Seeking justice from afar: the Tamil diaspora and transitional justice

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Abstract

This paper presents a research project which has focused on how the Tamil diaspora engages in the pursuit of truth, justice and remembrance in relation to war-atrocities in Sri Lanka. It looks at the opportunities that exist for groups in the diaspora to use transitional justice mechanisms and discourse to pursue Tamil rights. The study was carried out in North America and Europe 2015-2017, and involved interviews with key diaspora activists. The paper discusses Tamil efforts at pursuing justice in relation to a broader context of an increased role for diasporas in transitional justice globally. The paper reflects on challenges and achievements and suggests some lessons that can be drawn for further activism.

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Introduction

The large Tamil diaspora has played an important role in relation to conflicts and political struggles in Sri Lanka, not least through its support for the Tamil quest for self-determination in the island. With the end of the war and the defeat of the Liberation Tigers of Tamil Eelam (LTTE) in 2009, the diaspora engagement has had to find new paths. Diaspora organizations have since then stressed the importance of democratic organization and a continued struggle with political, non-violent means. Many have also pointed to the increased importance of the diaspora in a situation where Tamils in Sri Lanka have limited political room of manoeuver. As the global Tamil diaspora has struggled to reconfigure its homeland engagement over the last almost ten years, transitional justice has emerged as an important arena for continued struggle. Not only the Tamil diaspora, but also other diaspora groups from homelands affected by mass-atrocities, have increasingly framed their homeland involvement in terms of transitional justice (TJ). They have made use of globally salient TJ norms and mechanisms in their strife to hold perpetrators accountable for gross human rights violations, document and receive acknowledgement for what happened, and remember, honor and compensate victims (see Haider 2014; Koinova & Karabegovic 2017; Orjuela 2018).

My own research builds on a long engagement with the conflict in Sri Lanka and with Tamil issues. Since I first visited the island in 1992, and Jaffna in 1995, I have carried out various research projects in and about Sri Lanka and its diaspora (see Orjuela 2008a; 2008b; 2010; 2017; 2018; Orjuela et al 2016). That the diaspora plays an important role in conflict dynamics as well as in everyday life in the North-East becomes very evident when spending time there. Based on these insights, I have taken an interest in the role that diaspora actors can play "from afar" and in the various ways in which those "on the outside" continue to engage in homeland issues. Since 2015, I have carried out a research project which specifically looks at diaspora engagement in transitional justice. In this research, I build on my earlier work on the Tamil diaspora from Sri Lanka, but also add another case: that of the diaspora from Rwanda.

In this paper, I will focus on some of the findings from the Sri Lankan Tamil case. First, however, I will take a brief look at the broader academic debate about diasporas and transitional justice, in order to situate the Tamil case in that. Thereafter, I will say a few words about how I carried out my research project. This is followed by a presentation of some of the findings: first related to diaspora TJ engagements more broadly, and thereafter giving examples of diaspora commemoration, truth-seeking and legal processes. The concluding section reflects on some of the lessons learnt for the Tamil diaspora.

Diasporas and transitional justice – the academic discussion

The term "transitional justice" refers to a quite broad set of practices and ideas, which relate to how societies come to terms with past mass-atrocities. A core idea behind it is that in periods of transition from war or authoritarian government to more peaceful and democratic situations - special measures need to be taken to deal with the past. The establishment of special courts, truth commissions, reparations programs and memorialization are often part of the TJ repertoire. TJ has over the last two decades developed into a globally dominant norm the question is no longer if to deal with a violent past but how. States are in other words expected to engage in TJ after war or repression has ended. However, these expectations – and pressures to comply with them – are unevenly distributed, and depend on global power dynamics. While leaders from less powerful countries have been prosecuted in international courts, war crimes committed by influential countries have remained unpunished. Also power dynamics within countries determine whether TJ is viable or not. In cases where those bearing responsibility for grave crimes have lost power, it is more likely that TJ measures will be pursued. Perpetrators who still hold power are, on the other hand, unlikely to willingly engage in truth-seeking, accountability processes and the commemoration of victims, even though they may face some pressure by global actors to do so. Rwanda is an example of the first case, where the postgenocide leaders have been very active in pursuing justice and commemorating the 1994 genocide. Sri Lanka is an example of the second, as the post-war governments have been reluctant to engage in TJ and the official narrative about the past has tended to celebrate victory over terrorism, rather than allow for remembrance of the victims of the war.

