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Report of the OHCHR Investigation on Sri Lanka (OISL)* **

* Reproduced as received

** The information contained in this document should be read in conjunction with the report of the Office of the United Nations High Commissioner for Human Rights- Promoting reconciliation, accountability and human rights in Sri Lanka (A/HRC/30/61).

Contents

Glossary

ACF	Action Contre la Faim
AGA	Assistant Government Agent (local Government official)
CCHA	Consultative Committee on Humanitarian Assistance
CCP	Code of Criminal Procedure
CDS	Chief of Defence Staff
CFA	Ceasefire Agreement
CGES	Commissioner General of Essential Services
CID	Criminal Investigation Department
CoI	Commission of Inquiry
DIU	Disappearances Investigation Unit
DMI	Director Military Intelligence
ENDLF	Eelam National Democratic Liberation Front
EPDP	Eelam People's Democratic Party
EPRLF	Eelam People's Revolutionary Liberation Front
EROS	Eelam Revolutionary Organisation of Students
FDL	Forward Defence Line
GA	Government Agent (local Government official)
GoSL	Government of Sri Lanka
HRC	Human Rights Council
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IGP	Inspector General of Police
IIGEP	International Independent Group of Eminent Persons
ILO	International Labour Organization
INGO	International Non-governmental Organization
IOM	International Organization for Migration
JOC	Joint Operations Command
JOH	Joint Operations Headquarters
JVP	Janatha Vimukthi Peramuna
LLRC	Lessons Learned and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
MOD	Minister of Defence
MRM	Monitoring and Reporting mechanism
NFZ	No Fire Zone
NGO	Non-governmental Organization
NIB	National Intelligence Bureau
OHCHR	Office of the High Commissioner for Human Rights
PLOTE	People's Liberation Organization of Tamil Eelam
PTA	Prevention of Terrorism Act
PTK	Puthukkukiyiruppu
PTOMS	Post Tsunami Operation Management Structure
SFHQ	Security Forces Headquarters
SLA	Sri Lanka Army
SLAF	Sri Lanka Air Force

SLMM	Sri Lanka Monitoring Mission
SLN	Sri Lanka Navy
SLP	Sri Lanka Police
SRSG-CAAC	Special Representative of the Secretary-General on children and armed conflict
SSP	Senior Superintendent of Police
STF	Special Task Force (Police)
TELO	Tamil Eelam Liberation Organization
TID	Terrorist Investigation Division
TJ	Transitional Justice
TMVP	Tamil Makkal Viduthalai Puligal
UAV	Unmanned Aerial Vehicle
UNHCR	United Nations High Commissioner for Refugees
UNICEF	UN Children's Fund
UNOCHA	United Nations Office of the Coordination for Humanitarian Affairs
UNRC/HC	United Nations Resident and Humanitarian Coordinator
UTHR	University Teachers for Human Rights
WFP	World Food Programme
WS	Witness Statement

Part 1

I. Introduction

1. In Resolution 25/1, adopted in March 2014, the Human Rights Council requested the Office of the High Commissioner for Human Rights to "undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission (LLRC)[1] and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders".

2. The request for a comprehensive investigation followed increasing international and national concerns about the absence of a credible national process of accountability to address the extensive atrocities – including allegations of war crimes and crimes against humanity - allegedly committed towards the end of the conflict in 2009 by both the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE). The mandate given for the investigation however, covering a time period from February 2002 to November 2011, is much broader than the end of the conflict.

3. The human rights crisis in Sri Lanka which led to the Human Rights Council's resolution was not recent, nor was it just related to the final phases of the conflict. It is also not only confined to the years covered by OISL mandate but dates back through decades of conflict affecting all communities in Sri Lanka. The Ceasefire Agreement of February 2002, which marks the start of the period covered by OISL, brought some respite after years of armed conflict, but it did not bring peace, nor an end to patterns of violations and abuse. It also did not address the root causes of the armed conflict, such as discrimination, economic marginalisation and a pernicious ethnicised form of politics.

4. This report is organised in a series of thematic chapters on unlawful killings, violations related to the deprivation of liberty, enforced disappearance, torture, sexual and gender-based violence, the abduction and forced recruitment of adults and the recruitment and use of children in hostilities. Subsequent thematic chapters document the impact of hostilities on civilians and civilian objects in the final few months of the conflict, as well as controls on movement and the denial of humanitarian assistance, followed by a chapter on the screening and deprivation of liberty of internally displaced persons (IDPs) in military-guarded closed camps.

5. It is important at the outset to stress that the OISL conducted a human rights investigation, not a criminal investigation. The timeframe covered by the investigation, the extent of the violations, the large amount of available information, as well as the constraints to the investigation, including lack of access to Sri Lanka and witness protection concerns posed enormous challenges. Nevertheless, the investigation report has attempted to identify the patterns of persistent and large scale violations of international human rights and humanitarian law that occurred, not only during the last phases of the armed conflict, but during the whole period covered by OISL and prior to it.

[1] The LLRC was set up by President Mahinda Rajapaksa in 2010 to "inquire into and report on the facts and circumstances which led to the failure of the Ceasefire Agreement (CFA) operationalized on 21 February 2002 and the sequence of events that followed thereafter up to 19th May 2009", Report of the Commission of Inquiry on Lessons learnt and Reconciliation, November 2011. It presented an interim report to the President in October 2010, and its final report in November 2011.

6. These patterns of conduct consisted of multiple incidents which occurred over time. They usually required considerable resources, coordination, planning and organisation, and were usually executed by a number of perpetrators within a hierarchical command structure. Such systemic acts, if established in a court of law, may constitute war crimes and crimes against humanity, and give rise to individual criminal responsibility.

7. The patterns of violations and crimes described in this report are also characterised by the impunity that is deeply embedded in Sri Lanka to this day. The report examines the main obstacles to accountability that have prevented the victims and their relatives – of all communities – from exercising their rights to truth, justice and reparations.

8. This report is being presented in a very different context to the one in which OISL began its work. During the main information-gathering phase, (initially to December 2014), investigators had no access to Sri Lanka. The Government of Sri Lanka rejected the investigation, and accused the Office of being unprofessional and biased. At the same time, the Government mounted a campaign of intimidation, harassment, surveillance, detention and other violations against human rights defenders and others, which was clearly intended – directly or indirectly - at deterring engagement with OISL.

9. The Government which took office after Presidential elections in January 2015 did not change its stance on cooperation with the investigation, nor admit the investigation team to the country, but it engaged more constructively with the High Commissioner and OHCHR. It also took some important steps which have had a positive impact on the human rights situation.

10. The new Government has also made commitments related to accountability for the violations allegedly committed during the last few months of the conflict and to certain high profile cases. However, the patterns of violations documented in this report, and the impunity which the perpetrators have continued to enjoy, highlight the need for far-reaching reforms, particularly with regard to the security forces and judicial apparatus, as well as the need for concerted political will to bring about profound changes with regard to the protection of human rights.

11. The new Government that took office after parliamentary elections on 17 August 2015 has a unique and historic opportunity to bring about institutional reforms that could herald a new and lasting culture of respect for human rights, one that reverses the current balance which favours perpetrators and, at times, even penalises victims. It is a formidable task and will require not only commitment but also international assistance to ensure the delivery of results which can restore the faith of all people in Sri Lanka in justice and the rule of law.

12. In its final report, the Lesson Learnt and Reconciliation Committee (LLRC) noted that "the development of a vision of a shared future requires the involvement of the whole society". The High Commissioner strongly encourages all sections of society – including the security forces and former supporters of the LTTE - to view this report as an opportunity to change discourse from one of absolute denial to one of acknowledgement and constructive engagement to bring about change.

13. In presenting this report to the Human Rights Council and to the Government and people of Sri Lanka, OHCHR hopes that it will contribute constructively to a genuine process of accountability and reconciliation, above all so that the rights of the many victims and their relatives to truth, justice and reparations are finally fulfilled. In this regard, the High Commissioner wishes to pay tribute to the courage of all those who, despite the trauma they have suffered as well as the pressures and intimidation they faced, have contributed to this investigation. Their compelling testimonies and those of the many who did not have the opportunity to testify directly to OISL, must compel action by the

Government of Sri Lanka and the international community to implement the recommendations of this report.

II. Establishment of the OHCHR Investigation on Sri Lanka (OISL)

14. OISL, a special investigation team established within OHCHR in Geneva by the then High Commissioner for Human Rights, Navi Pillay, began its work from 1 July 2014, and its core seven-member staff became fully operational by mid-August. Terms of reference for the investigation (appended) were published on the OHCHR website in early August 2014, outlining the timeframe, methodology, standards of proof and other key aspects of the investigation.

15. The High Commissioner for Human Rights also invited three distinguished experts (henceforth referred as "the Experts"), Mr. Martti Ahtisaari, former President of Finland, Dame Silvia Cartwright, former High Court Judge of New Zealand, and Ms. Asma Jahangir, former President of the Human Rights Commission of Pakistan, to play a supportive and advisory role to the investigation. The team met with the Experts in September 2014, January and June 2015 and maintained regular contact with them throughout.

16. Human Rights Council Special Procedures mandate holders were also invited to assist as per resolution 25/1, and formed a small committee to liaise with OISL, which met with the team initially in September 2014. Documentation provided to OISL by Special Procedures highlighted the lack of cooperation by previous governments, including the repeated failure to respond adequately to complaints, challenging the applicability of international treaties, and delaying or not responding to the many requests for visits. Since the change of Government in January 2015, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence made a technical visit to the country in March 2015, and dates have now been set for the long-pending visit of the Working Group on Enforced or Involuntary Disappearances (WGEID). References are made throughout this report to the work of the mandate holders related to the period covered by OISL's mandate.

Mandate

17. OISL's mandate derives from Human Rights Council Resolution 25/1 which required OHCHR to "undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission (LLRC) and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders".

18. OISL has interpreted "both parties" to mean the Government of Sri Lanka and related institutions, and the Liberation Tigers of Tamil Eelam (LTTE). Paramilitary groups are also considered to fall within the mandate of the investigation, given their involvement with official security forces or the LTTE.

19. With regard to the timeframe for the investigation, Resolution 25/01 refers to the period covered by the LLRC. The LLRC's initial timeframe covered from 21 February 2002 to 19 May 2009. However, its report submitted to the President of Sri Lanka in November 2011, included information dated as late as October 2011. This report therefore covers the same extended period, to ensure consistency. The report also takes into account

contextual and other relevant information that falls outside this timeframe but allows a better understanding of events.

Methodology

20. In view of the extensive documentation already available on the period covered by the OISL investigation, the team initially carried out a desk review of existing material, including Government publications, international and Sri Lankan Non-Governmental Organization (NGO)/civil society reports, the report of LLRC and other commissions, audio-visual material and satellite images, reports of the United Nations Special Procedures and treaty bodies.

21. In the course of its work, OISL has received and gathered information from many sources with knowledge of human rights cases and issues in Sri Lanka, including the parties to the conflict, as well as United Nations officials and staff members, civil society organisations, forensic medical doctors, international NGOs, human rights defenders and other professionals. UNOSAT provided invaluable analysis on satellite imagery.

22. Another key source of information was the United Nations Secretary General's Panel of Experts, headed by Marzuki Darusman, with experts Yasmin Sooka and Stephen Ratner. It was appointed in 2010 to advise the United Nations Secretary-General on implementation of commitments he had received from the President of Sri Lanka with regards to accountability following his visit to Sri Lanka in May 2009. As custodian of the Panel's archives, the High Commissioner officially authorized OISL to access the documentation contained in the archives, requiring it to adhere strictly to confidentiality guidelines. The documentation served as an important resource for identifying leads for the investigation of incidents related to the end of conflict period. The Panel of Experts' primary focus was to advise the Secretary-General on matters in relation to accountability but carried out an assessment of the nature and scope of the violations and qualified these in terms of international law. The OISL team met with several members of the Panel of Experts and appreciated their valuable insights.

23. The investigation also benefitted from extensive access to the documentation of the Sri Lanka Monitoring Mission (SLMM), which was present in Sri Lanka (2002-2007) to monitor the implementation of the 2002 Ceasefire Agreement (CFA). Although the SLMM did not have an explicit human rights monitoring mandate, CFA violations included incidents which could be qualified as human rights violations or abuses, including conflict-related unlawful killings, abductions and child recruitment. In this regard, the High Commissioner wishes to express his gratitude to the Governments concerned for facilitating this access.

Confidentiality

24. With regard to confidentiality, the High Commissioner wishes to stress that witness statements and other confidential material stored in OISL's archives, are classified as strictly confidential, in line with United Nations security and archiving policy.[2]

25. Details which could reveal the identity of victims or witnesses such as names, dates and places have been omitted in many cases described in the report in order to ensure that the victims, witnesses and their families cannot be identified.

[2] The UN's policy with regard to archiving and classification of documents can be found in ST/SGB/2007/6.

Interviews/testimonies

26. Identifying and protecting witnesses and other potential sources of testimony was complex. The lack of access to Sri Lanka, combined with security and protection concerns and the risks of reprisals seriously limited access to potential witnesses. The fact that alleged violations and abuses occurred at a minimum more than three and, in some cases, up to 12 years ago also made locating witnesses challenging, particularly for older cases.

27. Despite these challenges, OISL gave priority to gathering first hand testimony, by conducting face-to-face interviews, whenever this was possible, or otherwise through audio-video communication. However, the team was not given access to Sri Lanka and did not carry out direct interviews with individuals inside Sri Lanka due to security and protection concerns.

28. Building trust through strict confidentiality, and ensuring adequate protection measures were in place, was essential to creating a secure environment in which witnesses could recount their experiences. Although no longer in Sri Lanka, many of those interviewed expressed concerns about their own security and/or that of their family in Sri Lanka.

29. OISL also received a number of detailed written testimonies from other credible sources where the witnesses had given their consent to do so. In some cases, OISL investigators also later interviewed these witnesses, if conditions allowed. Risks of re-traumatisation were taken into consideration in reaching this decision.

Call for submissions

30. A public call for submissions was issued on 4 August 2014 and posted on the OHCHR website. A total of 1,985 submissions were received by e-mail, 45 being outside the OISL mandate, and 1,197 by mail, 100 of which were outside the mandate. (In some cases, submissions were sent both by mail and email). Of those individual submissions received by mail, 329 were sent from within Sri Lanka, many of them related to allegations of LTTE abuse.

31. In the time available, and without access to Sri Lanka, it was possible to follow up only a limited number of the individual submissions received, some of which served to corroborate case information from other sources. This does not, however, lessen the value of the submissions, which will remain recorded in OISL confidential archives. They should be seen, rather, as an indication of the need for an appropriate mechanism with the mandate, time and resources to record and assess the testimonies of the many who consider their rights, or those of lost family members, to have been violated.

32. Towards the end of October 2014, an individual was arrested in Sri Lanka accused of collecting false testimony using blank signed forms to send to OISL. This was used by the Government of Sri Lanka at the time to attempt to discredit OISL. The High Commissioner wishes to stress that OISL was not linked to the alleged incident in any way, and has not used any information of this kind in its investigations or conclusions. [3]

[3] At the time of writing the individual remains in prison on remand, held without trial under the Prevention of Terrorism Act. While not condoning any act that might have been intended to prejudice its investigation, and without taking a position on the veracity or otherwise of the accusations, OISL believes that the case of the individual should be immediately reviewed, and that he be charged with a legitimate offence or released.

Verification and evaluation of information

33. OISL's mandate was to carry out a human rights investigation. As this was not a criminal investigation, OISL has based its findings on the standard of "reasonable grounds to believe". There are "reasonable grounds to believe" that an incident or pattern of violations, some of which may amount to crimes, occurred where the information gathered was sufficiently credible and corroborated. Establishing exact dates of incidents was challenging since witnesses, especially those recounting events which occurred in the intense last weeks of the conflict, were not always able to recall exact dates.

34. OISL received allegations which linked some named alleged perpetrators to specific violations or abuses in some cases, or to patterns of abuses. There is sufficient information on many incidents, as well as on the patterns of incidents described, to warrant criminal investigations of these individuals to assess their criminal responsibility and establish whether, by acts or omissions they may be responsible directly or have command responsibility.

35. OISL also received confidential lists of alleged perpetrators of enforced disappearances from the 1980s and 1990s. Further information on these lists is provided in the Chapter VIII on Enforced Disappearance. Such cases of enforced disappearance were assessed as continuing violations which extend into OISL mandate, in line with the Declaration on the Protection of Persons from Enforced Disappearance. Because of the obstacles to accountability, only a handful of these cases were reportedly ever prosecuted. OISL believes that these lists should be reviewed, together with the information on which the allegations are based, as part of a broader investigation into those responsible for patterns of disappearances.

Challenges and constraints

The Government of Sri Lanka

36. The greatest obstacle to OISL work was the absence of cooperation and undermining of the investigation by the former Government. From the outset, it stated its "categorical rejection" of the Human Rights Council-mandated investigation. It continued to reject repeated invitations to cooperate from the United Nations High Commissioner for Human Rights. In July 2014, the Permanent Representative of Sri Lanka to the United Nations in Geneva refused to meet with OISL coordinator and later with one of its experts, Dame Silvia Cartwright. The High Commissioner nevertheless met with the Foreign Minister in New York in September 2014. The Government also failed to respond formally to a letter sent by OHCHR on 4 December (appended) requesting detailed information.

37. Instead, the Government at all times sought to undermine the investigation by calling into question its objectivity, professionalism and integrity. Between 4 November and 2 December 2014, the Government issued several press statements, called three meetings with Colombo-based diplomats, and issued two demarches through the United Nations Resident Coordinator in Colombo, accusing OHCHR of a series of "grave inconsistencies and contradictions which call into question the honesty, integrity and appalling levels of unprofessionalism of the OHCHR." These allegations centred on procedural issues, particularly the deadline OISL had given for submissions.

38. On 7 November 2014, the High Commissioner for Human Rights issued a press statement urging the Government to "focus on the substantive issues under investigation

instead of obscuring them by the constant questioning of procedures"[4]. The High Commissioner also rejected accusations of having been linked to the alleged fraudulent gathering of statements and payment of money for information. Following a meeting with the High Commissioner, the Permanent Representative of Sri Lanka in Geneva, in a letter dated 15 December 2014, reiterated the Government's position of non-cooperation.

