

Representations of Mass Atrocity in Sri Lanka: Challenges to Justice and Recovery

Introduction

Within the legal framework of international law, the representation of mass atrocity is expressed through the categories of war crimes, crimes against humanity and genocide. However, these conceptual categories are applied within particular political and ideological fields that must be critiqued in order to reach an inclusive representation of truth about mass atrocity. The focus of this paper will be on the representations of mass atrocity in Sri Lanka, and will demonstrate that ideology has determined how truth is perceived, and how justice and recovery are envisaged. Approaching this task through a hermeneutic of suspicion allows a more accurate representation to emerge within the political imagination, and indicates more comprehensive justice and recovery measures to be pursued.

Death beyond Reckoning...

According to UN sources, at least 40,000 Tamil civilians were killed in the final phase of the war, lasting just four months (January through May of 2009).¹ Giving testimony at the Government of Sri Lanka (GoSL)-appointed Lessons Learnt and Reconciliation Commission (LLRC) on 11 January, 2011, the Bishop of Mannar revealed that there are still 1,46,679 Tamils unaccounted for, a figure he arrived at by analysing official data issued by the GoSL².

How can the truth about such shocking loss of life, such a staggering number of deaths, best be represented in the political imagination? International law provides conceptual and legal categories, including war crimes, crimes against humanity and genocide. The representation of mass atrocity in Sri Lanka within these categories will determine what measures are deemed necessary in terms of justice and recovery.

¹ The war between the Sinhala-majority dominated Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) has lasted nearly for 30 years with several unsuccessful ceasefire agreements and peace processes (1987-1989, 1994, 2002-2007). The GoSL unilaterally withdrew from the 2002 ceasefire agreement (CFA) and launched massive military operations (2008- May, 2009) against the Tamil population in the North and East of the country – which is considered to be the Tamil homeland – where the LTTE had created a *de facto* state during 30 years long war. By the 2002 CFA the boundaries of this *de facto* state were recognized as the line of control between the GoSL and the LTTE.

² Mannar is a district in the northwest of the Tamil region

Is it a war crime?

The three-member UN panel report on Sri Lanka, Human Rights Watch and the International Crisis Group represent the mass killings of Tamil civilians in the last phase of the conflict as a possible war crime. The US/UK/EU also seem to follow the same line of thinking calling for war crimes investigations.

The discourse on 'war crimes' in the specific case of Sri Lanka has several distinguishing features:

- The war is considered an internal armed conflict.
- Individual rights are prioritized, and limits to the acceptable use of violence are imposed.
- Emphasis is laid on the culpability of both sides (Human Rights Watch justified the banning of the LTTE by the EU on the same grounds.).
- The discourse accepts the right of the Sri Lankan state to defend itself and upholds the unitary character of the state (the political field).
- All forms of nationalism are considered negative (International Crisis Group).

With the discourse on war crimes in Sri Lanka circumscribed by these ideological markers, it is inevitable that the scope for justice would also be similarly limited. Emphasis is thus laid on the reinforcement of rule of law and the punishment of perpetrators. While these are important steps to overcome impunity, these do not address the root causes of the conflict. Within this paradigm, recovery becomes an undefined political solution for the victims (Tamils) under the existing unitary state structure. This type of a solution emerges from the inadequacy of the discourse on war crimes that reduces the truth about mass atrocity in Sri Lanka to a breakdown of law and order. Such an approach lacks a historical perspective of the conflict, a critique of the state structure and an understanding of the ideology that has given rise to the conflict.

Is it a crime against humanity?

Although the organizations mentioned above do not use the term 'crime against humanity', Amnesty International does. The People are Tribunal on Sri Lanka (PTSL or Dublin Tribunal), held in January 2010, used both terms.³ In this context, a crime against humanity refers not only to unjustified murder within an armed conflict, but also a crime that has been

³ The People's Tribunal on Sri Lanka (PTSL) was conducted by Permanent People's Tribunal (PPT) which is renowned for conducting opinion tribunals on violations of human rights by governments throughout the world. The origin of PPT is in the Bertrand Russell/ Satre Tribunal on Vietnam which investigated the crimes committed by the American government against the Vietnamese people. See <http://www.ptsrilanka.org/>, downloaded: 10/09/2011.

perpetrated within a widespread or systematic attack directed against a civilian population with knowledge of its outcome. Even though the *material element* is the same, the *mental element*, or the *intent*, differs when considering a crime against humanity, as opposed to a war crime. ‘As to the mental element of murder as a war crime, it consists in the intent to kill one or more persons, while the mental element of murder as a crime against humanity not only includes the intent to cause someone’s death, but also the knowledge of being part of a widespread and systematic attack on any civilian population’ (Michaela Frulli 2001, p.333).

