

Preliminary Written Submissions of Tamils Against Genocide before the People's Tribunal in Dublin on failures to exercise the obligation to prevent genocide in Mullaithivu in 2009

Background

We recognise that the allegation of genocide is an extremely serious one and furthermore the collection of evidence relating to the months leading up to May 2009 has just begun in the face of many obstacles.

The TAG submissions have focused on establishing in the first instance, via detailed primary evidence, specific war crimes and crimes against humanity namely

1. the racially motivated extrajudicial executions of the five students in Trincomalee
2. the shelling of PTK hospital as part of an overall strategy of ethnic cleansing (ensuring that “nothing should exist outside the safe zone” to quote the Sri Lankan Defense Secretary Mr Gothabaya Rajapakse),
3. the extrajudicial killings of unarmed male prisoners after the end of the war

TAG have also submitted, in the form of a model indictment document, a compilation of evidence of a “rolling 60 year” genocide/genocidal process up to December 2008 (based on broader sociological definitions such as the Raphael Lemkin definition). We additionally refer to our submissions in the US application for an injunction against the IMF which bring the body of evidence in the “rolling genocide” case up to March 2008 and as well as to a collection of satellite images of the war zones and photographic/video evidence.

TAG will refer to a body third party sources – reports and press releases by internationally recognised organisations and governments. While we do not agree completely with the entirety of these reports, where they corroborate our own primary evidence, we will rely on those corroborating sections.

There remains a considerable task of gathering evidence of the last stages of Eelam War IV leading up to May 2009, the conditions in the camps subsequently and the fates of tens of thousands of civilians and further thousands of captured combatants. This process has just begun.

Objectives

Due to evidentiary and time limitations, we do not in these submissions apply for a finding that genocide has occurred in 2009 or is occurring over the rolling 60 year plus period [although it is

clearly in the Tribunals discretion to make such a finding]. We do however seek the following findings and/or directions:

- There is sufficient evidence to suggest a genocide prosecution has a reasonable prospect of success, subject to the results of a formal discovery process to be initiated.
- There was a failure of the obligation under the UNCPPG to prevent and punish genocide at specified points by the following parties:
 - The government of Sri Lanka
 - The United Nations
 - The members of the UN Security council
 - Other states that had influence over the Sri Lankan state: The co-chairs of the peace process, specifically the United States, Japan, Norway, the EU the immediate neighbours and regional powers with close military and diplomatic ties to Sri Lanka – India and China Britain as the former colonial power with close current ties – and any others that the Tribunal may identify.
- We contend that to find a failure of the obligation under the UNCPPG to prevent genocide, it is not necessary to rely on any findings that genocide has taken place – it would be sufficient that the respondents had sufficient information contemporaneously for them to know that genocide was a real possibility and thus they would be obliged to act to prevent. Failure to act would result in actions for redress by those victims who might have been protected had they acted.
- Directions as to public disclosures of evidence contemporaneously available to them of the extent of civilians massacres, of the numbers of civilians trapped and any contemporaneous discussions as to the realistic prospect of crimes against humanity and genocide by the parties identified above as having an obligation and a capability (due to their influence) to prevent genocide.
- We would welcome comments as to the presence of other indicators, which while not genocide themselves, are often contemporaneous with genocide – such as ethnic cleansing, persecution.

The Tamil Case for genocide

The Tamil case is based on a “rolling genocide” since independence. It is set out in the TAG model indictment, in “The Tamil genocide by Sri Lanka” by Professor Boyle and in TAG case studies, [including but not limited to] structural similarities to the Nazi genocide of the Jewish people and the structural similarities to events in Srebrenica, relying on the factors cited by the ICTY judgments in the Krstic case and appeal.

It is our case that acts of genocide have taken place in Sri Lanka in its post-independence history, and these have remained without prosecution over a period of decades.

The July 1983 pogrom was one such episode that has been categorised as an act of genocide by eminent jurists but no prosecutions have been brought nationally or internationally, notwithstanding that Sri Lanka has acceded to the UN Convention on the Prevention and Punishment of Genocide [UNCPPG].

In respect of July 1983 we rely on the statement of the International commission of Jurists, in "The Review December 1983" on Sri Lanka:

"A (Sri Lanka) government spokesman has denied that the destruction and killing of Tamils amounted to genocide. Under the Convention on the Prevention and Punishment of the Crime of Genocide, acts of murder committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such are considered as acts of genocide. The evidence points clearly to the conclusion that the violence of the Sinhala rioters on the Tamils amounted to acts of genocide."

Since 1983, there have been a limited number of international investigations into discrete killings, but none with the scope to investigate an act of genocide.

The TAG model indictment of events up to December 2008 is hence a historic first such application to be presented to a Tribunal.

The Failure to Prevent

Precedent

We rely on the 2007 ruling of the ICJ [*Bosnia and Herzegovina v. Serbia and Montenegro*] where the Court found a robust concept of the prevention of genocide within the vague words of article I of the Convention. It spoke of a duty of "due diligence" imposed upon States, one that extended even to acts committed outside of their own borders by entities over which their influence may extend.

Additionally the responsibility to protect, was recognised in 2005 by the United Nations General Assembly and endorsed the following year by the Security Council

Failure to prosecute or punish the July 1983 genocide under the UNCPPG

The failure to prosecute or punish or sanction in any way the July 1983 genocide, despite the findings of the International commission of jurists (see above), is itself a failure to prevent future genocides and to prevent a culture of impunity for massacres and acts of genocide.

