

A Marred Victory and a Defeat Pregnant with Foreboding

“I do not know which is apt, whether to laugh or to cry. The [expatriate] society weeping that ‘he is gone’ spares no thought for those whom ‘he’ devastated. Wounds will heal, scars will remain. How many of us oppressed in heart and mutilated by a myriad scars must yet get on with life? Those not directly affected would go on as before. Bearers of weapons of war cannot discern the feelings of those injured by them. Our future could look bright only if we possess that divine quality of forgiveness.” – A mother’s lament

Summary

This report covers key issues arising from the recently concluded war. It begins by examining current political prospects, and then moves on to a sketch of the last two months of the war primarily from the standpoint of civilians. While being frank about the LTTE’s cynical use of civilians, the report raises questions about the Government’s relentless move to crush the LTTE leadership while placing the civilians it held hostage at unacceptable risk. It examines humanitarian and human rights issues, the detention of the doctors who served with courage in the No-Fire-Zone, questions about the fate of the injured left behind and moral questions arising from the action against the LTTE leadership and the fate of Prabhakaran’s family. The report closes with a warning, noting the danger posed by the present government behaving increasingly like a replica of the LTTE, and makes some recommendations that UTHR(J) believes would be profitable at this juncture. The report and its recommendations emphasize two aspects in particular: the need for urgent measures to address the concerns of the recently displaced living in camps and to secure accountability of the state to ensure the due rights of its citizens.

Introduction

The war ended officially on 20th May 2009 in a final flourish of brutality by both sides where almost the entire LTTE leadership was killed, much as the JVP leadership was decimated in 1989. As then, the hypocrisy and the attendant brutality remained after the conflict ended, leaving the gates open for future schism. Human rights had in the late 1980s been a game of politicians who used it to beat the UNP government with. At the same time these politicians were working with the security forces to deal with the JVP’s murderous rampage extra-judicially. The extra-judicial culture has again grown acute in recent times, with the present government feeling no qualms about killing someone for their views – indeed a ‘home grown’ substitute for the rule of law.

For the nearly 300 000 people held in internment like camps, the end of the war has not brought about the respite they deserve. They continue to suffer in squalid conditions of camps made not to last more than a few weeks. Living conditions including families packed into tents and the deteriorating hygienic conditions from the lack of proper sewage to garbage disposal are leading to further disease and suffering. These displaced

peoples who had suffered much under the LTTE do not deserve to be held in these conditions. The Government in restricting people the choice of movement out of the camps is responsible for their suffering. While the screening should be much quicker, there is no justification for detaining those who are clearly not combatants.

Nurtured amidst appalling human rights violations by the Sri Lankan state from 1977, the Tamil militant movements made a virtue of impunity. The upshot was the LTTE whose astounding military success was founded on despoiling the social fabric of the Tamils and making everything, from child bearing to education, creatures of its military needs.

The LTTE politically took Tamil society hostage from the mid-1980s through systematic terror. Militarily stymied, it took physical hostage of 300 000 people in its final stages, repeatedly provoking the Army to underpin its claims of genocide, shooting or shelling hundreds who tried to escape and forcing thousands of their children who could barely carry a rifle to man the frontlines. Even as the LTTE leaders were discussing surrender terms, they were sending out very young suicide cadres to 'martyrdom' to slow down the army advance.

Through repeated abuse of peace processes to strengthen its war machine, the LTTE again and again resuscitated the Sinhalese majoritarian agenda which had lay dormant when peace seemed possible. Such provocative action during the last peace process enabled President Rajapakse to come to power backed by hawkish allies intent on a military solution to the ethnic problem.

In turn, it is ironic to see the Sinhalese polity is being taken hostage by the very elements of Sinhalese extremism that fuelled and exacerbated the conflict in the first place. These elements within and outside the major parliamentary parties have derailed every attempt at a political settlement since 1957. The present government too has relied on Sinhalese narrow nationalism, within the state and judicial apparatus and without it, to undermine any authentic investigation demanded by world opinion into major human rights violations and political crimes. The same abusive response is in evidence as the government attempts to defend itself against worldwide criticism of the way military operations were conducted in the last stages of the conflict.

Sections of the Tamil Diaspora blindly supported the LTTE's terror at home and its political articulation of people as weapons of mass suicide. In turn they became accomplices in extending its dreadful fiat over the Tamil social and political space within Western democracies. Without batting an eyelid, this same Diaspora is using human rights campaigns to challenge the Lankan government. They enhanced the legitimate stories of profound suffering of their people with well-publicised lies that the people were staying with the LTTE willingly, all the while denying as always its abuse of children and blaming the Government squarely for all their ills.

