



Memorandum submitted to the Human Rights Council at its 7th session, March 2008

Sri Lanka: 60 Years of Independence

Tamils: Neither Freedom nor De-Colonisation

Introduction

Overview of the 60 years

The purpose of this memorandum is to present an overview of the sixty-year period since the so-called independence from colonialism in the year 1948. The overview exposes the indisputable prevalence of planned, systematic and widespread grave crimes and persecution by the State of Sri Lanka directed against the Tamils as a people, from that very year of de-colonisation up to the present day. For the Tamils, then, it has not been a period of independence, but on the contrary, one of oppression. Nor has it been a liberating passage from colonialism, but only a transfer of colonialism from the British to a new colonial ruler, namely, the Sinhala-Buddhist majoritarian State. In this context, the memorandum also traces the development of the Tamil people's shift from striving after co-existence within a united Sri Lanka on the basis of equality, to restoring independent existence as the inevitable option.

As the year 1983 is considered as the beginning of the metamorphosis of the conflict into armed resistance, the period 1948-1982 will be considered as Phase-I and the subsequent period, Phase-II.

1. Phase-I (1948 – 1982)

“Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind...”
(UDHR, Preamble)

This phase marks the consolidation of the state as a Sinhala-Buddhist State, and the denial of equal status for the Tamil people as citizens. This was carried out by (i) the Citizenship act (1948) which deprived a million plantation Tamils of their citizenship; (ii) introduction of legislations (1949) that deprived these Tamils of their voting rights; (iii) State-sponsored colonisation of Tamil Homeland with Sinhala settlers brought from Sinhala areas, with adverse consequences for the Tamils. This, to-

gether with the above two legislations, deprived the Tamils of any effective voice in parliament; (iv) introduction of the Official Language Act (1956) which makes Sinhala the only official language, heavily reducing opportunities and promotions; (v) Standardization of marks (1970, revoked in 1978) for admission to the university, whereby Tamil students were required to score more marks than Sinhalese students; (vi) Enactment of a new Constitution (1972) which does away with the minority rights provision (Article 29) entrenched in the independence constitution, confers on Buddhism the ‘foremost’ place, provides that Sinhala will be the official language and that Sri Lanka will be a unitary state, (vii) another new Constitution (1978) reiterates the above provisions and adds that

it shall be the duty of the State to protect the Buddhist religion; (Though it adds that Tamil will “also” be an official language, it retains the provision that “Sinhala” shall be the official language).

2. Thirty Years of Non-Violent Struggle

The Tamil proposal for parity of status was rejected, and so was the proposal for a federal structure. Agreements were signed (1957) between the Prime Minister (from the SLFP, i.e. Sri Lanka Freedom Party) and the Tamil leader to recognize the NorthEast as the traditional Tamil Homeland and for a measure of autonomy at provincial level. This was soon unilaterally abandoned by the Prime Minister on the grounds that the opposition party UNP (United National Party) and Buddhist elements including the clergy opposed the agreement. Another agreement was signed (1965) with the new Prime Minister from the UNP on the above issues, but this time for autonomy at a lower level, to wit, district level. But this was never implemented for the very same reasons. Ironically, the opposition party this time was the earlier ruling party, namely, the SLFP that had signed the 1957 agreement.

The means used by the Tamil people to oppose the oppressive measures was the Gandhian style non-violence (‘ahimsa’). They staged peaceful sit-in demonstrations, protest marches and acts of civil disobedience.

But the response to the non-violent protests was violence directed against the Tamils by the police, the military and the Sinhala mobs. In **1956**, Tamil political leaders engaged in a sit-in demonstration were beaten up by Sinhala mobs and some were tossed into the sea while the Prime Minister was watching the scene. At least 100 people were killed. In **1958** the military were let loose on the protestors whom they brutally assaulted, while the Sinhala mobs did their part. Over 1000 Tamils were killed. Such major pogroms took place again in **1977**, **1981** and **1983**. Thousands of Tamil people were killed, maimed and had their houses businesses looted and set on fire in these pogroms.

Yet, as Paul Sieghart of the International Commission of Jurists (ICJ) observes in his Report of 1984 on Sri Lanka, it is remarkable that the Tamils did not retaliate, in spite of the fact that the po-

groms progressively grew in frequency and intensity. They held on to non-violence.

Electoral lists were used for identifying Tamil houses in Sinhala areas or the walls of the houses were marked with black paint for carrying out attacks on them, which reveals a deliberate plan and organized pattern behind the pogroms. In all these instances, government officers, the police and security personnel were actively involved or stood by idle. They were accorded impunity. Some police officers were even promoted by the State.