This is a failure of the Sri Lankan state and also the UN, the UN Security council and those states listed above as having influence on Sri Lanka.

The Failure of the obligation to prevent [arising from the UNCPPG] the massacre of civilians in the safe zone in May 2009

We rely on the following:

- By September 2008, there had been issued warnings by all major international genocide prevention bodies – specifically genocide watch and the genocide intervention network.
 - Genocide Watch classifies as Stage 7, countries at the mass killing stage, meaning they have active genocides, recurring genocidal massacres, or ongoing politicide. Sri Lanka a ranking of 7 for genocide in 2008.
 - Genocide Intervention Network included Sri Lanka as 1 on 8 countries in its highest alert level category, as “areas of concern,” defined by ongoing systematic violence targeting civilians on a massive scale as of spring 2008

- The genocide prevention project was established and published its first ever rankings in December 2008 – Sri Lanka was 1 of 8 countries in the red alert (highest risk) category.
 - Sri Lanka identified as one of eight countries where “genocide was ongoing or where civilians face risk of genocide and mass atrocities”.
 - “We identify eight situations of highest concern. These countries appeared on each of the five expert indices used as a basis for this report and received the highest composite score on our watch list.” [Dec 2008 Report of Genocide Prevent Project]. Sri Lanka was one of these eight situations.

- A series of increasingly desperate warning by INGOs with a more general focus (i.e. not genocide specialists), specifically
 - Amnesty – e.g. Press statement entitled “Un Security Council must act immediately to stop "bloodbath" in Sri Lanka”, Amnesty May 11 2009
 - The International Crisis Group – e.g. Article titled "**Sri Lanka's Death Zone**", by **Donald Steinberg, 20th April 2009**
 - Human Rights Watch
 - UN Office for the coordination of humanitarian affairs (OCHA) reports

Genocide in Mullaithiv: the Srebrenica genocide analysis applied to Mullaitivu, Sri Lanka

The two requirements to find genocide, as articulated by the ICTY, are:

- 1) The showing that the group was targeted for destruction in its entirety *or in substantial part*, and
- 2) The demanding proof of *specific intent*.

Establishing that a Substantial Part of the Group was Targeted

Some parallels with Sri Lanka are given below:

Srebrenica	Mullaitivu	
<p>The implicated group was Bosnian Muslims and the part of the group that was targeted for destruction was the Muslims in Srebrenica. The Bosnian Muslim population in Srebrenica at the time of capture was 40,000 – 2.9% of the overall Muslim population in Bosnia and Herzegovina (1,400,000). There were an estimated 8,000 Bosnian Muslim men killed in the massacre at Srebrenica.</p>	<p>The implicated group are the Tamils of Sri Lanka and the part of the group targeted for destruction were the Tamils in Vanni. There were an estimated 250,000+ Tamils within the safe area in Mullaitivu (approximately 7% of the group’s population, if looking at the group as those remaining on the island; approximately 5.5% of the group’s population worldwide). There were an estimated 20,000 Tamils killed during the onslaught in the safe zone and more during and after the forcible transfer to “refugee” camps.</p>	1
<p>The area of the perpetrators’ activity and control as well as the possible extent of their reach are all factors when considering whether the part is a substantial part, “The intent to destroy is limited by the opportunity presented.”</p> <p>The perpetrators here could not easily reach beyond Srebrenica to reach the entirety of the Bosnian Muslims.</p>	<p>The Tamils of Sri Lanka are spread around the globe – nearly a quarter of the entire population would be outside of the perpetrators’ reach. Because of their location, the Tamils in the Vanni area presented themselves as a group within a confinable area and the state was able to effectively blockade them from the rest of the island.</p>	2
<p>Strategic Importance of the area: without Srebrenica, the ethnically Serb state that the Bosnian Serb leadership sought to create would be disconnected.</p> <p>Most of the Muslim inhabitants of the region had sought refuge in Srebrenica, and so elimination of it would lead to ethnic purity in the area.</p>	<p>Mullaitivu has always been over 90% Tamil in population, with the district being nearly 100% Tamil for the past ten years.</p> <p>The Government of Sri Lanka (GoSL) had dropped pamphlets around the entire surrounding region to encourage civilians in the 100% Tamil area to congregate in 20 mile safe zone in order to be protected from the surrounding war. Soon after, the GoSL began their aerial attacks on the area. Elimination of the civilians in that zone would have led to ethnic purity in the district.</p>	3
<p>International importance of the area: it was important to both Bosnian Muslims and international community because it was the most visible of the safe areas created by the UN Council.</p> <p>It had a guarantee of protection. “The elimination of the Muslim population of Srebrenica, despite the assurances given by the international community, would serve as a potent example to all Bosnian Muslims of their vulnerability and defenselessness in the face of Serb military forces.”</p>	<p>The safe zone was purportedly the GoSL’s response to growing concerns from the international community regarding civilian protection. This final battle was widely publicized because it was the last LTTE stronghold on the island.</p> <p>GoSL knew that the world was watching and wanted to serve a “potent example” to all Tamils of Sri Lanka that the GoSL determines their fate – to impress the Tamils’ vulnerability and defenselessness in the face of the Sri Lankan Army. [I think there was a good quote to show this from around that time – either Fonseka or one of the brothers]</p> <p>The area had strategic significance for the viability of a Tamil nation and state.</p>	4
<p>The Bosnian Muslims of Srebrenica were the only part of the Bosnian Muslims under the control of the Bosnian Serb forces.</p>	<p>The Mullaitivu area was the only area where a media blackout had been achieved, international observers had been expelled (save for the Red Cross which may not testify in legal tribunals) and an alibi of “a counter-insurgency war” had been established</p>	5

