The Silence of Sri Lanka’s Tamil Leaders on Accountability for War Crimes: Self-Preservation or Indifference?
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A ‘wikileaked’ cable of 15 January 2010 penned by Patricia Butenis, U.S Ambassador to Sri Lanka, entitled ‘SRI LANKA WAR-CRIMES ACCOUNTABILITY: THE TAMIL PERSPECTIVE’, suggested that Tamils within Sri Lanka are more concerned about economic and social issues and political reform than about pursuing accountability for war crimes. She also said that there was an ‘obvious split’ between diaspora Tamils and Tamils within Sri Lanka on how and when to address the issue of accountability.

Tamil political leaders for their part, notably those from the Tamil National Alliance (TNA), had made no public remarks on the issue of accountability until 18 April 2011, when they welcomed the UN Secretary-General’s Expert Panel report on accountability in Sri Lanka. That silence was observed by some as an indication that Tamils in Sri Lanka have not prioritised the pursuit of accountability to the degree that their diaspora counterparts have. At a panel discussion on Sri Lanka held on 10 February 2011 in Washington D.C., former Principal Deputy Assistant Secretary of State for South and Central Asia, Donald Camp, cited the Butenis cable to argue that the United States should shift its focus from one of pursuing accountability for war abuses to ‘constructive engagement’ with the Rajapakse regime. Camp is not alone. There is significant support within the centres of power in the West that a policy of engagement with Colombo is a better option than threatening it with war crimes investigations and prosecutions. The argument is that focussing on individual accountability when members of the ruling family are themselves key suspects will alienate Colombo from the West and induce it to further gravitate towards China, Russia, and Iran. Supporters of a policy of appeasement and soft engagement with Colombo concluded from the Butenis cable and the silence of the TNA on accountability that even Tamils within Sri Lanka—the victims of the government’s abuses—were not pressing for a process of accountability through the investigation and prosecution of war criminals.
I believe that Butenis was wrong. The UN Secretary-General’s Expert Panel report on accountability in Sri Lanka found ‘credible’ allegations of crimes against humanity and war crimes by both the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE). On 18 April 2011, a few days after the content of the report came to light, Rajavarothiam Sampanthan, leader of the Tamil National Alliance (the major Tamil party representing Tamils in the Northern and Eastern provinces), released a statement welcoming the report, specifically referring to the Panel’s recommendation that those responsible for the crimes be investigated and prosecuted. He also declared that the Report’s findings were an ‘irrefutable confirmation of the accounts of the events reported by us to Parliament as and when they occurred’, which was a reference to the speeches made by TNA MPs in Parliament in the final months of the war. Ever since the release of the Sampanthan’s statement, there has been a rise in hostility toward the TNA by the government and many hardline Sinhalese supporters. This is evidenced not only by calls for the arrest of Sampanthan himself for sedition but more severely by the assault on and subsequent hospitalisation of party spokesman Suresh Premachandran’s private secretary.

The assumption that Tamils in Sri Lanka value accountability less than diaspora Tamils is deeply problematic because it ignores the immense dangers associated with advocating for investigations and prosecutions of war crimes committed by the Sri Lankan military. The last public figure to openly accuse the Defence Secretary Gothabaya Rakapakse of committing a war crime—former General Sarath Fonseka—is currently standing trial on charges of inciting racial hatred and violence before a Trial-at-Bar because he dared to accuse the Defence Secretary of ordering troops to kill surrendering LTTE troops when they approached the military with white flags. The Butenis cable itself refers to the Tamil leaders’ fear of speaking out on accountability because doing so would render them ‘politically and even physically vulnerable’. This vulnerability is evidenced by verbal and physical attacks on the TNA as well as the recent assassination attempt on TNA Member of Parliament Sivagnanam Sritharan,
which occurred less than a week after he had petitioned the Supreme Court on the military’s registration of civilians in the Jaffna and Kilinochchi districts.

It is for this reason that construing the relative silence of Tamils and the TNA on war crimes as evidence that Tamils within Sri Lanka do not strongly support pursuing accountability is as wrongheaded as it is unfair. Such an approach shifts the burden onto Sri Lankan Tamils to voice their support for the investigation and prosecution of war crimes at their own peril. It places Sri Lankan Tamils and the TNA in a precarious situation—namely, speak out about war crimes and face the wrath of the Rajapakse regime, or hold your silence and give up any hope that justice will be served. It is precisely because speaking about war crimes in Sri Lanka would expose Tamil leaders to significant danger that the international civil society and diaspora Tamils must speak out on behalf of Sri Lankan Tamils. Further, requiring Sri Lankan Tamils to explicitly declare support for accountability would create further incentives to repress the freedom of speech of civilians by those responsible for war-time abuses. Thus, if the outward expression of support for accountability is a precondition for the international community to pursue investigations and prosecutions, the risk is that leaders vulnerable to prosecution will intimidate victims into silence in order to forestall efforts to bring them to justice.

