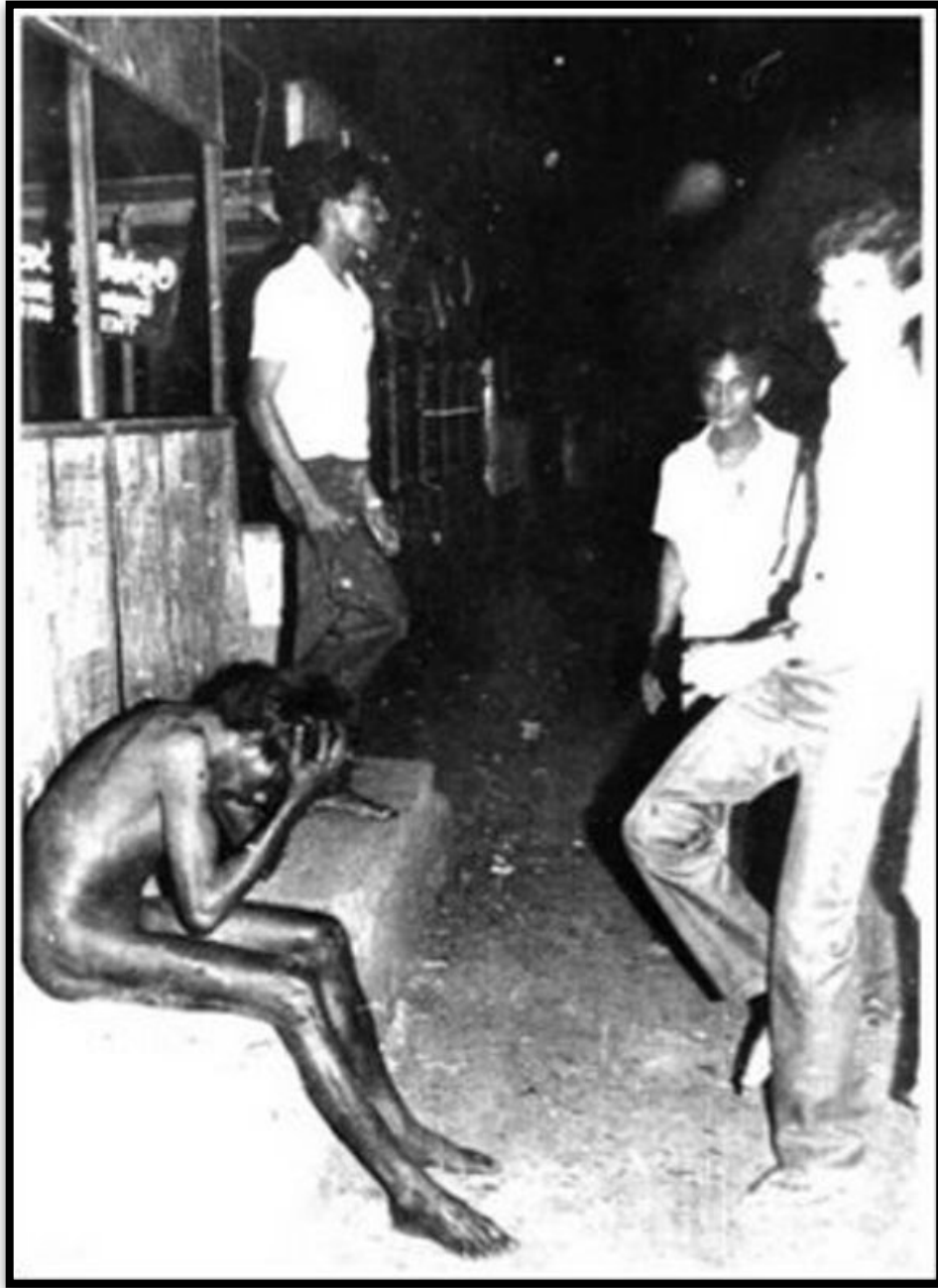


## **Double Genocide of Ceylon Tamils**



*HORRIFIC ATTACK ON TAMIL CIVILIANS, JULY 1983*

The period of July 24–29, 1983, known as “Black July” in Sri Lanka, is often considered the spark for the 26-year long armed liberation struggle by the Liberation Tigers of Tamil Eelam (LTTE) against the Government of Sri Lanka (GoSL).