	and an alibi of “a counter-insurgency war” had been established	
Even though the Serb forces claimed to target an even smaller part of that group, men of a military age, the Court did not find them to be a smaller, separate part of the group.	The GoSL claimed to target the LTTE, but the court may see the falsity in that contention given the nature of the attack: <ul style="list-style-type: none"> - The destruction of infrastructure and facilities for food and medicine and preventing these from reaching the broad population - The indiscriminate weapons deployed 	6
Even though the Bosnian Muslims of Srebrenica were not originally from Srebrenica, they still were able to be defined as a group as such.	The Tamils in Mullaitivu may have been displaced from other areas, but it will not affect the analysis for determining “a substantial part of a group.”	7

Establishing Intent to Destroy

The intent of the government of Sri Lanka was to ethnically cleanse the Mullaitivu area and prevent the Tamil community from reconstituting itself there, by means of physical destruction, via death or physical or mental harm of a substantive part of the Tamil nation, because of

- . the symbolic significance of the Tamil capital, Kilinochchi and its surrounding region, Mullaitivu,
- . the area’s strategic significance to the viability of a Tamil state.
- . a desire to punish the Tamil population that has chosen to live outside of government control

The intent to destroy is also evidenced by preparatory measures, for example

- Damaging and destroying the network of aid organisations that would be available to care for the massive number of displaced that were expected as a consequence of the attacks, creating a climate of fear and insecurity that forced many aid organisations to withdraw. For example
 - The killing of 17 staff of Action Contre Le Faim, failure to investigate and the subsequent withdrawal of the organisation
 - The abduction and killing of TRO staff and failure to investigate
 - Failure to investigate or prevent the killing of numerous other workers including those of the ICRC
 - Allowing inflammatory statements, inciting hatred against international humanitarian staff in the national press
 - Forcing the withdrawal of the UN from the conflict zone in September 2008

- In the late stage of the conflict UN staff were held in detention camps, initially incommunicado
- Achieving a media blackout of the conflict zone and also killings, destruction and intimidation of all Tamil press and to a lesser degree, other ethnic press.

The intent to destroy is also evidenced by the actions of the Government of Sri Lanka (GOSL) to prevent adequate food and medicine reaching the target population

- GOSL knowingly substantially published lower figures for the number of civilians in the safe zone – thus leading to far lower food and medical supplies than necessary
- GOSL chose a "safe zone" which had no medical infrastructure, inadequate drinking water (being on the sea shore, there was only salt water), it was an exposed open area suitable for shelling and without adequate shelter except open spaces
- The Sri Lankan military wilfully directed military operations towards the "safe zone" that GOSL had declared – so in fact GOSL had created not a safe zone but a killing zone towards which military operations were directed We refer to the diagram of evolution and direction of military operations in the TAG submissions on PTK hospital . We refer to the interview by President Rajapakse to the Hindu (see below)

Explicit statements of intent

- We rely on Gothabaya Rajapakses interview to Alex Crawford of Sky News on 2nd February where he confirmed that "Nothing must exist outside the safe zone", this includes operating hospitals.
- We rely on TAG satellite images which will show that other hospitals – in fact all hospitals in the area were targeted – consistent with Mr Rajapakses statement
- Extract of President Rajapakses interview confirming that GOSL intended for the safe zone to be also the final conflict zone, so it was not intended to be safe at all:
 “
- **NR:** What do you think was their final strategy? Prabakaran holed out with all the LTTE leaders and their families in that small space, that sliver of coastal land. It shocked the world. But what were they expecting? D.B.S. Jeyaraj, who writes for us, has a theory that they wanted to do a daring counter-attack.
- **President:** I think what they wanted was to escape. In the final phase, they were waiting for somebody to come and take them away. Otherwise, they wouldn't have gone there. Because they had the Sea Tiger base: that was the only place where they could bring a ship very close — even a submarine. They selected the best place for them: on one side the sea, then the lagoon, and there was a small strip. But then it was not they who actually selected the place: they 'selected' it but the armed forces made them go there. The No-Fire Zones were all

announced by the armed forces. After Kilinochchi, they were saying: “No-Fire Zones, so go there.” So all of them [the LTTE leaders and fighters] went there. These were not areas demarcated by the U.N. or somebody else; they were demarcated by our armed forces. The whole thing was planned by our forces to corner them. The Army was advancing from North to South, South to North, on all sides. So I would say they got cornered by our strategies. “