While challenging the majoritarian exclusivism of the State as the primal cause of the violent ethnic conflict, the UTHR(J) were among those who saw with alarm that in resisting the State, the Tamils had become prisoner of a deadly fascistic dispensation. The

transition to armed struggle from parliamentary nationalism exposed the weakness of our society and the futility of politics which relied on nationalist rhetoric that equated dissent with treachery. Those who tried to charter a broader and clearer vision were soon isolated and marginalised. The UTHR(J) were convinced from the start that failing to challenge this nihilistic trend would achieve nothing but debilitation and polarization that would lend legitimacy to the Sinhalese chauvinistic agenda. Our colleague Dr. Rajani Thiranagama felt this very keenly and wrote these prophetic words in the Broken Palmyra exactly 21 years ago and paid for her convictions with her life:

“The Tigers’ history, their theoretical vacuum, lack of political creativity, intolerance and fanatical dedication will be the ultimate cause of their own break up. The legendary Tigers will go to their demise with their legends smeared with the blood and tears of victims of their own misdoings. A new Tiger will not emerge from their ashes. Only by breaking with this whole history and its dominant ideology, can a new liberating outlook be born.”

That demise having come to pass there is real concern that the politics of the South will become preoccupied with the Sinhalese majoritarian agenda. That would undermine any meaningful course of reconciliation and restoration of human dignity. Obscurantist statements by the Defence Secretary and Army Commander with a strong hint of menace exhibit this danger very clearly. On the eve of victory celebrations on 3rd June 2009, senior journalist Poddala Jayantha who was previously threatened by the Defence Secretary was attacked and injured in the now familiar fashion: ‘Those who love us do what is required. We cannot help that’, Sunday Times 1st Jun.08.

Addressing past violations, reforming the state, and bringing to an end the culture of impunity are imperative if the country is to move forward towards a stable and dignified peace. The demand from sections of the international community for an international inquiry is being used by the State to whip up xenophobic emotions which may undermine any genuine peace process and entrench Sinhalese nationalist ideology that is detrimental to the country. The handling of the ACF case and impunity enjoyed by those who were involved in extrajudicial killings show the present government is steering the country along the beaten track to disaster.

The failure of the international community to rein in the LTTE once it was clear that it had doomed the 2002 peace process, gave the Rajapakse government the political pretext to ignore their warnings and prosecute the war relentlessly with the objective of wiping out the LTTE leadership. They succeeded and kept out the international community even when it offered opportunities to minimise harm to the civilians. Our examination of events suggests that by normal military standards, the soldiers in close encounters behaved exemplarily towards civilians. But needless and at times tremendous harm was done by political decisions of the High Command to take the No-Fire-Zone using artillery barrages at a time when the LTTE was relying increasingly on children. It was callous not to give opportunity for diplomatic alternatives that could have achieved the same result.

The destruction of the core of the LTTE has been achieved, but many legal and moral questions remain. One group of questions concerns the political decisions mentioned above. The other concerns what appears to be the politically ordered massacre of people who wanted to surrender or surrendered; the fate of their families and LTTE injured left behind; and the question of what happened to Prabhakaran's wife, and the 12-year-old son, whom all accounts from army sources claim was captured. It is not so much a case of what the LTTE did to the people, but what the State became through its own excesses in the course of fighting it. Against this legacy, those in power are using the victory (for which they owe the subaltern dead) to build for themselves citadels of power and glory. And they attempt to reinforce that power by appealing to Sinhalese ideology. Now with the war over, they are calling for a huge army, one assumes to keep the minorities under check and also to maintain the prominent role of the military in the affairs of the country. Lost opportunities have become the bane of Lanka. The righteous society the President seeks to build cannot be built on pure rhetoric and manipulative politics. It can be done only if the leadership thinks beyond their power ambitions towards the well being of the people.

The President's victory speech in Parliament on 19th May while carrying some good sentiments in a nebulous way, left little room for optimism. He again spoke of a home grown solution to the country's ethnic impasse, said nothing about how he understood the problem and how he would approach it, except to play to the xenophobic gallery by repudiating 'imported solutions'. One cannot begin without acknowledging that the home grown idea of Sinhalese-Buddhist hegemony has always stood in the way of any solution, was the principal cause of the bloody anarchy we faced and needs to be explicitly repudiated. The need for reconciliation was missing from his speech.

