

Alleged Tamil Genocide

No legal basis and evidence against Sri Lanka

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Brief History to Allegation

- Liberation tigers of Tamil Eelam (LTTE) terrorist group – Criminal organization
- Later involved with politics – self determination rights for Tamils Living North and East
- Armed conflicts began to cave
mono-ethnic Tamil state
for North and East Sri Lanka

Brief History to Allegation cont.

***Aranthalawa* Buddhist Monks Massacre**

Date: June 02, 1987

Target: Buddhist Monks

Murdered: 37

Weapons: Swords and Knives



***Kattankudy* Mosque Muslims Massacre**

Date: August 03, 1990

Target ; Muslim worshippers

Murdered: 147

Weapons: Automatics rifles, hand grenades



Brief History to Allegation cont.

- Brutality against Civilians
- Economic destructions
- LTTE Criminal enterprise

Brief History to Allegation cont.

- Responsible government needs to take action

Enough is Enough

Barbaric and ruthless terrorist organization

LTTE militarily defeated,

LTTE leader Prabhakaran killed in combat.

on May 18, 2009.

Ended 26 years Civil War

Brief History to Allegation cont.

New formation of LTTE proxy groups

- Many organizations that arose in Canada post-war after May 2009.
- Some calling for reconciliation
- others professing to continue the struggle for self determination
- Some wanted to take revenge for death of LTTE leader and high rankers

Alleged Tamil Genocide cont.

- Mainly originated from Scarborough Rough Park
- Federal MP, Gary Anandasangaree
- Provincial MPP, Vijay Thanigasalam

Alleged Tamil Genocide cont.

- Two different approach

Sangaree Approach (Stage show approach)

- On May 13, 2019 Mr. Anandasangaree addressed the parliament and stated as follows:
- “Mr. Speaker, This May 18 “**we**” mark the tenth anniversary of the genocide in *Mullivaikaa*. Over 70,000 Tamils were killed, 300,000 detained and countless disappeared.”

Alleged Tamil Genocide cont.

- On the evening of May 13, 2019, Mr. Gary Anandasangaree organized an event –
“Sri Lanka: In Search of Justice in Ten Years”
- It was held in Room 035B, West Block, Parliament Hill, Ottawa.
- The main content of the screening and discussion of the event was to validate claims of the alleged genocide against Sri Lanka.

Alleged Tamil Genocide cont.

- On June 19, 2019 the New Democratic Party (NDP) Human Rights Critic, Ms. Cheryl Hardcastle introduced a motion to investigate allegations of genocide against Tamils in Sri Lanka
- Canadians rejected the divisive 'imported conflict' politics and as a result Ms. Cheryl Hardcastle lost her riding in 2019's October federal election.

Alleged Tamil Genocide cont.

On October 24, 2019, Mr. Gary Anandasangaree attended the Conference on Tamil Genocide Recognition Houses of Parliament in London, UK –In support Liberal party election Campaign



Alleged Tamil Genocide cont.

- E-mail to City of Toronto and lobbied for Alleged Tamil Genocide.
- Tamil Memorial Day converted to Genocide Memorial Day

From: Abinaya Chandrabalan

Date: Thursday, April 11, 2019 at 4:45 PM

To: Lawvin Hadisi , Don Peat

Cc: Kema Joseph

Subject: FW: 10th Annual Tamil Memorial Day - Request for Proclamation and Message

Hi all,

I wanted to flag the below request for a proclamation.

This May 18 will be the 10th annual Tamil memorial day. Previously I believe the Mayor has proclaimed it—
Don, can you confirm?

MP Gary reached out to me yesterday and requested if the Mayor could pass a motion in Council on it.

Please advise how to respond.

AC

Alleged Tamil Genocide cont.



Alleged Tamil Genocide cont.

- **Thanigasalam Approach (Eelam approach)**
 - Submitted Bill 104 to Ontario Provincial Legislature

Tamil Genocide Education Week Act, 2019

Status:

First Reading – April 30, 2019

Second Reading – May 16, 2019

- Carried on division
- Ordered and referred to Standing Committee on Regulations and Private Bills

Alleged Tamil Genocide cont.

Sangaree Genocide
(Stage Show Approach)

Death Total: 70,000

But no written documents by
Anandasangaree to support
allegation

All stage shows
Lobbied behind

Thanigasalam Genocide
(Eelam Approach)

Death Total: 146,679

Sangaree Genocide x 2 =
Thanigasalam Genocide

Submitted Bill 104

Declared North and East
Sri Lanka as Tamil Homeland

Alleged Tamil Genocide cont.

Legal questions

- (1) Is Sri Lanka (state) perpetrated alleged Genocide against the Tamils during the civil war (which lasted from 1983 to 2009), and specifically in May of 2009?
- (2) Is the alleged Genocide against Tamils determined by the International Criminal Court or International Court of Justice?
- (3) Does the Ontario Legislature have jurisdiction to determine the alleged Tamil Genocide?

