

The Democratic Mandate of the Tamil Community General Assembly

On April 13, 2014, over 80 Tamil civil society groups convened at Toronto City Hall under the mandate of the Tamil Community General Assembly. This Assembly debated and democratically adopted concrete policy positions, articulating a common consensus about Sri Lanka and the Tamil national question.

A thoroughgoing structural analysis of the unitary state of Sri Lanka will provide robust and creative options to end Tamil oppression¹. This lobby guide will elaborate upon the resolutions of the Tamil Community General Assembly with further recommendations.

Sri Lanka's Post-War Policy: Occupation and State-Sponsored Colonization

Although five years have passed since the end of Sri Lanka's brutal war— a conflict marked by allegations of war crimes, crimes against humanity, and genocide — the Tamil people still await a political resolution that can alleviate their suffering. The Sri Lankan government's mantra of "reconciliation, redevelopment and reconstruction" disguises military occupation, settlements, and torture for Tamils. In the predominantly Tamil NorthEast, the military controls everything from civil affairs to industry to education.

The Armed Forces systematically use torture, rape and sexual violence against young Tamil women and men to ensure their subjugation. Yasmin Sooka, (Executive Director, Foundation for Human Rights in South Africa) affirms that brutal beatings, anal and vaginal rape, and forced oral sex form a systematic and coordinated policy of Sri Lanka's engagement with Tamils.



¹ All sources referenced in this lobby guide are available upon request.

18 of the 20 Divisions of the Sri Lanka Army are stationed in the North and East.

- As of February 2014, 90,000 people are still internally displaced. 57% of respondents to a United Nations High Commission on Refugees (UNHCR) survey said there was a military camp or checkpoint less than a mile from their place of residence.
- 81% of respondents to the UNHCR survey said they could not access their own land because the military was occupying it.
- There is 1 soldier for every 5 civilians in the North, and 1 for every 3 civilians in the East. In total, 85,000-86,000 soldiers are present throughout the North and East

Land Grabs

Before and after the war, dispossessed Tamils have fallen victim to land theft. State-sponsored settlements of Sinhala colonists on Tamil land, which began to intensify in the 1960's, are a root cause of the decades-long conflict. Post-war Sri Lanka has redoubled its settlement programs in the occupied Tamil homeland, legitimizing its actions with draconian legislation like the Land Acquisition Act.

Though the government promised to resettle all Internally Displaced Peoples (IDPs), state-sponsored Sinhala settlements continue to

expand throughout the Tamil homeland in the NorthEast. The Armed Forces occupy 6,069 acres of public and private lands². The appropriation of land by the Armed Forces facilitates new Sinhala colonies in the Vanni region.

For example, a review of Sri Lanka's state sponsored settlements in the Eastern province's Amparai District from 1911-1981 reveals the current intentions behind Sri Lanka's post-war policy.

YEAR	SINHALESE	TAMILS	MUSLIMS
1911	4,702	24,733	36,843
1921	7,285	25,207	37,901
1953	26,450	39,985	69,376
1964	62,160	49,220	97,990
1971	82,280	60,519	126,365
1981	146,371	78,315	161,481

² These figures excludes already occupied land in Jaffna region and the Eastern province



From 1911-1981 the Sinhalese population increased by 141,669 - amounting to a 3,012% increase. In contrast, the Tamil population increased by 53,582 from 1911-1981: an increase of 216%. The population ratio of Sinhalese to Tamils in 1911 was 7.0% to 37.0%, respectively. By 1981, the Sinhalese population comprised 38.0% of all Eastern Province residents, while the proportion of Tamil residents had decreased by 20.0%.

Sri Lanka's occupation and settlements undermine the prospects of peace and a political solution. Occupation, land grabs and settlements threaten to make Tamils a scattered minority across their homeland where they claim the right to self-determination.

What are the systemic barriers to peace in Sri Lanka?