All peoples and nations share a common fund of experience and a common history. 'Home grown' has in the tenure of this government served as populist rhetoric to mask what is really just evasion of responsibility, arrogance and a refusal to understand. Except for those blinded by their narrow vision, all that we have seen of home grown ideas in the last six decades is homicidal ignorance: communal violence rooted in majoritarian ideology, based in turn on third rate history, and a total erosion of standards.

In his speech, the President thought it a brilliant stroke to abolish the word 'minority' from the vocabulary and make everyone equal, as if all it took were a royal proclamation. Along with this he recognized only two kinds of people, those who love their motherland and those who do not, the latter being the lesser. The problem with that, of course is whose idea of a motherland prevails? These sentiments in the speech reflect those who hold to the Sinhalese-Buddhist hegemonic view. This hegemonic rhetoric about motherland accompanied by anti-Tamil violence led to its Tamil version, which at that historical juncture most Tamils believed was forced on them. Thousands of Tamil youth fought in several groups and willingly gave their life, not because they did not love their country fervently, but because they believed their country was Tamil Eelam. They include the majority of LTTE cadres who have died.

Even if one rejects the LTTE leadership as totalitarian, barbaric and utterly self-indulgent, one cannot dismiss the cadres both in the LTTE and from other groups as “terrorists” and traitors against Lanka. The lesson for those of us living is that however much it took hold of us at that time, nationalist rhetoric contained within it the seeds of war, a terrible waste of lives and totalitarianism. We must honour the dead, both militants and soldiers, with a heavy sense of responsibility. In order that the honour we give them are no mere empty words, we have to feel where we all went wrong and do what is needful to prevent a repetition. The only way those Tamil families and communities that have lost loved ones can find meaning in their loss and begin to think about a future as part of Lanka is if they as a people are granted equality and dignity through a just political process. Making them feel Lankan will be hard work, and the President seems to lack that sensitivity. It comes from his ideological make up and inability to understand the structural problems entailed by the character of state, and as a result the insecurity felt by the minorities.

Discrimination in Action: No sooner the President abolished the term minority, some old discriminatory habits which caused the Tamils to rebel show signs of returning with a vengeance. ‘Sinhalese’ fishermen have been brought under naval protection to fish in the sea off Mannar Island without any restriction. The local Tamil and Muslim fishermen are allowed only about four days a week on the pretext of security for some minor naval movements. The trawlers with Sinhalese fishermen use large Japanese nets of a kind now banned internationally, which drag the seabed, pulling out coral, the nets of local fishermen and damaging the breeding ground, eggs, weeds and fish fodder.

On 28th May the Tamil fishermen protested and had an argument with a group of Sinhalese trawler fishermen, who using the communication set the Navy provided, informed them of the boat number. When the Tamil fishermen came ashore, naval men who were waiting for them with batons, made the Tamils kneel and beat them up severely.

At this time when the official narrative dismisses the insurgency as one of Tamil terrorism backed up by international conspiracies, we must re-emphasise that the Tamil rebellion was the result of the leering loutishness of a Sinhalese dominated State that tried to deal with the minorities by the use of feudal thuggery (best exemplified by repeated outbreaks of communal violence) and persistent deprivation and humiliation. Over decades, none of that has been effectively redressed.

There is always hope amidst despair. Ordinary Sinhalese people from all walks of life felt the pain of Tamil civilians caught up in the conflict. Even from the border villages, Sinhalese who suffered grievous violence over many years have donated whatever they could lay their hands on for collections for the relief of Tamil IDPs. Even many middle class Sinhalese feel that time has come for reconciliation and initiatives to give new life to the country. They look to a broader political settlement that gives dignity to the minorities. Instead of building on this potential, the leaders are again failing the country through their preoccupation with a witch hunt and entrenching abuse of authority, while further subverting accountability.

5. Meeting the Challenge of the Future

There is a grave problem of impunity and denial of rights in Lanka that could turn the victory against the LTTE into a nightmare of violence as time moves on. These problems have been building up over a long time. Making the conduct of the war the major issue, might lead to the Government finding an escape route to sweep away a long list of crimes that had already attracted international attention.

This war also turned the focus on the broader issues related to International Humanitarian Norms and International Human Rights Law in today's internal and international conflicts. The purpose of international systems is to encourage states to honour obligations towards their own citizens. In this respect the limitations of the various structures in the UN have been brought to the fore in the era of internal and international conflicts where non state forces not only have become powerful, but also operate in a legal vacuum where they choose not to be encumbered by norms. Besides powerful nations too disregard norms when it suits them and try to use the UN as a creature of national interest. In that process the multilateral body becomes impotent.