However, ethnic tensions had been rising on the island since Sri Lanka's independence in 1948. The passage of the Sinhala Only Act in 1956 recognized Sinhalese as the only official language, effectively barring Tamils from holding GoSL positions. Tamils non-violently protested this structural violence, only to be met with GoSL-sponsored violence in Colombo and Gal Oya. Anti-Tamil pogroms in 1958 and 1977 and an act of cultural genocide—the destruction in 1981 of the Jaffna Library, a historic landmark and frequent meeting place for Tamils—fueled Tamil separatist sentiments.

A misconception as common as it is incorrect, is that the weeklong violence of Black July was retaliation for the LTTE's killing of 13 soldiers. In fact, what took place was not a spontaneous outburst of mob violence; rather, it was a systematic and intentional GoSL-sponsored genocide.

Neither any individual nor the Sri Lankan state has been held accountable for the mass atrocities committed against Tamils during Black July or afterwards. In light of the message and impact that state responsibility can have, we argue that Black July was a genocide, which was followed by another in 2009, and Sri Lanka is responsible. The first section of this article will outline the legal arguments supporting a finding that the events of Black July constituted genocide. The second section will discuss state responsibility for genocide and the importance of genocide recognition. The third and concluding sections focus on the Tamil people's need for genocide recognition and its value in their specific context.

## EVIDENCE OF THE STATE-SPONSORED GENOCIDE DURING BLACK JULY

International criminal law and jurisprudence on genocide did not exist in its current form at the time of Black July, but it is worth analyzing under modern international law because it provides guidance on the elements of the crime of genocide. As we understand it today, the specific intent of genocide is “to destroy at least a substantial part of the protected group.”

## DESTRUCTION OF JAFFNA LIBRARY

The burning of the Jaffna public library was a key warning sign in the genocide of Eelam Tamils. An organized mob of Sinhalese origin went on a rampage on the night of June 1, 1981, burning down the library. At the time of destruction, the library was one of the largest in Asia with over 97,000 books and historical scripts. The most effective way to destroy people is to deny and obliterate their own understanding of their history, exactly what purported.

“Where they have burned books, they will end in burning human beings.” – Heinrich Heine

### JAFFNA PUBLIC LIBRARY, JUNE 1981



*BURNING OF JAFFNA PUBLIC LIBRARY, JUNE 1981*

## INTENT TO DESTROY

Black July displayed the classic hallmarks of a genocide, including evidence of the GoSL's *dolus specialis* (specific intent) of genocide, which can be discerned from the presidential statements beforehand and the systematic nature of attacks against Tamils.

On July 11, 1983, an interview with the London Daily Telegraph records then President J.R. Jayewardene as saying:

*I am not worried about the opinion of the Jaffna [Tamil] people now... Now we can't think of them. Not about their lives, or their opinion about us. Nothing will happen in our favour until the terrorists are wiped out. Just that. You can't cure an appendicitis patient until you remove the appendix. 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.*

