

INTERVIEW

The Hague

EU: a ban on Tamil rights?

The European Union recently decided to prolong its ban on Sri Lanka's Liberation Tigers of Tamil Eelam (LTTE) for at least six months. Following similar moves by the US and Canada, the EU included the Tamil Tigers in its list of terrorist organisations in 2006. The group is challenging this move before the European Court of Justice (ECJ) in Luxembourg, claiming it is contrary to international law.

By Geraldine Coughlan

Dutch lawyer Victor Koppe is representing the Europe-based political wing of the Tamil Tigers before the ECJ. He has asked the court to annul the EU Council's decision (Regulation 83/2011), reassigning the LTTE to the EU's terrorism list.

Koppe argues this decision is nul and void because the LTTE, as it is described in the decision, has ceased to exist. It has declared it will no longer engage in military strategies to further its political goals.

Koppe claims the EU ban is legally flawed and that labelling the LTTE a terrorist organisation is contrary to international law as it frustrates the pursuit of the right to self-determination for the Tamil population.

He told IJT that his demand is partly to stop the prosecution of Tamils in the Netherlands, Germany, France, Switzerland and other EU member states:

"One of our main arguments is that the Tamil groups are fighting a legitimate battle for self-determination. You know the right to self-determination is one of the fundamental principles of international law. And it is within the context of an armed conflict that there were two parties fighting each other. Obviously things have gone

wrong - but to call the LTTE a terrorist organisation rather than one of the two fighting parties is in our opinion contrary to international law."

How contrary?

"Well, quite contrary actually. There has never been a legal debate in Europe about whether the LTTE is pursuing its right to self-determination in accordance with or contrary to international law. The whole matter of self-determination and whether the armed conflict and struggle is a rightful struggle, has never been properly answered. And one of the things that we have done in this petition is argue that there was in itself a fair right to self-determination and that things might have gone wrong in the conflict itself - crimes might have been committed. But to just simply call the LTTE a terrorist organisation and not to have any consideration for that basic right to self-determination - that's something that should be the subject of a proper legal debate."

What's the legal basis of your argument?

"The UN Charter. One of the most fundamental rights for peoples is the right to self-determination and in respect of that right to self-determination it is allowed, under certain specific circumstances, to not only oppose in a non-violent way, but also under certain conditions in a violent way in an armed conflict. We are working on that right and the right to resistance on the basis that you're bound by the rules of the Geneva Convention when you are in fact one of the combatants in an armed struggle - so that's the legal argument that we are making."

How much of an impact do you expect your petition to have?

"It's up to the Council now to come with a reaction. Individual member states

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SPECIAL SRI LANKA EDITION

This special edition of the International Justice Tribune has been compiled by RNW's investigative team in Sri Lanka.

will also come with their reactions. One can expect that most, if not all member states will oppose the legal argument that there is a fair and proper right to self-determination. You can see that - because in 5 or 6 jurisdictions within the EU, criminal prosecutions against individual members of the LTTE have been set in progress, so countries like Holland or Germany or France will say there's no such thing as the right to self-determination and that the LTTE is in fact a terrorist organisation. That's why in domestic jurisdictions the LTTE is being prosecuted. So that whole process with the opinions of member states will take quite some time so I don't expect a court decision within the next 2 to 3 years."

Experts say that by deciding to hear the case, the ECJ accepts the political status of the Europe-based political wing of the Tamil Tigers. And that this could lead to complaints against EU members regarding possible violations of international law arising from the imposition of the ban during the peace process in Sri Lanka.

Meanwhile, the European Commission, the Netherlands and the UK have informed the ECJ that they wish to intervene in the case.

Picking up the Tiger's scent

“The people have used ballots instead of bullets, that’s a great victory for us”, said Sri Lankan Health Minister Maithripala Sirisena, even though the ruling party he represents suffered a heavy defeat at the polls in the war-torn north and east of the island-nation.

The Tamil National Alliance (TNA), formerly controlled by the LTTE (Tamil Tigers), won control of three quarters of the councils in the Tamil majority region.

The government’s optimism may be premature though. RNW visited Sri Lanka to interview former Tamil Tigers fighters - “Yes, if life doesn’t improve here then I would fight again”, says Madu. “I don’t want war again but we need basic rights.”

RNW interviewed nine former Tiger fighters in the walled compound of an NGO which is keen to remain anonymous, in the eastern town of Batticaloa. Six men and three women sat and spoke openly to RNW about the war and their lives today. Despite government proclamations of racial harmony peace, many Tamils in the east and north of Sri Lanka still live in fear of the police.