The Dublin Tribunal asserted that the Sri Lankan conflict was primarily a war against the Tamil *people*, and pointed ‘to the full responsibility’ of international actors in ‘providing political endorsement of the conduct of the Sri Lankan government within the context of ‘Global War Against Terror’ (People’s Tribunal on Sri Lanka 2010: 20). By using the words ‘Tamil people’ in its report, the Dublin Tribunal recognised the collective identity of the principle victims, while holding the GoSL mainly culpable for the crimes. Additionally, by going beyond a single-state lens, the excessive internationalisation of the Sri Lankan conflict is also acknowledged.⁴ The Dublin Tribunal refrains from naming the mass killings as genocide, but recommends further investigation.

How does the discourse on crimes against humanity inform justice and recovery? The Dublin Tribunal sees justice and recovery as release of political prisoners, addressing the needs of refugees, post-war rehabilitation, and a power-sharing political solution. It also recommends an authoritative Truth and Justice Commission for Sri Lanka (avoiding the word reconciliation), and an independent international commission to investigate the responsibility of the international community in contributing to the breakdown of the 2002 peace process and commencement of war in 2006.⁵ Even though some of its recommendations for deliverance of justice and recovery overlap with those of the discourse on war crimes, the Tribunal’s approach to mass atrocity in Sri Lanka differs in critical details. The Dublin Tribunal upholds that international humanitarian law was promulgated to protect citizens from their state and lays emphasis on the culpability of the GoSL.⁶ It also exposes the complicity of the USA/UK/EU in supporting the GoSL. The Dublin Tribunal is not legally binding, but it is morally binding, creating a space for an improved political representation of truth and justice.

⁴ Due to the strategic location of Sri Lanka in the Indian Subcontinent and the Indian Ocean its political stability is of paramount importance for the global powers who use main sea lines of communication that run through the Indian Ocean. As a result major powers like USA, UK, EU, China, Japan, India and many other countries were involved in the supporting the GoSL in its war against the LTTE.

⁵ The word, ‘reconciliation’ is being used by the GoSL to establish a socio-political mechanism of amnesia where justice to the victims is denied. In that context the word ‘justice’ has become more meaningful for the victims than the word ‘reconciliation’.

⁶ The Tribunal acknowledged that the LTTE also violated human rights. However, the Tribunal states that ‘neither war crimes, nor crimes against humanity would be justified by any act committed by the victims’.(People’s Tribunal on Sri Lanka 2010: 19).

However, the legal categories of war crimes and crimes against humanity have been applied to Sri Lanka without a historical analysis of the conflict. There is no exploration of the nature of narratives and stories that shape the two main public discourses of the conflict: Sinhala Buddhist nationalism (ethno-religious) and Tamil nationalism (ethno-secular). Even though these legal categories are necessary as preliminary steps to understand mass atrocity in Sri Lanka, they do not sufficiently represent the scope of the conflict, and consequently negatively impact the delivery of justice and processes of recovery. It is therefore necessary to approach political imagination of mass atrocities in Sri Lanka with a historical analysis.

Is it Genocide?

According to Raphael Lemkin, genocide refers to “the destruction of a nation or of an ethnic group... Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation.... It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups...” (Raphael Lemkin 1944). The UN Convention on Prevention and Punishment of the Crime of Genocide (1948) further clarifies that such actions may be directed at the target group ‘in whole or in part’. The definition of genocide therefore lays emphasis on the *collective identity* of a population and a *coordinated plan of actions* to eliminate them *in whole or in part*.