3. Tamils Compelled to Seek Eelam.....as a Last Resort

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” (ICESCR and ICCPR, Art.1)

Extreme and violent Sinhala-Buddhist nationalism of the Sinhala leadership and polity, the repressive legislations, the betrayal of promises and the increasing scale of Sinhala violence in response to Tamil non-violence, drove the Tamil political parties to come together to form the Tamil United Liberation Front (TULF) and to resolve at a Tamil Congress in 1976 to change their position from autonomy within a united Sri Lanka to secession, to “restore” the sovereignty of the Tamil people, in order “to safeguard the very existence of the Tamil nation” on the island.

4. People’s Mandate for Restoring the Sovereign Tamil Eelam

In the 1977 general elections, the TULF contested on the separatist platform and scored an overwhelming victory (97% of the votes in the North; and 75% in the East where the three communities, Tamil, Muslim and Sinhala live).

Thus, through the democratic process of voting at the general elections, the Tamil people unequivocally gave their leaders the mandate to pursue the resolution to restore the independent state of Tamil Eelam, a mandate they never revoked thereafter.

5. Compelled by State Terrorism to Take Up Arms as a Last Resort

“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...” (Preamble, UDHR)

While the political leaders adhered to non-violence, the Tamil youth, frustrated by the political record of the thirty years, by the terrorism of the State and by the futility of the non-violent means, decided “as a last resort” to take up arms towards the end of the 1970s. This marks the emergence of Tamil militant groups, eventually to be crystallised into the LTTE that would spearhead the liberation struggle, unswervingly committed to the resolve of the people to re-establish the independent Tamil Eelam.

6. Observations on Phase I

The establishment of Sri Lanka as a Sinhala-Buddhist state and the exclusion of the Tamil people is not a campaign of any particular government or individual leader. It is entrenched as a State policy. The active participation of government officers and of the State mechanisms of police force and the military in the pogroms against non-violent unarmed Tamil civil population, the inaction of the government leaders to promptly contain the outbursts of violence, the impunity afforded to guilty police officers, encouragement given to them through promotions – all these factors imply a planned, organized campaign from within the State structure. The oppression, therefore, is more radical than can be resolved by addressing violations of particular human rights or “bad governance.” By the same token, the problem demands a radical solution that admits of self-determination.

The oppression and persecution of the Tamils by the State precedes the emergence of armed resistance on the Tamil side, and in fact engendered it. Thus for nearly thirty years, neither was the end-goal of the Tamil people a separate state, nor the means violence. The decision to fight to retrieve Tamil sovereignty as an independent state came after years of peaceful efforts for equality, justice and dignity against oppression and terror. The resolve was made through the democratic process of voting in the general elections (of 1977). It is the-

refore not a pursuit initiated by the LTTE. The LTTE only continues the struggle, but by a different means, the means of armed resistance.

The use of the word ‘restoration’ in the 1976 ‘resolution’ is deliberate: it alludes to the once-sovereign Tamil kingdom, administered separately from the rest of the island by the Portuguese and Dutch colonial rulers for three hundred years, but later annexed by the British in 1833 to the rest of the island to form one administrative unit. The deliberate use of the word serves to show that the Tamils are not an upstart community of people suddenly trying to carve a territory for themselves out of what does not belong to them. They are neither claiming any part of the Sinhala territory, nor attempting to overthrow the Sinhala State. They are only reclaiming what was theirs and is rightfully theirs, something never conceded to the Sinhala people, whether by consent or by conquest.

7. Phase II:

7.1 The War Period: 1983 to date.

Be it noted that though it is not the aim of this memorandum to enumerate single occurrences of atrocities by the military machinery of the Sri Lankan State against Tamil civilians, yet it is inevitable that some instances are mentioned in order to substantiate how grave they are, how widespread spatially and temporally, how they are directed against the Tamils as a people, and how systematically they are carried out. Furthermore, these instances are not meant to be exhaustive, but only illustrative of the numerous such incidents. Nor is it the aim to present the violations of the two armed parties to the war, which would form a separate exercise.