Srebrenica	Mullaitivu	
Physical or biological destruction of the group: killing of “men of military age.” The Serbs claimed that the executions were to remove a threat, but they exterminated men who were too young and too old to be considered military age.	The GoSL claimed to remove the LTTE, but they, at best, bombed indiscriminately, and at worst, targeted hospitals and the safe zone.	1
Physical or biological destruction of the group: killing of “men of military age. The Serbs claimed that the exterminations were to remove a threat, but they exterminated men without differentiating between military status and civilians. <i>Even though civilians are capable of bearing arms, they do not constitute the same kind of threat as professional soldiers.</i>	The GoSL claimed to remove the LTTE. However, in this air raid, there was no attempt to distinguish civilians from rebels in any manner. The mere similarity in appearance between the LTTE and civilians does not allow for indiscriminate attacks.	2
Physical or biological destruction of the group: destruction of men. This led to severe procreative implications for the Srebrenica Muslim community. The trial chamber found that the Serb forces knew about the implications of these acts on the physical survival of the population – that knowledge is enough to establish intent.	Even though men were not targeted separately from women or children in Mullaitivu, the indiscriminate shelling led to severe procreative implications for the Tamil community through deaths, lost relatives and disabilities.	3
Physical or biological destruction of the group: destruction of men. The men killed were largely listed as “missing,” which kept their spouses from being able to remarry and therefore have more children.	The forcible transfer, detainment, rapes and improper record-keeping throughout the aftermath of the Mullaitivu massacre have kept families from finding one another and has endangered reproductivity.	4
The decision not to kill all members (i.e., to transfer, rather than kill, the women and children) does not preclude genocidal intent. The forcible transfer could be to further the complete removal or destruction of Muslims in Srebrenica – “thereby eliminating even the residual possibility that the Muslim community in the area could reconstitute itself.”	Even though all the Tamils within the safe zone were not killed, that does not preclude genocidal intent. The forcible transfer to the camps bolsters the notion of furthering genocidal intent since the GoSL’s original plan was to maintain the civilians within the camps for three years, if not indefinitely – thereby eliminating the possibility that the community in the area could reconstitute itself. The GOSL has instilled sufficient fear in the minds of the population that many are too traumatised to return, reducing the possibility of the community reconstituting itself.	5
Even though forcible transfer is not genocide in and of itself, it can be relied on to prove intent to	In this struggle, where Tamils are dying to preserve their homeland, giving them the choice to flee or die is the offer of a	6

destroy.	false choice- either way, the GoSL will destroy the community.	
Even if the most direct and effective form of genocide is not carried out, genocide may still be found.	Even if the GoSL did not eradicate the safe zone entirely, genocidal intent can be found.	7
Even if there are no statements by general staff indicating the motivation of genocidal intent, intent may still be inferred. The staff's knowledge of the detrimental effects on the community may be enough.	Statements imputing genocidal intent on those actually carrying out the actions are not required to establish intent.	8

President Mahinda Rajapaksa responds to N. Ram 's questions

The human drama of some 300,000 Tamils fleeing the LTTE in the weeks before its elimination as a military force moved the world as it watched in shock, awe, and eventually great relief. What is their present condition in the Vavuniya IDP camps and what will be their future? And what is the nature of the political solution Sri Lanka 's government has in mind? President Mahinda Rajapaksa responds to N. Ram 's questions in this first part of an extended interview to The Hindu in Colombo . Lalith Weeratunga, Secretary to the President, participated in the conversation, filling in some details and adding his insights. P.M. Amza, Sri Lanka 's Deputy High Commissioner in Southern India , was also present during the June 30 meeting at Temple Trees, the former official residence of Prime Ministers.

N. Ram: Mr. President, are you satisfied with conditions in the Vavuniya IDP camps where close to 300,000 Tamils are housed?

President: I sent some people close to me to the camps. They went and stayed for several days. They spoke to the girls, the Tamil children, and others. And they came and reported to me. I don't rely on information only from the officials. We released people over 60. You know, a 74-year-old man, when he was released he immediately came here and went to Singapore . He was the man who had the money list, the other list. [Velupillai] Prabhakaran had given lists to many, not to just one person. This man escaped; he was one of the leaders.

I would say the condition in our camps is the best any country has. We supply water. There is a problem with lavatories. That is not because of our fault. The money that comes from the EU and others, it goes to the NGOs and the U.N. They are very slow; disbursing money is very slow. We supply the water tanks; we have spent over [Sri Lankan] Rs. 2 billion. Giving electricity, giving water, now we are giving televisions to them. They have telephone facilities. Schools have been established. Some of the leaders are using mobile phones.

I had a special meeting on the disposal of waste. I sent a special team of specialists to see how mosquitoes can be eradicated.

We know there are shortcomings. Slowly, we have to overcome them. In some camps there are no problems. What these people I sent told me: they are satisfied with the housing, the shelter. They have undergone much worse conditions earlier [when they were under the LTTE's control]. Their problem is movement, freedom of movement. Since there are security concerns, I don't know how to do that immediately.

So I said: "We have to identify these people. So if anybody takes the responsibility, we are ready to send them." We have called an all-party meeting for Development and Reconciliation. The reconciliation part, all parties must participate. The TNA [Tamil National Alliance] must participate.

Resettling displaced Tamils

NR: Why can't more Tamil IDPs be sent back to the places they hail from, provided of course their security and wellbeing can be assured? Why not a grand gesture of sending tens of thousands of people to safe places where they can be looked after – at this stage, in the Eastern Province, the Jaffna Peninsula, and the Indian Tamil areas?

President: You must remember it is only one month, my friend. I said on the 20th of May that as soon as possible, we must send them to places where they can stay. My problem is that we have to get the certificate of de-mining from the U.N. We have already sent people back to several places; you can get the details. As soon as we get the clearance, I'm ready to do that. But before that I must get the clearance from the U.N. about the de-mining. I can't send them to a place without basic facilities. Now we're spending on electricity, on roads, on water. We can't send them back to a place where there are just jungles. Every square centimetre has been mined by the LTTE. If something happens, I am responsible.

