

# 1 Genocide in Sri Lanka 101: Sheet 2

## 1.1 Key Concepts

- Raphael Lemkin Definition & Approach
- Comparators – the Nazi techniques of genocide
- Sociological v Legal studies of genocide
- Genocidal Process [Levene]

Please refer to Sheet 1 for the Lemkin and UN definitions.

## 1.2 Objective

To explain the 1941 approach and original definition of Raphael Lemkin, the man who invented the term “**Genocide**”. To use this approach as the foundation of the case against the Sri Lankan state for genocide against the Tamils.

Some modern academics differ from Lemkin in that they use an alternative terminology “**Genocidal Process**” to denote a process which stops short of an entire population being physically killed. To such scholars a “**Genocidal Process**” tends to become a “**Genocide**” in conditions of war or other extreme shocks. Levene [2005] recognises Sri Lanka as an example of a **Genocidal Process**.

Nevertheless we hold the **Genocide** of **Tamils** in Sri Lanka to be a **Genocide** not only a **Genocidal Process**. In this sheet we will rely on Lemkin’s definition. But in subsequent sheets we will build up the case using the 1948 UN Genocide convention definition.

## 1.3 Background

### 1.3.1 Raphael Lemkin

[See Wikipedia, also Power [2007] for more information on Lemkin].

Lemkin was a Polish Jewish Lawyer who invented the term “genocide” and almost single-handedly campaigned for the UN Convention on Genocide. His work is considered the foundation of genocide studies.

He campaigned for an international law against the **targeted destruction of ethnic, national and religious groups** [now termed “genocide”] in 1929 [before the Nazis came to power in 1933]. On reading Hitler’s Mein Kampf [1925] he became convinced the Nazi’s were genocidal.

In 1939 Lemkin escaped the Nazi invasion of Poland. In 1941, from the U.S., Lemkin produced his seminal work “Axis Rule”. At this stage, there was little or no information of the Nazi concentration camps, death camps etc. In “Axis Rule” - Lemkin collected together various **Nazi laws in occupied Europe as evidence of genocide**: the Nazis had laws designed to relegate entire peoples to subject/second class status.

Lemkin's definitions and study of genocide did not require sudden, large-scale totally annihilatory spasms of violence [such as Rwanda or the Nazi death camps] – for him it was a systematic process using a variety of different methods, including racist laws. The Lemkin approach is almost tailor made for our case against **Sri Lanka as a long-running, structural genocide**.

While many scholars have narrowed down the definition of genocide to spasms of mass killing, there is a trend towards a return to Lemkin – exemplified by e.g. Shaw [2007]

### 1.3.2 Sociology v Law

Genocide has been studied and defined in two complementary ways – from a sociology viewpoint and a legal viewpoint.

The sociology approach is important for political processes. The legal approach is encapsulated in the 1948 UN Convention. Lemkin combines both.

## 1.4 Summary of the Case Against Sri Lanka

Specific events in Sri Lanka already meet the UN Convention definition of Genocide.

- The 1983 anti-Tamil pogrom was itself a genocide by the UN Convention definition [see Sheet 1 for definition, the UN convention will be addressed in a future sheet]. The International Commission of Jurists termed the 1983 events an “Act of Genocide”.
- By the same reasoning, all previous pogroms – 1956, 1958, 1977, 1981 - qualify as genocides in the UN Convention.
- Specific aspects of the current [Eelam War IV] – such as the targeting of civilians in Safe havens – are similar to events recognised by the ICTY [International Criminal Tribunal for Yugoslavia] as genocides
- **Nevertheless under the Lemkin definition, there is a continuum of genocide since 1948. We say there has been genocidal intent, accompanied by genocidal actions – together, a “Genocide” – since 1948.**

## 1.5 The Lemkin Definition

### 1.5.1 The Basic Definition

Lemkin said:

**"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. The objectives of such a plan would be 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. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group."**

### 1.5.2 The 2 Stages according to Lemkin

Lemkin said:

"Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain or upon the territory alone, after removal of the population and the colonization by the oppressor's own nationals."