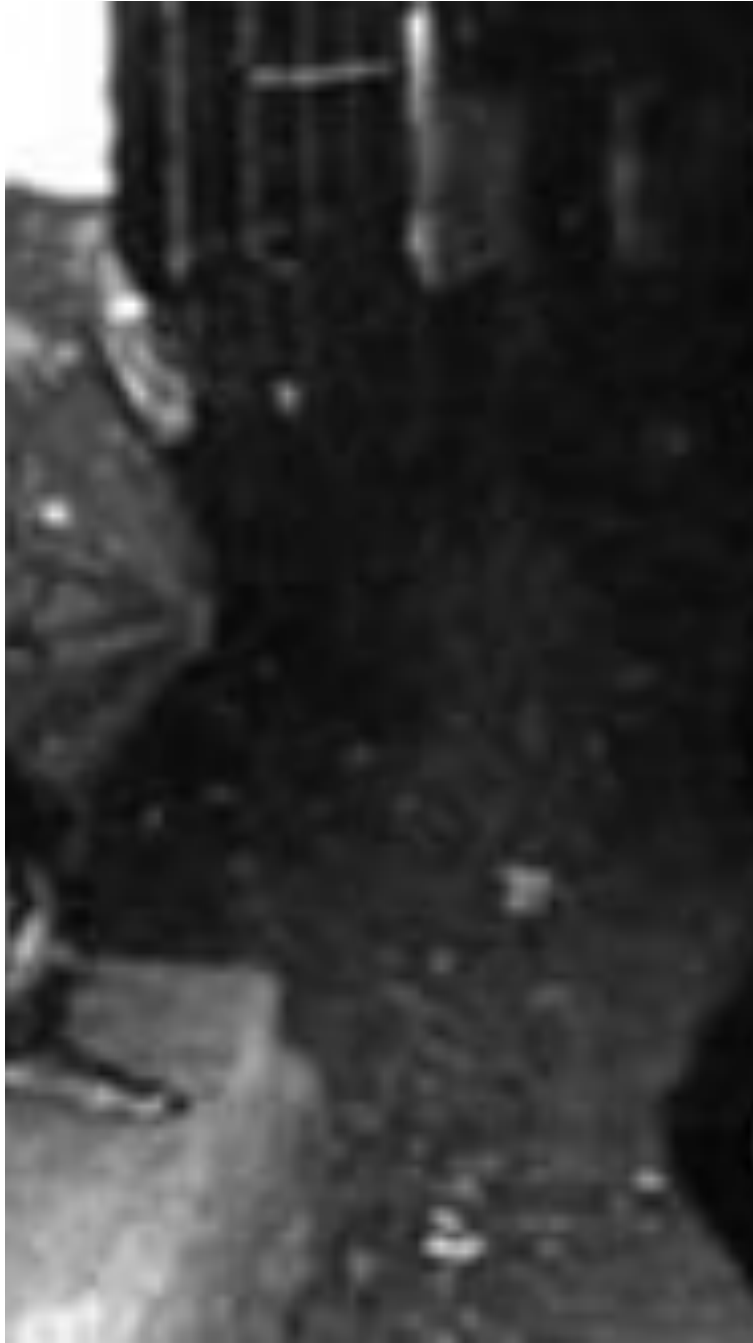
For context, "Jaffna people" is a common way of referring to all Eelam Tamil people (or Tamils from the island of Sri Lanka). And the state targeted Jaffna, a Tamil city in the North, with the organized Sinhalese mobs too.

Then-President Jayewardene's interview expresses the state's exclusionary ideology and implicitly dehumanizes the Tamil people while calling them "terrorists." Such tactics are risk factors of genocide. This quote has been interpreted to, at best, condone mass violence against Tamils and, at worst, incite Sinhala-Buddhist nationalists to commit such anti-Tamil violence.

During Black July itself, the GoSL armed Sinhalese mobs with voter lists and transported them around Colombo in vehicles owned by the GoSL establishments to enable their anti-Tamil violence. The Sinhalese crowds committed horrific violence against Tamils. Due to strong anti-Tamil sentiment among the almost entirely Sinhalese police,

military, and security forces, they stood idle and watched, sometimes even encouraging the violence. The killers stripped naked and beat other Tamils to death while hurling de-

TAMIL MASSACRE, JULY 1983



TAMIL MASSACRE, JULY 1983

humanizing insults and words. In addition to the destruction of life, the Sinhalese mobs pillaged and razed Tamil shops and homes. Their incendiary war cry translates in English to: "To save the race and country, give a little petrol and oil," and demonstrates an intent to commit and publicly incite genocide.