In the recent decades, the number of legal institutions and their importance has grown globally. The most important example of this is the establishment of the International Criminal Court in 2002. The number of truth-commissions has multiplied in violence-affected countries around the world, as has museums and memorials. Some researchers talk about a "memory boom" or "an obsession with the past" (see Macdonald 2013). Others stress the need to deal with the past in order to avoid impunity and amnesia, and thus enable the building of sustainable peace.

When looking closer at the processes of TJ in various places around the world, it becomes clear that they are not only about the past. They are, in fact, very much about the politics of the present. The past is often being used instrumentally to achieve goals in the present – or for the future. The contestations around the past that arise when different actors try to pursue TJ can sometimes be seen as a continuation of the conflict with other means (see McDowell et al 2014: 6).

If we look at the role of diasporas in TJ, we can see that they have emerged as important actors, and that they have an increased interest in pursuing justice, truth and remembrance in relation to atrocities in their homelands. Some researchers and policy makers talk about "the diaspora" as one actor. It is however important to recognize that diasporas are very diverse. Some are survivors of atrocities, some were already outside the country and watched the violence from a distance. Others may be perpetrators of violence. This means that some members of the diaspora may be very keen on pursuing justice, truth and remembrance, while others are more interested in letting the past be forgotten.

The ways in which diasporas involve in TJ processes are also very diverse. In the Rwandan case, the government has been very active in pursuing those genocide perpetrators who are hiding abroad. Together with the authorities in the countries where they reside, and sometimes with the help of survivors of genocide in the diaspora, they have identified perpetrators and brought them to court – either in Rwanda or in their new countries of residence. In Sweden, for instance, we have recently had three

cases where Swedish citizens originating from Rwandan have been sentenced to life time imprisonment for their role in the Rwandan genocide in 1994.

The legal systems at national as well as international level offer different opportunities to pursue justice for war crimes and other grave crimes. The principle of universal jurisdiction, which gives states criminal jurisdiction over an accused person regardless of where the crime was committed and regardless of the country of residence and nationality of the accused, have been used in several cases to attempt to bring perpetrators to justice, the most famous case being the one against Chile's dictator Pinochet. Victims or survivors in the diaspora can play an important role in legal cases in their new countries of residence.

Diaspora actors have also been involved in truth commissions. A truth commission in Haiti was established in 1994, largely on the initiative of the diaspora (Hoogenboom & Quinn 2011). In Liberia, the truth commission included hearings with Liberians in neighboring Ghana and in the United States (Young & Park 2009). Diaspora groups have also carried out various memorialization events, and established memorials.

In recent years, we have seen an academic discussion about, and research into, when, why and how diasporas engage in TJ, and also an interest in to what extent and how they can influence TJ processes.

My research project

In my own research project on TJ and diasporas, I studied how diaspora groups involved in the various TJ processes related to atrocities that had taken place in Sri Lanka and in Rwanda. Looking at two cases is useful as it enables the researcher to get a fairly indepth understanding of the cases (which is not possible if there are many cases), while enabling the insights from each case to inform the study of the other case. In the Rwandan case, the atrocities that took place in 1994 are recognized as genocide globally, and the post-genocide governments have taken a great interest in holding genocide perpetrators accountable, and organized massive commemoration events, also in the diaspora. In the Sri Lankan case, the atrocities against Tamils have not been officially recognized as genocide, and the post-war governments have been reluctant to pursue justice, for the quite obvious reason that they won the war and do not want to hold themselves accountable for any war crimes. So there are very different power dynamics in these two cases – which also means that diaspora TJ efforts can get different roles.