The Rajapakse government cleverly exploited the disaffection felt by most governments outside the West towards the West's hypocrisy when fighting their own wars, as a cover to betray its obligations towards a section of its own citizenry. The Government's getting a resolution in its favour and the UN Human Rights Council is a victory for an ideologically blinded clique and not for the people of Lanka. It also underscores the loss of direction in Indian policy.

The U.N. High Commissioner for Human Rights Navaneetham Pillay's call for an international inquiry to determine if Sri Lankan government forces and Tamil rebels committed war crimes in the last burst of their conflict was rejected by the Council on 27th May by an alternative resolution praising the Government for its victory over the Tigers and deeming the conflict an internal matter. Mrs. Pillay renewed her call for an international inquiry on 4th June 2009. She reiterated her belief that accountability is a prerequisite for the attainment of justice and reconciliation for all Lankans and a foundation for lasting peace.

The second call received a sharp rejoinder from the Indian Ambassador to the UN in Geneva, Gopinathan Achamkulangare, who said, "It would be extremely unfortunate, if the inter-governmental decisions adopted by the human rights council, were to be ignored or set aside [by] the High Commissioner and/or her office... according to their convenience or in accordance with the agenda of some states, or unrepresentative or unaccountable organizations, or to pursue their own agenda."

The Indian Ambassador's emphasis on inter-governmental decisions brings to the fore the dilemmas of a meaningful and autonomous international human rights regime. Navaneetham Pillay's principled stand on accountability for victims in Lanka being a necessary foundation of lasting peace, came from her grass roots experience of fighting the apartheid regime in South Africa. Such experiences fortify the conviction that there

are absolute rights of which no people could be divested by the whims of transient governments. That is what many of us believe and should fight for. Irritation of concerned governments and institutions with the Rajapakse government has been in evidence for a long time. They have been stumped by its LTTE-style bunker diplomacy. On major issues the Government has been consistent in meaning the opposite of what it says. India and other countries have been pressing for a political settlement, and the Government fervently agreed. The result has been a semantic game like the White Queen in Lewis Carroll's *Through the Looking Glass*, who offers Alice jam every other day, "The rule is, jam tomorrow and jam yesterday – but never jam today." After several major violations, the President promised an earnest investigation, sometimes by two police teams. The result was always a cover up. Pressure over the ACF killings and the killing of five students led to the President promising an international investigation.

Several countries expended money and effort in sending an International Independent Group of Eminent Persons. The latter became targets of abuse by patriotic elements and justice was thwarted. The West became angry. India simply surrendered. Recently the President repeatedly promised that bombing and shelling would not be used against civilians and acted in breach without a twinge of regret.

Here the real question as pointed out is whether the Government should have sent the Army into the NFZ at all. Now that it is over, a country which suffered three decades of war needs time to reflect on what happened in the final days. Immediate issues are about the plight of many who are in the IDP camps and thousands who have lost limb and livelihood. We see no qualitative shifts in political outlook that would lay the foundation for a dignified peace. We must continue to be concerned about the many emblematic human rights issues. If they are not addressed, the culture of impunity that had its advent in 1971 would live on.

As things turned out taking the Government before the UNHRC was an ill-thought-out move. It underestimated the Sri Lankan government's lobbying efforts and the appalling weakness of the HRC. On principle, wherever a war is being fought, we must call for accountability and, we believe, requesting an investigation of allegations of war crimes was appropriate...and remains appropriate. The UN's paralysis on Lanka, when it proved unacceptably dangerous for the civilians has lessons for everyone going far beyond Lanka.

What gives ground for satisfaction is that international pressure had a benign effect in protecting civilians. In the context of present war which took a heavy toll on the lives of soldiers, these ordinary men have shown remarkable restraint towards civilians when they come to contact with them. The civilians are uniformly scathing about the LTTE, and frequently found the Army helpful and considerate. So far we know of no major discrepancy in the civilian population before the fall of Killinochchi and after the war's end. The population before was estimated at 300 to 350 thousand. Presently nearly 300 000 are accounted for in IDP camps. It would be some time before all are registered and detailed checks could be made. There is no evidence of genocide. It is hard to identify

any other Army that would have endured the provocations of the LTTE, which was angling for genocide, and caused proportionately little harm.