39. The new Government which took office in January 2015 showed encouraging signs of cooperation and engagement with OHCHR, and there were a number of exchanges between the High Commissioner and the Foreign Minister, Mangala Samaraweera. However, the new Government did not cooperate directly with OISL, its position on access to the country did not change, and it did not respond officially to a letter sent on 15 March reiterating a request for information.

40. Despite this lack of cooperation, OISL reviewed publicly available written and oral statements given by Government officials to the Human Rights Council, the Human Rights Committee and other United Nations mechanisms, transcripts of Government and military officials to the LLRC, public Government reports such as the "Humanitarian Operation Factual Analysis July 2006- March 2009" and "Sri Lanka's Humanitarian Effort", as well as official Government websites. OISL also received subsequently a number of previously unpublished official documents, which it assesses to be authentic.

The LTTE

41. As the senior leadership of the LTTE was killed by the end of the conflict, OISL could not access LTTE officials for direct information regarding the group's policies, operations or responses to alleged abuses. Investigators interviewed a number of former LTTE cadres who had been subjected to torture and other grave violations by Government security forces. During the interviews, some provided information regarding LTTE responsibility for atrocities or abuses, but most were reluctant to acknowledge or discuss any practices or policies by the organization which might not accord with international law. In addition, the lack of availability of official LTTE documents made it difficult to confirm at what level some practices had been sanctioned. Nevertheless information from a range of sources, including victims of LTTE abuses, enabled OISL to document patterns of abuses committed by the LTTE.

Fear of reprisals, harassment, intimidation and other abuses

42. The impact of the previous Government's efforts to undermine the investigation was compounded by measures that apparently created a climate of fear and intimidation inside Sri Lanka. Throughout the period of work, OISL received persistent reports of surveillance, threats, intimidation, harassment, interrogation of grass roots activists, human rights defenders and potential witnesses by security forces inside Sri Lanka, particularly in the North of the country.

43. Although not always specifically articulated as threats linked to cooperation with OISL, many reports suggested that the harassment had intensified because of the investigation, particularly in the build-up to the deadline for submissions period on 30 October 2014. Whether or not they were directly intended to deter cooperation, the threats and harassment clearly acted as a powerful deterrent for those inside Sri Lanka who may have wanted to provide information on violations and even, in some cases, for those outside the country. Investigators exercised extreme caution in communicating with potential

[4] Zeid condemns persistent disinformation designed to discredit UN investigation on Sri Lanka, OHCHR, 7 November 2014

sources inside Sri Lanka, restricting contacts to an absolute minimum, and only when special security measures were in place to limit the risk of electronic surveillance. As previously noted, OISL did not take any verbal testimonies directly from individuals inside Sri Lanka.

44. Furthermore, the risks of reprisals, even in cases where the interviewee was outside of Sri Lanka but still had family inside meant that strict mitigating security measures had to be taken in order not to expose the individuals.

Risks of re-traumatisation

45. The continuing trauma suffered by many also impacted on the availability of witnesses. Investigators were particularly sensitive to the risks of re-traumatisation through interviewing. Prior to interviews, investigators carried out assessments of these risks, and the types of counselling and psychosocial support available. In a number of cases, the decision was taken not to interview certain individuals. Indeed, OISL investigators were deeply struck by the extent of the trauma which victims continue to suffer despite the passage of time. It is important to pay tribute to the courage of those who were determined to provide testimony.

46. In spite of the constraints described above, the information gathered and corroborated by OISL provides compelling findings relating to long standing and deep-rooted violations and abuses of human rights and international humanitarian law, some of which may amount to international crimes.

III. Contextual background

1948-2001: From independence to the Ceasefire Agreement

47. Following independence in 1948, a series of Government policies favouring the Sinhalese majority increasingly marginalised and alienated the Tamil minority. The Government presented these measures as a way to redress disadvantages Sinhalese had experienced under colonial rule, but they reflected an increasingly ethnic-based and majoritarian politics. From 1956 onwards, there were outbreaks of communal violence and growing radicalisation of some sections of the Tamil community. While some Tamil parties continued to participate in parliamentary politics, by the mid-1970s, some increasingly militant groups began calling for a separate state, 'Tamil Eelam', in the North and East of the island.

48. The Tamil New Tigers was formed in 1972 and became the Liberation Tigers of Tamil Eelam (LTTE) in 1976. Over the following decade it engaged in struggles against rival Tamil parties and militant organisations. After an LTTE attack in Jaffna, in July 1983, in which 13 government soldiers were killed, communal violence erupted across the country in what became known as "Black July". As many as 3,000 Tamils were killed, properties and businesses of Tamils were destroyed, and many fled Sinhalese-majority areas or subsequently left the country. A fully-fledged armed conflict developed between the Government and LTTE.

49. The LTTE developed as a ruthless and formidable military organisation, capable of holding large swathes of territory in the north and east, expelling Muslim and Sinhalese communities, and conducting assassinations and attacks on military and civilian targets in all parts of the island. One of the worst atrocities was the killing of several hundred police

officers after they had surrendered to the LTTE in Batticaloa on 17 June 1990[5]. The LTTE exerted significant influence and control over Tamil communities in the North and East, as well as in the large Tamil diaspora, including through forced recruitment and extortion. Government forces and rival Tamil groups acting as paramilitaries were also responsible for grave human rights abuses, particularly arbitrary detention, torture and many thousands of enforced disappearances, during the different phases of the conflict over the next two decades.

50. Separately, Sri Lanka also faced another armed insurgency in the south by the Marxist Janatha Vimukthi Peramuna (JVP). A short insurrection in 1971 was quickly suppressed, but the JVP staged a second rebellion from 1987 in opposition to Indian intervention in the Tamil conflict, which lasted for several years. The JVP engaged in assassinations and attacks on military and civilian targets. The movement was bloodily suppressed in a counter-insurgency campaign marked by many thousands of extra-judicial killings and enforced disappearances.

51. One major response to these overlapping violent movements was the declaration of a state of emergency in March 1971 under the Public Security Ordinance. This was followed by the introduction of emergency powers and draconian security legislation, such as the Prevention of Terrorism Act, first enacted for three years in 1979 and made permanent in 1982. This legislation provided a context for widespread arbitrary detention, torture and enforced disappearances. In addition, a powerful Executive Presidential system was introduced under the 1978 Constitution that has had a long-term impact on democracy and the rule of law.

52. A further effect was the failure to implement key provisions of the Indo-Lanka Peace Accord that had represented a landmark attempt to resolve the conflict in 1987, backed by the deployment of an Indian peacekeeping force. This led to the 13th Constitutional Amendment being passed in November 1987 that envisaged devolution of powers to a provincial level of government throughout the country. The Northern and Eastern Provinces were initially merged as one unit, reflecting Tamil aspirations but opposed by Sinhalese nationalists. The combined North Eastern Provincial Council (NEPC) was dissolved in 1990 when it put forward a resolution that was perceived by the Government as a unilateral declaration of independence.

53. While Provincial Councils continued to function in other parts of the country, the Northern and Eastern Provinces were then governed directly from Colombo[6]. Issues of devolution would remain central to the conflict and successive peace initiatives.

2002 – 2005: From ceasefire to intensification of hostilities

54. In February 2002, after nearly two decades of war, a Ceasefire Agreement (CFA) was signed between the Government of Sri Lanka and the LTTE which had been facilitated by the Government of Norway. The CFA envisaged a total cessation of military action, a separation of forces behind respective lines of control, and the disarmament of Tamil paramilitary groups. Under the CFA, the PTA also ceased to apply. Although the CFA did not include a human rights framework,[7] the parties committed "in accordance with

[5] http://www.uthr.org/Reports/Report4/chapter2.htm

[6] The Supreme Court ultimately ruled in October 2006 that the merger of the Northern and Eastern Provinces did not have legal effect, paving the way for separate Eastern Provincial Council elections in 2008.

[7] Efforts to negotiate a complementary framework of human rights and humanitarian principles during the first phase of the peace process failed.

international law (to) abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment." The agreement envisaged measures to restore normalcy, including freedom of movement. A Sri Lankan Monitoring Mission (SLMM) comprising personnel from the five Nordic countries was deployed to monitor the agreement and "enquire into any instance of violation".

55. On the one hand, the CFA heralded optimism that a more durable peace settlement to the conflict could be reached. An irregular series of peace negotiations began between representatives of the Government and LTTE. International donors pledged comprehensive support for the peace process and post-war reconstruction at a major conference in Tokyo[8].

56. However, the agreement also provoked suspicions and political divisions in the south. Many saw the CFA as establishing a *de facto* partition of the country and allowing the LTTE time to strengthen its position. These fears were exacerbated with the LTTE's tabling of a proposal for an Interim Self Governing Authority, and the opening of LTTE political offices in major towns of the North and East, permitted under the CFA. The LTTE was accused of repeatedly violating the CFA, engaging in extortion, targeted killings and continued child recruitment. By the end of the CFA- period in 2008, the SLMM had recorded 3,800 breaches of the ceasefire by the LTTE, and 350 by the Government.

57. In November 2003, President Chandrika Bandaranaike Kumaratunga took control of the key ministries of defence, interior and mass media from the United National Party (UNP) Government of Prime Minister Ranil Wickremasinghe. This led to parliamentary elections in April 2004 and a change of government, with Mahinda Rajapaksa of the Sri Lanka Freedom Party (SLFP) appointed as Prime Minister.

The Karuna Defection

58. Meanwhile, in March 2004, a major split had occurred in the LTTE ranks, with the defection of its senior commander in the East, Vinayagamoorthy Muralitharan, known as Karuna Amman. Thousands of cadres, including many children, returned to their homes, but the breakaway "Karuna group" emerged as a significant new paramilitary force[9], alongside older Tamil paramilitaries, such as the Eelam People's Democratic Party (EPDP), which had colluded with the Government in the past.

59. Karuna brought with him significant intelligence and military advantage. Over the following years, the LTTE and the paramilitaries engaged in a campaign of targeted killings[10]against each other, as well as abductions and attacks on civilians, the Karuna Group acting with apparent collusion with the Government. Both groups maintained high levels of recruitment of children, despite UNICEF efforts at prevention and release. The LTTE continued to carry out localised attacks against the Sri Lankan Army and police, but these remained low-intensity activities, using small arms and grenades. The LTTE also sent reinforcements from the Vanni in the North to the Eastern Province to regain the territory lost to Karuna and to restore its military strength following the defection.

[8] The LTTE temporarily withdrew from the peace process over its exclusion from the Tokyo conference in 2003.

[9] From 2007, the Karuna Group registered a political party, Tamil Makkal Viduthalai Puligal or TMVP.

[10] Under the CFA, only the LTTE and the Government of Sri Lanka forces were allowed to bear arms, but not in each other's territory. Other armed groups were to be disarmed by the Government. The Government failed to disarm paramilitary groups on its territory, including the Karuna Group once it had split from the LTTE. Although the Karuna Group was not a Party to CFA, the SLMM began ruling on its actions as CFA violations from 2005.

Tsunami – December 2004

60. The December 2004 Indian Ocean tsunami devastated coastal regions of Sri Lanka, killing more than 40,000 Sri Lankans and causing the displacement of over half a million people, in addition to the 390,000 persons already displaced by the conflict. Although there were hopes that the tsunami response would revive the peace process – agreement was reached for instance on a joint management structure to coordinate relief[11] – the politics of recovery quickly descended into mistrust and acrimony. There was a strong sense of grievance among the Tamil population that assistance was going primarily towards tsunami-affected people in the South, mostly Sinhalese, while those affected by the tsunami in the North and East, mostly Tamil, did not receive a proportionate share. The conflict-displaced, mostly Tamils and Muslims in the North and East, also felt excluded.[12]

Resumption of open hostilities

61. In August 2005, the Minister of Foreign Affairs, Lakshman Kadirgamar, a prominent Tamil politician, was assassinated at his residence in Colombo, allegedly by the LTTE. In the South this event triggered increasingly hardline attitudes to the peace process and increased international isolation, leading to the proscription of the LTTE. A state of emergency was declared and new emergency regulations were introduced which gave the Secretary of Defence sweeping powers to order arrest and administrative detention, and the military and police to carry them out. In November 2005, Presidential elections – at which the LTTE enforced a boycott in the areas under its control – saw the election of Mahinda Rajapaksa on a platform critical of the CFA and pledges to safeguard a unitary state.

62. In December 2005, the LTTE stepped up a new campaign of violence, particularly in the form of roadside claymore mine attacks[13], which increasingly affected civilians, many of them children, although the security forces may have been the primary target. [14] Initially, the use of mines was concentrated on the Jaffna peninsula. However, the practice soon extended to Government-controlled areas in the Vanni. Vavuniya and Mannar were particularly affected.

63. Targeted killings between the LTTE, rival paramilitary groups and the Sri Lankan military intelligence operatives also reached new levels, including against prominent Tamil members of parliament and journalists. There was also a renewed spate of so-called "white van" abductions and disappearances by Government forces, including in Colombo, as well as LTTE attacks on civilian trains and buses. Military clashes began to occur, particularly in the East and around Jaffna and Mannar to the North. Sri Lanka Army (SLA) deep penetration units, strengthened with intelligence from the Karuna faction, conducted operations inside LTTE-controlled territory. The head of the SLMM expressed the opinion that the Parties were increasingly locked into a "subversive war". [15]

[11] An agreement to establish a Post-Tsunami Operational Management System (PTOMS) involving both Government and LTTE was signed by President Kumaratunga in 2005 but some provisions were subsequently struck down by the Supreme Court as unconstitutional following legal challenges.

[12] http://www.brookings.edu/research/speeches/2010/03/03-natural-disasters-ferris

[13] A claymore mine is a remote-controlled, directional, anti-personnel mine designed for use in ambushes. Strictly speaking, "Claymore" is a brand-name for a specific US produced device, however it seems that in the Sri Lanka context claymore is used generically for any command-wire explosive device, including home made IEDs

[14] Witness Statement (WS) on file; Humanitarian Operation Factual Analysis, July 2006 – March 2009, Ministry of Defence (MOD), July 2011

[15] http://www.tamilguardian.com/article.asp?articleid=292

2006 – 2008: Further intensification of hostilities

64. By mid-2006 the CFA had broken down significantly. With the overall military situation steadily worsening, the LTTE withdrew from the on-going peace talks on 20th April 2006. A few days later, the LTTE attempted to assassinate the Army Commander General Fonseka in Colombo, causing him serious injury. The Sri Lankan Air Force (SLAF) retaliated by bombing Sampur, an area controlled by the LTTE in the East. [16] In December 2006, the LTTE made a further assassination attempt on the Defence Secretary, Gotabaya Rajapaksa, in Colombo.

65. During April 2006, the SLAF carried out airstrikes in the Sampur area, south of the strategically important bay south of Trincomalee. Reportedly, LTTE military targets were located in the vicinity of the civilian population. The SLMM stated that the airstrikes were in violation of the CFA, however it also warned the LTTE that it was "inexcusable to place military or political targets amongst the civilian population close to schools and private houses. "[17]

The Eastern Campaign

66. In July 2006, the LTTE seized the Mavil Aru area to the southwest of Trincomalee, closed off the sluice gate to a reservoir that was key to water supply in the eastern province, and launched attacks on the naval base in Trincomalee. At the same time, the LTTE launched a renewed offensive across the northern line of control in what may have been an attempt to recapture the Jaffna peninsula. The SLA launched 'Operation Watershed' which marked the beginning of the Eastern military campaign.

67. Security Force Headquarters-East (SFHQ-E), located in Welikanda, conducted the operation under the control of Joint Operations Headquarters in Colombo[18]. SFHQ-E had 22 & 23 Infantry Divisions under command, with the Commando Brigade and the Special Forces Brigade attached[19] for the operation. The Mavil Aru area was recaptured by the SLA within two weeks. Thereafter, the SLA pursued a 'bite and hold' strategy, clearing a limited area and consolidating it with second echelon troops before moving on to the next objective.

68. The next areas to be captured by the SLA in 2006 were Sampur (August – September), Vakarai (October. 2006– January 2007), Kanchikudichcharu (January – February 2007) Batticaloa East (February – April 2007), Batticaloa West (April – July 2007), and Thopigala (July 2007), the last LTTE stronghold in the Eastern Province. The local knowledge provided by the Karuna Group undoubtedly had a 'force multiplier' effect in this campaign.

69. The Eastern campaign provided the SLA with an opportunity to test the new doctrines, organisation and tactics that had been developed during reforms of the armed forces initiated by the new Government. The lessons that were learned capturing the East subsequently appear to have shaped the conduct of the later Northern campaign and gave

[16] http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/124-sri-lanka-the-failure-of-the-peace-process.aspx

[17] SLMM public press release, 20 April 2006, https://lankapage.wordpress.com/2006/04/30/slmm-rules-air-strikes-violation-of-truce

[18] Although it is reported that the acting Army Commander, Major General Nanda Mallawaratchchi, relocated himself to the area to personally oversee operations. Normally the Army Chief of Staff, he was made temporary Army Commander whilst General Fonseka was recovering from injuries he sustained in the April assassination attempt.

[19] Previously under the command of 53 Division in Jaffna.

the military command greater confidence in military success. As would be the case in the Northern campaign, the Government presented the Eastern campaign as a humanitarian operation and asserted that military planning was designed to avoid civilian casualties.[20] The Government, however, re-imposed severe restrictions on bringing aid into LTTE-controlled areas – for instance, humanitarian agencies had only limited access to civilians in Vakarai in the East, and from the beginning of 2007, the Government also began significantly increasing restrictions on humanitarian aid going into LTTE-controlled areas of the Vanni in the north.

70. While civilian casualties during this period may not have been on the scale in the last few months of the conflict, the renewed fighting and use of heavier arms, including artillery, rockets and air strikes, impacted on civilians. OISL documented several such attacks and considers that there are reasonable grounds to believe that they could constitute war crimes, and should be investigated as part of a prompt, effective and independent comprehensive investigation of the conduct of hostilities.

71. In the early morning of 14 August 2006, for example, the SLAF carried out an airstrike in a forest area near Vallipunam village, an LTTE-controlled area in the northern Mullativu district.[21] Around 14 fragmentation bombs were dropped. The attack hit Senchcholai Girls Orphanage, killing at least 60 girls, and injuring around 60 others. All the girls who were killed were aged 16-19 years, except for three women who were LTTE instructors. While the Government alleged the orphanage was an LTTE military training camp, international military observers who visited the site the same day found no indications of military installations, uniforms or weapons at the location.