For my research, I identified key persons and groups in the diaspora involved in transitional justice efforts. For instance, I met with organizers of commemoration events, persons involved in legal cases in different capacities, and representatives of key diaspora organizations. I did not focus on one specific diaspora country, but wanted to talk to people wherever they were. This meant that I carried out research in the United States. Canada, the United Kingdom, Belgium, Denmark, Sweden and Switzerland. In total, I carried out 56 in-depth interviews. Important for the study was also my participation in commemoration events and other diaspora activities. Ι attended numerous commemoration event, most importantly the Maaveerar Naal and Genocide Commemoration Week in May in the Tamil case, and the genocide commemorations in April in the Rwandan case. Participating in these events, and talking to people who attended them, also gave important insights about diaspora TJ engagement. In addition to this, I collected information from news media and social media. The research was carried out 2015-2018.

Tamil diaspora engagement and TJ

After the war had ended in Sri Lanka, and during the Rajapaksa regime, there was very limited space for the pursuit of TJ in Sri Lanka. The government instated a "Victory Day" on the 18 of May, the anniversary of the end of the war. Tamils were prevented from officially commemorating their loved ones both in May and on the day for the commemoration of LTTE cadres 27 November (Maaveerar Naal). There was pressure on the government, though, to do something. This pressure came from the United Nations as well as from European countries, United States and India. A UN report from 2011 (Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka) showed that Sri Lanka (as well as the LTTE) was most likely responsible of grave war crimes and crimes against humanity, and urged for an international investigation. Rajapaksa made use of the international pressure to mobilize the Sinhalese masses against the UN and what he described as hypocrite western countries. At the same time, though, the pressure resulted in a Sri Lankan government initiative of truth-seeking, the Lessons Learnt and Reconciliation Commission (LLRC). It was widely criticized as having a too limited mandate, not providing witness protection etc. However, it did provide space for some victims of war – mostly Tamil women whose family members were missing – to make their voices heard. The final report also provided recommendations that addressed some of the root causes of the conflict, and which civil society groups could use to try to put pressure on the government towards further TJ action (Höglund & Orjuela 2013).

With Sri Lankan leaders paying limited interest in TJ, the Tamil diaspora became a major proponent of justice, together with the international actors mentioned above. Rajapaksa's lack of concern for constitutional minority rights. reform and reconciliation helped convince international actors that they needed to put pressure on Sri Lanka. Systematic work by various Tamil diaspora organizations in the United Nations Human Rights Council (UNHRC) contributed to a shift in how Sri Lanka was treated there. A 2009 resolution had congratulated Sri Lanka to the victory against terrorism. Subsequent resolutions, however, pushed for accountability and reform. The shift of power in Sri Lanka in 2015 led to a new dynamic when it comes to TJ. Sirisena's government was, at least rhetorically, more open to TJ and to addressing Tamil grievances. Sri Lanka hence co-sponsored a resolution in UNHRC in October 2015, in which the country promised to set up a court with international participation, a truth-commission, an office of reparation and an office of missing persons. Sirisena's apparent willingness to work with the international community and pursue TJ created a new situation for the Tamil diaspora groups: an opportunity to engage with the government-led process had opened, which some groups seized.

Diasporas are, as I pointed out earlier, always diverse. Researchers studying activism and mobilization do not always see this as a disadvantage for a movement. Diversity may enable the involvement of more people with different views and motivations, and also make activists less vulnerable in the face of counter-campaigns against them. However, diaspora activists often tend to see internal conflicts and fragmentation as a weakness. They would prefer a strong diaspora organization which could speak with one voice. For the Tamil diaspora, this is something which was more feasible during the time of the LTTE, but which post-2009 has proved difficult, and perhaps not even desirable.