Lalith Weeratunga (Secretary to the President; LW): Sri Lanka is adopting a very good system. We are de-mining the paddy fields first; then you can get into rice cultivation. The other thing is that the U.N. has been so slow in de-mining. It's the Indian companies that have been doing the good work.

President: And the [Sri Lankan] Army. They're doing the best work.

My personal feeling is that as soon as possible, we have to re-settle these people. We have to send them to the villages. But my problem is that to provide security for them, I will have to recruit another 200,000! I don't want to do that. Now I am recruiting Tamils to the Army and the police. I was always for that. I said: "Have a Muslim regiment and a Tamil regiment." All these people started opposing it for political reasons: "No Muslim regiment, no Tamil regiment." Not by the Sinhalese who welcomed that, but by the Tamils, by the Muslims.

You know, the mothers of our soldiers – some of them though their sons had been killed by the LTTE – when we told them that these people [Tamil civilians fleeing the LTTE] were coming and we must send them food and meet their other basic needs, these mothers contributed. The mothers of ex-soldiers contributed. Bikkus contributed. But not some Tamil businessmen. I had to remind them, shout at them, plead with them to get that support.

NR: Another issue is three doctors under detention: one may be an LTTE man; the other two are government doctors. Why can't they be released now?

President: I told them to organise a press conference. Let the doctors come and say what they have to say.

LW: They were lying through their teeth [about civilian casualties in the No Fire Zone]. And they are public servants, paid by the government. If they go scot-free, it will set a very bad precedent.

President: Everybody is worried about the doctors. So let them explain to the public, to the journalists, who can question them, why and on what basis they said what they said. Let the pro-LTTE journalists also question them.

The question of Tamil leadership

NR: How do you see the post-Prabakaran situation evolving politically?

President: My view is this. Most Tamil people believed they had a leader – whether he was right or wrong. This man [Prabakaran] made them proud.. It was a ruthless organisation, it killed people, those are all immaterial for others. They thought: "There is a leader who is keeping us up in the world." Suddenly that leadership vanished, after thirty years. Immediately they couldn't digest it. Many of them know he was wrong. It will take time. Some of these people, the older people, can't accept it yet. Still the Internet — 'KP' [Selvarasa Pathmanathan, the former head of the LTTE's 'Department of International Relations' and chief arms procurer who is at large and on Interpol's most wanted list] and the rest are sending messages, right? "You don't worry, the organisation is still there," and so on. Their propaganda machinery is alive, to get the money. Things that they bought individually, they are not giving it. There are Sinhalese businessmen here who invested the LTTE money. We know it but various powerful people protected them.

My fear is this. Now, to collect money again, somebody will have to plan something here. Just one incident. Just to upset the world and then to show they have started the movement – so that they can continue to collect the money. They think that will help. But we are very vigilant.

No racism

In this whole thing, we have to think aloud. I have warned my party people, all party people, whether Sinhala, Tamil or Muslim, that "I don't want any statement, anything that creates a disturbance among

our three communities.” Now my theory is: there are no minorities in Sri Lanka, there are only those who love the country and those who don’t. They tried to twist that but I still maintain that position.

NR: That was in your speech of May 19.

President: Yes, in Parliament. And in my Parliament speech, I spoke in Tamil also. And I spoke only in Tamil when I gave a small message when we started the new ITV Tamil channel, Vasantham.

LW: The public service is learning Tamil. Some are following courses of 40 hours of spoken Tamil.

President: I learnt that in one school the master said: “If the President can learn Tamil, why can’t you all? You are students. You must learn Tamil.” We are paying people in the public service for learning Tamil, to encourage them.

LW: There is a one-time payment if you pass Tamil. But if they go for classes also we pay. H.E. [His Excellency] has issued a directive that with effect from July 1 we will not recruit people to the public service unless they know Tamil – and vice versa, that is, Tamils must know Sinhala, Sinhalese must know Tamil.

President: Let them learn, let them learn. I can remember that in 1970 as a young MP I said that we must teach all Sinhalese Tamil and all Tamils Sinhala. If that had happened, I think there would have been a different world.

NR: There was this famous and prophetic statement in the 1950s [in 1956, when Sinhala was made the official language]: “Two languages, one country. One language, two countries.”

President: Yes, by Colvin [Dr. Colin R. de Silva, the LSSP leader who between 1970 and 1975 was a key Minister in the Cabinet of Sirimavo Bandaranaike].

Towards a political solution

NR: Now about your political solution. You talked about the 13th Amendment plus.

President: I am waiting for them. The TNA representatives must come and participate in the discussions [on the political solution]. I am getting delayed because they haven’t done this yet. [On July 2, leaders and representatives of 22 political parties, including the TNA, participated in the inaugural meeting of the newly constituted All Parties Committee to build a consensus among political parties for development and reconciliation, giving priority to the speedy resettlement and rehabilitation of the war-displaced.] I am waiting but it will be after my [re-]election [as President]. I must get the mandate. After that, the political solution comes. Even tomorrow I can give that — but I want to get that from the people. Even today somebody said: “The 13th Amendment. We are not for...” I called them and gave them a piece of my mind. I called our party leaders and told them: “Now what I’m going to tell you, you’re not going to tell anybody. It’s between you and I.” Only party leaders were there. But today a professor from a university called me to say, “Thank you very much.” I said: “For what?” He said: “This morning you have warned all the people about racism. And what you said has been highly regarded. This call is to thank you.” I asked, “How do you know?” He said: “No sir, I just heard.” This professor, a Tamil man, had immediately got the news. “Whether it is Sinhalese, Tamil or Muslim, I am telling you all. No racism. Don’t try to create problems for me.”