A state of rehabilitation

Looking around the table the former guerilla fighters are unassuming and meek. But look a little closer and you notice scars from the war – both physical and emotional.

All nine were sent to so-called ‘rehabilitation camps’, effectively prisons, where at first many experienced maltreatment and shortages of food and medicine. Later with the help of NGOs their experience of the camps became more positive as they were taught skills and received ID cards, ready to attempt reintegration into post-conflict life.

The three women, in their twenties and thirties, spoke of the anxiety of uncertainty - unsure if they were in prison, if and when they would be released, and whether they would be allowed proper contact with loved ones. ‘Actually the most important question was: what will happen tomorrow?’ said Parinita. Most of all, they wanted their

freedom back.

Freedom, but not as we know

‘But once we were released, we still had no freedom,’ said Abi, referring to the many military checkpoints that Tamils still have to go through every day. ‘Last month the police suddenly arrived and searched my house. I don’t know what they wanted,’ she said. Police are suspicious and oblige former Tigers to sign a ‘Good behavior paper’ every month.

Many Tamils claim that it is harder for them to find work than it is for Sinhalese. The group points out that no Tamils are allowed to join the police force, and that even in Tamil-majority districts local government jobs are difficult to get without speaking fluent Sinhala.

The former Tigers complained of ‘Sinhalese colonisation’ of the north and east of the island. Colombo offers incentives to Sinhalese people to move to the former Tamil strongholds.

Speaking in tongues

Even the police and military in Sri Lanka’s north and east don’t speak, or refuse to speak, Tamil. RNW experienced this first hand when witnessing a Tamil being questioned in Sinhala by police – when he asked to be addressed in English as his Sinhala was poor, he was ignored.

In the West the image of Sri Lanka as being free from oppression and violence has taken root. Recent investigations by Britain’s Channel 4 and the UN have focused on atrocities committed during the civil war. Human rights issues existing today in the north and east are being overlooked. These are the same rights issues that helped lead the country into one of the world’s bloodiest civil conflicts in the 1980s.

Battle for peace

Former Sri Lankan president Chandrika Kumaratunga urges her successor Mahinda Rajapaksa to work towards an ‘inclusive society’ and share political power with minority Tamils. ‘I too, am glad, extremely happy that the war has ended and terrorism defeated.

Sri Lanka’s main Tamil party threatens reconciliation talks walkout

Sri Lanka’s main Tamil party threatened on Friday to pull out of reconciliation talks if the government does not within two weeks respond to proposals on devolution of powers, a core issue that fuelled a quarter-century civil war.

The Tamil National Alliance (TNA), the political proxy of the now-defeated Tamil Tiger separatists, accused President Mahinda Rajapaksa’s government of carrying out a “deceitful process” in talks which have reached their tenth round. “While attempting to show the world that the government was engaged in a political process as an integral part of reconciliation, what the government was really engaged in was no more than a mere facade,” the TNA said in a statement.

The government in turn blamed the TNA for trying to force its demands without wider consultation, and moved to appoint a committee to handle the talks in parliament, where Rajapaksa’s ruling alliance has a two-thirds majority.

“We do not think that the ultimatum delivered to the government by the TNA, which is tantamount to the attitude portrayed by the LTTE, is at all helpful or constructive,” Irrigation Minister Nimal Siripala de Silva, a senior presidential ally involved in the talks, said in a statement.

The Liberation Tigers of Tamil Eelam (LTTE) emerged as the most ruthless of several armed groups that began fighting in the 1970s for a separate state for Sri Lanka’s minority Tamils.

But I cannot blind myself to the fact that although we have won the civil war, we have not even begun the battle for peace.’

Closing the interviews with the nine Tiger fighters, RNW returns to the question of long-term peace - with the Tamil Tiger leadership dead and the infrastructure supporting their cause all but wiped out, could they imagine picking up arms again?

“If we don’t feel our rights being respected in the coming years then yes, I can imagine I would.” said Saathuryan.

The names quoted here have been changed to protect identities.

Sri Lankan President Mahinda Rajapaksa landed in China on Tuesday in search of support against an aggressive Western push for a probe into war crimes allegations and tighter economic ties in a stormy financial world.

Sri Lanka is now in its third year of peace after destroying the Tamil Tiger separatists, listed by more than 30 nations as a terrorist organisation.

Now Rajapaksa, whose victory brought him immense popularity at home, is up against a coordinated push from the West, rights advocates and a well-financed global network of former Tiger supporters for a probe into war crimes allegations.