72. The Senchcholai attack was one of a number of serious human rights violations alleged to have been committed by all sides during this period which became the subject of a Presidential Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights Occurring since 1 August 2005 (the Udalagama Commission) established in 2006. OISL obtained access to the unpublished findings of this Commission which are examined later in this report.

73. In the Senchcholai case, the Commission concluded the orphanage was a legitimate military target and that the LTTE carried responsibility for the deaths of the girls. On the basis of the available information, the OISL found that there are reasonable grounds to believe that the LTTE wilfully jeopardised the security of the children by forcing them to attend an LTTE-organised training in a remote location where there may have been military targets. The OISL also found that there are reasonable grounds to believe that the SLAF knew at the time that there were children present, yet undertook a disproportionate attack against a primarily civilian object and failed to take any precautions to avoid or minimise incidental loss of civilian life, which were clearly excessive in relation to the concrete and direct military advantage anticipated.

74. Throughout October and early November 2006, LTTE and Sri Lankan military exchanged artillery fire in and around the Vakarai area north of Batticaloa town.[22] On 8 November 2006, for instance, a Sri Lankan Army artillery bombardment hit Kathiravelli School, which was hosting around 1,000 IDPs, causing numerous deaths. The military prevented the SLMM from accessing the school site until late afternoon.[23]. The SLMM found no evidence of LTTE military installations at the school, but it reported that the LTTE had prevented some 2,000 civilians from fleeing to safety.

[20] Representation of Gotabaya Rajapaska to the LLRC, 17 August 2010
[21] WS on file
[22] SLMM documentation
[23] SLMM, http://www.hrw.org/reports/2007/srilanka0807/4.htm

75. Separately, on 2 November, a Sri Lankan Army bombardment hit the vicinity of the hospital in the LTTE-held town of Kilinochchi in northern Sri Lanka, killing five civilians and damaging the hospital's maternity ward.[24]

76. At the end of 2006, at least 520,000 people in Sri Lanka were displaced by the conflict, upwards of 300,000 following the renewed fighting, making it one of the largest displacement crises in Asia in both absolute terms and in proportion to the population.[25] Elections were held for the Eastern Provincial Council in May 2008, for the first time since 1988, although the province remained under a military governor.

The Northern Campaign

77. Days into 2008, the Government announced its withdrawal from the CFA.[26] As violations of the CFA had long been the norm, the immediate implication of its abrogation was an end to SLMM, effective 16 January, and a clear statement of the Government's intention to defeat the LTTE militarily. With the abrogation of the CFA, insecurity and violent incidents increased, including LTTE suicide attacks, both in the Vanni and in the South.

78. By this time, Sri Lanka's military budget had reportedly risen by 40 percent and the Army had tripled in size from 100,000 to 300,000, with almost an additional 5,000 troops recruited per month between 2005 and 2008, according to the Secretary of Defence[27]. In order to maintain its force strength and control, the LTTE intensified its restrictions of movement out of the Vanni region, as well as its forced recruitment of adults and children, which caused increasing anger amongst the Tamil communities..

79. From around October 2007, the Government began to focus its military operations in the North, with the main areas of fighting concentrated in the Western district of Mannar from April 2008. During this period, the Sri Lankan Navy sank several LTTE Sea Tiger vessels loaded with military cargo. An air strike on Kilinochchi in November 2007 killed the head of the LTTE Political Wing, Thamilselvan.

80. On 24 April 2008, the SLA captured Madhu, marking its advance into LTTE controlled areas. This was followed by the fall of the towns of Adampan and Periyamadhu.[28] In July 2008, the SLA captured Veddithalathiye, a major Sea Tiger base, and by September 2008, the SLA advance was threatening the LTTE's *de facto* capital of Kilinochchi, forcing the LTTE to retreat.

81. On 3 September 2008, the Government ordered all United Nations agencies and non-governmental humanitarian organisations to leave the LTTE-controlled area. The United Nations was informed by the Joint Operations Headquarters that the safety of humanitarian staff could not be guaranteed in "uncleared areas", and that authorisation for travel beyond Omanthai into the Vanni would no longer be granted.[29]

[24] http://www.un.org/press/en/2006/iha1240.doc.htm

[25] IDMC, http://www.internal-displacement.org/assets/publications/2007/200709-ap-srilanka-civilians-in-the-way-of-conflict-country-en.pdf

[26] BBC, Sri Lanka Timeline, 6 October 2010, http://www.bbc.co.uk/news/world-south-asia-12004081

[27] www.defence.lk/new.asp?fname=20100429_05

[28] Humanitarian Operation Factual Analysis, op.cit.

[29] WS on file, http://www.island.lk/2008/09/10/news16.html; Ministry of Disaster Management and Human Rights Press Release, 3 October 2008, http://reliefweb.int/sites/reliefweb.int/files/resources/AF5D1F3435536F42852574D70063A679-Full_Report.pdf

82. The departure of most international observers from the Vanni effectively undermined protection responses and humanitarian assistance programmes for civilians in the Vanni and left the population vulnerable to violations by both the Sri Lanka Armed Forces and the LTTE. United Nations national staff and their families, like many other civilians, were refused permission by the LTTE to leave but continued their humanitarian work in a deteriorating humanitarian situation.

January – May 2009: Final phase of the armed conflict

83. By January 2009, the SLA had captured Kilinochchi and the Elephant Pass, taking complete control of the A9 Highway, which connects Jaffna to the rest of the country.[30] Both were taken with relative ease and low military casualties, indicating that the LTTE was in a state of military collapse. Although the numbers were disputed, some 300,000[31] civilians, most of whom had experienced multiple displacements, were trapped in the small area of the Vanni region that was still held by the LTTE.

84. Until mid-January, the humanitarian agencies were able to conduct 11 road convoys, until fighting and restrictions by both parties made the delivery of humanitarian assistance by road impossible.[32] The agreement to allow convoys safe passage was breached on several occasions when shelling occurred in close proximity to convoys.

85. According to its 2009 Annual Report, the ICRC arranged ships from February to May 2009 to transport limited amounts of humanitarian assistance between Trincomalee and the area near Puthumattalan, where most displaced civilians were located and, at the same time, evacuated some 12,000 people – those seriously in need of medical treatment together with their care-givers. The Government also transported limited amounts of humanitarian assistance by road until the end of January.

86. By the end of January 2009, the LTTE was severely diminished as a fighting force. It lacked heavy weapons, ammunition and had to rely on new and ill-trained recruits to fill its ranks. The SLA was reportedly much stronger in terms of mortars, artillery, multi-barrelled rocket launchers (MBRLs) and ammunition. Government forces also benefitted from complete air supremacy and aerial reconnaissance. Having lost their defence lines at Kilinochchi and Elephant Pass, the LTTE was apparently no longer able to hold ground against the SLA advance from the north, west and south, and engaged in a fighting withdrawal in an ever diminishing area with its back against the sea.

87. Between January and May 2009, the Government unilaterally announced the successive establishment of three No Fire Zones (NFZs) inside LTTE areas, without agreement with the LTTE. Each was smaller and further east than its predecessor, coinciding with the retreat of the LTTE before the advancing SLA and the diminishing area of land under LTTE control. The Government's strategy appears to have been to force the LTTE to retreat to the coast, and to try to split the bulk of the civilian population away from the main LTTE force. This period was marked by many alleged gross human rights violations and serious violations of international humanitarian law, such as attacks on civilians, restrictions on humanitarian assistance, forced recruitment of adults and children

[30] BBC, Sri Lanka Timeline, 6 October 2010, http://www.bbc.co.uk/news/world-south-asia-12004081

[31] Although the figures were disputed in early 2009 by the Government as part of its arguments for reducing humanitarian assistance, in the final phases of the conflict, some 300,000 left the conflict zone.

[32] Sri Lanka: 250,000 People in War Zone Need Food, WFP, 6 February 2009 - https://www.wfp.org/stories/sri-lanka-vanni

by the LTTE and coercive measures to stop civilians leaving the conflict area, which are detailed in later chapters of this report.

88. Throughout late January and early February, the SLA continued to advance eastwards along the A35. Heavy fighting continued as the SLA advanced towards Puthukkudiyiruppu (PTK) hospital. The shelling of the area in and around the first NFZ had become so intense with many casualties that the civilian population began to leave the area and head towards the Eastern coast, congregating on the barrier island to the south of Putumattalan.

89. On 12 February 2009, the Government designated a second NFZ, referred to officially as the Civilian Safety Zone (CSZ), in an area covering some 15 kilometres along the coast from Putumattalan in the north to Vellamullivaikkal in the south. Available information indicates that the civilians had no other option to move from the first NFZ towards parts of LTTE-controlled territory, and since there were reportedly no safe corridors to move away from the shelling or the LTTE positions, even if they had wanted to.

90. During this period, there were numerous international interventions urging the Government to halt its offensive and calling for a humanitarian pause. The High Commissioner for Human Rights issued a statement on 13 March 2009, expressing her concern for the civilian population in the conflict zone, suggesting war crimes and crimes against humanity may have been committed.[33]

91. On 12 April, the Government announced it was going to restrict military operations for 48 hours on 13 and 14 April. On 20 April, the SLA crossed the lagoon and infiltrated behind the earthen bund constructed by LTTE. In the last ten days of April, some 100,000 civilians crossed over into the Government-controlled area north of Puthumatalan. On 26 April, LTTE unilaterally declared a ceasefire, but this was rejected by the Government that instead sought a surrender.[34] On 27 April, the Government announced that combat operations had reached their conclusion and that the security forces had been instructed "to end the use of heavy caliber guns, combat aircraft and aerial weapons which could cause civilian casualties".[35] However, the shelling did not stop, and may even have intensified according to some sources.

92. On 8 May 2009, the Government announced the third and final NFZ, the small remaining central part of the former second NFZ, between Karayamullivaikkal and Vellamullivaikkal. Although the southern part of the barrier island below Vellamullivaikal was still in LTTE control, it was then excluded from the NFZ, paving the way for the Armed Forces to attack northwards from Vadduvakal across the causeway bridge. The SLA force now confronting the LTTE was probably in excess of 50,000 soldiers, with significant heavy weapons capability and air supremacy.

93. On 13 May, the 58th Division was pushing its way forward towards the coastline with the aim of advancing south from there, with the 53rd Division moving east along the A35 road towards the lagoon. Troops from the 55th Division pushed further south from Putumattalan. At that point, the United Nations estimated that more than 100,000 civilians remained trapped within three square kilometres.

[33] Navy Pillay: Serious violations of international law committed in Sri Lanka conflict, 13 March 2009

[34] http://www.priu.gov.lk/news_update/Current_Affairs/ca200904/20090430no_time_for_ceasefire_president.htm

[35] http://www.priu.gov.lk/news_update/Current_Affairs/ca200904/20090427combat_operations_reach_conclusion.htm

94. From 14 May, senior LTTE cadres began to communicate their intent to surrender to several Sri Lankan and foreign intermediaries. On 15 May, the LTTE began destroying their communications equipment. On 16 May, the 58th and 59th Divisions of the SLA linked on the coastline. The 53rd Division continued to make its way south, along the Nanthi kadal lagoon. The remaining LTTE, including many of the top leaders and around 250 hard-core fighters, were locked into a small area of around three square kilometres at Vellamullivaikkal. The final surrender of LTTE combatants, political cadres and remaining civilians and their fate in the hands of Government forces is described in subsequent chapters of this report.

May 2009 – November 2011: Post-armed conflict period

95. The tens of thousands of civilians who survived the last phase of the conflict now passed into Government control. Among them were former LTTE leaders and combatants who either surrendered or were identified during an ongoing screening process and taken away. Thousands of former LTTE combatants or people suspected of links to the LTTE, including children, were held in various often opaque systems of detention and rehabilitation, and were only gradually released. Some reportedly remain in detention to this day. Others remain unaccounted for and may have been the victims of summary executions or enforced disappearances that are examined in subsequent chapters.

96. Almost 300,000 IDPs were held mostly in closed camps at Manik Farm, near Vavuniya, and in other locations, in conditions also examined in this report. The Government gradually began to reduce restrictions on movement and began a process of resettlement from the camps from late 2009. Manik Farm was finally closed in September 2012. Many challenges to resettlement remain to this day and thousands are yet to achieve durable solutions.

97. The Government celebrated its military victory in a triumphalist way. Despite early commitments to develop a "national solution acceptable to all sections of people" and to proceed with the implementation of the 13th amendment which promised devolved government structures in the North and East[36], little progress was made in a series of abortive all-party conferences and parliamentary committees on constitutional reform. In July 2011, local council elections were held for the first time in the North. Elections to the Northern Provincial Council were ultimately held in September 2013, although the province until recently remained under a military governor, and relations with the central government remained fraught.

98. The Government embarked on an ambitious programme of reconstruction and infrastructure development in the North and East but led this centrally from Colombo with limited consultation by a Presidential Task Force for Resettlement, Development and Security in the Northern Province, chaired by the President's brother, Basil Rajapaksa.[37] The military has retained a heavy presence and a system of checks and surveillance in the North and East, and it continued to occupy substantial tracts of civilian land, further complicating resettlement. Local communities also complained of the progressive "Sinhalisation" of Tamil areas through the encroachment of Sinhalese moving into the area and business interests, proliferation of Buddhist temples and language issues such as signage and place names.

[36] Joint Statement by United Nations Secretary-General, Government of Sri Lanka, at the end of the United Nations Secretary General's visit to Sri Lanka. http://www.un.org/press/en/2009/sg2151.doc.htm

[37] http://reliefweb.int/report/sri-lanka/sri-lanka-president-appoints-new-task-force-rebuild-north

99. Capitalizing on the military victory, the President announced early Presidential elections for January 2010. The Opposition parties united behind former Army Chief General Fonseka, who had felt sidelined and retired from military service in November 2009, as an opposition candidate. President Rajapaksa won the elections comfortably, and the ruling coalition subsequently won a landslide victory in parliamentary elections in April 2010. Following his defeat, General Fonseka was arrested on corruption charges and sentenced to three years in prison.[38]

100. In September 2010, the new parliament adopted the 18th Constitutional Amendment which removed the limit on the number of terms for which a President could seek election, and replaced the (by then defunct) Constitutional Council with a less independent parliamentary process to recommend appointments to the judiciary and other independent bodies, including the Human Rights Commission of Sri Lanka.

101. During this period, governance in Sri Lanka continued to develop in an authoritarian direction, with an increasing number of ministries and Government functions centralized under the President and members of his family. The space for freedom of expression and critical debate closed further, with relentless harassment and intimidation of human rights defenders, interference with the independence of lawyers and judges, and attacks on journalists and the independent media. Resurgent Sinhalese nationalism and religious extremism among some sections of the Buddhist majority, unchecked and often patronized by Government figures, led to renewed violence against minorities, particularly the Muslim community.

102. This was also the period in which testimony and other evidence, including video material, continued to emerge about grave violations allegedly committed by both sides during the war. In May 2009, in a joint statement with the Secretary-General, President Rajapaksa undertook to put in place measures to address issues of accountability arising from the conflict. In the absence of progress in this area, the Secretary-General decided, in June 2010, to appoint an independent Panel of Experts to advise him on options for advancing accountability in Sri Lanka. The Panel of Experts, chaired by Mr Marzuki Darusman, presented its report in March 2011[39].

103. In May 2010, the Government appointed its own Lessons Learned and Reconciliation Commission (LLRC) "to investigate the facts and circumstances which led to the failure of the ceasefire agreement, the lessons that should be learnt from those events and the institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future, and to promote further national unity and reconciliation among all communities." The LLRC presented its report to the President on 15 November 2011, which frames the time period covered by this OHCHR investigation[40], as per Human Rights Council resolution 25/1.

IV. Overview of Government, LTTE and other armed groups

104. This chapter outlines the structure of the security forces, associated paramilitary groups and the LTTE. The names provided in the description of the chain of command do not imply criminal responsibility for particular alleged violations listed in this report, either

[38] General Fonseka was released after two years in May 2012, and granted a pardon by the new President Sirisena in January 2015.

[39] http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf. The Government of Sri Lanka did not afford any credence or legitimacy to the report of the Panel.

[40] http://www.priu.gov.lk/news_update/Current_Affairs/ca201112 /FINAL%20LLRC%20REPORT.pdf

as direct responsibility or under command or superior responsibility. Similarly, the names of individuals in the subsequent chapters of this report in relation to specific violations are given without prejudice of the presumption of innocence of those named, and do not imply any criminal responsibility for particular alleged violations listed in this report, either as direct responsibility or under command or superior responsibility. Individual criminal responsibility can only be determined by a court of law with all necessary due process guarantees. The allegations contained in this report must be promptly, thoroughly and independently investigated and those responsible must be brought to justice.

Sri Lanka Security Forces and related bodies

President/Commander-in-Chief of the Armed Forces

105. There were two Presidents during OISL's mandate period: President Chandrika Bandaranaike Kumaratunga (to 2005) and President Mahinda Rajapaksa (from November 2005). According to the Constitution, the President of the Republic is the Commander-in-Chief of the Armed Forces and appoints the commanders of the different services.

Ministry of Defence (MoD)

106. The Ministry of Defence[41] is responsible for the formulation and execution of strategies with regard to defence and safeguarding the territorial integrity and sovereignty of Sri Lanka[42]. Accordingly, it is responsible for all the State agencies which perform a defence or security role. Until August 2013, all branches of the security forces, including the police, came under the Ministry of Defence. In addition to its role in military operations, from 2006, the high level coordination meetings of all humanitarian operations into the Vanni took place at the Ministry of Defence.

107. After taking office in November 2005, President Mahinda Rajapaksa took on the portfolio of Minister of Defence. Under President Chandrika Bandaranaike Kumaratunga, Tilak Malapana held the Minister of Defence portfolio from 2001-2005.

Secretary of Defence

108. The Secretary of Defence is the senior permanent civil servant in the Ministry of Defence appointed by the President. Gotabaya Rajapaska, the brother of the President, was appointed Secretary of Defence in November 2005 and held that position until January 2015. Under the Emergency Regulations of the Public Security Ordinance (Chapter 40) gazetted on 13 August 2005, the Secretary of Defence was given sweeping powers to order arrests and detention "if he is of the opinion" that the arrest is necessary *interalia* in the interests of national security and, from 2006 onwards, in relation to terrorism[43]. A series of interviews with police chiefs in the Sri Lankan newspaper Business Today in April 2009,

[41] There has always been a ministry with responsibility for defence and security matters, although its name has changed on several occasions since independence, reflecting the other responsibilities that it has also had. six of the defence/security bodies referred to in this report were under the responsibility of the Defence Ministry up until 2013 when the police were re-subordinated to the Ministry of Law and Order.