Alleged Tamil Genocide cont.

- (4) Is the ideology of creating a separate state for Tamil living in North and East Sri Lanka "Tamil homeland" root cause to the Civil War? Is there any legal basis for the "Tamil homeland"?
- (5) Bill 104 claims that Genocide against the Tamils started in 1948 through Sinhala-Buddhist centric government policies, pogroms, land grabs and ethnic cleansing. It also states the Tamil population systematically disenfranchised of their right to vote and to maintain their language, religion and culture, e.g. introducing *Sinhala Only Act 1956*.
Are these allegations having a legal basis for determining Genocide?
- (6) Is death total a factor of determining the alleged Genocide?

Alleged Tamil Genocide cont.

Take 1-3, questions together

- The International Criminal Court (ICC) is the relevant judicial entity in the investigation of genocide.
- No state party under *Rome statute* or UNSC request to investigate alleged Tamil Genocide.

Alleged Tamil Genocide cont

No any individual convicted for Alleged Tamil
Genocide

Not declared as Genocide

The word **genocide** cannot be used arbitrarily on
matters before the Legislative Assembly of
Ontario.

Alleged Tamil Genocide cont.

- As of July 17th, 2018, a situation in which an act of aggression would appear to have occurred could be referred to the Court by the Security Council, acting under Chapter VII of the United Nations Charter, irrespective as to whether it involves States Parties or non-States Parties.
- No such reference from UNSC, ICC prosecutor can initiate with Pre-trial division

Alleged Tamil Genocide cont.

- ICC and ICJ process is complementary.
 - Intended to complement and does not to replace national criminal system.
 - Sri Lanka willing and genuinely engaged in reconciliation – Lesson Learnt and Reconciliation

Alleged Tamil Genocide cont.

Bill 104

- Private Member's Public Bill may pertain to any topic within provincial jurisdiction,
- But, only in accordance with the Standing Orders of the Legislative Assembly, the *Legislative Assembly Act, 1990 and the Constitution Act, 1867*

Alleged Tamil Genocide cont.

- If any crimes (alleged genocide) were committed by Sri Lanka, they would be investigated only by the International Criminal Court.
- No other institutions have legal authority to initiate actions against the sovereign state of Sri Lanka.

Alleged Tamil Genocide cont.

- No referral from UNSC
- ICC Pre-Trial Division has not authorized the commencement of the investigation against Sri Lanka.

Alleged Tamil Genocide cont.

- Since Genocide claims are not established against Sri Lanka as cited on Bill 104
- Standing Committee on Regulations and Private Bill is required to investigate the validity of its claims in order to pass the legislation.
- **Bill 104 can not be passed base on patently false narrative.**

Alleged Tamil Genocide cont.

Most Importantly

- The committee and the Legislative Assembly of Ontario is not a State party to the United Nations' treaty -*Rome statute*
- No jurisdiction
- Also, not fall within provincial jurisdiction

Alleged Tamil Genocide cont.

- Therefore, Genocide claims against Sri Lanka, as cited on Bill 104, and
- Bill 104 as a whole, should be dismissed without any further reading.

Alleged Tamil Genocide cont.

- Thanigasalam acknowledged the United Nations, nor any national government, has not recognized such a “genocide” so far.
- NEWS MAY 23, 2019 TORONTO.COM
- <https://www.toronto.com/news-story/9363753-scarborough-mpp-says-bill-on-sri-lankan-genocide-will-speed-healing/>

Alleged Tamil Genocide cont.

- (4) Is the ideology of creating a separate state for Tamil living in North and East Sri Lanka "Tamil homeland" root cause to the Civil War? Is there any legal basis for the "Tamil homeland"?

Alleged Tamil Genocide cont.

- "Tamil homeland" concept is a separatist agenda against Sri Lanka,
- Root cause of the three-decade civil war.
- "Tamil homeland" ideology is a separatist agenda of the LTTE.

Alleged Tamil Genocide cont.

- The constitution is a supreme law in Sri Lanka,
- 1(s) 1 and 2 section constitution says Sri Lanka is a unitary state.
- There is no room for the Tamil Homeland in Sri Lanka legally, politically and socially.
- Therefore, "homeland" claims for Tamils, as cited on Bill 104, has no legal standings
- **Alleged genocide claims against Sri Lanka, and Bill 104 as whole should be rejected.**

Alleged Tamil Genocide cont

- (5) Bill 104 states, alleged Genocide against the Tamils started in 1948 through Sinhala-Buddhist centric government policies, pogroms and land grabs. Tamil population systematically disenfranchised of their right to vote and to maintain their language, religion and culture, e.g. introducing Sinhala Only Act 1956
- Are these allegations having a legal basis in determining Genocide?

Alleged Tamil Genocide cont

- These allegations do not stand against the legal test in determining Genocide.
- Those allegations are plain and bold.

Alleged Tamil Genocide cont.