The result is remarkable because the present Army Commander's operations in Akkaraipattu and Kalmunai in 1990 led to grave massacres. The same year the present Army Commander and Defence Secretary took part in the operation in the islands off Jaffna, which too resulted in significant massacres of civilians. Foreign pressure and scrutiny apparently forced the Government to be extremely careful this time.

Any action now must concentrate on the resettlement and rights of the displaced and a compilation of the dead and missing in order to raise specific questions about what has not been accounted for. The military action should be examined in a wider context of how many governments deal with insurgencies and how the US and British armies have conducted themselves in current theatres of war. That would help towards strengthening humanitarian norms so that they would not remain a dead letter for the victims.

The right thing to do now is to keep up the pressure for the rights of IDPs, make detailed documentation on the experience of war victims and to keep challenging the Government on issues already on the table, such as the Five Students and ACF cases and a credible investigation into the assassination of Lasantha Wickrematunge.

5.1 A New Direction for Tamil Expatriates

For the expatriate Tamil community, there is both a challenge and a moral obligation. From the time of the 1977 communal violence expatriate Tamils have rightly been increasingly active and concerned about the plight of Tamils at home. Groups were formed abroad. Some linked up with Amirthalingam's TULF and concentrated on lobbying. Some linked up with K. Kanthasamy's Tamil Relief and Rehabilitation Organisation (TRRO, the LTTE started the TRO in the mid-1980s with a view to supplanting the TRRO) and others with the Gandhiyam of Dr. Rajasundaram and Arulanatham David. Despite differences, they were largely days of cooperative endeavour. Whether one favoured violence or not, the atmosphere at the Standing Committee of Tamils (SCOT) in London was gentlemanly and without rancour.

Things went very wrong from about 1988 when the LTTE began its monopoly of Tamil organisations with either the innocent or not so innocent complicity of some leading Tamil names. Those who were friends were divided by fear – fear for one's life. Perhaps we are past that nightmare now. It is time to go back to 1977 and figure out where we went wrong and once more direct our energies towards the poor, the helpless and the IDPs at home as the first priority. It was in that spirit that Kanthasamy directed all his energies to the TRRO, the Sansoni Commission and initiatives like the Saturday Review, and Dr. and Dr. (Mrs.) Rajasundaram got together with David. It was in that spirit that a group within the SCOT including P. Rajanayagam and J. Thamotheram founded the Tamil Times.

It is time to rediscover that spirit. In our opinion this is best achieved by forming solidarity groups with Muslims and Sinhalese abroad and to focus on the political rights of the minority communities as part of the revival of accountable and democratic government in Lanka.

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6. Matters of Urgent Concern

6.1 Issues for Immediate Resolution

1. Engaging with the Government on resettling IDPs expeditiously and monitoring measures to ensure that all security screening is done according to the law.
2. Free access to camps to compile the experience of the IDPs and prepare lists of dead and missing.
3. Free access to NGOs to improve living conditions and take action to trace and unite families.
4. Reunite all minors who have been cadres with their families.
5. The government should be inclusive in forming task forces and other mechanisms to address the concerns of IDPs. Tamil government officers and prominent members of Tamil civil society should be given a prominent role to avoid the alienation of the Tamil community through the general insensitivity of the administration and the frustrations with the bureaucracy for a community traumatized by the war.
6. The priority now is a transitional process bringing together different segments of society to focus on resettlement of the IDPs, broader humanitarian concerns and normalization.
7. The government should not rush into elections, as the communities in the North need time to recover from this costly war and address the issues of normalization first.

6.2 Longer term issues

1. Demand for accountability on all issues pertaining to the war including civilian deaths and displacement, including in suitable national and international fora.
2. The Government must seek suitable international assistance to provide an objective record of how the war was fought and the role of the different actors in the war in order to address the concerns of the civilians. Such an honest record is important to win the confidence of the Tamil community.
3. Demilitarisation of the North-East, including the disarmament of all armed groups. The Army to be confined to barracks except in areas where there is a credible security threat.
4. Return all lands acquired as high security zones and reopen schools and public institutions in these areas. Those displaced from Sampoor in 2006 to be resettled immediately.
5. Remove the state of Emergency and repeal the PTA .

6. Address the culture of impunity relating to all violations and especially the emblematic cases like the ACF case, the Five Students' case, the killing of the Editor of the Sunday Leader and the disappearance of Fr. Jim Brown.
7. Allow foreign investigators and lawyers under the auspices of the UN to assist in cases where national efforts have failed.

Source: University Teachers for Human Rights (Jaffna) Sri Lanka UTHR(J)