[As for the political] solution, I’m willing. I know what to give and I know what not to give. The people have given me the mandate, so I’m going to use it. But I must get these people [the TNA representatives] to agree to this. They must also know that they can’t get what they want. No way for federalism in this country. For reconciliation to happen, there must be a mix [of ethnicities]. Here the Sinhalese, the Tamils, and Muslims inter-marry. In my own family, there have been mixed marriages: Sinhalese with Tamils, Sinhalese with Muslims. This is Sri Lankan society. No one can change this.

NR: You have this idea of a Second Chamber.

President: Yes, I want to get representatives from the Provinces involved in national policy-making. And if there is anything against a Provincial Council, they can protect their powers constitutionally. I have an arrangement in mind — this is what we call ‘home-grown solutions’ — but the idea needs to be discussed and the details settled. I don’t want to impose any arrangement.

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*In this second part of an extended interview to The Hindu at Temple Trees in Colombo on June 30, **President Mahinda Rajapaksa** answers **N. Ram**'s questions on his outlook on the LTTE, his approach to it in peacetime and in armed conflict, and his assessment of its fighting capabilities and of Velupillai Prabhakaran's strategy during the endgame.*

N. Ram (NR): Mr. President, when you were elected in 2005 what was your expectation of this conflict? This is what you said in your 2005 presidential election manifesto, *Mahinda Chintana*: "The freedom of our country is supreme. I will not permit any separatism. I will also not permit anyone to destroy democracy in our country...I will respect all ethnic and religious identities, refrain from using force against anyone, and build a new society that protects individuals and social freedoms." In that policy statement, you also projected the "fundamental platform" of your initiatives as "an undivided country, a national consensus, and an honourable peace." So what was your real expectation when you assumed the office of President? You had no plan, it appears, to go on an offensive.

President: I was very clear about terrorism. I didn't want to suppress the Tamils' feelings. But I was very clear about the terrorism from the start. That's why as soon as I knew that I was going to win, I invited Gota [his brother Gotabaya Rajapaksa, who took charge as Secretary in the Ministry of Defence, Public Security, Law & Order on November 25, 2005; a battle-hardened professional with 20 years of service in the Sri Lankan Army, he played a key role in the successful Vadamarachchi Operation against the LTTE in 1987 and subsequently, in 1990, in Operation Thrividabalaya to rescue Jaffna peninsula and the Jaffna Fort from LTTE control.] I said to him: "You can't go. You wait here." That's why I selected as commanders of the Armed Forces people who would get ready to do that. Then I sent the message to the LTTE: "Come, we will have talks, discuss." I was trying to negotiate. I was very practical. I said: "You can get anything you want. But why don't you all contest for this, have elections? Now you are people who have weapons in your hands. Ask the people to select. Have elections for the Provincial Council. Then we will negotiate. I can negotiate with an elected group. But with a man with weapons, I can't negotiate." The biggest mistake he [Prabhakaran] made was this. He said I was a practical man, a pragmatic man.

Lalith Weeratunga (Secretary to the President; LW): H.E. [His Excellency] was appointed on the 19th of November [2005] when he made his inaugural speech, where he invited this man. Then on the 27th of November came Prabhakaran's Maaveerar speech, in which he said the President was a pragmatic, practical man [the LTTE supremo announced that his organisation would "wait and observe" the new President's approach to the peace process "for some time" because "President Rajapaksa is considered a realist, committed to pragmatic politics"].. When he said that, H.E. said in a speech: "I am willing to walk that last mile." Then on the 5th of December, they attacked 13 innocent soldiers who were taking meals to their comrades and they were without weapons. That is how it started.

President: Even then I didn't do anything. But then I knew what was going on. Then only I started my defence, I would say. Then Gota said we would have to increase the strength of the Army. All that was planned by them [the professionals]. I said: "What do you want? Get ready." But I went behind them [the LTTE] pleading. But I knew people were getting worked up in the South. Then I warned the LTTE: "Don't do this. Don't push me to the wall."

LW: Then you sent me to talk to one of their leaders.

President: I sent him. I sent Jeyaraj [Jeyaraj Fernandopulle, a veteran politician hailing from the Tamil minority group of Colombo Chetties and Cabinet Minister of Highways & Road Development; he was assassinated by an LTTE suicide bomber on April 6, 2008].

LW: In 2006, I went through many checkpoints without being checked. H.E. said: "Just go. Don't identify yourself." Later he told them: "I sent someone. You people couldn't even find out who it was."

President: I pulled up the Defence people, saying: “If I can send a man there, what is your security?” I told them after several months: “He [Lalith Weeratunga] is the man who went there. Do you know that?”

LW: To that extent he went.

NR: To see the weaknesses?

LW: No, to negotiate.

President: To negotiate and see the weaknesses also! Then I sent Jeyaraj. He told them some home truths in Sinhala, which they understood. “You will be killed [if they continued along this path].”

NR: Then came the Mavil Aru incident.

President: That was the time they gave me the green light!

NR: But you were well prepared by then, August 2006?

President: Yes. But before that, they tried to kill the Army Commander.

LW: In April 2006, when they tried to assassinate the Army Commander, the President said — this was in the next room — “as a deterrent, just one round of bombing, then stop it.”