I would like to offer three further reasons why the West and the international community at large should relentlessly pursue an accountability agenda in Sri Lanka.

First, growing international pressure for war crimes accountability strengthens the hand of Sri Lankan Tamil leaders and is likely to induce the government to offer more concessions to them. The Sri Lankan government has reacted in seemingly contradictory ways to international pressure on human rights issues. On the one hand, it has noisily objected to the perceived violation of its sovereignty, while on the other it has attempted to demonstrate to the West that it is addressing those very human rights concerns. The Sri Lankan government’s response to the European Union’s reluctance and subsequent refusal to extend the GSP+ (Generalised System of Preference) scheme of trade access to
Sri Lankan goods—because Sri Lanka had not sufficiently implemented the International Convention on Civil and Political Rights (ICCPR)—is an instructive example. While the government adamantly refused to permit an investigating team to enquire into the EU’s concerns about human rights, it did make substantial concessions on certain human rights issues in an attempt to attain GSP+ trade access. Notably, it released J.S. Tissainayagam, a Tamil journalist convicted on terrorism charges for accusing the government of war crimes, and expedited the release of civilians interned in military run camps. The appointment of a ‘Lessons Learnt and Reconciliation Commission’ (LLRC) was also an effort to stave off growing international pressure. While the LLRC falls woefully short of international standards, the fact that the government was seeking to project itself as receptive to international concerns indicates that Colombo is more responsive to international pressure than supporters of appeasement are willing to concede. The influence of the West in monopolising the flow of aid into the country is admittedly on the wane and the Rajapakse regime has compensated for the loss of aid from the West by relying on the ‘no questions asked’ aid policy of China and Iran. However, pressure on accountability for war crimes provides international civil society considerable leverage with which the Rajapakse regime can be induced to reform the state and improve human rights conditions. Seen in this light, there is no incompatibility between pursuing accountability for war crimes and contributing to the larger reform of the Sri Lankan state. In fact, pressuring the Sri Lankan government on the one issue on which it is most vulnerable is perhaps the best opportunity of ensuring improvement in other critical areas.

Second, pursuing accountability for grave violations of international humanitarian law is required by international law. International treaty and customary law impose on states and the international community at large the responsibility to prosecute genocide, crimes against humanity, and grave breaches of international humanitarian law. There is no room for the exercise of discretion to forego accountability. From multi-lateral treaties, to resolutions of UN bodies, codifications of customary international law, best

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1 The Convention on the Prevention and Punishment of the Crime of Genocide, articles 4 and 5; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
practices recognised by UN offices, the principle that there is a duty to prosecute serious international crimes is now well-entrenched in international law. For this reason, international law even considers amnesty provisions in domestic law that seek to shield those responsible for the most serious international crimes to be void. While the primary responsibility to prosecute lies with the state, the duty to prosecute devolves to the international community where the state has demonstrated an unwillingness to confront violations.

Finally, an accountability process for international crimes is essential to combat the culture of impunity that has prevailed for decades in Sri Lanka. This culture has perpetuated authoritarian trends and abuses of state power and has undermined faith in democratic institutions and the rule of law. It has weakened public confidence in the value of democratic and human rights norms and in turn has poisoned Sri Lanka’s democracy. It has rewarded violence directed against Sri Lanka’s minorities and

Articles 4 and 5; Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Geneva IV), Articles 146 and 147; and the Rome Statute of the International Criminal Court.


3 See Rule 158 in International Committee of the Red Cross, Customary International Humanitarian Law (Cambridge, UK: Cambridge University Press, 2005), p. 607


therefore further alienated those communities. Thus, any process that leads to a durable political solution will have to address Sri Lanka’s impunity problem.

Tamils within Sri Lanka cannot and should not be expected to explicitly support a call for the investigation and prosecution of war crimes until the prevailing climate of intimidation is ameliorated. Instead, the West should seek to empower the Tamil minority by representing its interests on issues where it cannot afford to speak for itself, and pressure the Rajapakse regime to make meaningful and substantial concessions. A concentrated effort to pressure the Sri Lankan government on war crimes issues will both empower Tamil leaders within Sri Lanka, and constitute a first step in the process of restoring the faith of the Tamil minority in the Sri Lankan state. It will also be a necessary step towards overcoming the deep grievances of the Tamil minority engendered by decades of unbridled impunity.

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