### A SUBSTANTIAL PART

Genocide can occur in a geographically limited area (Jelisić, Trial Chamber, para. 83; Bosnia v. Serbia, Judgment, 2007, para. 199). "A substantial part" refers to the part's numeric size and proportion of the whole group and its significance, including the presence of the protected group's leadership within that part (Krstić, Appeals Chamber, para. 12).

Numeric size and proportion: Only 2.9% of Bosnian Muslims in Bosnia and Herzegovina resided in Srebrenica at the time of the Srebrenica genocide (fn. 27). By contrast, the 187,456 Tamils in Colombo constituted 11% of Colombo's total population and 6.7% of the Tamils in Sri Lanka. And as the violence spread throughout the island, more than 6.7% of Tamils became targets.

Significance: The elimination of the Tamils in the South was necessary to establish and maintain a Sinhala-Buddhist ethnocratic state. The violence occurred mainly in Colombo, where the worst affected areas were neighborhoods with large Tamil populations, and in towns in the South with large Tamil populations.

Presence of leadership: Colombo, as the capital and economic center, was replete with Tamil politicians and business people whose lives and livelihoods were eradicated. Colombo's Welikada Prison housed many Tamil visionaries and supporters of the liberation struggle who were imprisoned for their activism under maximum security. This placed them under the direct control of the state. And on two separate days, Sinhalese

prison guards enabled Sinhalese prisoners to access and massacre at least 53 Tamil political prisoners.

## ACTS OF GENOCIDE

With the aforementioned specific intent, the Sinhalese state-sponsored mobs perpetrated three acts of genocide.

**Killing:** The state-sponsored Sinhalese crowds killed over 3000 Tamils, including through beatings, hackings with knives, or burning. They threw Tamil children into burning cauldrons of tar and set alight vans and buses filled with Tamil passengers. In hospitals, Sinhalese healthcare workers attacked and killed their Tamil patients.

**Causing serious bodily or mental harm:** The mass violence maimed many Tamils who did not die from the beatings or fire. At least 500 women were raped by the state-sponsored mobs. Serious mental harm naturally followed for the many Tamil witnesses to the genocidal killings mentioned above. Some Tamils were forced to watch the rape or gang rape of their female relatives.

**Deliberately inflicting conditions of life to bring about the group's physical destruction:** State-sponsored mobs looted, burned, and destroyed 18,000 Tamil homes and Tamil 5,000 shops, resulting in 150,000 homeless Tamils and \$300 million in economic losses (see ICC Elements of Crimes, Art. 6(c)(4), fn. 4). They even incinerated Tamil doctors' dispensaries and homes, killing some Tamil doctors as well. Notable, a relatively contemporary report of the International Commission of Jurists in December 1983 found "the evidence points clearly to the conclusion that the violence of the Sinhala rioters on the Tamils amounted to acts of genocide."

## RISE OF BUDDHIST MOB VIOLENCE

The most controversial figure in the years leading up the Black July 1983 massacre was Prime Minister J.R. Jayewardene from 1977 to 1989. He was a leader of the na-

*DUDLEY SENANAYAKE AND JR JAYEWARDENE DURING THE MARCH*



*NATIONALISTIC FIGURE JR.JAYEWARDENE 1972, SRI LANKA*

tionalist movement in Ceylon (now Sri Lanka) who served in a variety of cabinet positions in the decades following independence. Under his leadership, the local mobs thrived to become the most powerful national Buddhist movement.



## STATE RESPONSIBILITY FOR GENOCIDE

State responsibility for genocide is an important form of legal accountability, especially if individual criminal responsibility for the same is unlikely due to a lack of political will to investigate and prosecute. Genocide recognition is multipurposed: it can mobilize international interventions, as well as provide a form of redress for victims and their descendants, the latter of which is also critical given the transgenerational cultural trauma transmitted by genocide survivors. Unfortunately, world leaders have continued to, more often than not, avoid recognizing a mass atrocity as genocide for political reasons or fear that their erga omnes obligations under the Genocide Convention will attach (*Bosnia v. Serbia*, Judgment, 2007, para. 183).