President: Yes, I said: “Just go once.” We were very careful.. We did our best to find a way out through talks.

LW: There was a whole series of negotiations, in Geneva and elsewhere. They [the Tigers] didn’t even want to talk.

President: So these military operations did not come without negotiation or without any reason. But from the start, I was getting ready for that [the military operations]. I knew — because I had the experience, you see.. We knew that they would never lay down arms and start negotiating.

LW: In this connection let me tell you about the President’s interesting conversation with Mr. Solheim [Eric Solheim, the Norwegian politician and Minister who helped negotiate the 2002 ceasefire and was a controversial participant in the Norwegian mediatory efforts]. I was there, it was about March 2006. Mr. Solheim came to see H.E. after he became President, and said, in the midst of other things: “Prabakaran is a military genius.. I have seen him in action,” and this and that. The President said: “He is from the jungles of the North. I am from the jungles of the South. Let’s see who will win!” It was very prophetic. Later the President met Minister Solheim in New York and reminded him of their conversation on the “military genius,” the jungles of the North and South, and who would win. The East had by that time, in 2007, been cleared and the President said: “Now see what’s going to happen in the North. The same.”

NR: When did you first get an idea that the Tigers were vulnerable, that they were hollow in some sense, that you could hit deep?

No underestimation

President: From the beginning I had the feeling that if you gave the forces [the Sri Lankan armed forces] proper instructions and whatever they wanted, our people could defeat them. Because I always had the feeling that what they [the LTTE] were showing was not the reality. But in a way, we were wrong. They had numbers, they had weapons. They would have attacked not just Sri Lanka , they would have attacked South India . The weapons they had accumulated could not have been just for Sri Lanka ! The amount of weapons our armed forces are discovering is unbelievable. And I knew when our intelligence was saying: “They have only 15,000 fighters,” I knew it was not that number. I was not depending on one source. I knew that the LTTE had more than that. One thing I never did was to underestimate the LTTE.

NR: So you say they were the most ruthless and most powerful terrorist organisation in the world.

President: Yes, the most ruthless and richest terrorist organisation in the world. And well equipped, well trained.

LTTE's final strategy?

NR: What do you think was their final strategy? Prabakaran holed out with all the LTTE leaders and their families in that small space, that sliver of coastal land. It shocked the world. But what were they expecting? D.B.S. Jeyaraj, who writes for us, has a theory that they wanted to do a daring counter-attack.

President: I think what they wanted was to escape. In the final phase, they were waiting for somebody to come and take them away. Otherwise, they wouldn't have gone there. Because they had the Sea Tiger base: that was the only place where they could bring a ship very close — even a submarine. They selected the best place for them: on one side the sea, then the lagoon, and there was a small strip. But then it was not they who actually selected the place: they 'selected' it but the armed forces made them go there. The No-Fire Zones were all announced by the armed forces. After Kilinochchi, they were saying: "No-Fire Zones, so go there." So all of them [the LTTE leaders and fighters] went there. These were not areas demarcated by the U.N. or somebody else; they were demarcated by our armed forces. The whole thing was planned by our forces to corner them. The Army was advancing from North to South, South to North, on all sides. So I would say they got cornered by our strategies.

LW: Kilinochchi was captured on the 1st of January 2009. And the whole operation was over on the 19th of May. So there was ample time [for them to get away].

Conduct of armed forces

President: Yes, I can't understand why they had to fight a conventional war. Prabakaran could have gone underground. If I was the leader of the LTTE, I would have gone underground and I would have been in the jungles — fighting a guerrilla fight. They couldn't do that now because we, our Army, mastered the jungles. They were much better than the LTTE in this [mode of warfare]. Thanks to the Special Forces, the Long-Range Forces, and the small groups, the group of eight. That worked very well. And I salute our forces for their discipline.

LW: For example, there was not a single instance where the Army was found to be wanting in its conduct towards women.

President: That girl, when she surrendered — they were deciding, there were six or seven [LTTE women fighters] — she says in her statement: finally, two or three ate cyanide and killed themselves; and then two or three girls said, "all right, we will see whether we will be raped, whether we will kill ourselves or be killed by rape, we will take this risk." The schoolteacher, this educated girl, surrendered. Nothing happened. She can't believe this. She was paid by the government for fighting us! By the way, we are now going to get all the government servants [from the Northern areas that used to be controlled by the LTTE] and I am going to tell them: "Forget your past. You work there in these organisations, you can't just wait there. We are paying you." Now teachers must go and teach and others must go to their posts and work.

And the money that they [the Tamil civilians fleeing the LTTE] deposited: on the first day it was 450 million [Sri Lankan rupees] together in the two banks, People's Bank and the Bank of Ceylon. And considerable quantities of gold. The Army has become a very disciplined force.

N. Ram [NR]: Are you not worried by what is seen outside Sri Lanka as triumphalism following the military victory? That has to be checked, does it not, in the South?

President: No. The Tamils are happy, the Muslims are happy. They had that fear for two days. I must admit that. When my friends informed me, "Sir, we have a problem like this" — they had this fear — I spoke to them in Tamil and said: "Don't worry, I will look after you." People were enjoying themselves for two weeks. One day I took a vehicle and went all over just to find out what was going on. I placed the Army and the police near the Tamil houses. Nothing happened. Not a single Tamil house was attacked, not a single Tamil was humiliated. Not a single Muslim.

