

# The Tamil People: “Unsung Victims”<sup>1</sup>

by Alfred de Zayas,\* Geneva



Alfred de Zayas  
(Photo ma)

*The Tamils of the island of Sri Lanka (Ceylon) belong to that category of victims of major human rights violations who only few in the world want to acknowledge as victims. Not only today, but during the past 50 years when I have been associated in various capacities in United Nations organs and*

*human rights NGO’s, I have met many Tamils but noticed how, unlike other victims, the Tamils do not enjoy that aura of empathy that benefits other victim groups.*

I have also seen how in the human rights system some victims are deemed “politically correct” and garner all the attention, whereas other victims are safely ignored and forgotten – worse still, they can be defamed as “terrorists”, so that no one feels any compassion for them. The hapless Palestinians are similarly defamed as “terrorists” and their human rights are systematically violated, but at least we know about them and many international lawyers like Professors *Richard Falk* and *Francis Boyle* defend their rights.

There are some 70 million Tamils living in the southern tip of India. 5.9% of India’s population, residing particularly in Tamil Nadu and Puducherry. In colonial times many Tamils were taken from India to South Africa as cheap labour, among them the parents of *Navi Pillay*, the UN High Commissioner for Human Rights (2008–2014).

## **Eelam Tamils and “victim solidarity”**

There are some three million Tamils living in the Northern and Eastern provinces of the island Sri

Lanka, mostly known as *Eelam Tamils*, and a large diaspora in Canada, United Kingdom and Germany. It is about these unfortunates that I write. The ancestors of the Eelam Tamils settled in Sri Lanka more than two millennia ago.

This phenomenon of who belongs in the category of “consensus victim” is not new, and it will probably continue, as indeed the unbecoming competition among victims. As a senior lawyer with the UN, I always pleaded for “victim solidarity”, so that NGO and media attention be generously given to all whose rights and dignity have been violated.

## **Denial of self-determination by the Colombo authorities**

The core problem with the human rights of Eelam Tamils is the denial of internal and external self-determination by the Colombo authorities. This is particularly irritating, because the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), clearly stipulate the right of self-determination of ALL peoples. Although this article constitutes hard law – it is not self-executing:

“1. 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.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

## **Right to self-determination “à la carte”?**

Doctrine tells us that the right attaches to people, not to States. Undoubtedly, the Tamils of Sri

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Lanka are a “people” and have the right of self-determination under ICCPR and ICESCR. Hitherto the political constellation has been unfavourable, as also in the cases of the Igbos and Ogonis of Biafra, the Kurds of Turkey, Syria, Iraq and Iran, the Catalans of Spain, the Corsicans of France. These peoples could justly invoke what is termed “remedial secession”, since gross violations of human rights were committed against them. Yet, neither the United Nations nor the international community has moved a finger to help them.

The realization of the right of self-determination in Estonia, Latvia, Lithuania, Czechia, Slovakia, Slovenia, Croatia, Bosnia, Macedonia, Montenegro – happened because major powers supported it, giving priority to the right of self-determination over the principle of territorial integrity. The merits of each case were not determinative of the success of the claim. It was not fundamental justice, but geopolitical restructuring that resulted in the independence of these peoples.

As I wrote in my 2014 report to the UN General Assembly<sup>2</sup> and repeated in my book “Building a Just World Order”,<sup>3</sup> with its 25 Principles of International Order, the realization of the right of self-determination is a conflict-prevention strategy. Here an excerpt of Principle 10:

“All peoples without exception are rights-holders of self-determination. The duty bearers are all States members of the UN. The exercise of self-determination is an expression of democracy, as democracy is an expression of self-determination. [...] The United Nations has an essential mediating role between States and peoples, and should conduct self-determination referenda as a conflict-prevention measure, because self-determination grievances often develop into a threat to international peace and security for purposes of article 39 of the UN Charter. The right of self-determination has not only a collective but also an individual dimension. Moreover, the right to call for and conduct a referendum is protected by article 19 ICCPR.”

In my capacity as Independent Expert for International Order I argued that the United Nations should organize and monitor referenda in all disputed territories in order to learn what the majority of the people want for themselves and their children. The United Nations organized referenda in Timor Leste, Ethiopia/Eritrea and Sudan, but only after tens of thousands of human beings had lost their lives in armed conflict. In a very real sense, the United Nations has failed

millions of people in the world by keeping silent about major injustices and grievances, and by not formulating timely proposals to facilitate dialogue and, where necessary, peaceful secession.

### **Self-determination is part of fundamental natural law**

In my reports to the Human Rights Council and General Assembly I proposed the creation of the function of a Special Advisor to the Secretary General on Self-Determination, the creation of the function of a Special Rapporteur of the Human Rights Council on Self-determination. I also argued that the Human Rights Council should make self-determination a permanent item of its agenda, as it had been a permanent item in the agenda of the former Commission on Human Rights.