Washington has told Colombo it wants the findings of Sri Lanka's internal probe, the Lessons Learned and Reconciliation Commission, to be submitted to UN Human Rights Council session after they are given to the government on November 15.

That would open up a host of material critical of Sri Lanka's handling of the war that could end up before the rights council at its March session, and give momentum to calls for an external probe to which Sri Lanka has refused to submit.

A UN-sponsored report found "credible evidence" that Sri Lankan forces and the Tigers committed war crimes including killing possibly thousands of civilians, but the separatists' elimination means only Sri Lanka can be held to account.

Sri Lanka has acknowledged some civilian deaths but says the allegations in the UN report first emanated from Tamil Tiger propaganda operations, and lack any real proof.

Chinese support appears likely. Both China and Russia usually oppose foreign intervention in domestic conflicts, and both held off US-British attempts at the UN Security Council to get a ceasefire at the end of the war.

Justice, lies and videotape

Sri Lanka's thirty year war is now more of words than of guns, but it is no less bitter. RNW's team in the country met with fierce resistance as the Sri Lankan government faces calls for international justice.

The presence of non-governmental organizations is dwindling in Sri Lanka, a fact witnessed when travelling across the east of the island – where once there were distinctive white NGO vehicles on every corner, the sight is now rare.

With the help of one remaining NGO, which requested anonymity, RNW met nine 'reintegrated' former Tamil Tiger guerillas who spoke of their desire for justice for all Sri Lankans. But people in the heavily militarized north and east live in fear of reprisal if they openly criticize the authorities, creating the space for a vociferous Tamil diaspora, the foreign media, and a UN investigation, to demand justice. The Sri Lankan government is now hitting back.

Video counter-punch

Colombo released a documentary video in response to British Channel 4's Sri Lanka's Killing Fields, in which it looks to discredit all claims that government troops killed and raped Tamil civilians and prisoners of war during the closing months of the conflict in 2009. The narrator of Lies Agreed Upon rubbishes Channel 4's documentary: "Doctored footage and deliberate lies are presented as authentic. It begs for review." The film proceeds to refute claims that the military deliberately bombed no-fire zones and seeks to bring into focus atrocities committed by the Tamil Tigers.

Reactions from the Tamil diaspora to the film are predictable - "The whole documentary is based on lies. The people speaking are all under pressure from the government. What would you do when you were a Tamil and you were under that pressure? You would probably go along with what the government wants," said Mohan, a Dutch Tamil campaigner.

Tamils who feel free to speak openly say they want an independent, international investigation into the many claims of atrocities committed in 2009 and before. "We are requesting, pleading, begging the civilized world to stop the hypocrisy and double standards. And we're calling for impartial investigations into missing persons," said Donald Gnanakone head of the US-based 'Tamils for Justice'.

Probing for the truth

Colombo says it is investigating the period in question and that all Sri Lankans, not just the Sinhalese majority, are cared for by President Rajapaksa, an almost omnipresent figure to be found smiling down from countless billboards around the capital.

Evidence of this, it claims, is the President's creation of the 'Lessons Learned and Reconciliation Commission' (LLRC) last year, the stated intention of which is to "focus on the causes of conflict, its effect on the people, and promote national unity and reconciliation." This body claims to have interviewed five thousand people of all ethnicities around the country in the building of its report, expected later this year.

The international community though, led by the United Nations Secretary General's office, is not impressed by the LLRC's work so far, saying it is "deeply flawed, (and) does not meet international standards for an effective accountability mechanism."

Spokesman for the LLRC Lakshman Wickremasinghe: "I hope the international community doesn't put pressure on the Commission because it's the best mechanism the country has."

Greater pressure is gradually being brought to bear on the Sri Lankan government. The US Foreign Affairs Committee, which advises Secretary of State Hillary Clinton, says it is pushing ahead with plans to stop American aid to Sri Lanka unless meaningful investigation takes place and the guilty are brought to book.

The UN however only wants to launch an investigation with the approval of the government of Sri Lanka, which is unlikely to happen. The International Criminal Court does not have jurisdiction, as Sri Lanka is not one of the 114 countries that have signed up to the court. Direct referral by the UN Security Council seems to be the only option left, but with China, India and Russia as major investors in the country, they are expected to veto any resolution on a referral.

Silenced guns or guns with silencers?

Sri Lanka has suffered from a cycle of oppression and violence for decades. And as the former Tamil rebels in the town of Batticaloa told RNW, if basic rights are not upheld, that cycle will simply continue into the future. The danger for Sri Lanka is that silent guns continue to be interpreted as lasting peace.