### 1.5.3 Mini Case Study : the Lemkin analysis applied to the Nazi methods compared to Sri Lanka.

[Shaw 2008]

Lemkin said

‘The Nazi genocide was effected through a synchronised attack on different aspects of life of the captive peoples in the political field (by destroying the institutions of self-government and imposing a German pattern of administration and colonisation by Germans), in the social field ((by disrupting the social cohesion of the nation involved and killing or removing elements such as the intelligentsia), in the cultural field (by prohibiting or destroying cultural institutions and cultural activities; by substituting vocational education for education in the liberal arts to prevent humanistic thinking), in the economic field (by shifting wealth to Germans and by prohibiting the exercise of trades and occupations by people who do not promote Germanism ‘without reservation’), in the biological field (by a policy of depopulation and by promoting procreation of Germans in the occupied territories) and in the fields of physical existence (by introducing a starvation rationing system for non-Germans and by mass killings, mainly of Jews, Poles, Sovens and Russians); in the religious field (by interfering in the activities of the Church, which in many countries provides not only spiritual but national leadership); in the field of morality (by attempts to create an atmosphere of moral debasement through promoting pornography, excessive alcohol)

The parallels with Sri Lanka are given below. For lack of space these are not comprehensive:

| <b>Nazis</b>  | <b>Sri Lanka</b>   |   |
|---|--|---|
| Pre-existing anti-semitic prejudices in Europe<br>Nazi race theory built on these | The Mahavamsa [5 <sup>th</sup> century CE, translated 1870] is the primary religious/historical text of the majority Sinhala Buddhists.<br>The Mahavamsa includes concepts such as the Sinhalese are the “rightful people of Sri Lanka”.<br>Buddhism recognizes a hierarchy of actions as being more or less wholesome: the Mahavamsa defines the killing of the Tamil Chola king and his troops as being on par with the killing of "sinners and wild | 1 |

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|  | <p>beasts". It explicitly equates 1000 Tamil lives as worth less than 1 Sinhala life.</p> <p>Mahavamsa race theory is propagated today via a militant Buddhist clergy and militant Buddhist political party [JHU]</p> <p>For example in March 2003 leading Buddhist monks made the following "Sangha decree" [Buddhist decree equivalent to an Islamic Fatwa]</p> <p>"Sinhaleshaya [the country of the Sinhalese] is an indivisible unitary state where ethnic, linguistic or religious differences must be erased."</p>   |   |
| 1933: Nazis won elections, came to power   | 1946: Sri Lankan independence  | 2 |
| 1935: Nuremberg Laws (c.f. wikipedia)<br>Specifically – Reich Citizenship Law<br>Stripped German Jews of citizenship             | 1948: Citizenship Act<br>Stripped <b>1 million Indian Tamils of citizenship from a total population of circa 2.5 million.</b><br>[Non violent ethnic cleansing]  | 3 |
| 1933 onwards– Mass killings  | <p>Periodic pogroms conducted with impunity/state sanction. 1956, 1958, 1977</p> <p>In Eelam War I [1983 to 1990] and in subsequent wars the state utilized violence to funnel internally displaced Tamils into common areas to achieve economies of scale in killings. By creating oppressive living conditions, through curfews, killings, and the burning of homes, Sinhalese Buddhist soldiers forced displaced Tamils to congregate in schools, churches, temples, and refugee camps. In some cases, the GoSL dropped pamphlets instructing Tamil populations to seek safe haven in these common areas. Once there, the Sri Lankan Air Force and Army bombed or shelled the congregation of Tamils.</p> <p>In Eelam War II [1990 to 1995] the death figures of village massacres climbed to ranges from the tens to the hundreds. Village massacres were routine in previous Eelam wars.</p> <p>In Eelam war IV similarly the state unilaterally declared a safe-haven and once civilians had assembled in the safe haven, it aeriaily bombed and shelled them.</p> | 4 |
| 1941: Burning of the Great Talmudic Library of the Jewish Theological Seminary in Lublin, Poland<br><br>Widespread book burnings | <p>1974: State violence resulting in deaths of delegates to the 4<sup>th</sup> International Tamil Conference</p> <p>1981: Burning of Jaffna Library<br/>[cultural genocide as per UNESCO definition]</p> <p>Between 1983 and 1995: 1,500 non-Buddhist places of worship were damaged, looted, bombed, or shelled.</p> <p>During the Eelam III War [1995 to 2002], 299</p>   | 5 |