[42] http://www.defence.lk/main_abt.asp?fname=mission

[43] Under these regulations, which were amended to include the provisions of the Prevention of Terrorism Act in 2006 and therefore broadened even further, all branches of police and military were authorized to carry out the arrests and detention.

describes the role of the Secretary of Defence in coordinating operations between the Armed Forces and police, as well as directing investigations.[44]

National Security Council

109. The National Security Council (NSC) is the executive body of the Government responsible for maintaining national security. It was established in the mid-1980's under the provisions of Section 27 of the Prevention of Terrorism Act. It brought together all the senior political and military figures relevant to defence and security matters. The President, as Commander-in-Chief, chaired the NSC.

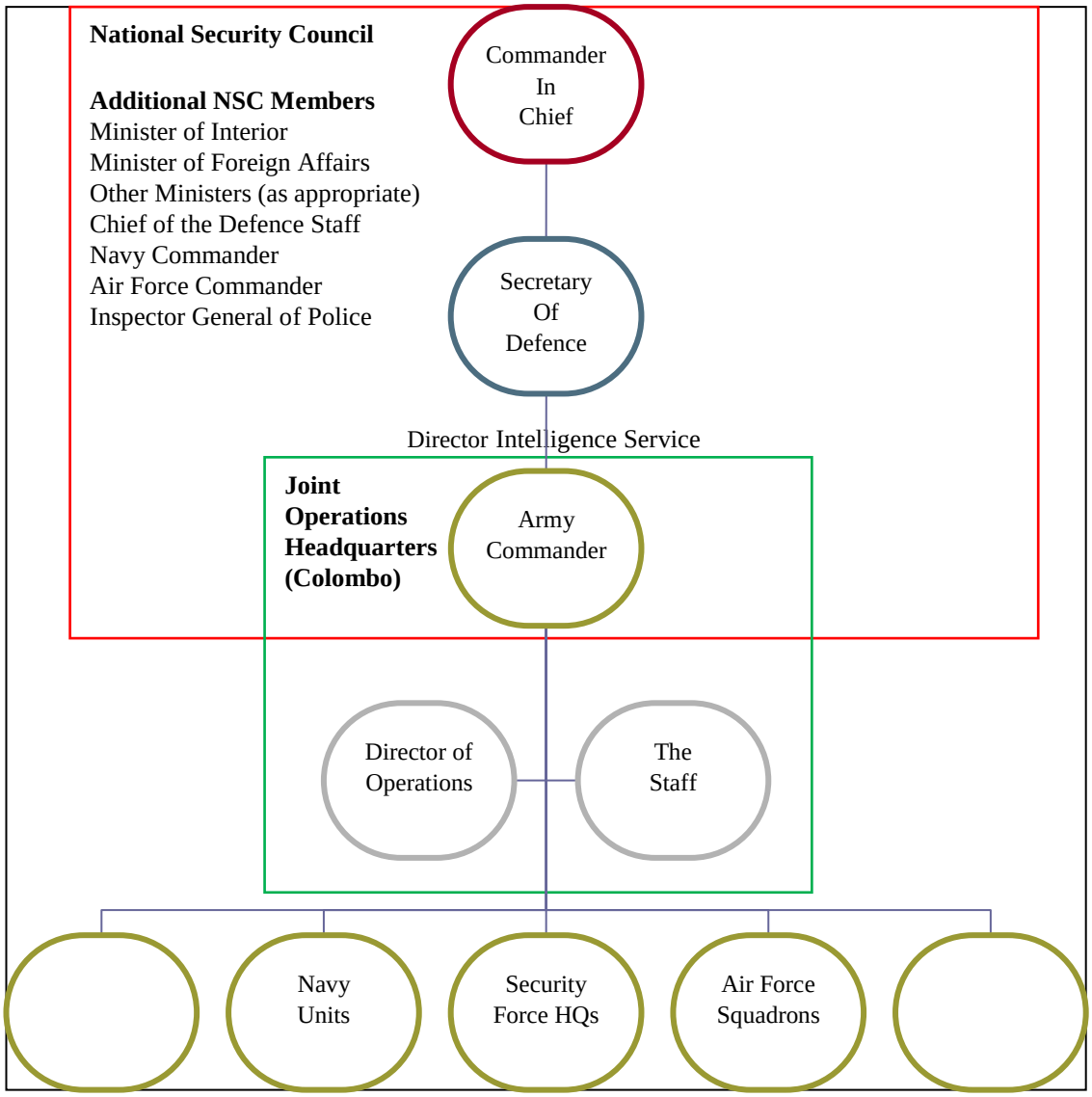

Figure 2: Command Structures of the Sri Lankan Security Forces

[44] Interviews with the director of Colombo Crime Division, the Inspector General of Police, the Deputy Inspector General of the Crime Division and the Director of the Terrorism Investigation Division, Business Today, April 2009.

Main branches of the Sri Lankan Security Forces

110. At the time of the conflict, the Security Forces of Sri Lanka consisted of three armed forces: the Sri Lanka Army (SLA), the Sri Lanka Navy (SLN) and the Sri Lanka Air Force (SLAF); and three civilian bodies - the Sri Lanka Police (SLP), the National Intelligence Bureau (NIB) now replaced by the State Intelligence Service, and the Civil Defence Forces (CDF). During most of the period covered by OISL mandate, all six fell under the Ministry of Defence until 2013, when the SLP was brought under a new Ministry of Law and Order. [45] A Civil Security Department was created in 2006 under which the pre-existing National Home Guard was reorganized.

Chief of Defence Staff (CoDS) of the Armed Forces

111. The Chief of the Defence Staff is the senior professional military officer in the Armed Forces, and is appointed by the President. Prior to 2009, the CoDS (Air Chief Marshall Donald Perrera) primarily played a coordinating role with responsibility to implement directions from the President and NSC, leaving the Chiefs of the three armed forces to carry out their own operational plans. [46]

Joint Operations Headquarters (JOH)

112. Joint Operations Headquarters was established in 1985 to coordinate operations among the Armed Forces and SLP, given the escalation at that time in the conflict[47]. It was responsible for implementing the decisions of NSC. The JoH was commanded by the Chief of Defence Staff, who was responsible to the Secretary of Defence.

Sri Lanka Army

113. *The Army Commander* is the most senior officer within the Army. The President, as Commander-in-Chief, appoints the Army Commander. General L.P.Balagalle was Army Commander from August 2000 to July 2004. He was replaced by General S.H.S. Kottegoda. General Sarath Fonseka was appointed as Army Commander on 6 December 2005. He was replaced by General Jagath Jayasuriya in July 2009.[48]

114. *The Director of Operations* was the senior army officer in the Joint Operations HQ, with 'hands-on' responsibility for battlefield management. He worked under the supervision of the Army Commander, to monitor and coordinate the activity of the operational units who were actively engaged in the fighting.

115. *Security* Force *HQ*: a Corps level formation, commanded by a Major General having a defined geographical area of responsibility, and a number of different combat Divisions and supporting units under command. During the final phase of the armed conflict, the SFHQ-Vanni was headed by the thenMajor General Jagath Jayasuriya, who was an interlocutor for the United Nations and other international agencies, particularly regarding security. SFHQ-Jaffna was headed by Major General Mahinda Hathurusinghe, from 7 January 2010 to 9 January 2014.

[45] http://www.lawandorder.lk/index.php?option=com_content&view=article&id=78&Itemid=491&lang=en

[46] In July 2009, the role of the Chief of Defence Staff was expanded to a more operational role coordinating the armed forces. The first CoDS with these new functions was Sarath Fonseka, appointed in July 2009: www.ocds.lk/history.html

[47] http://www.ocds.lk/history.html

[48] www.army.lk

116. *Division*: a combined arms manoeuvre formation capable of independent battlefield operations, numbering some 10 to 20,000 soldiers. Commanded by a two-star general, it has a number of different combat Brigades and supporting units under command, according to OISL's information during the final phase of the armed conflict the following Division commanders[49] were:

53rd Division : Major General Kamal Gunaratne

55th Division : Brigadier Prasanna Silva

57th Division : Major General Jagath Dias

58th Division : Brigadier Shavendra Silva

59th Division: Brigadier Nandana Udawatta and subsequently Brigadier Chagie Gallage

117. *Brigade:* a major tactical infantry formation, commanded by a one-star general (Brigadier), numbering some 3,500 to 6000 soldiers. It has a number of different combat battalions and other supporting units under command. In addition to the Brigades attached to the divisions was the Artillery Brigade.[50] According to a 3 June 2009 Daily News article, the Artillery Brigade Commander during the final phase of the armed conflict was Brigadier Priyantha Napagoda. The Special Forces Brigade was headed by Colonel Athula Kodippily.

118. *Battalion*: a tactical infantry formation, commanded by a Lieutenant Colonel and numbering some 650 men. It consists of a number of combat companies and support companies, all of which are an integral part of that battalion.

119. *Task Force*: This was an ad-hoc grouping put together for a specific task requiring a separate formation command. It was hierarchically equivalent to a division, but had the size of a strong brigade[51]. It comprised a mixture of existing units 'borrowed' from other formations and new units that were raised by new recruitment during the rapid expansion of the army. According to maps compiled by the Defence Ministry, Task Forces 2, 3, 4 and 8 were particularly involved in the final weeks of the conflict. According to the Ministry of Defence website, the following were Commanders of Task Forces: Brigadier Rohana Bandara (Task Force 2); Brigadier Sathyapriya Liyanage (Task Force 3); Colonel Nishantha Wanniarachchi (Task Force 4); Colonel G.V. Ravipriya (Task Force 8).

120. *Staff:* Each formation from battalion level upwards includes a 'staff' of professional advisers who assist the commander in formulating and executing plans.

[49] www.defence.lk/new.asp?fname=20090117_03

[50] 'The Grand Finale', lankanews.lk archives

[51] Whereas a regular Division had three Brigades (each of three Battalions, thus nine in total) a Task Force had two Brigades (six Battalions).

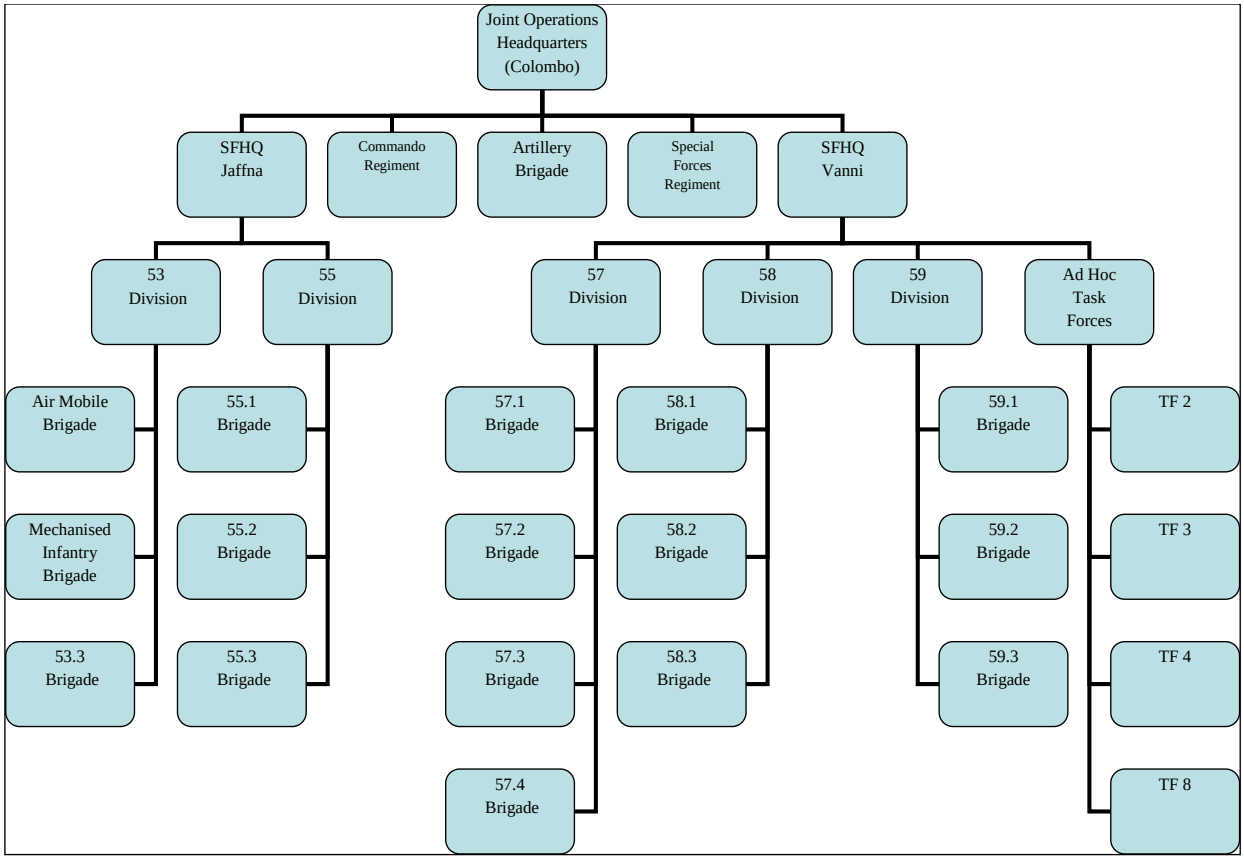

Figure 1: SLA order of battle in the Vanni Campaign

Military Intelligence Corps of SLA

121. In addition to its role in intelligence gathering in the context of the conflict, it played a pivotal role in the identification and interrogation of LTTE suspect including at military checkpoints, screening posts and in IDP camps. During the end of conflict period, it was headed by Major Hendawitharana.

The Sri Lankan Navy (SLN):

122. The SLN was heavily involved in the conflict, particularly with regard to fighting LTTE Sea Tigers, and intercepting LTTE supply routes, as well as boats leaving the Vanni, including civilians fleeing from LTTE-controlled areas. SLN provided support to the Army through naval gunfire support to land operations. It was also involved in the checking, loading and unloading of humanitarian supplies on ships going to the Vanni. It had its own intelligence service.

123. The Commanders of the Navy during OISL mandate period were: Admiral D.W.K Sandagiri (January.2001 to September 2005); Admiral Wasantha Karannagoda (September 2005 to July 2009); Admiral TSG Samarasinghe (July 2009 to 1 January2011). Admiral D.W.A.S.Dissanayake (January 2011 to September 2012)[52].

[52] www.navy.lk

The Sri Lanka Air Force (SLAF)

124. The Air Force is the smallest of the three armed forces. The SLAF had 13 air squadrons and one ground regiment, which was responsible for airfield protection. The island is divided into an air defence command and four zonal commands, North, South, East-West, each under the control of an Air Vice Marshall (one star rank). The zonal commands control all flying squadrons and airbases, and are responsible for air operations that have been decided upon by the Directorate of Operations at Air Force HQ.125. The Air Force was tasked with a range of functions often in support of army or navy operations, including:

- Pre-planned bombing of significant targets (infrastructure or high-value individuals), often carried out from higher altitudes;
- Close air support (also called fighter ground attack) by which low flying aircraft engage tactical ground targets that are of direct significance to the progress of infantry or armour operations;
- Reconnaissance flights by aircraft (including Unmanned Aerial Vehicles – UAV) which were equipped with still or video cameras in order to provide intelligence to inform operational and targeting decisions.

125. Three air squadrons were particularly involved in the conflict:

No. 10 Sqn. Operating Kfir ground attack aircraft out of Katunayake AFB;[53]

No. 12 Sqn. Operating Mig-27 ground attack aircraft out of Katunayake AFB;

No. 111 Sqn. Operating AIA Searcher reconnaissance UAV out of Vavuniya AFB.[54]

126. The Commanders of the Air Force during OISL's mandate period were: Air Chief Marshal G D Perera (16 July 2002 - 11 June 2006); Air Chief Marshal WDRMJ Gunetilleke (11 June 2006 - 27 February 2011).[55]

The State Intelligence Service

127. The State Intelligence Service reports to the Ministry of Defence. The SIS was one of a number of intelligence bodies operational during the final phases of the armed conflict. In interviews with Business Today in April 2009, both the Inspector General of the Sri Lankan Police at the time and the Deputy Inspector General of the Criminal Investigation Division described the close coordination, including weekly meetings under the Secretary of Defence, of the different intelligence services, including the SIS, police intelligence units and the Directorate of Military Intelligence to exchange information on the LTTE. [56]

The Sri Lankan Police (SLP)

128. The SLP is primarily responsible for law enforcement: maintaining law and order, preventing crime and investigating crime. Up until August 2013, SLP was under the Ministry of Defence and Urban Development. It then came under the newly formed

[53] Approximately 25 minutes flying time from the northern conflict area

[54] SLAF had a second UAV squadron, which may have been involved - No. 112 Sqn. Operating Emit Blue Horizon reconnaissance UAV. They were based at Weerawila AFB, which is on the south coast of the island and therefore out of flying range. Its aircraft could have been redeployed to operate from Vavuniya AFB.

[55] www.airforce.lk

[56] www.businesstoday.lk archive, April 2009.

Ministry of Law and Order.[57] SLP is headed by the Inspector General of Police (IGP) who is selected by the President. The IGP is a member of the National Security Council.

129. The military also had policing functions through a gazetted order which was renewed monthly, the last renewal being on 2 February 2015, after which it lapsed. As indicated above, under Emergency Regulations, the Secretary for Defence also had direct authority to order arrests related to national security and counter-terrorism under the Emergency Regulations.

130. The current IGP is N.K. Illangakoon who was appointed on 4 July 2011. His predecessor was Mahinda Balasuriya who was appointed to the position on 3 November 2009. He was preceded by Jayantha Wickramaratna (appointed in July 2008), Victor Perera (appointed in October 2006), Chandra Fernando (appointed in October 2004), Indra De Silva (appointed in December 2003) and T. E. Anandaraja (appointed in 2002).