In relation to TJ, we see the diversity of the diaspora in the different positions that it has taken:

(a) There are those groups who have engaged directly with actors in TJ, like the government of Sri Lanka and the Tamil National Alliance in Sri Lanka. Examples of these groups are the Global Tamil Forum and USTPAC.

(b) Other groups have engaged with the TJ initiatives as critics from the outside – they have made efforts to point out the shortcomings of and to monitor the process. One example of such an initiative is the TGTE's Monitoring and Accountability Panel, which was tasked to monitor the UNHRC-driven TJ initiatives.

(c) There are also groups who have not engaged at all with the TJ process, arguing that TJ amounts to deception and cooption, which would only hurt the Tamil struggle. Such views have been expressed for instance at Tamilnet.

We can also see two different positions regarding the meaning of TJ among those who engage in it. The first is those who see TJ as important in its own right. This perspective stresses the right to remember, and the pursuit of justice and truth as important in itself. The second perspective is more instrumental, and regards TJ as a step towards other goals, related to Tamil rights, and most importantly self-determination for Tamils. In this perspective, the recognition of the atrocities against the Tamils as genocide is particularly important, since this – some argue – would oblige the international community to intervene to give the Tamils their own land, in a similar way as Jews were given their own country (Israel) after Holocaust (see also Walton 2015).

After these general remarks, I will give some examples of diaspora TJ engagement, starting with those related to commemoration.

Commemoration

The lack of possibilities in Sri Lanka to mourn and remember those who died in the struggle – both civilians and fighters – has made the Tamil diaspora countries a main space for remembrance. Great Heroes' Day or Maaveerar Naal in November traditionally draws large numbers of Tamils in diaspora, and holds the position of the main event which bring people together to respect for those who fought for the homeland. The fact that the LTTE cemeteries were demolished in Sri Lanka and that honoring of LTTE fighters there were outlawed, made the commemorations in the diaspora particularly important. Since 2017, cemeteries have been cleared and remembrance events taken place in various places in north-east of Sri Lanka, while the diaspora remembrance events remain large. Also social media provides space for remembrance as songs, pictures and texts are circulated. Maaveerar Naal as well as events organized at the anniversary of the end of the war in May and on the anniversary of Black July each year are of big personal importance to persons who lost their loved ones. Being in the diaspora means not having a grave to go to to mourn, but in remembrance events organized in the diaspora countries temporary spaces are created where flowers can be laid down, candles lit and recognition given to the loss. Apart from being important for individuals, remembrance also has collective significance. In nation-building, the past is essential. The shared identity of those who make up the nation is built around a shared past. This is often a two-way process: it takes place through elite nation-building, where the narrative of the past is governed from above, and where leaders give guidance on what is to be remembered - and thus also what is to be forgotten. But it also takes place from below, when people themselves choose to remember in ways that are meaningful to them. Doing that, they sometimes adopt the elite narratives and sometimes challenge them. Often, nation-building from above simplifies the story of the past and buries important parts of it, causing frustration among people whose loved ones are not among those who are officially remembered. This can lead to resistance, sometimes through the creation of "counter-monuments" and alternative ways to talk about the past. In my research about Rwanda, I have seen how some people in the diaspora, who lost their loved ones in atrocities other than the 1994 genocide which is officially commemorated, felt frustrated and have taken their own initiatives to remember those lost but forgotten. In the Sri Lankan case, the commemoration events taking place in the Tamil diaspora can be seen as a challenge to the story of the past that the Sri Lankan government wants to tell, and which silences Tamil experiences of struggle and loss. It may also be useful, though, to take a look at how the Tamil diaspora in their events construct a story of the past. Even in such a story, some losses are recognized

while others may be forgotten. For many reasons, there is a strong focus on remembering the LTTE cadres. When it comes to civilian losses, those lost in the end phase of the war and in July 1983 tend to receive more attention, while other victims, from other time periods, or with other perpetrators, may be forgotten.