- There is an enormous amount of unproductive speculation about Genocide.
- The prevalence in the world of today, of racial and religious discrimination, of apartheid-like policies, and persecution of ethnic minorities, indigenous peoples, migrant workers and refugees, in many countries and conflicts
- No shortage of acts that may look-like within the paragraphs of Article II of the Convention.
- Bill 104 is clear unproductive speculation about the Genocide.

Alleged Tamil Genocide cont.

- In the Bosnia case, the ICJ held that: Application of the Convention on the Prevention and Punishment of the Crime of Genocide
- "Neither the intent, as a matter of policy, to render an area 'ethnically homogeneous,' nor the operations that may be carried out to implement such policy, can as such be designated as Genocide. . . [the] deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to the destruction of that group

(*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007 (I), p. 123, para. 190;

Alleged Tamil Genocide cont.

- The quotation of various policies and its effectiveness and failures, as cited on Bill 104, has no legal standings for determining Genocide
- Genocide claim as cited on Bill 104 and Bill 104 as a whole should be rejected.

Alleged Tamil Genocide cont.

- **(6) Is death total a factor of determining the alleged Genocide?**
- "Sufficient gravity" should be present
- Within the meaning of article 17(1) (d) of the *Rome Statute* criterion of "gravity"
- Abu Garda Pre-Trial Chamber I, held that
"the gravity in a given case should not be assessed only from a quantitative perspective, i.e. by considering the number of victims; rather, the qualitative dimension of the crime should also be taken into consideration".

The Prosecutor v. Bahr Idriss Abu Garda, "Decision on the Confirmation of Charges", 8 February 2010, ICC-02/05-02/09-243-Red (French version notified on 16 March 2010), para. 31.

Alleged Tamil Genocide cont.

- Qualitative dimension of the crime means intent has to be proved.
- No such intention exist; destroy whole or in part Tamils in Sri Lanka.

All actions have taken to eliminate LTTE terrorism

Alleged Tamil Genocide cont

- **Non- International Armed conflict**
- Geneva convention Article 3 (1949) and later added additional protocol II (1977)
 - Authority given to defend any action against the state.
- Bill 104 recognized Tamil Eelam or Tamil Homeland.
- It is a aggressive action against state.

Alleged Tamil Genocide cont.

International Humanitarian Law

- **Collateral Damage**

- Providing civilian protection while simultaneously allowing military objectives to be fulfilled is a central goal of International Humanitarian Law. (IHL)
- Well established that “ Under IHL deaths of civilian in armed conflicts, no matter how grave and regrettable does not itself constitute a war crime.”

Alleged Tamil Genocide cont.

- **NATO, Israel, UK have policy on Collateral Damage**
- **US Policy on Collateral Damage**
 - “Unintentional or incidental injury or damage to persons or objects that would not be lawful military targets in the circumstances ruling at that time. Such damage is not unlawful so long as it is not excessive in the light of overall military advantage anticipated from the attack”

Alleged Tamil Genocide cont.

- **Collateral Damage**

- 3 elements

- (1) Distinction

- (2) Military necessity

- (3) Proportionality

- GOSL observed 48-hour ceasefire on two occasions.

- Law full engagement of proportionality

- Balance against possible civilian losses

Alleged Tamil Genocide cont.

LTTE used Human shield

- GOSL attempted to minimize civilian casualties by setting up NFZs
- Scaling down the methods of attack so that they were more precise.
- The area of the first NFZ was a fraction of the territory then controlled by the LTTE.
- Instead of conducting its warfare from that territory, the LTTE moved into the NFZ
- Demonstrated their intent to conduct their war against the SLA whilst embedded amongst civilians and civilian structures.

Alleged Tamil Genocide cont.

LTTE Truly Liable

- By engaging in perfidy and human shielding, it was the LTTE that failed to take the necessary precautions to minimize civilian casualties
- So it is the LTTE that was truly liable for failure to comply with the principle of distinction and thus for civilian deaths that resulted.

Alleged Tamil Genocide cont.

- Humanitarian operation launched by the GOSL was justified (Military necessity)
 - ending the nearly 30 year campaign of violence by the LTTE
 - assassinations on duly elected officials
 - attacks on civilian objects
 - Central Bank of Sri Lanka
 - Colombo international airport
 - *Mavilaru* sluice gate, closed, depriving the populace of access to water
 - Oil (energy) Platform attack

Alleged Tamil Genocide cont.

Balance of the proportionality equation

- There were up to 330,000 Civilians
- Civilians in the NFZ as the Darusinan Report contends -- 7,000 of whom were died.
- A loss of life of approximately 2% of that civilian population.
- The respected UTHR report compiled by a group of Tamil academics places the "hostage" population at 300,000.
- In terms of a hostage rescue operation where some 295,000 were saved —

It is a successful operation.

Alleged Tamil Genocide

Conclusion

No Tamil genocide in Sri Lanka

Truly internal armed conflicts with LTTE

Allegations as cited on Bill 104 not
substantiated against Sri Lanka

Bill 104 should be dismissed without

3rd reading



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Thank You