The staggering numbers of civilian victims in the Sri Lankan conflict were not only individuals possessing individual rights, but also a distinct group of people with a particular collective identity, who possessed collective rights as such. By analysing the *intent* and *actions* of the GoSL during the war within a historical perspective, the genocidal process carried out against the Tamil people becomes evident. A *coordinated and systematic plan* elaborated through *a series of policy statements, orders and actions* materialises from the historical backdrop. The primary focus until this point has been on the last phase of the war (January through May 2009). However, in situating the element of *intent* within a historical context, four main periods of the Sri Lankan conflict emerge, without which the genocidal intent of the last phase of war remains obscured.

1. The colonial period (until 1948): The Sri Lankan state was built by the British colonial rulers with a unitary state structure that established the rule of the Sinhala majority. This is the beginning of racism in Sri Lanka, informed by the Indo-European Aryan myth of racial superiority over Tamil and Dravidian cultures.⁷
2. The post-colonial phase (1948-1970s): All post-independence governments have reinforced the unitary state structure and its Sinhala Buddhist ideology (the majoritarian ideology), promoting cultural homogenisation throughout the entire island through the apparatus of the centralised state structure. Citizenship rights of

⁷ This myth also influenced Nazism against Jews and others, and Hindutva ideology in India against Muslims and others.

Tamil plantation workers were abolished. Sinhala was declared the only official language, and Sinhala settlements were built in Tamil areas as state-sponsored colonies. During these 30 years, Tamil resistance embraced Gandhi's methods, yet nonviolent protests were brutally attacked by racist Sinhala groups. Nevertheless, no one was brought to justice, although over 500 Tamils were killed as a result of racial attacks.

3. The era of GoSL-LTTE military conflict (1970s-2002): In the post-colonial phase, the primary demand of the Tamil resistance was to be incorporated into the state structure. However, in the 1970s, a separatist nationalist movement evolved, under the militant leadership of the LTTE. July 1983 marked a turning point in which, according to official figures, over 3000 Tamils were massacred by racist Sinhala groups, with the support of the security forces, police, government officials and ministers. From 1983 until 2002, at least 80,000 Tamils were killed and 1.5 million displaced. Tamil militants countered with violence that claimed the lives of around 3000 Sinhalese and Muslims.

4. The ceasefire period (2002-2006): The Ceasefire Agreement and peace process between the GoSL and the LTTE came into effect as a result of a balance of power being reached between the two parties in conflict. The last phase of the war began in October 2006, leading to another round of shocking violence, characterized by staggering numbers of civilian casualties.

Although *intent* may be seen as an individual psychological state, the dominant *public discourse* connects the individual to the collective *intent*. The *public discourse* of the main perpetrator of mass atrocity in Sri Lanka is Sinhala Buddhist nationalism, which upholds the unitary character of the state and espouses cultural homogenisation. The *motive* behind the *intent* to destroy the Tamil ethnic and national group in part was to protect the unitary state and its Sinhala Buddhist ideology. In this sense, the *motive* underlying the *public discourse* corroborates the genocidal *intent* of the Sri Lankan state.

Intent in historical perspective

In the colonial period...

Anagarika Dharmapala, the founding father of Sinhala Buddhist nationalism, instigated anti-minority sentiments and riots in the 1910s. The following is an excerpt from a letter he wrote to the colonial government in 1915, opposing the arrests of Sinhala leaders who led anti-Muslim riots.

‘The British officials may shoot, hang, quarter, imprison or do anything to the Sinhalese but there will always be bad blood between the Moors and the Sinhalese... but my loyalty to the British Throne is as solid as a rock...’ (Ananda Guruge 1991: 541).

During the 1930s, the leading Sinhala labour leader, A. E. Gunasinghe, was addressed as a lion by his party. Its official paper followed the example of Hitler, emphasising the need to keep 'Sinhala blood pure' by avoiding mixed marriages ((Kumari Jayawardena 2003: 30-40). While in Germany anti-Semitism was promoted in defence of the 'German Aryan race'; in Sri Lanka, anti-Dravidianism was ideologised in defence of the 'Sinhala Aryan race'. The racialised interpretation of Sinhala identity was reinforced particularly among the working class, resulting in attacks on south Indian migrant workers during the Great Depression.