Among the initiatives I find particularly interesting in the diaspora are those attempting to establish physical memorials. One such initiative is the land outside Oxford in the UK, where there is a vision to create a cultural center and memorial park. Tree planting projects, where one tree is to be planted for each life lost, is also a way of establishing something physical to facilitate remembrance in new diasporic spaces. I imagine that in the continued discussions about Tamil nationhood, how, where and who to remember will be of crucial importance.

Documentation and truth-seeking

Commemoration is one way of telling the story about what happened in the past. There have also been other initiatives, though, focusing less on remembrance and more on finding out the truth about and documenting what happened. Numerous diaspora groups have engaged in the collection of evidence about atrocities in Sri Lanka. Here, the diaspora countries can provide safe spaces, where witnesses are not threatened, and where documents can be kept more securely. In connection with the UN processes, diaspora groups collected stories of witnesses. These were of importance as direct contributions to reports by the Secretary-General's Panel of Experts on Accountability in Sri Lanka and the Office of the High Commissioner of Human Rights. The evidence collected may also be useful in future legal cases. The fact that justice can take a long time makes it important to see to that this evidence is preserved. The diversity of actors who have involved in this, and the sometimes double work carried out on this is a challenge. The stories collected about what happened during the war have also served a role in raising awareness about what happened. Some of them have been published, and spread to a wider audience. In that way, they contribute to drawing attention to the atrocities in Sri Lanka, and to gathering support for TJ also from actors outside the Tamil community. The quest for truth and justice is often a very long process. In many societies that have gone through war or genocide, it is only decades after the events that the process of finding out what happened and prosecuting those responsible gains momentum. In this perspective, having a long-term strategy for how evidence is to be preserved is of great importance.

Some of the evidence of war crimes in Sri Lanka gained wider attention through the documentary "Sri Lanka's Killing Fields" produced by British Channel 4 in 2011, and followed by two other documentaries in 2011 and 2013. Diaspora groups and individuals played a key role in enabling the production of the documentary. Unique film clips and photos depicting evidence of unlawful killings, sexual violence and torture, which came from inside the war zone were conveyed to Channel 4 via journalists and human rights activists exiled from Sri Lanka. The footage was unique, given the fact that media and international organizations had had no access to the war zone. Diaspora Tamils also appeared as witnesses in the documentaries. Diaspora groups saw to that the documentaries were broadcasted in a range of countries and in connection with the UNHRC sessions in Geneva. Although it is hard to exactly measure the impact of the Channel 4 documentaries, it is clear that this has been a major way in which the diaspora has been able to get their message spread globally and advocate for justice.

Legal approaches

The promised legal mechanism involving international judges has not materialized in Sri Lanka, and Tamil groups remain deeply skeptical of a justice process run by the Sri Lankan state. In diasporic spaces, though, other options may be available for the pursuit of justice. That activists use law and rights to advance political goals has become increasingly common globally. Some researchers talk about a trend of "judicialization of politics", and the use of legal strategies such as litigation and rights advocacy as "lawfare" (Gloppen 2018). For the Tamil diaspora, it has very much been a matter of making sure to have "turned every stone", as one activist I interviewed expressed it. The global reach of the diaspora meant that numerous legal mechanisms could be considered, when advocacy, large-scale demonstrations and other strategies did not yield results. To get Sri Lanka referred to the International Criminal Court (ICC) has been one aspiration, towards which Tamil groups worked through large-scale signature have campaigns, most importantly the one aiming for one million signatures organized by the TGTE. Although such efforts are unlikely to result in an actual ICC investigation of Sri Lanka, it may contribute to

putting pressure on key actors and drawing attention to the grave crimes committed in Sri Lanka.