The Tamils qualify as a nation under international law: they have a distinct culture, history, traditions, and identifiable territorial homeland. Every Sri Lankan government since independence has been marked by failure to recognize the Tamils as a distinct nation with the right to self-determination. In effect, successive Sri Lankan governments have enacted exclusionary policy to socially, economically and politically marginalize Tamils within the areas of civic engagement, education, employment and land rights coupled with the military, the police and state sanctioned riots. Through state sanctioned massacres, dispossession and marginalization Tamils have endured a protracted genocide to try and dismantle their national existence and turn them into a scattered minority in their own homeland. Consequently, a negotiated political settlement seems a distant reality.

Policy Recommendation: If power-sharing between the Tamil and Sinhalese is to form the basis for a negotiated process and a solution to the conflict, then the only starting point can be the coexistence of collective entities—nations. Canada’s recognition of a distinct Tamil Nation in the island will bolster efforts to peacefully resolve the conflict through a restructured state structure. The current unitary state structure of Sri Lanka monopolizes all power over resources and governance within the hands of the numerically superior Sinhala majority.

“The Tamil population in the North and East, who have lived for many centuries within relatively well defined geographical boundaries, share an ancient heritage, a vibrant culture, and a living language which traces its origins to more than 2500 years ago. A social group, which shares objective elements such a common language and which has acquired a subjective consciousness of togetherness by its life within a relatively well defined territory, and its struggle against alien domination, clearly constitutes a “people” with the right to self-determination. Today, there is an urgent need for the international community recognize that the Tamil population in the North and East of the island of Sri Lanka are such a “people” with the right to freely choose their political status” – *UN Human Rights Commission 49th session February 1993, joint statement by several international NGO’s.*

A comparative example: The South African state structure and unitary Sri Lanka

“Subordination was achieved and defined by laws which denied blacks the right to vote and to participate in the governance of the country, and limited their right to own land and to engage in economic activity.

Successive apartheid governments enacted and enforced a rigorous race-based set of laws which ensured that social, economic and political power remained a monopoly of the white population” – Mac Maharaj, African National Congress

Democracy in Sri Lanka is a euphemism for a "tyranny of the majority" that institutionalizes the repression of Tamils within a Sinhala-dominated state. The unitary state structure in Sri Lanka concentrates all power over land rights, education, governance, etc. within the hands of the Sinhalese. Therefore, any meaningful constitutional or power-sharing arrangement must dismantle the current unitary state structure and recognize the existence of the island’s diverse nations—the Tamil, Sinhalese and Muslims with an equal claim to sovereignty within the island.

The unitary nature of Sri Lanka, enshrined in Article 2 of the Sri Lankan Constitution, keeps political, social, and economic power indisputably in the hands of the Sinhalese people group. The constitutional requirement to change the unitary structure of Sri Lanka demands a two-thirds majority among the 225 seats of Parliament. Tamils in the NorthEast only

constitute 25 seats in parliament. The unitary constitution, foundation of Sri Lanka's "democratic" system, ignores the existence of diverse peoples in the island who have equal claims to their traditional homelands throughout the island.

- In addition to the parliamentary majority, any constitutional amendment that dismantles the unitary structure requires endorsement by a nation-wide referendum. During each round of power-sharing negotiations held between the Tamil nation and the Sinhala nation, both major Sinhalese opposition parties (the United National Party and the Sri Lanka Freedom Party) have whipped up anti-Tamil sentiment to make such an agreement impossible. Any genuine effort to change the unitary state is doomed to fail without effective external, international pressure.
- Sri Lanka has consistently denied the right of self-determination to Tamils and has refused to recognize the Tamils as a nation. It relegates the Tamil question to the category of a "minority" group—or dismisses it as a "terrorist problem." In contrast, Canada's recognition of Quebecois nationhood and Britain's recognition of Scottish nationhood have paved the way for peaceful negotiations and even referenda.