Legal genocide recognition has recently surfaced in international headlines when The Gambia filed a case against Myanmar under the Genocide Convention at the International Court of Justice (ICJ). This is the third case on state responsibility for breaches of the Genocide Convention. The first two were against Serbia: *Bosnia v. Serbia* (2007) recognized the mass atrocities in Srebrenica as a genocide, while *Croatia v. Serbia* (2015) did not recognize any genocides. Interestingly, even before The Gambia made headlines for bringing its case against Myanmar, Tamil diaspora organizations were sussing out potential state Applicants to file a case before the International Court of Justice. This could be the fourth case.

## TAMIL PEOPLE'S NEED FOR GENOCIDE RECOGNITION

For the Tamil people, genocide recognition is important because Black July was neither the first, nor the last instance of genocide against the Tamil people in Sri Lanka. Even before the armed conflict, Sri Lanka organized anti-Tamil violence in 1956, 1958, and 1977. And in May 2009, the armed conflict ended in still un-investigated allegations of genocide, crimes against humanity, and war crimes. Different ruling parties and leaders were responsible for these mass atrocities over time, pointing to the responsibility of the Sri Lankan state—not just a particular individual or political party. Torture, sexual vio-

lence, the continuous crime of enforced disappearance, and ongoing militarization continue to seriously harm Tamils in the North-East. The international failures to secure criminal or state accountability for historical and recent mass atrocities has reinforced the impunity of the Sri Lankan state and Sri Lankan perpetrators for atrocity crimes against Tamils.

*NO FIRE ZONE, MULLIVAICKAL, MAY 2009*



*DESTRUCTION OF NO FIRE ZONE, MAY 2009*

There is already documentation of state security forces destroying physical evidence. To that end, Tamil diaspora organizations have considered different options for protecting evidence. Regardless of a determination of genocide in an ICJ case, the Tamil people would immediately benefit from a provisional measure ordering Sri Lanka not to destroy evidence of alleged genocidal acts, as the Court directed Myanmar, because security forces have destroyed mass graves and other evidence. In the best case, such an order might result in evidence preservation; at minimum, it would be a form of re-

demption for the UN (via the UN's judicial organ), which sorely needs to redress its systemic failure at the end of the armed conflict (para. 80). The first step is identifying a state to champion this cause. Unfortunately, while Canada and The Netherlands—the former, home to the most Eelam Tamils outside of South Asia; the latter, a colonizer of the island, including the North and parts of the East—expressed their intent to formally support The Gambia's case against Myanmar, at present, no similarly strong support exists regarding the Tamil people's call for justice for genocide.

### GENOCIDE WITHOUT JUSTICE AND ACCOUNTABILITY

Eelam Tamils have suffered at least two genocides: Black July of 1983 and the Mullivaikkal Massacre of 2009. It is important that these allegations of genocide are addressed and recognized. And the Tamil people, like the Rohingya people, require justice for the mass atrocities against them, over time, by the state. There has been no legal accountability for the crimes committed during Black July in 1983, and a comparison of Rohingya and Tamils illustrates the international community's disparate treatment of allegations of mass atrocities.

Canada's lower house and the Presidents of France, also home to sizeable Eelam Tamil populations, of Bangladesh, Nigeria, and Turkey as well as the Prime Minister of Malaysia have asserted that Myanmar committed genocide against the Rohingya people. The same level of courageous leadership is needed to end impunity for Sri Lanka's decades of genocide and other mass atrocities against Tamils as individuals and as a people.

The 70 years of acts of genocide against Tamils calls for the need of justice through an international judicial mechanism and a process to protect the Tamils in the North-East of Sri Lanka; while bring justice to those living abroad with genocidal experience.