



## **The World Today**

### **GENOCIDE: A CLARIFICATION**

**Mr. Anselm Francis**

Senior Lecturer, The UWI Graduate Institute of International Relations,  
The University of the West Indies, St. Augustine Campus.

On February 26, 2007 the International Court of Justice (ICJ) ruled on the case brought by Bosnia and Herzegovina against Serbia and Montenegro in which Bosnia charged that Serbia had committed acts of genocide against Bosnian Muslims. In light of the charge made by Singing Sandra in her calypso that genocide is practiced in Trinidad and Tobago, the relevance of the case to this country is unquestionable. The case revolved around the interpretation and application of the Convention on the Prevention and Punishment of the Crime of Genocide. This should help to shed some light on Singing Sandra's allegation of the practice of genocide in Trinidad and Tobago.

Genocide is regarded as an international crime, thus any claim concerning this must be treated with the utmost gravity. This position has been adopted in the Judgment of the ICJ since it insisted that the charge of genocide must be proven by irrefutable evidence. It would be unrealistic to expect such a heavy burden of proof to be provided in a calypso. Even so, one should be mindful of the high standards of proof required in such a charge. The specific charge in the calypso is that an identifiable group may be targeted with respect to birth prevention methods being used on its members. In emphasizing the requirement of a specific intent or in legal parlance *dolus specialis*, the Court noted that it is not enough that the members of the group are targeted because they belong to that group. The acts against the group must be done "with intent to destroy the group as such in whole or in part." In other words, we are seeking to identify a systemic undertaking to eliminate a group in whole or in part. The plain words of the calypso do not disclose such a pattern or system.

The Convention used by the ICJ in its application of the judgment is highly relevant within our jurisdiction. It may be argued that the Convention is now part of customary international law, and by extension, our domestic law. Moreover, genocide is an international crime over which the International Criminal Court exercises jurisdiction. Therefore, nationals of Trinidad and Tobago may be required to appear before the Court to face a charge of genocide. Crimes against humanity and war crimes are the other two crimes which fall within the jurisdiction of the International Criminal Court.

In the calypso, the complaint is against the doctors who adopt measures intended to prevent births. Presumably, these doctors are employees of either the Ministry of Health or the Regional Health Authorities. Since both entities are regarded as organs of the State,

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First published [The Sunday Guardian](#), 18 March 2007

[The World Today](#) is a weekly column of The UWI Graduate Institute of International Relations

the issue of state responsibility arises. Individuals must be held accountable for whatever crimes they commit but state responsibility arises if a wrong has been done by an organ of the State. This means that actions arising from the same set of facts may be heard by different Courts. This is illustrated by the fact that President Milosevic, now deceased, had to answer charges before the International Criminal Court, while his State, Serbia and Montenegro had to appear before the International Court of Justice.

It is argued that a State is an abstract entity and as a result cannot commit crimes. It is individuals who commit crimes and should be held accountable for them. However, under international law the State is regarded as a person and as such is capable of assuming obligations and acquiring rights. For example, Trinidad and Tobago is under an obligation to prevent and punish the crime of genocide.

The state must use all means at its disposal to ensure that genocide does not occur. In spite of its best efforts, acts of genocide may still be perpetuated but the State's obligation would have been discharged. As a result, State conduct is distinct from result. The rationale behind punishment is that no one should be allowed to commit the heinous crime of genocide with immunity. The perpetrator of acts of genocide must be handed over to a State or tribunal with jurisdiction. With the establishment of the International Criminal Court, it was believed that it would be easier to prosecute international criminals. Yet, persons wanted for war crimes are still at large, allegedly in Serbia, and receiving the protection of the State.

Genocide is a grave crime but not every grave crime can be characterized as genocide. It is easier to prove the kindred offences of war crimes and crimes against humanity that it is to prove genocide. It is instructive that although there were massive killings throughout the territory of Bosnia and Herzegovina, the ICJ found that only the massacre at Srebrenica constituted genocide. It is held that the acts committed there were carried out "with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such."

Thus, the conclusion reached is that genocide is not taking place in Trinidad and Tobago. As far as the factual content of the Calypso is concerned, it is left to the reader to decide. Hardly anyone can question this neat division of labour.