To suppress the claim for a separate state and the emerging armed resistance, the state passed the 6th amendment to the Constitution entrenching that Sri Lanka shall be a unitary state, and enacted the Prevention of Terrorism Act (PTA) in 1979. The PTA gave extensive powers to the military, which resorted to all kinds of violations particularly against the Tamil youth, such as arbitrary arrest, torture, rape, extra-judicial killing, enforced disappearance, degrading and inhuman treatment, looting, arson, wanton destruction of houses and property, and the like. Counter-productively, it

only helped to drive the Tamil youth in large numbers to form or join armed groups, to consolidate the resolve of the people to secede and to inspire the people to support the armed struggle.

7.1.2 Widespread (spatially and temporally) and Grave Violations by the Military Machinery of the State.

“...Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such...” (Convention on Genocide, Art.2)

The incidents below are so selected as to illustrate that they are widespread (both spatially and temporally) and grave. It should be noted that these are – incredible though it might sound - single massacres on particular days, unless indicated otherwise in the text.

1983: The year 1983 will be one of the most shameful pages in the history of the Sinhala-Buddhist state of Sri Lanka for the most atrocious crimes against Tamil civilians and political prisoners in maximum security jails. Over 2000 were killed within a few consecutive days starting from 24th July, including 101 in the North (Jaffna), 19 in the East (Trincomalee) and 52 political detainees in the South (Colombo). About this episode the President later expressed regret that some members of his political party had “spoken in parliament and outside words that encouraged violence and murders, rapes and arson” that had been committed.

This violent year marks the beginning of hundreds of thousands of Tamil refugees and IDPs (Internally displaced Persons) fleeing their towns and villages

1984: 55 passengers in the east (Sampalhoddam), 52 from the north-west (Cheddikulam) taken to the north-central Mathawachchi and hacked to death, 215 in the north-west (at and around Thalladi), 131 in the north-east (at and around Kokkilai)

1985: 103 in the east (Udumbankulam and Than-kavelayuthapuram), 75 in the north (Valvet-tithurai), about 200 in the north (Vavuniya).

1986: 24 in the east (Ithayapuram), 33 fishermen in the north (off the Mandathivu coast), 48 IDPs in the east (Peruvely), 44 mostly IDPs in the east (Muthur Manalchenai).

1987: 150 or more in the east (Kokkaddicholai), 40 in the north (Alvai, taking refuge in a temple), 16 in the east (Paddithidal – all members of an extended family).

(1988 to 1989 was a period of the presence of the IPKF (Indian Peace Keeping Force) at whose hands the Tamil people suffered the same horrors. But this does not fall under the purview of this memorandum).

1990: 226 in the east (Batticaloa, people taking refuge in the Eastern University), 125 in the east (Pothuvil – all burnt alive), 205 in the east (Sathurukkondan – including 68 children), over 158 in the east (Vanthaarumoolai), over 70 “disappeared” in the north (Mandathivu).

1991: 28 in the north (Puthukudiyirupu), 220 in the east (Kokkadicholai), 9 in the north-west (Vankalai).

1992: 94 in the north-central Karapolla and Muthugalle, 10 devotees in the north (Vatrapalai temple), 50 in the east (Mailanthanai).

1993: 30 in the north (Sangathaananai), 13 in the north-east (Maathalan), 10 devotees in the North (Jaffna, St.James Church), 30 in the north (Kilaly - bodies of escapees from the Jaffna peninsula to the mainland - washed ashore with gunshot and stab wounds),

1994: 10 fishermen in the north-east (off Chundikulam shore).

1995: 20 school children in the north (Naagarkovil school), 65 IDPs in the north (Navaly, St.Peter’s Church), and about 90 in the surrounding areas).

1996: 184 in the north (Kilinochchi), 24 in the north (Kumarapuram), [over 600 “disappeared” in the north (Chemmani mass graves) between July and December].

1997: 7 IDPs in the north (Mankulam), 3 road workers and unknown number of fishermen in the north-east (Mullivaikaal).

1998: 25 in the north (Suthanthirapuram), 8 in the east (Thambalagaamam), 7 in the north-west (Chundikulam).

1999: 40 IDPs in the north-west (Madhu Church), 25 in the north (Manthuvil), 25 in the north (Palinagar)

2000: 28 detainees in the south (inside the Binthunuwewa Rehabilitation Centre).

7.1.3 Other Kinds of Crime

The incidents listed above are illustrations only of killings. Other kinds of grave and widespread violations that fall within the purview of the various human rights conventions, the Convention on Genocide and Geneva Conventions, have also taken place. such as torture, rape, arbitrary arrest, enforced disappearance, wanton and extensive destruction of property etc. These have been amply attested over the decades by INGOs like Amnesty International, International Commission of Jurists, Lawasia, Minority Rights Group and UN bodies.