Other interesting attempts at diaspora "lawfare" include the different initiatives to take Sri Lankan leaders to court in other countries. For instance, in the United States in 2011, the relatives of three Tamils killed in in Sri Lanka attempted to bring a case against president Rajapaksa. Rajapaksa's immunity as a head of state however led the case to be dismissed. Diaspora groups have also targeted several former military officers who had been posted as diplomats to different countries. In the US, the widow of an LTTE member who was killed in the violent last phase of the war attempted to take then Deputy Permanent Representative to the UN, Major General Silva, to court. The most recent example of attempts to take suspected perpetrators to court outside of Sri Lanka is the case brought against Jagath Jayasuriya, Sri Lanka's ambassador to Brazil and neighboring South American countries. While this attempt was initiated by a South Africa based human rights organization rather than by Tamil diaspora actors, it serves as an additional example of how various opportunities at legal action can be pursued in various places around the globe.

However, litigation is a strategy which is both costly and where the likelihood of success is low. So far, none of the attempts at holding perpetrators accountable in courts outside of Sri Lanka has led to prosecutions and convictions. Yet, they have had some impact: several diplomats with a background in the Sri Lankan armed forces have been called back to Sri Lanka. Legal action has also brought publicity to accountability issues in Sri Lanka, and individuals who risk prosecution have restricted their travel abroad. Even if the attempts do not lead to justice in the sense of perpetrators being convicted, legal action can be symbolically important, and contributes to shaping the narrative about Sri Lanka's past.

Concluding remarks

The three aspects of transitional justice discussed above – commemoration, truth-seeking and legal action – are closely intertwined. They can reinforce each other, and they all serve to draw attention to the atrocities in Sri Lanka, and as such contribute to shaping the way Sri Lanka's past is understood. For instance, attempts at finding out the truth and documenting what happened can pave the way for legal action at a later stage. Documentation and legal action, on the other hand, can by establishing what happened support commemoration and facilitate the mourning process for individuals.

The global discourses and practices of TJ open up various opportunities for action for diaspora groups. As the Tamil diaspora continues to struggle to find its new forms and strategies in the post-2009 era, TJ offers a more legitimate language which can be used to gain support from international actors than does the language of self-determination. By framing Tamil concerns as matters of transitional justice, global actors are more willing to listen than when they are framed as part of a separatist liberation struggle, as the international system is strongly biased against the splitting up of existing states. TJ also offers spaces for diaspora actors to engage with international actors. For instance, UNHRC's regular meetings in Geneva have become an important arena for the Tamil diaspora - and also Tamil representatives from Sri Lanka brought by diaspora groups – to challenge the narratives of the past of the Sri Lankan government and to pursue justice.

There are limitations and drawbacks, though. As diaspora groups increasingly draw on TJ language and practices to wage their struggles, the gap between expectations and outcomes is a challenge. The efforts put into advocacy work, signature campaigns, demonstrations and fact-finding very often do not bear fruit. This is often not related to the strategies by diaspora groups, but rather to the limited possibilities to pursue justice against an unwilling state (in this case Sri Lanka). With campaigns for the establishment of an international court or for ICC referral, expectations are raised among Tamils that justice will indeed be achieved. When international mechanisms fail to deliver, there is a risk of frustration and resignation. Just like many diaspora Tamils up until May 2009 believed that the LTTE would soon win the war and that the homeland would be liberated, the campaigns for justice may fuel hope for change that will not be fulfilled.

Transitional justice is a broad set of measures and ideas, though. It is not established by one authority and once and for all. The struggle over how a violent past should be understood, remembered and dealt with takes place in many arenas at the same time. Although genocide against the Tamils is not recognized by key UN institutions, smaller institutions may still give it recognition, as is the case with Markham City Council, which passed a resolution naming the atrocities in Sri Lanka genocide. What the atrocities in Sri Lanka should be labelled and how they should be dealt with, will continue to cause controversy over many years to come. The struggles over this takes place at many different levels – in global institutions, in national governments, local institutions, media and the everyday lives of people. The Tamil diaspora, being well-organized, dedicated and present in many countries around the world, will continue to be an important player in that struggle.

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