'What happened was predictable'

In his recently published book 'The Cage' former United Nations spokesman Gordon Weiss is critical of the UN and points to evidence of the government of Sri Lanka committing war crimes.

As the UN spokesperson in Sri Lanka during the conflict, he experienced first-hand how the UN was unable to fulfill its duties. RNW asked him about the role of the UN and the lack of accountability in Sri Lanka.

Could you give a brief account of what happened with the UN in the last phase of the war?

As the last phase of the war gathered pace, and as air attacks began on the nominal capital of the Tamil Tigers (Kilinochchi) in 2008, the government warned the UN that it should pull its staff out of the north. There were government air strikes and those came dangerously close to UN positions in Kilinochchi. Our staff were spending time hiding in bomb shelters. They were unable to effectively carry out their duties, which were largely to distribute humanitarian aid. So the UN complied with the government request and pulled out. From that point onwards there was effectively no international independent presence inside the northern region, except for the International Red Cross. They have a history of not talking about the things that they see when they're working behind the lines. But the UN was certainly no longer there and no longer capable of making judgements on what was going on. Thereafter it had to rely on the government, and the government alone for access to Tamil areas to deliver humanitarian aid. Whether the UN ought to have stayed, despite the attacks is a moot point and something that an accountability investigation needs to answer rather than me.

In the last part of the war, did the UN fail?

My position on this is that simply by virtue of the number of people alleged to have been killed and the fact that the UN was on the ground, you have to look at it and say 'well, something went wrong'. Now to what degree it was

a UN failure or not, is a matter of debate. I think the UN could have done more, it ought to have done more. But of course the ultimate responsibility for this rests with the warring parties, not with the UN.

Is the UN accountable?

I think the UN has to be accountable for the way that it managed its operations in Sri Lanka and for the stand that it took in various instances. Was it correct for them to pull out their humanitarian operation in September 2008, when they were warned to do so by the government? Was it right for them not to take on the government of Sri Lanka publicly about its use of heavy weaponry? Was it right or wrong of the UN not to have said anything about the attacks on medical points and hospitals, which we also knew was going on? So there are many questions that are still open. The UN has promised an investigation into what happened and into its own role. We have yet to see whether the Secretary General is going to make good on that promise.

In Sri Lanka there has not only been a war with the Tamil minority, but also within the Sinhalese population. Is there justice in Sri Lanka for any of the victims?

I think that's part of the problem. What happened in 2009 in the final stages of the Tamil-Sinhalese war was predictable, because there had been such large bouts of violence unleashed against people in Sri Lanka by the government in previous administrations. So there's a history of it and there's also a history of a lack of accountability. Almost nobody has done jail time for the crimes that were committed in 1971 and in the uprising in 1987-1990 when tens of thousands of Sinhalese were killed. So there is a long and very profound history of a lack of accountability, a lack of rule of law and a lack of justice for crimes that were committed in the name of the state.

Do you think some Tamils will pick up arms again?

During riots in 1983 the killing of Tamils is what really led to this insurgency. So the killing of tens of

thousands more, if that many were killed and I think that's true, I hardly think that that is going to cure the Tamil grievance. If I were a Tamil I would feel very gloomy about the prospects of any real future in Sri Lanka. But I think any sort of armed uprising is very futile and I doubt if that is considered by anyone with their head screwed on.

Fighting for press freedom in Sri Lanka

Since 2004, 34 media workers have been killed in Sri Lanka. Many more have been threatened, beaten and abducted. None of the assaults or murders have led to trials or convictions.

Fearing for their safety, more than 70 journalists have fled the country in the last five years. Fred Carver of the London-based Sri Lanka Campaign for Peace and Justice says the virtual impunity for people who commit crimes against journalists leaves some outspoken media workers feeling that they have no choice but to leave the country.

This week the campaign issued a plan of action, calling on other nations and international media to support Sri Lankan journalists where their government does not. The action plan recommends that other nations expedite asylum requests for journalists. It also calls for international media to maintain a presence in the country, particularly with the growing possibility of future investigations into war crimes in the country.

"The government of Sri Lanka's paranoia about a free media is - to a large extent - driven by their fear of the international accountability process," Carver says. "But if the intimidation and the violence wins, and [foreign press] pull out of Sri Lanka entirely, that would be hugely damaging [for press freedom]."

Sri Lanka: white vans deliver fear & oppression

Sri Lanka's reputation as an Indian Ocean paradise may hold true for determined holidaymakers, but for the sober-minded this image has been shattered in recent months.