Here are some relevant quotations from the above sources.

Arbitrary Arrest and Detention

“The indiscriminate round-ups of people solely because of their ethnic origin, and reports of their treatment in custody, are making many members of the Tamil community fearful that they are not safe to walk the streets of Colombo.” (Amnesty International, 1994).

“The number of prisoners at any given moment under the ER and PTA consistently remained close to 2,000. Hundreds of Tamils indicted under the PTA remained without bail awaiting trial, some for more than two years...Many such cases drag on for years.” (US State Department – Country Report on human rights practices 2000).

Torture

“I have received information indicating that torture and other forms of ill-treatment are employed on a widespread basis by members of the security forces, particularly against Tamils held in detention.....various methods of torture are said to continue to be used in police stations and other detention centres..” (UN Special Rapporteur on Torture, Report 1999).

Disappearances

“More than 680 people had “disappeared” in the north-east before the arrival of the IPKF, following arrest by the Sri Lankan security forces.” (AI, September 1990).

“Young Tamil men suspected of LTTE allegiances were detained and many disappeared. Frequently, the army and the police would cordon and search villages and detain scores of people. Tellingly, in 1996, when the security forces regained control of the Jaffna peninsula, the highest number of people (622) disappeared.” (UN Working Group on Enforced or Involuntary Disappearances – Report 2000).

Rape

“Many communications had been forwarded to Sri Lanka by the Special Rapporteur, almost all concerning women and girls of Tamil origin in the Northern and Eastern Provinces, who had suffered sexual violence at the hands of the military. Mass graves allegedly exist, in particular in the Jaffna peninsula, where raped and murdered women had been buried.” (UN Special Rapporteur on Violence Against Women, Report 1999). (In some instances, the security forces used hand grenades to blast off the private parts of their rape victims in order to erase incriminating evidence).

Deliberately inflicting harsh conditions of life ..

“The economic embargo on goods ...impacts on all aspects of day to day lifeWhile in theory the embargo is only with regard to items of potential military significance, in practice most items have not been able to reach the people. The result has been insufficient quantities of pharmaceuticals, food stuffs, drugs, kerosene, agricultural materials, spare parts and fertilizer and even items such as clothes water jars, pens and pencils, school books and other educational materials.” (Save the Children – UK, 1998).

This observation refers to the economic blockade imposed in 1991. Another blockade was effectively imposed with the closure in August 2006 of the only highway that links the northern Jaffna peninsula to the mainland. This stranglehold, which has not been released, has driven the people to near starvation. On the other hand, people are unable to fend for themselves because of the heavy restrictions on access to their livelihoods of farming and fishing

Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly

In the use of military hardware that are not precision weapons such as multi-barrel rocket launchers (MBRL), and in sorties of indiscriminate bombing, extensive destruction of property has been wrought in the Tamil areas.

In the 1984 pogrom, every single day of July witnessed the destruction of some village or other in the eastern Trincomalee: A number of entire villages were set on fire. By the year 2000, the houses destroyed in the east amounted to 150,000.

In the north, over 80% of the 176,000 houses in the Jaffna peninsula had been damaged by the year 1997; more than 17,000 of them were completely destroyed.

The destruction included numerous public buildings like hospitals, schools, places of worship, markets, community centres and libraries including the Jaffna library with its 90,000 volumes.

8. The Present Situation

There was a relative lull in the massacres during the ceasefire starting from February 2002. But as hostilities flared up even before the CFA was abrogated by the government in February 2008, indiscriminate shelling, aerial bombardment, enforced disappearance and extra-judicial killing have also become daily occurrences, claiming the lives of civilians at an alarming rate, particularly since the take over of political power by President Mahinda Rajapaksa in October 2005, quite in accordance with the expressly stated 'Mahinda Chinthana' (Mahinda Idea).

The grave violations by the State machineries are facilitated by the re-operationalization of the Prevention of Terrorism Act, once compared by Professor Virginia Leary to the legislation of apartheid South Africa and described by Paul Sieghart (ICJ) as "an ugly blot on the statute book of any civilized country."

In this short period, at least 2,300 Tamil civilians have been killed. According to a national NGO, five people are killed or "disappeared" daily in Sri Lanka. "Tamils are overwhelmingly affected. Although they form only 16% of the popula-

tion, 78% of victims of killings are Tamils."

Taking disappearances, 84% of the victims are Tamils, most of them occurring in Jaffna.

