

A Genocide of Tamils in Sri Lanka

Failures of the Obligation to Prevent
and Punish

Presentation to the People's Tribunal
On Sri Lanka

Objectives

- Provide context and background to evidence
- Describe TAG's approach to genocide
 - Connecting the dots in a time line
 - Discrete acts of genocide have already been “recognised” by eminent Jurists [ref. International Commission of Jurists on July 1983 pogroms]

Objectives

- Establish a reasonable prospect of success of a prosecution of the Sri Lankan state and/or the President/Defense Secretary, Gen Fonseka and other officers for the genocide of the Tamil people.
- Obtain orders/directions on disclosures by relevant states and international organisations, including the UN
- Identify a failure of the obligation to prevent and punish the genocide of Tamils

UN Legislation v Sociological Definitions

- Rely on Raphael Lemkin Definition for our lower threshold
- UN Convention – narrower interpretation

Raphael Lemkin Definition

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation.

It is intended rather to signify a **coordinated plan** of different actions aiming at the destruction of **essential foundations of the life of national groups, with the aim of annihilating the groups themselves.**

Raphael Lemkin Definition

“The objectives of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups”

UN Convention on the Prevention and Punishment of the Crime of Genocide [CPPG]

- acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group constitute 'genocide'.
- (1) killing members of the group (2) causing serious bodily or mental harm to members of the group (3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

UN Convention on the Prevention and Punishment of the Crime of Genocide [CPPG]

- Obligations

- The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Obligation to Prevent and Protect

- Red Alerts on Genocide by expert groups
 - Genocide Prevention Project [Dec 2008]
 - Genocidewatch
 - Genocide Intervention Network

Timeline & methods of Destruction of the Tamil Community

Via legislation: 1948/49, 1956 – Race-based Citizenship law, non violent ethnic cleansing, Language Act

Via Pogroms 1956, 1958, 1977, 1983

Cultural genocide [as per UNESCO] - 1950s onwards, state-sponsored destruction of books [1981], temples etc

Via conditions of life in occupied territory, internment
- Embargos of food, medicine etc

Via disappearances, killings in times of peace [e.g. 2002-2008]

Via military attack – Eelam Wars 1 [1983-1987], II [1990-1995], III [1995-2002], IV [Jan 2008 -present]

Statements of intent

- [1937] First Sri Lankan Prime Minister, D. S. Senanayake: "we must realise that the Sinhalese are the rightful sons of this fair country, and that we must organise ourselves into a determined body and even risk our lives in doing it service. The minorities choose to believe that we are not trustworthy."
- [1956] Prime Minister Solomon Bandaranaike: "with their books and culture and will and strength characteristic of their race, the Tamils (if parity were given) would soon rise to exert their dominant power over us." [context: language act]

Statements of intent

- [1983] President Jeyawardene "I am not worried about the opinion of the Tamil people... now we cannot think of them, not about their lives or their opinion... the more you put pressure in the north, the happier the Sinhala people will be here... *Really if I starve the Tamils out, the Sinhala people will be happy.*" [context: lead up to July pogrom]

Statements of intent

- [2008] Lt. Gen. Sarath Fonseka: “I strongly believe that this country belongs to the Sinhalese but there are minority communities and we treat them like our people... We being the majority of the country, 75%, we will never give in and we have the right to protect this country... They can live in this country with us. But they must not try to, under the pretext of being a minority, demand undue things.” [2008]

Statements of intent

- [2009] Mr. Gothabhaya Rajapakse, Defense Minister: “Nothing must exist outside the safe zone”. [context: shelling of PTK hospital, ethnic cleansing of Mullaithivu]
- [2009] Post-war: Initial statements as to indefinite detention of displaced civilians in camps followed by proposed 3 year time frame

Statements of intent

[June 2009] President Rajapakse [Ref: Interview to the Hindu 30 June 2009]

- . But then it was not they [LTTE] 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

Structural similarities with recognised genocides

- Pre 1943 Nazi Genocide of Jewish people
- Srebenica

Structural similarities

Nazi Genocide of Jews pre 1943

<p>1935: Nuremberg Laws. Specifically – Reich Citizenship Law Stripped German Jews of citizenship</p>	<p>1948: Citizenship Act Stripped 1 million Indian Tamils of citizenship from a total population of circa 2.5 million. [Non violent ethnic cleansing]</p>
<p>1941: Burning of the Great Talmudic Library in Lublin, Poland, book burnings</p>	<p>1974: State violence at 4th International Tamil Conference 1981: Burning of Jaffna Library Between 1983 and 1995: 1,500 non-Buddhist places of worship damaged, bombed, or shelled. During the Eelam III War 299 Churches were destroyed or damaged</p>

Structural similarities

Nazi Genocide of Jews pre 1943

<p>1933 onwards– Mass killings</p>	<p>Periodic pogroms with state sanction. 1956,1958,1977, 1983 Village massacres in Eelam Wars Funnelling civilians into ‘safe havens’ then killing them – economies of scale</p>
<p>Colonisation of Poland by Germans from other parts of Europe</p>	<p>1951 onwards - Colonisation of Gali Oya, Kantalai, Mahaweli resulting in change of ethnic composition of the Tamil Eastern province</p>

Structural similarities

Nazi Genocide of Jews pre 1943

Destruction of institutions of self-government in occupied territories

Widespread political detentions

1956 Language Act – administration of local govt. in local language made impossible, civil service ethnic composition radically altered.