Do you know that recently there was a fight. Two were killed. I thought, "Another problem." Only to find out that a gang had applied for visas saying, "The Army is bombing us and fighting us" and that they wanted to escape all this. They somehow got two visas and [to celebrate that] had a party. After drinking, two fellows were killed. We caught all of them and questioned them. They are not LTTEers, they don't belong to any political party. They are gangsters. Gang fighting is going on. These are the underworld; we have to tackle them. They want to go to some western countries. I don't mind; if those governments want them, let them take them!

Is the President too powerful?

NR: There is a perception that the presidency has become too powerful. If so, what is the safeguard? What would be your answer to this criticism?

President: My answer is that it is not too powerful. That is my three years' experience. I can't take any decision on money matters. My money is controlled by Parliament. My powers have been taken over by Commissions. I can't dismiss any Provincial Council — unlike your central government, which has the constitutional power to dismiss a State government and dissolve a State Assembly. So how can I say I am powerful? I can't transfer a provincial teacher. I can't make a school a national school. So what is this power? To decide on the security, yes.. The power is there. To keep the country in one piece. Otherwise I have no powers. The Cabinet has all the power. I can request.

NR: You are a man of Parliament, are you not?

President: I always say I am a man of Parliament. I like to debate. I like to fight, not physically of course. If you are inside Parliament, you're in touch. I'm in a prison now. A glorified prisoner, I would say, with all these security personnel. I'm one who walked from Colombo to Kathargama, 180 miles in 18 days. I'm a person who went and met people. I am a person who went to their houses. I was very free: 40 years of politics was with the people. So suddenly you put me here. I also have been in remand for three months. But I can't see a difference now. Of course I'm getting all these comforts. But what is comfort? This is not comfort. I can't get out, I can't drop in on my friends, I can't bring them here. I can't enjoy anything.

Friendship

NR: They say you value friendships a lot. You have friends in India .

President: I will do anything for a friend — not for any bad work, of course. But when a friend in difficulty approaches me, I will do whatever is possible to comfort them. Even when a country needs a friend, I always trust that country as a friend. Personal friendship has become important even in international relations. That is why I always treat India as a friend.. A little more than that: a relation, I would say. Because of that, I will not get angry with others also.

NR: You are happy overall with India 's response to the recent developments?

President: Yes, India was very helpful, first by understanding what was happening. We had a list and we knew what was possible and what was not. We bought the weapons we wanted from China . It was a commercial deal. China helped us and when somebody helps you, you appreciate it, don't you? But we paid them on international terms. We were very clear about this. That is also why I stood by Pakistan . When they were isolated, I got up and defended them. Then I canvassed for India during the process of choosing a Secretary-General for the Commonwealth [Kamalesh Sharma, a senior Indian diplomat, was chosen for this post by the Commonwealth Heads of Government in November 2007 and took up his post in April 2008]. I think no other country's leader would have been doing that openly. There were people in Sri Lanka who were interested in the job. But I said I wanted an Indian candidate. "In this region, we must have a leader. Here's the SAARC leader, at that time. So make them also powerful internationally and then we have a friend to defend us in international forums." That was my reasoning.

Media issues

NR: There has been international concern over the assaults and pressures on journalists in Sri Lanka . Some of these journalists were your personal friends, especially Lasantha Wickrematunge [Editor of *The Sunday Leader*] who was gunned down in January 2009. Then, in June, a Tamil woman journalist [Krishni Ifhan née Kandasamy of Internews] was abducted in Colombo by unidentified persons [who questioned her for several hours before releasing her in Kandy].

President: Most of these cases were created, I would say. If you fight someone in the street and that man comes and hits you, can the government take responsibility? But we have not done anything against journalists even when they attack us. For example, even though we had evidence that a Tamil newspaper owner and editor supported the LTTE, we treated them as journalists. I invited them here and they even entered into arguments with our senior officials.

Some of our journalists want complete freedom. They can attack anybody, they cannot be charged. Under the Constitution, only the President has immunity from prosecution. But the journalists also think they have the right to do whatever they want and get away with it — because they are journalists.. Some of them said they would get together and do something about this. But what are some of the newspapers doing? They use media power to blackmail innocent citizens and collect money. I am a politician, I can take it. But public servants, what recourse do they have? The journalist writes something and then publishes a correction — it is useless. If they write falsely that this person is a bribe-taker or a rapist — there are such instances — what does he do? He can't go home; he can't face his children. How many people can afford to go to court with a civil [defamation] case? Newspapers must take responsibility. If they won't do this, then you will have laws to make them do this.

Lasantha was my friend; he used to come and meet me, told me of various things that were happening, even in my party. He would drop in at two o'clock in the morning and I used to send him back in my vehicle.

NR: His last call was to you?

President: Yes, but unfortunately I was in the shrine room. It was a bad time. If I was out, they would have given me the phone. I was very angry with my security people.

Cultural values

President: I always respect the family culture of the Tamils. That is very important but it has been ruined by the LTTE. There is this 19-year-old girl in one of the IDP camps; she has had seven children! Every year she got pregnant because then the LTTE would not take her away to fight. And they don't even know the father.

NR: And the parents also supported this?

President: Yes, to keep the child. This is in a traditional family. This is the society we are living in. We don't want to publicise all this, although I did mention it in one of my speeches. The point is you can't ruin the culture of a country, the future of the young generation. The drug dealers are doing that. We must do everything to stop them.