As for torture for example, this is what the relevant UN Special Rapporteur has to say: "The high number of indictments for torture filed by the Attorney General's Office, the number of successful fundamental rights cases decided by the Supreme Court of Sri Lanka, as well as the high number of complaints that the National Human Rights Commission continues to receive on an almost daily basis indicates that torture is widely practiced in Sri Lanka... This practice is prone to become routine in the context of counter-terrorism operations," (*Mr. Manfred Nowak, UN special Rapporteur on Torture and Human Rights Abuse, as stated in the UN press release on 30 Oct 2007, following his visit to Sri Lanka*).

Hundreds of thousands of Tamils have been made to flee their homes and villages as IDPs. In the east, villages from where Tamils have been forcibly driven out are being turned into Sinhala-Buddhist villages as accelerated colonisation.

8.2 Violations Reveal 'Intent' and Planned Campaign from within the State Structure

The attacks on the Tamil people that started in 1956 have continued over the decades to the present day for the same reason as then, namely, the fact that they are Tamils. This is clear from the fact that the killing, maiming and destruction have been indiscriminate. They have been attacked, killed or maimed for the sheer reason that they are Tamils.

This cannot be disputed in the case of the several anti-Tamil pogroms between 1956 and 1983.

It might be thought that during the 'war phase', military activities have been directed against the armed LTTE, and therefore the case of civilian casualties is only 'collateral damage'. But this claim flies in the face of facts, apart from the controversial concept of 'collateral damage' which places people at the margin rather than at the centre. In many instances, civilians were the direct targets of attack. This is especially so in the case of unprovoked attacks, particularly in the east, and retaliatory attacks by the SLAF for attacks by the LTTE;

these were often directed, not against the LTTE itself, but against unarmed civilians. Rape is a clear illustration of this point. The people are attacked for no other reason than that they are Tamils.

This demonstrates the intent of the perpetrators, which constitutes these acts as acts of genocide.

Amnesty International observed in 1993 that “since June there have been several such arrests forming part of a pattern of human rights violations directed at the Tamil community, in which thousands of people appear to have been arrested solely on the basis of their ethnic origin.”

State complicity in the form of active involvement of, or culpable negligence by Ministers, by Members of Parliament and by the police, impunity, biased judiciary and certain statements by representatives of the Sri Lankan State are further proofs of ‘intent.’

For instance, regarding the pogrom from 13 August 1977 to 15 Sept 1977, not only was no action taken despite the Sansoni Commission’s finding that the police either participated in the assaults or watched mobs without intervening, but instead, the UNP government of President J R Jayewardene passed the Indemnity Act No.20 “with a view to restrict legal proceedings against Ministers, Deputy Ministers, or any person holding office in the government in any capacity, whether naval, military, police or civil, in respect of acts done during the period 1st August, 1977 to 31 August 1977.”

It was the same President who later admitted with regret complicity of members of parliament from his party in the pogrom of 1983.

In the last two years the genocidal programme has been aggravated. The abductions and cold blooded extra-judicial killings taking place in the Tamil homeland practically every single day cannot be dismissed as mere excesses of some “elements” (rogue elements) within the forces or the paramilitary. Given the circumstances of the territory under SLAF control in the northern Jaffna, the conclusion is inevitable that these atrocities flow

from a deliberate plan and approval from a central authoritative source. Pervasive presence of the military with an average of one military personnel for every ten or twelve civilians, a soldier deployed every thirty metres along the streets, military checkpoints at every intersection of the streets that criss-cross the towns, killings taking place in the vicinity of these checkpoints, the notorious “white vans without number plates” used for abductions, the long period of time without a single culprit’s being apprehended....are all circumstances that convincingly point to planned and systematic execution of the atrocities.

9. Observations on Phase II

Whether one looks at the violent years of Phase II from the aspect of Genocide, International Humanitarian Law or International Human Rights Law, the State of Sri Lanka stands guilty of planned, systematic and widespread grave crimes and persecution directed against the Tamils as a people with the intent to destroy them.

10. Conclusion

The only option now left for the Tamil nation, a nation that once enjoyed sovereignty but is now made a subject people against their will, a nation whose existence on this island spans over three millennia, a nation whose peaceful efforts to secure its dignity and equality within a united Sri Lanka has been met with exclusion, persecution and the threat of genocide perpetrated by the Sri Lankan State, is to pursue what it resolutely declared thirty years ago:

“The restoration....of the free, sovereign State of Tamil Eelam, based on the right of self-determination.”

03rd of March 2008

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