Let us also remember that self-determination is part of fundamental *natural law*, as recognized by *Francisco de Vitoria* already in the 16<sup>th</sup> century. Even before we explore natural law and its metaphysics, we must acknowledge that self-determination is an inborn impulse, an instinct for freedom, a sense of identity, individualism, self-fulfilment. Far from being the source of conflict, self-determination is a condition for living together.

Conflict emerges not from the exercise of the right, but from the unjust denial thereof. Far from being a form of anarchy, it constitutes a building-block of civilized governance, the fountainhead of a just society based on equal rights and level playing fields. It was the cruel violation of Eelam Tamil self-determination that led to a 30-year independence struggle (1979-2009) and the deaths of at least 200,000 Tamils, the disappearance of tens of thousands (presumed dead) and the destruction of an enormous amount of private property and cultural heritage of mankind.

Hence, we should stand up against the false narratives of the government of Sri Lanka, which wrongly depict the Tamils as terrorists, and do not recognize their right of self-determination, their right to their identity, culture and language. There is also a high degree of dis-information and “incitement to hate” against the Tamils in the Sri Lankan media and in Sri Lankan pronouncements at the United Nations and elsewhere, which constitute a violation of article 20 of the *International Covenant on Civil and Political Rights*.

### **Requesting an advisory opinion of the “International Court of Justice”**

The responsibility for this unjust situation goes back to the flawed decolonization process carried out by Great Britain. At decolonization Sri Lanka could have been separated into two States. It would have saved hundreds of thousands of lives. We cannot bring back those lives, but we owe it to the survivors and to future generations of Tamils to try to repair ongoing injustices, e.g. by requesting an advisory opinion of the *International Court of Justice*, pursuant to article 96 of the UN Charter.

Allow me to refer to the advisory opinion issued by the ICJ on 25 February 2019 concerning the *Chagos Islands*. The ICJ ruled that the decolonization of Mauritius by Britain had violated the self-determination of the people of Chagos Islands.<sup>4</sup> This is a useful precedent for the Tamils.

In September 2022 the Office of the UN High Commissioner for Human Rights issued a report entitled the “Situation of human rights in Sri Lanka” (A/HRC/51/5).<sup>5</sup>

The report calls on the Government to immediately end the reliance on draconian security laws and crackdowns on peaceful protest, reverse the drift towards militarisation, implement security sector reform and end impunity.

Particularly important is the section titled “Reconciliation and Accountability”. The report urges the new Government to re-launch a comprehensive and victim-centred strategy on transitional justice and accountability, with a time-bound plan to implement outstanding commitments, including taking steps in relation to the establishment of a credible truth-seeking mechanism and an ad hoc special court. Victims must be given a central role in the design and implementation of all accountability and transitional justice mechanisms.

We join OHCHR in calling upon the Sri Lankan authorities to implement the recommendations in the report without further delay.

### **Crimes against humanity**

Objective observers have already concluded that the war conducted by the Sri Lankan government against the Tamil people constituted crimes against humanity and even genocide. The Permanent Peoples Tribunal<sup>6</sup> held hearings in Dublin in 2010 and the judges issued a judgment in Bremen in 2014. The Tribunal focused on the crimes committed during the final months of the 30-year war, during which the Sri Lankan forces attempted physical extermination not only of the government of the Liberation Tigers of Tamil Eelam, but also of the hundreds of thousands of Eelam Tamils who had sought refuge in so-called “no fire zones”.

Now is the time to call upon the International Criminal Court to pronounce itself on the violations of articles 6 and 7 of the Rome Statute by the political leaders and military of Sri Lanka.

At the very least, the United Nations Organization should demand that a referendum on the issue of self-determination of the Tamil People be held in Sri Lanka. Moreover, an appropriate level of just reparation to the survivors of the genocide should be fixed, so as to facilitate a process of reconciliation, which should be coordinated with the assistance of the pertinent UN agencies.

Source: <https://www.counterpunch.org/2022/12/23/the-tamil-people-unsung-victims/>

<sup>1</sup> Lecture delivered in London to mark Human Rights Day, 10 December 2022

<sup>2</sup> <https://www.ohchr.org/en/special-procedures/ie-international-order/annual-thematic-reports,A/69/272>.

<sup>3</sup> <https://www.claritypress.com/product/building-a-just-world-order/>

<sup>4</sup> <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>

<sup>5</sup> <https://www.ohchr.org/en/press-releases/2022/09/sri-lanka-critical-juncture-un-report-urges-progress-accountability>.

<sup>6</sup> <https://sangam.org/verdict-permanent-peoples-tribunal/>  
<https://redflag.org.au/article/tribunal-condemns-sri-lankan-genocide-against-eelam-tamils>