According to a speech given in 1939 by D. S. Senanayake, considered to be 'father of the nation', and who in 1948 would become the first prime minister after independence:

'We are one blood and one nation. We are a chosen people. The Buddha said that his religion would last 5500 years. That means that we, as the custodians of that religion, shall last long' (Rajan Hoole 2001: 5).

S.W.R.D. Bandaranaike, who as prime minister in 1956 would declare Sinhala the only official language of the state, made the following statement in 1939:

'I am prepared to sacrifice my life for the sake of my community, the Sinhalese. If anybody were to try to hinder our progress, I am determined to see that he is taught a lesson he will never forget' (Rajan Hoole 2001: 5).

In the era of post-colonial nation-building...

The nation-building process was marked with anti-Tamil riots. Most of these riots were instigated with the aim of counteracting the non-violent demonstrations of the Tamils against discriminatory measures. The following are examples of remarks made by Sinhala members of parliament in 1958 after an anti-Tamil riot:

'The Tamils will destroy us eventually. Before that happens, I ask that the Tamils be settled once for all.' - Pani Illangakoon (Rajan Hoole 2001: 471).

'The Tamils are gaining strength in all parts of the country where they are. The Sinhalese are in danger of being liquidated by them.' - Sagara Palansuriya

'Destroy them.' - Lakshman Rajapakshe (Rajan Hoole 2001: 471).

In the era of GoSL-LTTE military conflict...

As the Tamil resistance turned militant, articulating a separatist agenda, the first executive president of Sri Lanka, J. R. Jayawardene (1978-1988), stated:

"I am not worried about the opinion of the Jaffna people... now we cannot think of them, not about their lives or their opinion... the more you put pressure in the north, the happier the Sinhala people will be here... Really if I starve the Tamils out, the Sinhala people will be happy." - J.R.Jayawardene (Daily Telegraph, July 1983).⁸

⁸ Jaffna in this statement is the northern peninsula of the Tamil region.

The following statement of the Minister for National Security, (1982-1988), who commanded military operations in the Tamil region, reveals the intent of eliminating one of the foundations of collective identity of the Tamils.

“The only way to root out terrorism was to remove the concept of ‘traditional homelands (of the Tamils)’-Lalith Athulathmudali. (Vssubramaniam 12 March, 2010)

During this period, one of South Asia’s oldest libraries, located in the Tamil region of Sri Lanka and possessing a large number of ancient Tamil manuscripts, was burnt by a group of Sinhalese, who were led by a government minister. The library was revered as the principal cultural symbol of Tamil collective life. During the same timeframe, a group of Tamil political prisoners were murdered by Sinhala prisoners, with the support of the prison guards. The following statement by another president reflects the racial ideology of those who led the Sri Lankan government in 80s and early 90s:

“Minorities are like creepers clinging to the Sinhala tree.”-D B Wijetunge (Vssubramaniam 12 March, 2010)

Last phase of war...

The shocking violence and staggering numbers of victims from the last phase of war are neither the result of a historical accident, nor an isolated set of unfortunate events, neither collateral damage, nor a breakdown of law and order. They are the logical consequence of a historical process of eliminating the ethnic and national foundations of the Tamil people.

The last phase of the war should be analysed against the achievements of the Tamil nationalist movement by 2002. The Ceasefire Agreement and peace process between the GoSL and the LTTE, a result of the weakening of the Sri Lankan state due to Tamil resistance, created an unprecedented parity of esteem between the parties. This posed a significant challenge to Sinhala supremacist ideology. Furthermore, it directly challenged the unitary state structure, as the LTTE had built a *de facto* state of Tamil Eelam in the North and East of the island, in which over 500,000 Tamils had chosen to live by 2002. The *de facto* Tamil state also caused serious concerns among the international allies of the GoSL. They provided political, diplomatic and military support backing the specific *intent* of the Sri Lankan state to destroy the national foundations of the Tamil people.