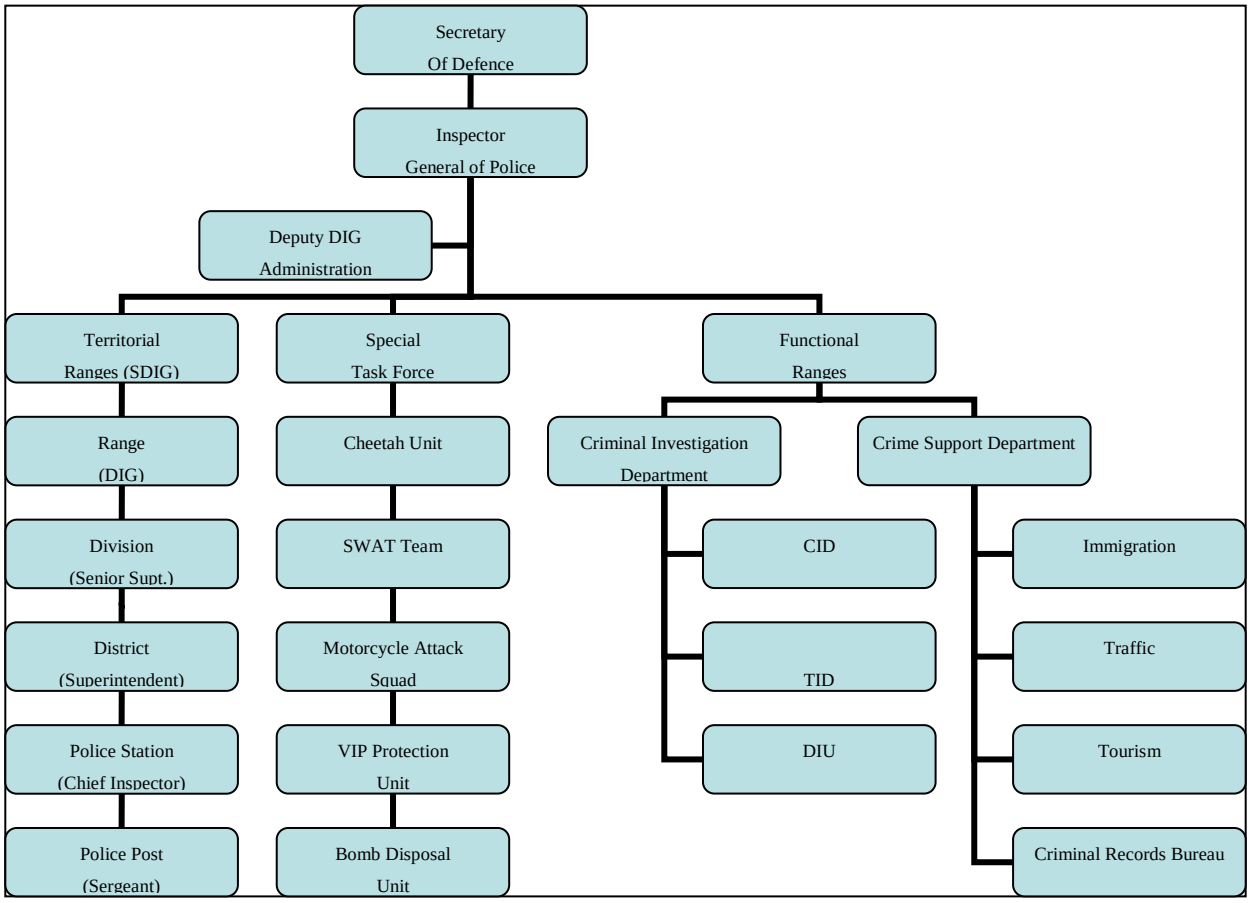

Figure 3: Organisational Structure of the Sri Lanka Police

131. The Sri Lanka Police has five Territorial Ranges; Northern, Southern, Eastern, Western and Colombo Ranges. Each Range contains a number of 'Divisions', each of which is commanded by a Senior Superintendent of Police (SSP). These in turn contain a number of 'Districts', each commanded by a Superintendent (SP). Each District has two or

[57] This was in line with the recommendation from the LLRC that the police should no longer fall under the Ministry of Defence[57], LLRC Report, November 2011.

three Police Stations, each of which is commanded by a Police Chief Inspector (CI). Some Police Stations have smaller Police Posts which are placed in the suburbs or outlying districts to facilitate public access to the police in their local area. Beside the Territorial Ranges, there are a number of Functional Ranges, which have a nationwide mandate in a specific functional area. For the purposes of this report, the significant Functional Ranges are the Special Task Forces, the Terrorism Investigation Division (TID) and the Criminal Investigation Department[58]. At the beginning of the mandate period there was also a Disappearances Investigation Unit (DIU).

Special Task Force (STF)

132. The Special Task Force is an elite paramilitary unit within the police. It was formed by Presidential decree in 1983 to provide additional support to the police in the face of the rising threat of LTTE, especially in the East. STF officers resemble military rather than police officers, wearing green berets and camouflage uniforms. As well as the AK-47 assault rifles used by all branches of SLAF, the STF are depicted carrying more specialist weapons including sniper rifles, RPGs, grenade launchers, pistols and AR-15 assault rifles. The STF reports to the IGP.

133. The current STF Commander is DIG R.W.M.C Ranawana (appointed on 24 March 2001). He was preceded by DIG K.M.L. Sarathchandra (appointed on 24 March 2008), DIG Nimal Lewke (appointed on 10 September 2003), and DIG Nimal Gunatilleke (appointed on 01 June 1998)[59].

Criminal Investigation Department (CID)

134. The CID is primarily responsible for investigating serious and organised crime, but also engaged with counter-terrorism activities[60]. CID are plainclothes police and have surveillance, intelligence and analysis sections. Its "4th Floor" facility at Police HQ in Colombo is particularly notorious as a place where many detainees are taken for interrogation (see later chapter on Torture). In April 2009, the Deputy Inspector General (DIG) of the CID was Sisira Mendis. The Colombo Crimes Division, headed in April 2009 by SSP Anura Senanayake, also played a key role in investigating crime and in counter-terrorist activities.

Terrorism Investigation Division (TID)

135. The TID was created in the mid-1980s and has a specific focus on preventing and investigating acts of terrorism as defined in the Prevention of Terrorism Act. The exact division of responsibility between CID and TID remains unclear. TID Colombo detention/interrogation facilities are often referred to as the "6th floor. In April 2009, the Director of the TID was SSP C.N.Wakishta.[61]

[58] Commanded by a Deputy Inspector General of Police.

[59] www.police.lk

[60] An extensive set of interviews given by the IGP, DIGP Western Province and the Commanders of CID, TID and CCD was published in 'Business today' in April 2009, from which it was clear that all these branches were involved in counter-terrorism activities against the LTTE, and no precise division of competences was clearly apparent.

[61] Interiew, Business Today, April 2009, www.businesstoday.lk.

Disappearances Investigation Unit (DIU)

136. The DIU was established in 1997 on the recommendation of the Zonal Commissions of Inquiry into disappearances that were conducted in the 1990s[62], to investigate the numerous cases of disappeared persons and to bring to justice those responsible. As described in chapter VIII on Enforced Disappearances, the DIU became less and less effective, particularly from 2006. It has since been disbanded.

Civil Security Department (CSD)[63]

137. The Sri Lankan National Home Guard Service was established as a volunteer service in the mid 1980's to protect the border and rural villages that were threatened by LTTE. It was originally placed under the Police Department. According to Civil Security Department website, in September 2006, the Home Guard Service was restructured by Presidential decree, and the Civil Security Department was established under the Ministry of Defence. Military uniforms were issued and volunteers began to be paid a salary. The role of the CSD was to assist the police and military in security and law and order functions. The first Director General, appointed in 2006, was Rear Admiral Dr. Sarath Weerasekare. He was replaced in February 2009 by Rear Admiral Ananda Peiris. The current CDS Director General, appointed in February 2015, is a civilian.

Paramilitary Groups

138. The groups listed below are the main Tamil paramilitary groups and parties which were allegedly involved in security operations with the Sri Lanka security forces, as well as independently carrying out their own activities during the period under review. The term 'paramilitary groups' is also sometimes used to refer to the above-mentioned Home Guard system which was operating under the Civil Service Department. However, the Home Guard's links to the security forces are official, unlike the groups mentioned below, whose links with Government forces were denied.

139. Over time the involvement of paramilitary groups with Government security forces became increasingly clear, as has been documented by the SLMM, various Special Rapporteurs and others. In his follow-up report of 14 May 2008, the Special Rapporteur on extrajudicial executions wrote that "There are also strong indications that these factions no longer constitute truly independent armed groups but instead receive direction and assistance from the security forces". [64] These links between the Government (primarily the Secretary of Defence), security forces (in particular the SLA and the police STF) and with the paramilitary groups were also highlighted by witnesses interviewed by OISL and other sources. A number of witnesses point to close links between Military Intelligence and both the Karuna Group and EPDP.

140. In its interim recommendations in 2010, the LLRC stressed the "apprehension in the minds of people due to continuing acts of extortion, abduction and other criminal acts by armed groups" and recommended their disarming as "a matter of the highest priority". [65] In its final report in 2011, the LLRC regretted the failure to act on its interim recommendation and said "proper investigations should be conducted in respect of the allegations against the

[62] Sri Lanka's Fourth Periodic Report to the Human Rights Committee, CCPR/C/LKA/2002/4, 18 October 2002

[63] http://www.csd.lk/index.php?option=com_content&view=article&id=52&Itemid=59

[64] A/HRC/8/3/Add.3, para 50

[65] https://llrclk.files.wordpress.com/2011/02/interim-recommendations.pdf

illegal armed groups with a view to ascertain the truth and the institution of criminal proceedings against offenders in cases where sufficient evidence can be found."[66]

The Karuna Group/TMVP

141. Vinayagamoorthy Muralitharan, known by his *nom de guerre* Colonel Karuna Amman, was originally the commander of LTTE in the Eastern Province, based in Batticaloa District. In 2004, Karuna broke away from LTTE, taking a number of his cadres with him, and formed a paramilitary group– often referred to as the Karuna Group. The Groups was allegedly linked with the Government security forces, particularly as hostilities intensified in 2006.

142. Under the terms of the CFA, the Karuna Group should have been disarmed by the Government. In his statement to the public hearings of the LLRC, on 17 August 2010, Gotabaya Rajapaksa claimed the Karuna Group (as well as other paramilitary groups such as EPDP and the Pillayan Group which later broke away from the Karuna Group) had been disarmed, but nevertheless acknowledged that the Karuna Group had "supported the Government for a long period" and that at the time, they "had to carry weapons" "for their own security".

143. OISL gathered information indicating to the contrary that the Karuna Group played a vital role in providing intelligence on LTTE after the split, and allegedly became engaged in covert activities against LTTE and those suspected of having links with LTTE, reportedly acting alongside, or on behalf of SLA, SLN and STF in particular. Towards the end of the armed conflict, and in its immediate aftermath, Karuna Group members helped the security forces identify LTTE cadres who had laid down arms and were amongst the thousands of civilians leaving the Vanni. They also performed a similar role in IDP camps. Karuna himself was brought to Nanthi Kadal lagoon to make the initial identification of the corpse of LTTE leader Prabhakaran.

144. The Karuna Group formed an associated political party called Tamil Makkal Viduthalai Pulikal (TMVP) which was officially registered in 2007. TMVP contested the Eastern Provincial Council elections in 2008, winning a majority. Karuna himself became Minister of National Integration under the Rajapaksa Government in March 2009.

145. Chapters XI and XIII of this report on unlawful killings and enforced disappearances reports allegations that the Karuna Group collaborated with the official security forces. The section of this report on the recruitment and use of children describes the extensive recruitment of children by the Karuna Group/TMVP, which led to its listing by the UN Security Council.

Pillayan Group

146. Pillayan was initially the deputy of Karuna but a further split occurerd in 2007 and he set up his own group. He became Chief Minister of the Eastern Province in May 2008.

Iniya Bharathi

147. K Pushpakumar, known as Iniya Bharathi was, according to press reports, appointed in 2011 as Sri Lanka Freedom Party (SLFP) organizer for Ampara District by President

[66] LLRC final report, para 9.73, para 9.74 http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf

Mahinda Rajapaksa. Iniya Bharathi's group was listed under the Security Council 1612 procedure for the recruitment of children.[67]

Eelam People's Democratic Party (EPDP)

148. The EPDP emerged in 1990 from a plethora of Tamil groups and is still active to this day, headed by Douglas Devananda. With the Government's support, EPDP became more politically orientated and won a number of parliamentary seats in the 1994 elections, becoming well established in the Jaffna district. Devananda himself held Ministerial positions on a number of occasions under Presidents Kumaratanga and Rajapaksa.

149. The paramilitary wing of EPDP was reportedly involved in tit-for-tat killings and other acts of violence. Towards the end of the conflict in 2009, EPDP was frequently cited as operating inside the closed military-run IDP camps. The freedom of movement that EPDP enjoyed in the camps clearly indicated official approval of their presence and activity.

Liberation Tigers of Tamil Eelam (LTTE)

150. LTTE emerged as a military and political force in the 1970s. Initially, LTTE was one of many different Tamil militant groups, including the Tamil Eelam Liberation Organization (TELO), the Eelam Revolutionary Organization of Students (EROS), the Eelam People's Revolutionary Liberation Front (EPRLF), and the People's Liberation Organization of Tamil Eelam (PLOTE). With time, it gradually asserted its authority as the so-called "sole and legitimate representative" of the Tamil people.

151. In the 1980's, the LTTE became increasingly capable of attacking SLA positions and holding territory, thereby establishing a stronghold in the north and controlling territory in the east of the island. By the time of the 2002 Ceasefire Agreement, it had acquired the trappings of pseudo-state institutions, including a police, courts and detention centres.

152. Paradoxically, Colombo-appointed Government Agents continued to work in LTTE controlled areas, even to the end of the conflict to deliver government services such as health and education. They also became the focal points for ordering, receiving and distributing humanitarian assistance in the LTTE-controlled areas in the final phase of the armed conflict.

153. The military wing of LTTE was over time organised along the lines of a conventional armed force, with uniformed troops grouped together into formed units based in fixed locations. Nonetheless, it still carried out hit-and-run and suicide attacks throughout the island. This continued until the last phases of the armed conflict in 2009 though there was a significant lull in such attacks during the initial ceasefire period between 2002 and 2005.

154. Following the 9/11 attacks in the United States of America, and the launch of the US-led 'war on terror' the rhetoric of the international community began to change and a growing number of States listed LTTE as a terrorist organization. Nevertheless, the LTTE continued to raise funds among the large Tamil diaspora, although this often involved criminal activity and extortion[68]. LTTE also maintained an extensive network of

[67] He was delisted in April 2012: Report of the Secretary-General on Children and Armed Conflict, 26 April 2012, A/66/782-S/2012/261

[68] OISL did not focus on the issues of illegal acquisition of military equipment, extortion or other such matters, which should be the subject of separate inquiries in the respective countries.

commercial and media resources throughout the world which also provided material and propaganda support to its cause.

155. The LTTE had a Military Wing, a Political Wing and an International Secretariat. The Political Wing and its Peace Secretariat dealt with political negotiations with the Government and other international actors involved in the peace process. During the period under review, the Political Wing was headed by Suppaya Paramu Thamilselvan, until he was killed in a Government airstrike on Killinochchi in November 2007 and then Balasingham Nadesan, the former LTTE police chief. It was also involved in recruitment and granting permission to leave LTTE-controlled areas in some cases. The International Secretariat, headed by Veerakathy Manivannam *a.k.a.* Castro, was responsible for propaganda, fund-raising and procurement overseas. The Peace Secretariat was headed by Seevaratnam Puleedevan until the end of the war in May 2009.

156. Overseeing these structures was a Central Governing Committee, headed by LTTE leader, Velupillai Prabhakaran, who also headed the Military Wing. The head of the LTTE Police until November 2007 was B. Nadesan, and the head of the Intelligence Wing Pottu Amman. The Sea Tigers were commanded by Thillailambalam Sivanesan (nom de guerre Col.'Soosai').

157. Although some mention will be made of the non-military parts of LTTE, this section essentially focuses on the military wing. Where possible this report tries to distinguish between LTTE military cadres and other LTTE cadres not involved in direct hostilities. Because of its secretive nature, it is not possible for OISL to detail the lower command structure.

LTTE military forces

158. The military wing of the LTTE consisted of a regular force and a reserve force. The regular force had a land, air and sea component (the Sea Tigers), an intelligence branch and a Special Forces unit. Women were encouraged to join and became a significant part of the overall force strength.

159. There are no exact figures for the total strength of the LTTE military wing, but estimates vary at different times from several thousand to 30,000 cadres. In the closing months of the armed conflict, deaths and desertions would have further reduced its forces, especially within the last few weeks, but no reliable figures exist. Recruitment – both voluntary and forced – is described in Chapters XI and XII of this report and includes the forced recruitment of adults and the recruitment and use of children.

160. Besides being the overall LTTE Leader, Prabhakaran was Commander-in-Chief of the Military Wing. The Central Governing Committee had a Military Secretariat that managed and coordinated the LTTE forces. It included the commanders of LTTE's seven (later six) military regions.

Land Forces

161. The land force was the largest component of the LTTE military wing and consisted of two Commands; the Northern Province Command (under Velayuthapllai Baheerathakumar (nom de guerre 'Theepan') who was killed in battle in April 2009 and then replaced by Colonel Bhanu) and an Eastern Province command (initially under Karuna, and after his defection by Colonel Thambirasa Thurairasasingam (nom de guerre Colonel 'Ramesh'). These were sub-divided into a further seven (six post-Karuna split) different military regions: Jaffna (Northen Front), Mannar, Mannalaru, Vavuniya, Trincomalee, Batticaloa and Amapara. Each region was headed by a Regional Commander. The land forces contained a number of Brigades and Regiments, but the exact

subordination of these is not clear. Nor is it clear if their formation designator truly reflects the size of the formation. These included:

Special Forces

162. Black Tigers: the 'Black Tigers' were the elite troops of LTTE. Although trained and heralded as Special Forces troops, they were in fact used mainly as suicide bombers. The Black Tigers were reportedly under the direct command of Prabhakaran and also provided his personal security detachment[69]. The Black Tigers were involved in conventional combat on land and at sea and guerrilla attacks, as well as assassinations.