First a UN report accused both sides in the country's 30-year civil war of atrocities – a claim the current government refutes categorically. Then in June British TV station Channel 4 broadcast a devastating account of the closing weeks of the conflict in 2009. At this time, the programme said, the Sri Lankan military systematically murdered thousands of civilians. Colombo says the evidence is 'fabricated'. Distinguishing truth from artifice is problematic in a country where the free press claims it is under constant threat. RNW sent a team to Sri Lanka to investigate.

Reporters with Borders

In a recent report the International Crisis Group says Sri Lankan "President Rajapaksa and his powerful brothers continue to repress the media and political opponents". Other rights groups claim a widespread lack of press freedom – the media does not tell it as it is, and people are afraid to speak to reporters. Pressure is brought to bear on them with the use of armed men in white mini-vans, who kidnap or murder journalists. RNW's team experienced the phenomenon first hand after a surprise roadside attack.

Journalists attacked

Few Western reporters have visited the former Tamil Tiger administered north and east of the country in the past year – journalist visas are not issued without months of bureaucratic delays.

Travelling from the relatively affluent capital Colombo, RNW's two person team saw how the further eastward one travels the poorer and more militarized the country becomes.

Entering on tourist visas to a former Tamil Tiger administered region, RNW spoke to locals on subjects as diverse as business, sport and the UN's development role. During one such conversation in a restaurant they were

spied on and reported to the police, who later that night arrived at the hotel for a midnight interrogation. Ten police officers, including the Chief of Police, scared the team into leaving the region. The following morning, on their way back to the well trodden tourist path, they were robbed and attacked at gunpoint by a gang in a white van.

Getting white-vanned

The intimidation of the 'white van' tactic that Sri Lankan reporters had described now came sharply into focus.

"The police reaction is absurd, but it shows the fear of anything that, in their perception, might be connected to the Channel 4 programme or the UN investigation into war crimes", said Sanjana Hattotuwa from the independent media watchdog Groundviews in Colombo. "The government stance has always been that there were no war crimes committed by their side – so they clamp down violently on anyone suggesting otherwise".

Leading the way

Raisa Wickrematunge from Sri Lanka's most controversial newspaper, The Sunday Leader, believes the attack on western journalists marks a new low.

"Disappearances in white vans and things like this unfortunately still happen here. So in that sense it's not really a first, but it's quite shocking that they did this to foreign journalists, particularly the robbery."

Raisa is the niece of its outspoken former editor Lasantha Wickrematunge who was gunned down in 2009. The Leader's Colombo newsroom is adorned with pictures of a smiling Wickrematunge, pen in hand. Raisa joined the paper shortly after his murder, wanting to keep the memories and values of her uncle alive. "But after it happened, we decided we can't take that same hard line. In the past people would attack us, now they would kill us."

Sri Lankan journalists self-censor to protect themselves. Current editor of the Sunday Leader Frederica Jansz: "I don't do this myself. I am willing to die for my job. But I understand that not everybody will do this."

Mini-van, big trouble

Reactions to the RNW experience confirm the likelihood of this being an example of state-sponsored press intimidation. A senior European diplomat working in Colombo, speaking on condition of anonymity, said "You can be sure this is the authorities sending you a message".

That a conversation can be overheard and misconstrued by informants, and reported to the police is a story not commonly associated with South Asia. Raisa Wickrematunge is pessimistic for the prospects of free speech in Sri Lanka. "I don't think that [objective journalism] is possible in this country. There are so many things you can't write about. If you say that you're from the Sunday Leader, there is immediately this sense of fear, people don't want to talk to you. We have to be very careful what we write about."

Rights groups file complaint against Sri Lanka diplomat

Two rights groups said Thursday they have brought a criminal complaint to Swiss authorities against a Sri Lankan diplomat and former general, Jagath Dias, over alleged war crimes.

The Swiss attorney-general's office confirmed that it has received the complaint filed by the Society for Threatened Peoples and TRIAL (Track Impunity Always) and that it was examining the case.

Dias is the deputy ambassador at Sri Lanka's embassy in Berlin, which also handles diplomatic relations with Switzerland and the Vatican.

Radio Netherlands Worldwide

Witte Kruislaan 55
PO box 222
1200 JG Hilversum
The Netherlands
telephone: + 31 35 6724533
e-mail: internationaljustice@rnw.nl

Managing editor: Arjen van Dijkhuizen

Arjen.vandijkhuizen@rnw.nl

Editor : Geraldine Coughlan

geraldine.coughlan@rnw.nl

Producer: Thijs Bouwknegt

thijs.bouwknegt@rnw.nl

Producer: Richard Walker

richard.walker@rnw.nl

Producer: Maïke Winters

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