Often, the last phase of the war is justified by the GoSL and its international allies as a counter-insurgency war, rationalised within the ‘global war on terror’. They deny the charge of genocide due to the absence of a *specific intent* to destroy a distinct group of people. However, even without articulation of a *specific intent*, the *general intent* remains clear enough. A knowledge-based interpretation of intent (Alexander K.A. Greenwalt 1999) illuminates the psychological relationship between the perpetrator and the outcome of his/her actions. As it was argued in the case of Guatemala, could the intent be military (to destroy insurgents), not racist ? (Greg Grandin 2003: 347). If the outcome of the massive attacks

directed against the Tamil population could have been predicted with prior knowledge and with practicable certainty, such actions can constitute genocide. In other words, engaging in a coercive counter-insurgency war, that deliberately terrorises a civilian population through large-scale military attacks in order to resolve an ethno-nationalist conflict, is genocidal in *intent*.

The following statements of Sri Lankan military and political leaders during the last phase of war, which accompanied *coordinated plans* to attack the Tamil population, reflect both the specific and the general *intents*:

“I strongly believe that this country belongs to Sinhalese...We, who comprise 75% of the population, will never surrender ourselves. The right to defend the country lies in our hands. Minorities can live here. But they cannot make unjustifiable demands using the cover of being a minority.” - Lt. General Sarath Fonseka, Commander of the Sri Lankan Armed Forces (23 September 2008 - National Post, Canada).

“In any country the administrative powers should lie in the hands of the majority. We cannot prevent it. The majority should have the power in their hands. This country will be ruled by the Sinhalese who represent the 74% of the population.” - Lt. General Sarath Fonseka, Commander of the SL Armed Forces (19 July 2008, Daily News, Colombo, Sri Lanka).

“People who are trapped in Mullaithivu area are just the relatives of the Terrorists. They cannot be considered as civilians at all.” - Government coalition partner JHU (National Heritage Party) Press Conference (28 January 2009, Colombo, Sri Lanka).

“...Anything that stands outside the designated safety zone, will be targeted. Be it a hospital, be it civilians, as long as it remains out of the ‘no fire zone’ it becomes a legitimate target....” - Defense Secretary Gotabhaya Rajapaksa (02 February 2009, Interview with ‘Sky News’).

These statements clearly reflect knowledge regarding the destructive consequences of the GoSL’s actions for the survival of the Tamil group. The UN report revealed that even the designated ‘safety zone’ was heavily attacked.⁹ In the aftermath of the war, in May 2009, the Sri Lankan president, Mahinda Rajapakshe, declared in his victory speech:

“There are no minority or majority communities in Sri Lanka today. There are only patriots and traitors.”

Transnationalisation of Truth: The Geo-politics of Genocide

The *well-coordinated* attack directed against the Tamil people was carried out with the full knowledge of not only the Sri Lankan government, but also the international actors whose voices could be heard through the UN. Global powers, including the USA, UK, EU, China and India, needed a strong state in Sri Lanka as a balance of power in their attempts to control

⁹ This is the zone that was declared safe by the GoSL. The civilians were asked to move this zone by the GoSL.

economic, political and military power in the Indian Ocean region. To name genocide in Sri Lanka is not only legally, morally and conceptually correct, but also captures the political imagination of the Tamil people, who for decades have struggled against discrimination, oppression and repression. Naming genocide not only has an emotional and symbolic value, but also a political value that seriously questions the ethical validity of the Sri Lankan unitary state structure and its international alliances. The war intentionally destroyed the national foundations of the Tamil people, created as a resistance to a racist ideology and power structure. The Sri Lankan government is culpable for the Tamil genocide, however, the international community, led by the above-mentioned powers, shares responsibility for it.

Conclusion: Justice, Recovery and Hope

Naming genocide in Sri Lanka can help determine the nature of justice required by Tamil victims and survivors, particularly the recognition of Tamils as a distinct nationality with the right to self-determination and autonomy in their traditional homeland. However, this form of justice should not lead to an essentialist construction of Tamil versus Sinhala binary identities that will reproduce the genocidal system and further polarise the two nationalities. Instead, naming genocide should be interpreted as resistance to a fundamentalist state ideology that does not tolerate diversity, equality and interdependence. Such a fundamentalist ideology does not have perennial or primordial bindings that are unchanging; rather, it was historically constructed within the colonial period, and reinforced by Sri Lankan nation-builders and their global allies. Only such a historical and non-essentialist (non-racist) perspective can support recovery in Sri Lanka. Amidst traumatic memories of mass atrocities, hope is found in humanity's eternal potential to change, and to resist perceived unchangeable and dehumanising structures and ideologies.

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