Infantry Units

Charles Anthony Brigade (Northern troops)

Jeyanthan Brigade (Eastern troops)

Leopard Brigade (made up of children)

Imran Pandikhan Regiment

Vinothan Regiment

Women's Units

Mallaitivu Brigade

Sothiya Brigade

Anbarasi Brigade (used as an anti-aircraft unit)

Support Units

Victor Regiment (anti-tank)

Kittu Artillery Brigade

Kutti Sri Mortar Brigade

Ponnamman Mining Unit

Intelligence

163. The Tiger Organisation Security Intelligence Service (TOSIS) was responsible for intelligence gathering and for counter-intelligence within the organization. The Commander of TOSIS was Pottu Amman. TOSIS had two branches; the National Intelligence Service (NIS), and the Military Intelligence Service (MIS). NIS was the larger of the two and had field operatives. MIS was 'office based' and ran a network of agents within the Government security forces. It had separate departments for SLA, SLN and SLAF.

Navy Wing

164. The 'Sea Tigers', commanded throughout by Thillailambalam Sivanesan[70] (nom de guerre Colonel 'Soosai') were a very significant and effective component of LTTE military capability. The Sea Tigers maintained many small land bases and facilities mainly along the

[69] The Radha (Anti-Aircraft) Regiment were also reported as a bodyguard unit- perhaps safeguarding other senior officials. It was named after Lt Col Radha, a senior commander killed in a SLAF air raid in 1987.

[70] Reportedly killed in the final battle, on 18 May 2009 alongside Prabhakaran

north-east coast of the island, but also a few on the north-west side. They had both a military and a merchant role.

165. The military fleet had small and fast attack boats that would operate in inshore waters to attack land or sea targets. These fleets included suicide boats packed with explosives which would ram into SLN ships and then detonate.

166. The merchant fleet was responsible for shipping supplies into the LTTE-controlled area. This included small boat smuggling across the Palk Strait from India, and bringing ashore goods transferred from larger ocean-going cargo ships waiting offshore. The merchant fleet also included 'floating warehouses' that stayed far out to sea in an attempt to evade SLN interdiction.

167. The LTTE also conducted amphibious landings indicating that the Sea Tigers also had a troop-carrying capability, and engaged in joint operations with the LTTE land forces.

Air Force

168. LTTE was the only non-state armed group in the world to maintain its own air force, the Air Tigers. They operated a small fleet of six Czech-built light aircraft, which had been adapted to drop bombs. In purely military terms, the Air Tigers were of negligible importance, but the few missions that they flew delivered a huge propaganda coup for LTTE, and instilled fear among civilians living in Colombo.

Civil Defence Force

169. The Civil Defence Force consisted of two elements:

- A home-guard responsible for security in the villages, and defence against SLA attack;
- A border-guard, which helped to prevent infiltration by SLA forces.

170. During the last years of the conflict, entire villages were called to do short periods of civil defence training, including the elderly, and sometimes villagers were called up to do work such as dig bunkers. However, the civil defence force appeared to be a relatively loose structure. The fact that the villagers received civil defence training and may, in the eyes of the LTTE, have been part of the CDFs did not mean that all civilians in the Vanni could be considered as taking direct part in hostilities.

V. Legal framework

171. OISL has conducted its investigation within the framework of international human rights law, international humanitarian law and international criminal law.

International human rights law

172. Sri Lanka is a State party to nine of the core human rights treaties: the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (CMW) and the Convention on the Rights of the Child (CRC) and its Optional Protocols on the Involvement of Children in Armed Conflict, and on the Sale of Children, Child Prostitution and Child Pornography. In addition, Sri

Lanka has signed, but not ratified the Convention on the Rights of Persons with Disabilities.[71]

173. OISL also recalls the Declaration on the Protection of Persons from Enforced Disappearances[72], the Guiding Principles on Internal Displacement[73], the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[74] as well as the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity[75] as instruments that identify modalities, procedures and mechanisms for the implementation of existing obligations under international law, in particular international human rights law. OISL also considers the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law of 2005 to be of particular relevance.[76]

174. Sri Lanka is bound to respect, protect, promote and fulfil the human rights of all persons within its territory and subject to its jurisdiction. This includes the right to afford an effective remedy to those whose rights have been violated (including the provision of reparations and guarantees of non-recurrence), as well as the responsibility of the State to investigate and bring to justice perpetrators of particular violations.[77] Sri Lanka is also bound by relevant rules of international human rights law which form a part of customary international law.

175. OISL notes that Sri Lanka has submitted a Declaration of a State of emergency, dated 30 May 2000, derogating from articles 9 (2)[78], 9 (3)[79], 12 (1)[80], 12 (2)[81], 14 (3)[82], 17

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[71] Sri Lanka is not party to the following instruments: the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol on the International Covenant on Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty as well as the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

[72] Declaration on the Protection of Persons from Enforced Disappearances

[73] Guiding Principles on Internal Displacement

[74] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

[75] Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity

[76] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

[77] See Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on State Parties to the Covenant (2004), paras. 15-19. In this General Comment, the Human Rights Committee considered that the duty to bring perpetrators to justice attaches in particular to violations that are criminal under domestic or international law, torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in December 2005, and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (which were recognised in a consensus resolution of the UN Commission on Human Rights in 2005).

[78] Article 9(2) of the ICCPR provides for the following: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

[79] Article 9(3) of the ICCPR provides for the following: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees

(1)[83], 19 (2)[84], 21[85] and 22[86] of the ICCPR.[87] Measures taken pursuant to derogations are lawful to the extent they comply with the conditions set out in international human rights law. Article 4 of the ICCPR provides for the possibility for States to temporarily adjust certain obligations under the treaty in time of "public emergency which threatens the life of the nation", provided a number of conditions are met, notably that measures are limited to the extent strictly required by the exigencies of the situation, [88] that adequate safeguards are

to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment."

[80] Article 12(1) of the ICCPR provides for the following: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

[81] Article 12(2) of the ICCPR provides for the following: "Everyone shall be free to leave any country, including his own."

[82] Article 14(3) of the ICCPR provides for the following: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;
(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt."

[83] Article 17(1) of the ICCPR provides for the following: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."

[84] Article 19(2) of the ICCPR provides for the following: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

[85] Article 21 of the ICCPR provides for the following: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

[86] Article 22 of the ICCPR provides for the following: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. (…)"

[87] On 9 June 2010, Sri Lanka notified the termination of derogations under the following ICCPR provisions: 9 (2), 12, 14 (3), 17 (1), 19 (2), 21 and 22 (1).

[88] This obligation reflects the principle of proportionality which is common to derogation and limitation powers. Any measures thus taken need to be in genuine response to the situation, aimed at the restoration of a constitutional order respectful of human rights and be fully justified by the circumstances. Therefore, the mere fact that derogating from a specific provision may, of itself, be

set up to protect against arbitrary and disproportionate interference with human rights[89] and that procedural safeguards shall never be limited in a manner that would circumvent the protection of non-derogable rights.[90]

176. Article 4 of the ICCPR also requires that measures derogating from the provisions of the Covenant are not inconsistent with a State party's "other obligations under international law", particularly under international humanitarian law.[91] In this regard, the Human Rights Committee observed that, as certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, there is no justification for derogation from these guarantees during emergency situations.[92] This is particularly relevant with respect to measures that, depending on the circumstances, may have amounted to collective punishments, and are also as such prohibited under international humanitarian law[93].

177. Furthermore, a number of other acts are prohibited at all times and therefore cannot be made subject to lawful derogations. These include the prohibitions against the taking of hostages, abductions or unacknowledged detention; deportation or forcible transfer of population without grounds permitted under international law, in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present; propaganda for war, or advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.[94]

178. International human rights law applies both in peace and in times of armed conflict.[95] The United Nations Human Rights Committee stated that the ICCPR applied also in situations of armed conflict, specifying that "[w]hile, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for

justified by the exigencies of the situation does not obviate the requirement to demonstrate the necessity of the concrete measures taken pursuant to the derogation.

89 Human Rights Committee, General Comment No. 29 'States of emergency (Article 4)', UN Doc. CCPR/C/21/Rev.1/Add.11, para. 4.

90 This was emphasized by the Committee both in General Comment no. 29 States of emergency (Article 4)', UN Doc. CCPR/C/21/Rev.1/Add.11 and in its new General Comment no 35 on the liberty and security of person (Article 9), UN Doc. CCPR/C/GC/35 where the Committee unequivocally stated that habeas corpus was non-derogable (paras. 65-67).

91 Human Rights Committee, General Comment No. 29 'States of emergency (Article 4)', UN Doc. CCPR/C/21/Rev.1/Add.11, para. 9.

92 General Comment No. 29: 'States of emergency (Article 4)', UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 16. The Human Rights Committee referred to its Concluding Observations on Israel (1998, CCPR/C/79/Add. 93), where it stressed that a State party may not depart from the requirement of effective judicial review of detention.

93 Jean Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Cambridge, CUP, 2006, Rule 103. The rules and the updated related practice are now available on the ICRC Database on customary international humanitarian law, to which this report refers to.

94 General Comment 29, para. 13.

95 The International Court of Justice (ICJ), in its Nuclear Weapons Advisory Opinion, held that the protection of the International Covenant for Civil and Political Rights does not cease in situations of armed conflict95. The Court later confirmed this position and identified three possible situations as regards the relationship between international humanitarian law and human rights law stating that "some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law." *Legal Consequences of the Construction of a Wall in the Occupied Palestinian territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, para. 106.

the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive."[96]

179. The concurrent application of international humanitarian law and international human rights law in situations of armed conflict means that the provisions of the two bodies of law should be read together and reconciled, as far as possible.

International humanitarian law

180. International humanitarian law regulates the conduct of parties to the armed conflict by protecting those who do not or no longer directly participate in hostilities and by regulating the means and methods of warfare with the aim of restricting the use of armed force "to the amount necessary to achieve the aim of the conflict, which – independently of the causes fought for – can only be to weaken the military potential of the enemy."[97]

181. In situations of armed conflict, all parties to the conflict are bound by the applicable rules of international humanitarian law, whether customary or treaty based. 13. Sri Lanka is a party to the four Geneva Conventions of 12 August 1949.[98] Sri Lanka is also a party to the Convention prohibiting Certain Conventional Weapons of 1980, including its amended Article 1 and its Protocol I on non-detectable fragments, amended Protocol II prohibiting mines, booby-traps and other devices, Protocol III prohibiting incendiary weapons and Protocol IV on blinding laser weapons.[99] It has further ratified the Geneva Protocol on Asphyxiating or Poisonous Gases, and of Bacteriological Methods, the Convention on the Prohibition of Biological Weapons as well as the Hague Convention for the Protection of Cultural Property.

182. Article 3 common to the four Geneva Conventions relating to conflicts not of an international character is applicable to the situation in Sri Lanka, with all parties to the conflict being bound to respect the guarantees pertaining to the treatment of civilians and persons *hors de combat* contained therein.[100] Common Article 3 binds all parties to the conflict to respect, as a minimum, that persons taking no direct part in hostilities as well as those placed *hors de combat* shall be treated humanely, without any adverse distinction. [101]

183. In addition, the Government and armed groups that are parties to the conflict are bound alike by the relevant rules of customary international law applicable in non-international armed conflict.

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[96] Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 11.

[97] Sassòli, M., Bouvier, A., Quintin A. (eds), How Does Law Protect in War?, (3rd edn., Geneva: ICRC, 2011), Vol. I, at 1.

[98] Sri Lanka has not ratified Additional Protocols I, II and III on the protection of victims of international armed conflicts and non-international armed conflicts, and on the adoption of an additional distinctive emblem, respectively.

[99] Sri Lanka has ratified these instruments on 24 September 2004. See https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=LK

[100] ICJ, Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), I.C.J. Reports, 1986, p. 14, para. 218,.The International Court of Justice has held that the rules contained in common Article 3 reflected elementary considerations of humanity.

[101] Common Article 3 prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity as well as the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, respecting the generally recognized principles of fair trial and due process.

184. International humanitarian law prohibits direct attacks on persons not taking direct part in hostilities as well as "violence to life and person, in particular killing of all kinds, mutilation, cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment".[102] Obligations of parties to the conflict in the conduct of hostilities are governed by the principles of distinction, proportionality and precaution, at all times:[103]

185. The principle of **distinction** requires that parties to a conflict distinguish between civilians and civilian objects on the one hand, and lawful military targets on the other. Attacks may only be directed against the latter.[104] All objects that do not qualify as military objectives shall be considered civilian and be protected against direct attack. Civilians are protected against direct attack. They may however lose their protection from attack if and for such time as they directly participate in the hostilities.[105]

186. The principle of **proportionality** prohibits attacks that are expected to cause incidental loss of life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.[106]

187. The principle of **precaution** requires all parties to take all feasible measures to avoid and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.[107] Precautions against the effects of attacks include, most importantly, the obligation to avoid locating military objectives within or near densely populated areas, to the extent feasible as well as taking all feasible measures to remove civilian persons and objects under the control of a party to the conflict from the vicinity of military objectives.[108]

188. Parties to the conflict have the obligation to respect medical units and transports as well as personnel and not make them object of attack. The protection to which medical units and transports are entitled shall not cease unless these are used to commit hostile acts,

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[102] See Article 3 common to the four Geneva Conventions.
The principle of distinction is a cardinal principle of international humanitarian law rooted in the rationale of international humanitarian law to limit the use of armed violence to what is necessary to weaken the military potential of the enemy. A number of concrete rules can be derived of this principle, such as the prohibition on the direct targeting of persons not taking direct part in hostilities as well as on launching indiscriminate attacks. Moreover, the principle of distinction also requires parties to the conflict to limit incidental damage to civilians and civilian objects and to take all feasible measures to protect civilians from the effects of hostilities. This is also clearly reflected in customary law applicable in non-international armed conflicts. See ICRC, Database on customary international humanitarian law, Chapter I: The Principle of Distinction, Rules 1-24.

[104] In order for an object or building to be considered a military objective it must meet two cumulative criteria namely that (1) by its "nature, location, purpose or use [it] make[s] an effective contribution to military action" and, (2) the object's "total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer[s] a definite military advantage." See ICRC, *Database on customary international humanitarian law*, Rule 9.

[105] See Article 13(3) Additional Protocol II and 51(3) of Additional Protocol I; ICRC, Database on customary international humanitarian law, Rule 6.

[106] See ICRC, Database on customary international humanitarian law, Rule 14. See also Articles 51(5) and 57(2) Additional Protocol I.

[107] Parties to the conflict have the duty to take such precautionary measures in attack as well as against the effects of attacks. Precautions in attack include verifying that the target is a military objective and that the attack respects the proportionality requirement; choosing weapons and timing for the attack with a view to avoiding or minimizing civilian casualties; issuing advance warnings when feasible; and suspending an attack if it becomes apparent that it does not respect the principle of proportionality.

[108] ICRC, *Database on customary international humanitarian law*, Rules 23-24. See also Article 57 Additional Protocol I.

outside their humanitarian function. International humanitarian law however requires that protection of such objects only cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.[109]

189. The obligations of a party to the armed conflict under international humanitarian law do not depend on the conduct of the opposing party, as the duty to respect international humanitarian law is not conditioned on reciprocity.[110] Violations of international humanitarian law attributable to one of the parties to the conflict do not justify lack of compliance in response on part of the opposing party.[111] Similarly, common Article 1 of the Four Geneva Conventions of 1949 provides that all "High Contracting Parties undertake to respect and ensure respect" for the four Geneva Conventions in all circumstances.[112]

International criminal law

190. States have the primary obligation to ensure accountability for gross violations of international human rights law and serious violations of international humanitarian law, in particular those that amount to crimes under international law.[113] To comply with this obligation, States must ensure that their domestic legislation constitute the necessary legal basis to enable domestic courts to duly exercise jurisdiction over such crimes, in accordance with applicable principles of customary and treaty law.[114] Indeed, States must take appropriate measures to ensure that those suspected of having committed crimes under international law are prosecuted and, if found responsible, duly punished. [115] States shall further provide victims with effective remedies and ensure that they receive reparation for the injuries suffered, ensure the inalienable right to know the truth about violations and take other necessary steps to prevent a recurrence of violations.[116]

191. Depending on the circumstances, military commanders and other superiors may bear criminal responsibility for crimes they directly committed, ordered or instigated, and also for crimes perpetrated by those under their command or effective control, when they knew

[109] Articles 9-11, Additional Protocol II; ICRC, Database on customary international humanitarian law, Rules 25-26, 28-30.

[110] See ICRC, Database on customary international humanitarian law, Rules 140 and 144. See also Article 60(5), Vienna Convention on the Law of the Treaties.

[111] The wording of common Article 3 providing that the guarantees contained therein shall be applicable "in all circumstances" further reinforces this obligation.

[112] The International Court of Justice stated the obligation to 'ensure respect' is not limited to States' own behaviour but extends to a duty not to encourage parties to a conflict to act in violation of international humanitarian law. State practice since the adoption of the Geneva Conventions has also made clear that the obligations of common Article 1 are not limited only to those States involved in an armed conflict; rather all States "must exert their influence, to the degree possible, to stop violations of international humanitarian law." See ICJ, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports, 1986, p. 14, para 220.

[113] Such crimes are considered to encompass war crimes, crimes against humanity, genocide, enforced disappearance and torture.

[114] Set of principles for the protection and promotion of human rights through action to combat impunity, Principle 21.

[115] Statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law, which constitute crimes under international law. 1968 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity ; United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 6.

[116] Set of principles for the protection and promotion of human rights through action to combat impunity, Principle 1.

or should have known that such acts were being or were about to be committed and failed to take all necessary and reasonable measures to prevent or punish these acts.[117]

192. International crimes are deemed to include the following:

War crimes

193. Serious violations of the laws and customs of war that entail individual criminal responsibility under customary or conventional law[118] constitute war crimes. These include, *inter alia*, violations of common Article 3 of the Four Geneva Conventions,119 as well as other serious violations of the laws and customs of war.

194. In order for such acts to be considered war crimes, a nexus to an armed conflict needs to be established. The nexus requirement has been interpreted as requiring the criminal conduct to be closely related to the hostilities, that is the offence must be committed to pursue the aims of the conflict or, alternatively, be carried out "with a view to somehow contributing to attain the ultimate goals of a military campaign or, at a minimum, in unison with the military campaign".[120]

Crimes against humanity

195. Inhumane acts intentionally causing great suffering, or serious injury to body or to mental or physical health, if committed as part of a widespread or systematic attack against a civilian population, may constitute crimes against humanity.