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|   | Churches were destroyed or damaged   |   |
| Colonisation of Poland by Germans from other parts of Europe<br><br>[Levene] “techniques of germanisation included ..removal of traditional street signs” | 1951 onwards - Colonisation of Gali Oya, Kantalai, Mahaweli resulting in change of ethnic composition of the Tamil Eastern province<br><br>Entire towns, villages, streets renamed in Sinhala, after Sinhala “war-heros”/generals etc  |   |
| In early stages, German Jews were encouraged to emigrate  | Over 800 000 Tamils out of a total population of just 3 million are refugees   |   |
| Destruction of institutions of self-government in occupied territories<br>Widespread political detentions   | 1956 Language Act – administration of local govt. in local language made impossible, Tamil civil servants lost their jobs – civil service ethnic composition radically altered.<br>Widespread detentions under PTA – detention without charge for over a year, massacres in detention – e.g. Bindunuwewa   | 6 |
| Killing or removing of intelligentsia<br>e.g. 1939 Decapitating of Polish intelligentsia  | Killing of intelligentsia since 1983, but with accelerated episodes e.g. 2004-2006<br><br>In occupied Jaffna & East <ul style="list-style-type: none"> <li>• Killing civil society leaders in Jaffna</li> <li>• Killing students</li> <li>• Killing media workers</li> </ul><br>Throughout <ul style="list-style-type: none"> <li>• Killing TNA parliamentarians</li> <li>• Killing/abducting academics (e.g. Vice Chancellor of Eastern University) and student leaders</li> <li>• Killing aid workers</li> <li>• Killing media workers</li> </ul><br>In Colombo <ul style="list-style-type: none"> <li>• Killing of politicians</li> <li>• Killing/abduction of business owners</li> </ul> | 7 |
| Depopulation  | In army occupied Tamil areas <ul style="list-style-type: none"> <li>• Gradual depopulation of over 3 disappearances a day [6 per day in some years] in the late CFA [Cease fire agreement] period</li> <li>• Mostly of able-bodied, military age men and civil leaders.</li> <li>• Sri Lanka has one of the highest rates of disappearances in the world</li> </ul>  | 8 |
| Depopulation via lowering survival capacity of children [Levene p44]<br>Biological measure to prevent reproduction  | Malnutrition, disease in Jaffna, Vanni<br><br>Separation of men and women in internment camps  | 9 |

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|   | Gang Rape of women as a means of destroying reproductive capacity [Sri Lanka is one of the world's three worst states for violence against women]   |    |
| Physical existence – starvation, rationing                | <p>The blockade of Tamil civilians in the north and east was taken under Emergency Regulations No. 1 in August 1991. Blockaded items included essential medicine.</p> <p>Example - banned items included - surgical instruments, life-support equipment, pain-killers, bandages, and medicine to treat minor injuries.</p> <p>Example – In November 1992, the military's Joint Operation of Command (JOC) allowed only a fraction of the medicine requested by the Jaffna regional director. It allowed only 2000 of requested 535,000 Amoxicillin tablets, 585,000 of requested 1,970,000 Penicillin tablets, and zero Oxygen cylinders to the Jaffna peninsula.</p> <p>Example: The absence of medicines killed many children from cholera or typhoid in hospitals and refugee camps; and from malaria in Mannar and Batticaloa. The GoSL Health Department denied requests to chlorinate wells to control the spread of Ecoli and to spray Malathion to control diseases spread by mosquito. The latter denial created 77,540 cases of malaria in Jaffna peninsula, a dramatically higher figure than in areas with non-genocidal conditions.</p> <p>In Eelam War IV [2009] there is a blockade of food and medicine in the Vanni region, leading to conditions of near starvation [16 deaths from starvation in Feb 200]. Patients with injuries from bomb attacks have had to be amputated twice due to lack of medicine to stem infections.</p> | 10 |
| Religious field – interfering in activities of the Church | Killing numerous North-Eastern Church Leaders   | 11 |
| Economic existence  | <p>Various means throughout</p> <ol style="list-style-type: none"> <li>1. 1948,1949 Citizenship act destroyed economic existence of Indian Tamils</li> <li>2. 1983 pogrom destroyed majority of Tamil businesses in Colombo</li> <li>3. 1990 onwards – Embargos destroyed economy of Jaffna, Vanni</li> <li>4. Bylaws/edicts prohibiting fishing etc, destroying economic existence of fishing</li> </ol>   | 12 |

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|  | <p>communities</p> <p>5. 1990 to present - Policy of keeping Tamil refugees in detention camps for periods up to 18 years – destroy economic existence</p> <p>6. Expulsion of aid organisations from Tamil areas and killing of aid workers</p>  |    |
| <p>1939 - Ghettoisation of Polish Jews [with cooption of Jewish leadership]<br/>1939 onwards - Concentration camps</p> | <p>Between 1983 and 1995, in the North-East including the Jaffna peninsula, 1,224,000 Tamils were displaced of whom at least 98 000 were held in internment camps for 18 years [since 1990]</p> <p>At the start of Eelam II in June 1990, there were 350,000 displaced in Jaffna peninsula and another 120,000 who fled to Tamil Nadu, pushing the number of Tamil refugees there to 220,000.</p> <p>In 2009 there is proposed an establishment of new concentration/internment camps for refugees from the Vanni – Tamils held in inhuman conditions of life under military control</p> | 13 |

## 1.6 A Genocidal Process [Levene]

### 1.6.1 Applying Lemkin to determine the period of genocide

In the Lemkin definition of genocide there is no difference between a genocidal process and a genocide. A genocide can be extremely gradual and take however long the perpetrator wishes. A genocide as per Lemkin is not defined in terms of the number of people killed in any given time period.