The sixth amendment to the Sri Lankan Constitution: the criminalization of fundamental freedoms

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"- Article 19 of the Universal Declaration of Human Rights

- The key to the 6th amendment is paragraph 1: "No person shall directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate state within the territory of Sri Lanka."
- The consequences for anyone who contravenes the sixth amendment are severe: the denial of civic engagement; the forfeiture of her movable and immovable property; the loss of his passport; the right to engage in any trade or profession. If a Member of Parliament violates the 6th amendment, they are stripped of their elected seat.

- Regardless of one's position on Tamil independence, the freedom to express political opinions and to seek to persuade others of their merits is fundamental to democracy itself, as enshrined by Article 25 of the International Covenant of Civil and Political Rights.

Policy Recommendation: Support a UN sponsored Referendum in the North and East for Tamils to democratically establish their political will about a solution to ongoing conflict.

There is no democratic, open, and free space in the NorthEast for Tamils to clearly articulate their political aspirations. In this regard, the history of Canada and the Quebec National Question offers a constructive model for both the international community and Sri Lanka to resolve the ongoing conflict in the island. The two referendums held in Quebec are an example of how national questions can be resolved without recourse to constitutional measures or military force.



The Prevention of Terrorism Act: an ugly blotch on democracy

“The South African Terrorism Act has been called ‘a piece of legislation which must shock the conscience of a lawyer.’ Many of the provisions of the Sri Lankan Prevention of Terrorism Act (of 1981) are equally contrary to accepted principles of the Rule of Law”- Virginia Leary: Ethnic Conflict and Violence in Sri Lanka—Report of a Mission to Sri Lanka on behalf of the International Commission of Jurists, July/August 1981

Recently, the Sri Lankan government used the draconian Prevention of Terrorism Act to ban major Tamil Diaspora organizations—including the National Council of Canadian Tamils—which advocates accountability for violations of international law by Sri Lanka. The Provisions in the PTA are extraordinarily wide.

Under this law, a person can be detained for 18 months without trial and court decisions to transfer suspects to the custody of the judiciary can be reversed by Parliament. No legislation conferring even remotely comparable powers is in force in any other free democracy operating under the Rule of Law. Indeed there is only one known precedent for the power to impose restriction orders under section 11 of the Sri Lankan PTA—the comparable legislation used in South Africa.



A case in point is the detainment of Jeyakumari and her 13 year old daughter under the PTA. Jeyakumari is a key organizer in mobilizing Tamil women to demand the whereabouts of missing Tamils under the custody of the state. She was detained by the Armed Forces in March 2014 and sent to Boosai Camp—a notorious prison camp known for torture and extra-judicial killings in Southern Sri Lanka.

Policy Recommendations: Demand that Sri Lanka repeal the Prevention of Terrorism Act. The terms of the PTA deny the rule of law contrary to Sri Lanka’s obligations under the International Covenant on Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Conclusion: Canadian leadership in ending Sri Lanka’s genocide: Canada’s Special Economic Measures Act (SEMA)

The Canadian Prime Minister’s decision to boycott the commonwealth meeting in November 2013 (where Sri Lanka’s President assumed the chairship), and the Canadian government’s suspension of a ten million dollar voluntary contribution to the Commonwealth paves the way for strong economic and diplomatic isolation of Sri Lanka. The Tamil Canadian community seeks to intensify the diplomatic and economic isolation of Sri Lanka until it arrives at a peacefully negotiated settlement to the conflict in an environment of freedom and normalcy.

Canada recently used the Special Economic Measures Act (SEMA) in 2007 to place pressure on the Burmese junta to stop its serious violations of international humanitarian law. Through a recommendation of the Foreign Minister, Canada placed sanctions on Burma and drafted a designated list of individuals, political parties and corporations associated with the Junta.

In this light, we recommend that Canada pursues targetted sanctions under the ‘Special Economic Measures Act’ (SEMA):

- Exporting, selling or shipping goods to Sri Lanka
- Transferring technical data to Sri Lanka
- Importing or acquiring goods from Sri Lanka or from providing or acquiring any financial or other services to or from Sri Lanka
- Create a ‘DESIGNATED LIST’ of Sri Lankan individuals who are specifically held accountable under SEMA.