196. As crimes against humanity relate to conduct which is 'impermissible under generally applicable international law, recognized by the principal legal systems of the world'[121], the obligation to establish and exercise jurisdiction over such crimes exists independently of treaty obligations

197. For a crime against humanity to be committed, the civilian population must be the object of an attack that is 'widespread or systematic'. The two conditions are disjunctive, meaning that it is not required for the attack to satisfy both. The population against whom the attack is directed is considered civilian if it is predominantly civilian in nature. The

[117] United Kingdom, Military Court at Wuppertal, Trial of Major Karl Rauer and Six Others, 18 February 1946, reported as Case no. 23 in the United Nations War Crimes Commission, Volume IV, London, HMSO, 1948 (para. 656); Military Tribunal at Nuremberg, The United States of America v. Wilhelm Von Leeb, et al. (The High Command Trial), 27 October 1948 (para. 657) and Military Tribunal at Nuremberg, The United States of America v. List et al. (Hostages Trial), 19 February 1948 (para. 658); United States, Supreme Court, Yamashita case, 327 U.S. 1 (1946), 4 February 1946 (para. § 659);Article 28 Rome Statue of the ICC, article 7(2) of the Statute of the ICTY and article 6(2) of the Statute of the ICTR. See also ICRC, Database on Customary International Humanitarian Law, Rule 152.

[118] Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *Tadić* (IT-94-1-AR72), 2 October 1995, para 94. See generally G Abi-Saab, 'The Concept of "War Crimes"', in S Yee and W Tieya (eds), International Law and the Post-Cold War World: Essays in Honour of Li Haopei (Routledge, 2001) 99, 112. See also Sivakumaran, S., *The Law of Non-International Armed Conflict*, (Oxford: Oxford University Press, 2012), 475– 8.

[119] Article 4, Statute of the International Criminal Tribunal for Rwanda, article 8 Rome Statute of the International Criminal Court, article 3 Statute of the Special Court for Sierra Leone. See also, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *Tadić* (IT-94-1-AR72), 2 October 1995; Judgment, *Delalić, Mucić, Delić and Landzo* (Celebici Case), IT-96-21-A, 20 February 2001, para. 136.

[120] Cassese, The Nexus Requirement for War Crimes, J Int Criminal Justice (2012) 10 (5): 1395-1417, at 1397.

[121] Elements of Crimes of the Rome Statute of the International Criminal Court, Art. 7

presence of individuals within the civilian population who do not come within the definition of civilians does not deprive the population of its civilian character.[122]

198. The term 'widespread' generally refers to the large-scale nature of the attack and the number of victims.[123] However, an attack may also be considered widespread by the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude".[124]

199. The concept of a 'systematic' attack refers to the organized nature of the acts of violence and the improbability of their random occurrence.[125] This would in principle be reflected in the non-accidental repetition of similar criminal conduct following a regular pattern.[126]

Genocide

200. Sri Lanka is a party to the Convention on the Prevention and Punishment of Genocide of 1948. The Convention requires High Contracting Parties to take a series of measures aimed at giving effect to the Convention, including by enacting the necessary legislation providing effective penalties for persons guilty of genocide.[127] Persons charged with genocide "shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction".[128]

201. The Convention as well as corresponding customary international rules define the crime of genocide as requiring specific objective and subjective elements.

202. The objective element is twofold. The first, relating to prohibited conduct (*actus reus*), requires the offence to take the form of: (a) killing, (b) causing serious bodily or mental harm, (c) inflicting on a group conditions of life calculated to bring about its physical destruction, (d) imposing measures intended to prevent birth within the group or (e) forcibly transferring children of the group to another group.[129] The second objective element requires that the group targeted by the prohibited conduct be a national, ethnical, racial or religious group.

203. The subjective element (*mens rea*) is similarly twofold and calls for, in addition to the criminal intent required for the underlying offence, the intent to destroy, in whole or in part, the targeted group as such.

[122] Judgment, *Naletilić and Martinović* (IT-98-34), Trial Chamber, 31 March 2003, par. 235; Judgment, *Akayesu* (ICTR-96-4), Trial Chamber, 2 September 1998, para. 582; Judgment, *Jelisić* (IT-95-10-T), Trial Chamber, 14 December 1999, para. 54.

[123] Warrant of Arrest for Omar Hassan Ahmad Al Bashir, Pre-Trial Chamber I, ICC-02/05-01/09, 4 March 2009, para. 81, Katanga, 30 September 2008, paras. 394-397

[124] Judgment, *Blaškić* (IT-95-14), Trial Chamber, 3 March 2000, para. 206; Judgment, *Kordić and Čerkez* (IT-95-14/2-T), Trial Chamber, 26 February 2001, para. 179 ; Judgment, *Kordić and Čerkez* (IT-95-14/2-A), Appeals Chamber, 17 December 2004, para. 94.

[125] Warrant of Arrest for Omar Hassan Ahmad Al Bashir, Pre-Trial Chamber I, ICC-02/05-01/09, 4 March 2009, para. 81, Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Decison on the confirmation of charges, Pre-Trial Chamber I, ICC-01/04-01-/07, 30 September 2008, paras. 394-397

[126] Warrant of Arrest for Omar Hassan Ahmad Al Bashir, Pre-Trial Chamber I, ICC-02/05-01/09, 4 March 2009, para. 81, Katanga, Decison on the confirmation of charges, paras. 394-398

[127] Convention on the Prevention and Punishment of Genocide, Article V.

[128] Convention on the Prevention and Punishment of Genocide, Article VI.

[129] Convention on the Prevention and Punishment of Genocide, Article II.

Torture

204. International law contains an absolute and peremptory prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as set out *inter alia* in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR).[130] The right to be free from torture cannot be limited or derogated from under any circumstances.[131]

205. CAT defines torture as a discrete crime under international law[132] requiring

1) intentional infliction of severe pain or suffering, whether physical or mental

2) for a specific purpose, such as to obtain information or a confession, as punishment or to intimidate or coerce, or for any reason based on discrimination of any kind,

3) by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[133]

International humanitarian law explicitly prohibits the torture and cruel treatment of persons taking no active part or persons taking no longer active part in hostilities.134 Such conduct may constitute a war crime when committed during an armed conflict, if a nexus with the conflict is established. Separately, it may amount to a crime against humanity if committed as part of a widespread or systematic attack against civilians.

Enforced disappearances

206. While Sri Lanka is not a party to the International Convention for the Protection of all Persons from Enforced Disappearance135, it is a party to the ICCPR, provisions of which are infringed by enforced.

207. Disappearance. Enforced disappearance constitutes a unique and integrated series of acts that represents continuing violation of various rights recognized in the ICCPR. Acts of enforced disappearance are recognized to constitute an offence to human dignity as they place the persons affected outside the protection of the law and inflict severe suffering on them and their families.[136] Enforced disappearance potentially encompasses multiple violations of human rights, inter alia, the right to recognition as a person before the law, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or

130 To which Sri Lanka acceded in 1980 and 1994 respectively

131 Article 4(2), International Covenant on Civil and Political Rights, Article 2(2) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

132 Torture may also amount to a war crime, if perpetrated in connection with an armed conflict, as well as to a crime against humanity, if committed as part of a widespread or systematic attack directed against a civilian population. That the act is committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity is not a requirement in order to classify a conduct as torture as a war crime or a crime against humanity.

133 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Article 1.1.

134 Common Article 3 of the Geneva Conventions.

135 Article 2 of the International Convention for the Protection of all Persons from Enforced Disappearance defines enforced disappearance as 1) the arrest, detention, abduction, or any other form of deprivation of liberty 2) by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, 3) followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

136 Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, 18 December 1992, Article 1.

punishment, the right to liberty and security of the person and freedom from arbitrary detention including the right to be brought promptly before a judge or other official for review of the lawfulness of detention, the right to respect privacy, family, home and correspondence, as well as, in some cases, even the right to life or the State's failure to protect the right to life. [137]

208. Customary international law requires States to ensure that they do not practice, permit or tolerate enforced disappearances and that they take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under their jurisdiction, including by making enforced disappearance a criminal offence.[138]

[137] Enforced disappearances, if committed as part of a widespread or systematic attack directed against a civilian population, also amount to a crime against humanity. Moreover, elements of enforced disappearances may be prosecuted as freestanding crimes both under domestic and, under certain circumstances, also under international law.

[138] Declaration on the Protection of All Persons from Enforced Disappearance, Articles 2-4.

Part 2

VI. Unlawful killings

Introduction

209. This chapter documents extensive patterns of unlawful killings allegedly committed by both parties, as well as by paramilitary groups linked to the security forces, which occurred from 2002 to 2011.[139] Some of these killings occurred after unlawful arrests or abductions, others were extrajudicial killings or assassinations. Suicide bombings by the LTTE also resumed during this period. Both the LTTE and army were also reportedly responsible for unlawful killings through the use of claymore mine attacks. Incidents in this section of the report are analysed within the framework of international human rights law, in particular the right to life.

210. In cases in which the incident is linked to the armed conflict, OISL also refers to relevant rules of treaty and customary international humanitarian law. These include, in particular, article 3 common to the four Geneva Conventions of 1949, which prohibits violence to life. It refers, in particular, to the murder of persons taking no active part in hostilities or those who are *hors de combat*, including by detention, and the customary rules relating to the conduct of hostilities, namely the principle of distinction which prohibits parties to a conflict to direct attacks against civilians or civilian objects.

211. The section also reviews allegations of the sexual mutilation and desecration of bodies of Tamils, mainly female, by the security forces during the final phase of the conflict.

212. Deaths in custody of regular criminal suspects are not covered by this investigation but it is important to note that the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in his 2006 report a pattern of deaths in police custody and the link to the routine use of torture.[140]

213. Given the extent of the allegations of unlawful killings during the period under review, OISL has focussed on emblematic cases indicative of some of the groups affected, such as journalists, humanitarian workers and politicians, as well as members of the Muslim community. Several of the emblematic cases documented in this section remain to be investigated or are under investigation, showing some of the major obstacles to accountability.

214. As part of its investigations, OISL interviewed first-hand witnesses including persons who were present at the location during or shortly after the alleged killings took place and relatives of victims who have spoken about the aftermath. Reports by Special Rapporteurs - such as that of the Special Rapporteurs on extrajudicial, summary and arbitrary executions (2005, 2008, 2011)[141] and of Torture (2007)[142] also provided important

[139] This chapter does not cover killings or deaths that occurred in other circumstances, in the course of the conduct of hostilities; these are detailed in a later chapter, as well as in the chapter on restrictions on movement.

[140] E/CN.4/2006/53/Add.5, 27 March 2006: Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Philip Alston, Addendum, Mission to Sri Lanka (28 November to 6 December 2005).

[141] Op.cit, A/HRC/8/3/Add.3 (2008); A/HRC/17/28/Add.1 (June 2011).

[142] A/HRC/7/3/Add.6

information regarding patterns and cases of killings by the LTTE, Government forces and paramilitary groups, as did the SLMM. OISL has received video and photographic material as well as autopsy reports of victims. OISL has also reviewed the unpublished report of the Presidential Commission of Inquiry appointed to investigate and inquire into alleged serious violations of Human Rights arising since 1 August 2005, established in 2006 and known, after its Chair, as the Udalagama Commission, and the reports of the International Independent Group of Eminent Persons (IIGEP) which was set up to observe its work.

215. Since the end of the armed conflict in 2009, video and photographic material has emerged depicting disturbing images from the last phase of the war. OISL received a large body of photographic and video material, much of which is not in the public domain. OISL has examined this body of material with the assistance of an independent forensic medical expert. OISL has also relied on a technical report demonstrating the authenticity of some of the video footage depicting an extrajudicial execution which was presented at the 17th HRC session in 2011 by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns.[143]

Patterns of unlawful killings - 2002-2011

216. Unlawful killings by Government security forces, including police, SLA and SLN, as well as by the LTTE predate the period under review and persisted until 2009 and beyond, with some alleged killings perpetrated by security forces continuing after the conflict. Although detailed and reliable statistics on the number of unlawful killings during OISL's mandate period are not available, United Nations Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture who visited the country described in their reports a disturbing pattern of violations of the rights to life that continued with almost complete impunity. In addition, Sri Lankan civil society organisations and international NGOs have documented and reported on hundreds of cases. The SLMM inquired into and ruled on numerous cases of killings falling under the CFA.[144] Information available to OISL indicates that there were more than one thousand cases of alleged assassinations reported to the SLMM during its operation in Sri Lanka between 2002 and early 2008. The monitoring mission repeatedly urged the parties to cease the killings. [145]

217. According to the available information, the scale of such killings varied over time. During the initial ceasefire period, there were fewer cases reported throughout the country. However, from 2004 and especially late 2005, unlawful killings, including targeted killings of political figures, humanitarian workers and journalists, began to escalate. In the report of his visit to Sri Lanka from 28 November to 6 December 2005, the former Special Rapporteur on extrajudicial executions, Philip Alston, noted that unlawful killings were "a

[143] A/HRC/17/28/Add.1.

[144] Specifically articles 1.2 on Military Operations and 2.1 on Hostile Acts against the Civilian Population."1.2 Neither Party shall engage in any offensive military operation. This requires the total cessation of all military action and includes, but is not limited to, such acts as: a) The firing of direct and indirect weapons, armed raids, ambushes, assassinations, abductions, destruction of civilian or military property, sabotage, suicide missions and activities by deep penetration units; b) Aerial bombardment; c) Offensive naval operations. 2.1 The Parties shall in accordance with international law abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment."

[145] SLMM Final Report, p. 103. SLMM press releases, for example in May 2004, March 2005 and April 2006, quoted in SLMM final report.

singularly important element in the exacerbation of the conflict."[146] He referred to "the most credible estimates" of the number of political killings to be over 300 in 2005 alone,[147] and noted that almost none of these killings had been effectively investigated and "remarkably few" resulted in convictions. [148]

218. As with enforced disappearances, it was the emergence of the Karuna Group in the Eastern Province from April 2004, alongside other paramilitary groups such as the EPDP (which had been operating in the Northern Province for some time), which changed both the scale and the nature of unlawful killings, particularly in the Eastern and Northern Provinces. In the East, following the Karuna split, observers noted a prevailing sense of fear among the civilian population as a result of the brutality of the killings, which had not been seen since prior to the ceasefire period in Sri Lanka.[149] The Special Rapporteur on extrajudicial killings also noted that "many people – notably Tamil and Muslim civilians – face a credible threat of death for exercising freedoms of expression, movement, association and participation in public affairs".

219. Because of the covert nature of the military, paramilitary and LTTE operations during this period, and the similarities in some of the *modus operandi*, it was sometimes difficult to determine who was responsible for unlawful killings. The absence or shortcomings of investigations also meant that perpetrators have usually not been identified. Even when investigations were launched, witnesses were too afraid to come forward. Both the main parties to the armed conflict frequently blamed killings on the other side. Nevertheless, on the basis of the information OISL has obtained, there are reasonable grounds to believe that security forces, associated paramilitary groups and the LTTE were directly involved in many targeted killings.

220. Another key feature of this period was the many mutual retaliatory killings between the LTTE and the different groups that split from it, whereby each of these groups targeted individuals suspected of being members, collaborators or informants of the others. [150] In the report of his mission to Sri Lanka, the Special Rapporteur on extrajudicial executions referred also to the "many civilians in the East who have been killed as a consequence of the low-intensity conflict between the LTTE and the Karuna Group". [151]

221. The LTTE carried out killings of individuals they believed to be cooperating with security forces and the Karuna Group, as well as politicians, public officials, academics and other Tamils perceived as being moderates. [152] In his 2006 report, the Special Rapporteur noted that the "LTTE's classification of its political opponents within the Tamil community as "traitors" and its efforts to enforce obedience with killings constitute fundamental violations of human rights."[153]

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146 E/CN.4/2006/53/Add.5, 27 March 2006, Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Philip Alston Addendum, Mission to Sri Lanka (28 November to 6 December 2005).

147 E/CN.4/2006/53/Add.5, Op.cit.

148 E/CN.4/2006/53/Add.5, Op.cit.

149 SLMM documentation.

150 A/HRC/8/3/Add.3 (2008): Special Rapporteur on Extrajudicial, summary or arbitrary executions, Follow-up report, p. 99. Covert military operations to carry out targeted killings amounted to a 'shadow war' between Army backed paramilitaries and the LTTE military intelligence. This was increasingly the pattern throughout the conflict areas, where intelligence operatives were at the front of a low intensity war of attrition.

151 E/CN.4/2006/53/Add.5, Op.cit.

152 Humanitarian Operation Factual Analysis, MOD, Op.cit.

153 E/CN.4/2006/53/Add.5, Op.cit.The Special Rapporteur on extrajudicial, summary or arbitrary executions stated that "to the extent that the diaspora is funding the ongoing killing and terrorizing of

222. The *modus operandi* for such killings by the LTTE included the use of 'pistol groups' whose members reportedly were drawn primarily from its Intelligence Wing (see Chapter IV). They were used, in particular, to kill police officers, military intelligence, Tamil informants and members of rival Tamil groups. [154] Such killings were often carried out by two men on a motorcycle, one of whom would shoot the victim with a handgun, before making a swift escape. This was a similar *modus operandi* to killings attributed to members of the security forces and paramilitary groups. Killings would typically take place in broad daylight in front of witnesses, but the witnesses would usually deny being able to identify or describe the perpetrators to police, the SLMM and others. The members of these pistol groups also allegedly killed Tamil informants working with the Army's Long Range Reconnaissance Patrols, which eliminated some LTTE leaders inside LTTE-controlled territory.[155]

223. Another hallmark and widely repudiated tactic of the LTTE was suicide attacks, which were frequent prior to the ceasefire period and were resumed in late 2005 until 2009. Most suicide attacks during the period of OISL's investigation targeted the security forces, although some targeted civilians. One example of the suicide attacks allegedly committed by the LTTE which affected civilians occurred at the Fort Railway Station in Colombo on 3 February 2008. It resulted in the deaths of 12 civilians, mostly students, and injured over 100 people.[156] Another such attack, documented in the chapter on Controls on Movement, resulted in the deaths of a number of 28 individuals, civilians and security force personnel, at an IDP registration point in February 2009.

224. In December 2005, the LTTE also escalated their use of roadside claymore mines which increasingly affected civilians, many of them children, although the principal target may have been members of the security forces. [157] Initially the use of claymore mines was concentrated on the Jaffna peninsula. However, the practice soon extended to Government-controlled areas in the Vanni, with Vavuniya and Mannar Districts particularly affected. One such case, described later in this chapter, is the claymore mine attack on a bus carrying some 150 passengers in Kebethigollewa in which 64 people were killed. The SLMM recorded 20 separate claymore attacks in these districts between 1 April and 15 June 2006. It also concluded that the security forces were also using claymore mines to target the LTTE within the Vanni.[158] Such attacks continued to take place during 2007.