In the Lemkin definition the Nazi genocide of the Jewish people began in 1933, when the Nazis came to power. By analogy the Sri Lankan genocide of the Tamil people began in 1948 or effectively since independence [since there would have been a planning phase preceding the Citizenship Act].

### 1.6.2 Genocidal process [the minimal argument]

Some modern scholars prefer to restrict the term genocide to extreme, sudden, annihilatory [i.e totally destructive] violence.

But in this [alternative] definition, [total] **genocides** are always preceded by a **genocidal process**. In this definition Sri Lanka has had a **genocidal process** since independence.

Such academics will accept a genocidal process in Sri Lanka but may or may not accept that this process has today in Eelam War IV culminated in genocide. But these academics depart from Lemkin. [ref. Levene]

**[Levene p 46]** “ Equally persuasive is way that Lemkin demonstrates annihilation as such can never viewed in isolation but has a developmental and cumulative trajectory in which a variety of coercive strategies might be applied on a targeted group by way of ‘preparatory’ measures”... “preparatory measures against these target groups – removing their citizenship rights, shutting off their ability to make a living, expropriating their property..incarcerating them in ghettos and camps...Are we to assume therefore [i.e on Lemkins analysis] that the Nazi genocide begins in 1933 as opposed to a generally accepted date of sometime during the course of 1941? If this is so should we be thinking of a genocide not so much as a spasm or sequence in which group extermination is massively unleashed but rather **as an ongoing process, in which the peaks of mass violence should be understood as only the most overt of the instruments calculated to bring about the group’s destruction.**”

**We say to this question posed by academic Mark Levene – yes, in Sri Lanka, genocide is an ongoing process since 1948 and the peaks of massive violence are only the most overt methods, accompanies by numerous other methods.**

Levene however would disagree with us and differentiate between a genocidal process and a genocide.

In Levene’s view therefore Sri Lanka would be a **genocidal process**.

### **1.6.3 The brakes and accelerators on Genocide [Levene 2005]**

[Levene 2005 p63] “In other instances the brakes on genocide may be more prosaic, for instance where the state’s ability to deliver genocide is limited not so much by a lack of will but rather its military or resource capacity to do so is insufficient, often in the face of a relatively strong communal insurgency. Post-colonial struggles in Southern and Western Sudan, Iraq Kurdistan, the Karen and other hill-tribes of regions of Burma or **the northern Tamil part of Sri Lanka** all have displayed these inertial tendencies while in no way negating their high and sometimes continuing potential for genocide....Indeed the **frustration associated with State failure** to reassert its authority in the regions associated with insurgents – and with it a state monopoly of violence – **may itself be a significant if not the ultimate goad driving such regimes towards genocidal denouement.**”

### **1.6.4 The 2009 Military attack on the Vanni as Genocidal Denouement of a genocidal process**

In summary, from Levene’s 2005 analysis above, even where an academic recognises a **genocidal process as distinct from a genocide**, the current situation in the Vanni is evidence of a process culminating in genocide: the need for the state to reassert its authority over the de-facto Tamil state is the **“ultimate goad driving the state towards genocidal denouement”**



### 1.6.5 The Implications for the UN Convention

Given the UN Convention creates an obligation to prevent genocide, clearly UN member nations may not wait till massively unleashed group violence [Levene definition of genocide] is over.

From this perspective, it matters little whether we use the Lemkin definition [genocide is ongoing] or the Levene-type approach [a genocidal process is ongoing and the current situation indicates a genocidal conclusion]. The UN has an obligation to stop a genocidal process in its tracks.

### 1.6.6 Implications for International Policy

Currently the international action proposed by parties such as the US – e.g. evacuation from the Vanni into long term internment camps etc, negligible incremental changes to Tamil rights – are in fact **a continuation of the genocide as per Lemkin**. They are also a continuation, in fact, **strengthening, of the genocidal process** as per Levene.

It follows that in the absence of military counter-power [the brakes – whether Tamil or UN military power] to the genocidal state, genocide will continue