Widespread detentions under PTA – detention without charge 1 yr+, massacres in detention – e.g.

Bindunuwewa

Structural similarities

Nazi Genocide of Jews pre 1943

Killing or removing of
intelligentsia
e.g. 1939 Decapitating of Polish
intelligentsia

Killing of intelligentsia since 1983,
but with accelerated episodes e.g.
2004-2006

- Killing civil society leaders
- Killing student leaders & academics
- Killing media workers
- Killing TNA parliamentarians
- Killing aid workers
- Killing business owners

Structural similarities

Nazi Genocide of Jews pre 1943

<p>Depopulation via disappearances</p>	<p>Sri Lanka has one of the highest rates of disappearances in the world – vast majority are Tamil</p>
--	--

Structural similarities

Nazi Genocide of Jews pre 1943

1939 - Ghettoisation of Polish Jews [with cooption of Jewish leadership]

1939 onwards - Concentration camps

[Ref TAG model Indictment]

1983 - 1995, in the North-East, 1,224,000 Tamils displaced, at least 98 000 in camps for 18 years

In June 1990, 350,000 displaced in Jaffna peninsula

Concentration camps in 2009 for Vanni area civilians

Structural similarities

Nazi Genocide of Jews pre 1943

Conditions in
camps such as to
cause destruction
of group

[Ref TAG Model Indictment]

The absence of medicines in refugees camps
killed many children from cholera or typhoid;

2009 [Ref London Times, Channel 4 investigation]
Conditions in camps in 2009

Structural similarities

Nazi Genocide of Jews pre 1943

Physical
existence –
starvation,
rationing,
medicine

[Ref TAG Model Indictment]

The blockade of Tamil civilians in the north and east under ERNo. 1 in Aug 1991. Blockaded items included essential medicine, surgical instruments, life-support equipment, pain-killers, bandages.

Structural similarities

Nazi Genocide of Jews pre 1943

Physical
existence –
starvation,
rationing,
medicine,
destruction of
medical facilities

[Ref TAG Model Indictment]

2009 there is a blockade of food and medicine
in the Vanni region

-16 starvation deaths in Feb 2009 alone

-In 'safe zone' some patients amputated
twice due to lack of medicine

[Ref TAG submission on PTK Hospital, HRW
report] Medical facilities destroyed

Obligation to Prevent

Arose at least by following dates

- February 2009: Starvation deaths in Vanni
- January – March 2009: PTK hospital shelling
- May 2009: US evacuation plans [knowledge of genocide ?]

Structural similarities

Srebrenica

Ref. ICTY Krstic judgment, TAG submissions

“Substantive part” test - quantitative

The implicated group was Bosnian Muslims and the part of the group that was targeted for destruction was the Muslims in Srebrenica..

The implicated group are the Tamils of Sri Lanka and the part of the group targeted for destruction were the Tamils in Vanni.

Structural similarities

Srebrenica

Ref. ICTY Krstic judgment, TAG submissions

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 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).

Structural similarities

Srebrenica

Ref. ICTY Krstic judgment, TAG submissions

An estimated 8,000
Bosnian Muslim
men were killed in the
massacre at Srebrenica.

An estimated 20,000 Tamils
killed during the onslaught in the
safe zone and more during and
after the forcible transfer to
“refugee” camps.

Structural similarities

Srebrenica

Ref. ICTY Krstic judgment, TAG submissions

“Substantive part” test - qualitative

Strategic location of Srebrenica for viability of Bosnian nation.	Strategic significance of Kilinocchi, Vanni region for viability of Tamil Eelam
---	---

Structural similarities

Srebrenica

Ref. ICTY Krstic judgment, TAG submissions

“Substantive part” test - qualitative

International importance of the safe area.	Identical considerations
--	--------------------------

“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.”	
---	--

Structural similarities

Srebrenica

Ref. ICTY Krstic judgment, TAG submissions

“Substantive part” test - qualitative

Opportunity	Opportunity – caused by ‘alibi’ of counter-terrorist war, elimination of media and international observers
-------------	--

Structural Similarities

Srebrenica

- Sequence of events
 - Forcing of civilians into ‘safe haven’
 - Safe haven then attacked (efficient location for killing)
 - Surviving population interned in camps,
 - indefinitely
 - under international pressure – 3 years, then earlier
- Test: Can population be reconstructed as it was before ?

Structural Similarities

Srebrenica

- Statements of intent
 - Mr Gothabaya Rajapakse [see above]
 - President Rajapakse [see above]
 - ‘Safe haven’ was in fact theatre of military operations
 - Selected by Sri Lankan military as part of their strategy
 - No effort to establish trusted separate zone for civilians with international monitors – on the contrary

Directions

- Seek orders on public disclosure
 - By the governments of India, Sri Lanka and the United States relating to the proposed evacuation of civilians from the “safe zone”
 - By the UN as to its internal documents on the allegation of genocide and reasons for non-action and discussions between UN officials and member states
 - The UN security council member states on their deliberations and the documentation available to them

Conclusion

- Reasonable prospect of success of genocide prosecution
- Sufficient grounds existed by March 2009 for the obligation to prevent to arise on
 - UN, UN Security council members
 - Immediate neighbours, regional super powers with influence on GOSL [India]
 - US can be taken to have recognised obligation

[Ref ICJ on Bosnia Herzegovina v Serbia]