225. It has been reported that in Jaffna the LTTE organised civilian-dressed militia, sometimes known as the People's Force, which undertook targeted killings, primarily of security forces members, during 2006.[159] All these allegations must be investigated.

226. From 2006, the involvement of paramilitary groups with Government security forces became increasingly clear, as has been documented by the SLMM and the Special Rapporteurs. In his follow-up report of 14 May 2008, the Special Rapporteur on extrajudicial executions wrote that "there are also strong indications that these factions no longer constitute truly independent armed groups but instead receive direction and assistance from the security forces". [160] These links between the Government (primarily the

innocent civilians, the Governments of the states in which they live should enter into a serious dialogue with them on the findings of this report and the opportunities they might have to promote respect for human rights."

154 SLMM documentation. Rival Tamil organizations included the EPRLF, TELO, EPDP and PLOTE.

155 SLMM documentation.

156 Humanitarian Operation Factual Analysis, MOD, Op.cit.

157 SLMM documentation, SLMM final report; Humanitarian Operation Factual Analysis, MOD, Op.cit.

158 SLMM documentation.

159 SLMM documentation; E/CN.4/2006/53/Add.5, Op.cit.

160 A/HRC/8/3/Add.3, Op.cit.

Secretary of Defence), security forces (in particular the SLA and particularly Military Intelligence, and the police STF) and the paramilitary groups were also alleged by several sources.[161]

227. With regard to the killings by the security forces and paramilitary groups, the Special Rapporteur noted, for example, that between January 2006 and November 2007, as an "informed estimate" "the security forces committed a total of 700 extrajudicial executions in Jaffna" and that the EPDP was implicated in "a large number of these cases."[162] According to the information reviewed by OISL, potential suspects were sometimes identified at SLA and SLN checkpoints or through military interrogations, and they subsequently risked being killed by the EPDP.[163]

228. Information gathered by OISL indicates that there are reasonable grounds to believe that security forces and paramilitary groups were implicated in unlawful killings. A pattern emerged of killings of civilians in the vicinity of police checkpoints and SLA bases in Eastern districts and the North Western districts of Vavuniya and Mannar. In several of these cases, those allegedly responsible for killings had passed through areas with heavy police and military presence without being stopped.

229. The *modus operandi* of the security forces and paramilitary groups also involved "motorcycle killings" whereby two men in plain clothes on a motorbike would drive up close to a victim in the street and shoot the victim. Other killings took place after so-called "white van" abductions and unlawful arrests leading to enforced disappearances. Sometimes, the perpetrators arrived at the victim's home and shot them there, or took them away and killed them in another location. Victims were killed on their way to or from work, sometimes near army camps or police installations. In one documented case, for example, the perpetrators arrived on a motorbike from a nearby military base and spoke to nearby SLA soldiers before proceeding to the house of the victim and shooting him dead. Most victims were shot in the head at close range. [164]

230. With regard to Government forces, available information shows that in addition to the patterns of killings documented in earlier years, there are reasonable grounds to believe that Government forces were involved in a series of extrajudicial executions of captured LTTE cadres and others in the aftermath of the fighting. These cases are examined later in this chapter.

Victims of unlawful killings

231. This section highlights the different categories of individuals who were among the many victims of extrajudicial killings. These included humanitarian workers, journalists and politicians who may have been perceived as critics or supporters of one side or the other. The purpose of the killings appeared to be primarily to discourage moderate voices as well as repress and divide the population for political or tactical gain.165 Several killings of politicians occurred after they had drawn attention to human rights violations by security forces.

232. Ordinary civilians often from poor communities living in Government-controlled areas, sometimes in hotly contested areas were also caught between the two sides. They

[161] WS on file
[162] A/HRC/8/3/Add.3, Op cit, para.19.
[163] A/HRC/8/3/Add.3, Op.cit.; SLMM documentation.
[164] SLMM documentation.
[165] E/CN.4/2006/53/Add.5, 27 March 2006, para 5

were accused of passing information to either party and were killed either as part of retaliation for battle zone losses or as punishment for perceived affiliation. Informants and LTTE political wing cadres were also among the many victims, especially following the split of Karuna from the LTTE. In some instances, individuals were targeted on the mere basis of their relatives' suspected political affiliation. This was particularly the case in the Eastern and North-Western districts.

Killings of humanitarian workers

233. As of 2013, Sri Lanka figured as one of the countries with the highest numbers of humanitarian workers killed worldwide. A Sri Lankan NGO documenting killings and disappearances of humanitarian workers between January 2006 and December 2007 reported that such incidents escalated significantly, with concentration in the North and East of the country.166 The report noted that there was a killing or enforced disappearance of at least one person engaged in humanitarian service nearly every month and documented over 60 specific incidents. Organisations affected include Action Contre la Faim (ACF), the Sri Lanka Red Cross, and the Norwegian Refugee Council (NRC) among others. A global project which records major incidents of violence against aid workers documented 46 separate cases of 51 humanitarian workers being unlawfully killed in Sri Lanka between 2002 and 2011.167 OISL met with witnesses who testified to having observed first-hand the hardening climate of fear in 2006 and the explicit threats made by members of the security forces against national humanitarian workers and their relatives.168

234. The most significant case of humanitarian workers killed in Sri Lanka is the killing of 17 ACF workers in Muttur. On 1 August 2006, 17 local ACF staff deployed from Trincomalee by boat on their regular daily assignment to provide sanitation and water assistance in Muttur. Sixteen of the staff were Tamil while one was Muslim. Five were women. The same day, the LTTE attacked Muttur and temporarily took control of the town. During this time, security forces remained at certain locations, including in bunkers near the police station. As the returning boat was cancelled, the ACF staff were forced to remain in Muttur and were advised by the SLA that it would be safer for them to remain inside their compound, rather than to evacuate. ACF in Trincomalee lost radio contact with their staff in Muttur after 7 am on 4 August 2006. ACF, along with the SLMM, made several attempts to enter Muttur and evacuate the staff between 4 and 6 August, but the SLA repeatedly denied entry. On 5 August, the ACF received anonymous phone calls that their staff had been killed. There was never any official notification from the security forces. On 6 August 2006, a Sri Lankan NGO reported finding the bodies of the ACF staff inside their compound. The bodies were lined up and most were face down, executed with bullet wounds to the head. There was no damage to the building to indicate that an exchange of fire or shelling had taken place.

235. On 7 August 2006, ACF staff from the Trincomalee office entered the town and retrieved the bodies of their dead colleagues. In an advanced state of decomposition, the smell of the bodies could be detected from afar. The police and SLA had made no effort to secure the crime scene. On 29 August 2006, the SLMM ruled that "there cannot be any other armed groups than the security forces who could have been behind the act" finding the security forces by 4 August had gained full control over Muttur, which both the LTTE

166 Law and Society Trust, Under Fire: Persons in Humanitarian Service, A Preliminary Report on killings and disappearances of persons in humanitarian service in Sri Lanka January 2006 - December 2007, 2008

167 The Aid Worker Security Database (AWSD); https://aidworkersecurity.org/incidents/report/country. Between 2006 and 2009 47 humanitarian aid workers were killed in Sri Lanka.

168 WS on file

and the Sri Lankan security forces had controlled for periods of time during the first week of August.169

236. This case was not effectively investigated, illustrating the entrenched impunity enjoyed by perpetrators and the challenges met in furthering accountability at the domestic level in Sri Lanka. Evidence was either not collected, was tampered with or disappeared from the police investigation. The security forces from the outset pre-empted impartial investigations by declaring publicly already on 7 August 2006 that the LTTE was responsible. The Executive interfered with the inquest and shifted the case to a jurisdiction in a Sinhalese area where Tamils had difficulty attending the proceedings. The magistrate initially assigned the case was threatened. The international forensic pathologist appointed to oversee a second autopsy was harassed and retracted his finding that a bullet likely to be from a STF weapon was lodged in the skull of one of the victims.

237. The case was investigated by the Human Rights Commission of Sri Lanka and the Udalagama Commission. Several witnesses who testified to the Commission were threatened and due to the lack of witness protection were forced to leave the country. The Commission, with the assistance of the IIGEP, arranged for testimonies of key witnesses overseas to be obtained by video-link from abroad. However, after a few statements had been taken, the Chair of the Commission intervened and impeded the use of the video-link statements, upon advice from the Attorney-General. Police testifying to the Commission claimed they were unaware of the presence of the ACF and gave inconsistent and incomplete accounts. One observer said "an epidemic of willful blindness occurred amongst the Police".

238. The LLRC strongly recommended further investigations and the prosecution of offenders in the ACF case (para. 9.120). Whilst the investigations are still pending, the MOD nevertheless issued a public report in August 2014 which again refuted the involvement of the security forces and accused the ACF of being responsible. There has also been extensive harassment by security forces of the victims' relatives and of local ACF staff whenever international attention is drawn to such cases. Based on the information OISL has compiled, there are reasonable grounds to believe that members of the security forces committed the extrajudicial executions of the ACF staff. According to the Government, the Criminal Investigation Department (CID) has recorded statements of 18 military personnel since January 2015 and a further 22 are to be interviewed. CID wishes to interview two key witnesses believed to be living in France and has sought the assistance of the French Government. Other cases reviewed by OISL include the following:

239. On 16 May 2006, a 22-year-old NRC staff member was shot fatally in the head while cycling home after work within 200 meters from an SLA checkpoint near Vavuniya manned by soldiers from the 562 Brigade, who had quarrelled with and threatened the victim prior to his killing because he refused to use an NRC tractor to assist the SLA. The SLMM investigated the incident and ruled that the SLA was most likely responsible for the killing. Despite the fact that the Vavuniya Magistrate initially identified four suspects, the investigation is not believed to have proceeded.170

240. On 1 April 2007, six Sinhalese male civilians working on a post-tsunami construction project were shot dead at Mailampaaveli in the eastern district of Batticaloa. They were employed in building an orphanage for survivors of the 2004 Indian Ocean tsunami. One Sinhala and two Tamil workers were injured in the attack. The attack allegedly took place 300 meters from an STF camp at Mailampaaveli, eight kilometers

169 http://www.amnestyusa.org/pdf/srilanka2009.pdf

170 SLMM documentation; Law and Society Trust, *Under Fire: Persons in* Humanitarian *Service*;

north of Batticaloa town. The Government blamed the LTTE for the killings but the LTTE denied its involvement and accused the Karuna Group of being behind the attack. 171 To the knowledge of OISL, this case has not been investigated or prosecuted.

Killings of politicians

241. OISL has documented a number of cases of targeted killings of politicians during the reporting period. The Inter-Parliamentary Union (IPU), whose complaints mechanism receives cases relating to threats and killings of parliamentarians, has raised concerns over "the sheer number of cases received between September 2004 and August 2008 and the serious issues involved."[172] In most cases, the victims were Tamils. On the basis of the information obtained by the OISL, there are reasonable grounds to believe that the killings of politicians were committed in some cases by the LTTE, and in others by the security forces, sometimes in collusion with paramilitary groups (or vice-versa).

Foreign Minister Lakshman Kadirgamar

242. Foreign Minister Lakshman Kadirgamar was one of the most high profile politicians to be killed. He was shot by a sniper at his residence in Colombo in August 2005. The perpetrator was never identified, although preliminary police investigations accused the LTTE of committing the murder.[173] In March 2008, the LTTE leader Velupillai Prabhakaran and five others were charged with the assassination[174]. According to Government sources, several individuals have been arrested and indictments filed at the High Court in Colombo. The case was due to be heard again on 9 September 2015.

Joseph Pararajasingham,Tamil MP

243. On 24 December 2005, Joseph Pararajasingham, an MP for the Tamil National Alliance (TNA)[175] was shot dead while attending midnight mass at St Mary's Church, Batticaloa. Eight other persons, including his wife, were injured in the attack. The church was located between military checkpoints, in a high-security area with a large presence of security forces. Pararajasingham was assigned police bodyguards by the Ministry of Defence, who were present with him at the time when he was killed but allegedly did not attempt to prevent the shooting or apprehend the killers. Just days before the attack, his usual bodyguards had been replaced. The victim was shot with nine bullets in the back and in the chest in front of a church full of worshippers and the Bishop from whom he had just received communion. Witnesses saw two perpetrators in civilian clothing with pistols. They shot and killed the victim while members of the congregation fell to the floor. They fired shot up into the roof to make way for their escape out into the yard where they proceeded to climb over a wall surrounding the church. There were numerous security guards, police officers and two police constables present during the incident.[176]

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171 Law and Society Trust, *Under Fire: Persons in Humanitarian Service*, Asian Centre for Human Rights; http://www.achrweb.org/Review/2007/164-07.htm

172 IPU Public Mission report from Sri Lanka, July 2013, p.2

173 LLRC report, p.26 and the Humanitarian Operation Factual Analysis, MOD, Op.cit. both claim LTTE was responsible. However, the LTTE never accepted responsibility for the crime. CID Police reports also indicated LTTE.

174 http://timesofindia.indiatimes.com/world/south-asia/Arrest-warrants-against-Prabhakaran-Pottu-in-Kadirgamar-case/articleshow/4525407.cms

175 Joseph Pararajasingham was also a member of the LTTE-affiliated Northeast Secretariat on Human Rights (NESOHR).

176 SLMM documentation.

244. The assailants exited the church unchallenged,despite the fact that it was under police guard, and allegedly departed in a white van in the direction of a nearby army camp. Joseph Pararajasingham had declined to support Karuna after his split from the LTTE and had previously been threatened by members of the Karuna group. Family members of the victim suffered further threats after the attack and fled the country. 177

245. OISL considers that, based on the information obtained, there are reasonable grounds to believe that the Karuna Group killed Joseph Pararajasingham, and that it was aided and abetted by security and army personnel. Initial police investigations identified and detained two suspects from the armed forces.178 However, the suspects were released due to the lack of testimony from witnesses, despite the many eye-witnesses to the killing. The killing was one of the incidents which were to be investigated by the Udalagama Commission. The Commission stated in its report that Pararajasingham's murder was not investigated by the Commission due to 'non availability of witnesses and time constraints.'[179]

246. A separate Presidential Commission headed by Retired Judge of the High Court Mahanama Tilakaratne was appointed to look into the killing in April 2006. In its final report of March 2007, also unpublished but reviewed by OISL, the Commission concluded that it could be a political crime, and blamed the CID for investigations that were "inadequate, and contrary to procedure established by law", partly because in the absence of evidence they had arrested two soldiers who were subsequently not identified at an identification parade.

247. In July 2013, the Inter Parliamentary Union (IPU) conducted a mission to Sri Lanka180 to inquire about several cases of Sri Lankan politicians killed, including Joseph Pararajasingham; during their visit several authorities commented that there was no evidence to indicate that the Karuna Group was involved in the killing and thus no such line of investigation was being pursued. The IPU concluded in its mission report that it is "highly improbable that the perpetrators in Mr. Pararajasingham's case could have escaped without the complicity of the security forces."

248. Government sources informed OISL in August 2015 that CID officers had visited Batticaloa in December 2014 to conduct further investigations, and that investigations "have been reactivated recently".

Nadarajah Raviraj, Human Rights Lawyer and Tamil MP

249. On 10 November 2006, Nadarajah Raviraj, a human rights lawyer and MP for the Tamil National Alliance (TNA), was shot dead on a main road in Colombo by an assailant on a motorbike. The attack took place near a Security Force base on a stretch of road between police checkpoints. [181]

250. Nadarajah Raviraj was widely known for his moderate views and critical statements of both the LTTE and the Government, particularly in the weeks leading up to his murder. Along with other parliamentarians he had set up the Civilian Monitoring Committee, which alleged the Government was responsible for abductions, enforced disappearances and unlawful killings. The day before he was killed, Raviraj and other TNA parliamentarians

177 Committee on the Human Rights of Parliamentarians, Report of the Committee's delegation on its mission to Sri Lanka, 9 - 11 July 2013, , Inter-Parliamentary Union, 9 October 2013

178 Confidential CID Police reports seen by OISL.

179 See Final Report Udalagama Commission.

180 IPU report, Op.cit.

181 WS on file; see also http://news.bbc.co.uk/2/hi/south_asia/6155362.stm.University for Teachers for Human Rights (UTHR) Special report. No 29

took part in a demonstration in front of the UN offices in Colombo to protest against the killing of Tamil civilians by the military in the East and the increasing abductions and extrajudicial killings.

251. The Raviraj case was among the high profile killings within the mandate of the Udalagama Commission of Inquiry. However, the unreleased Commission material to which OISL has access shows that Raviraj's murder was not investigated by the Commission due to lack of time.182 The IPU has expressed deep concern that in relation to both the murders of Pararajasingham and Raviraj, no progress has been made in the investigations, "in which sources have from outset pointed to the possible involvement of paramilitary forces."[183]

252. Police investigations initially failed to produce any results and focussed exclusively on suspects belonging to the LTTE whom the authorities claimed could not be apprehended due to lack of access to the Vanni. According to Government sources, three Navy officers and a former police officer were arrested in connection with the killing in March 2015 and have been remanded in custody following further investigations by the CID. An arrest warrant has been issued against a fourth person believed to be outside Sri Lanka. The case is before the Colombo Magistrate's Court. Another suspect identified by CID was abducted by an unknown group of people in 2007 and his whereabouts remain unknown, according to the Government sources.

Thiyagarajah Maheswaran, Tamil MP

253. Thiyagarajah Maheswaran, a Tamil opposition MP of the UNP, was shot dead on 1 January 2008 while attending a religious ceremony with his family at a Hindu temple in Colombo. Before being killed, he had stated that he would reveal, in Parliament, EPDP and Government collusion in relation to killings in Jaffna. His security measures and the number of bodyguards assigned to him had been reduced considerably shortly before his death.

254. On 27 August 2012, a former LTTE cadre was sentenced to death for the murder of Mr. Maheswaran by the High Court of Colombo. An appeal against the death sentence is pending and due to be heard in November 2015. The IPU Committee on Human Rights of Parliamentarians has noted that it is "keen to ascertain whether the verdict established the motive for the murder, in particular in light of earlier concerns that the crime may be related to Mr. Maheswaran's criticism of the Government" and that there is a longstanding concern that the murder took place at "a critical time in his political career against the backdrop of a sudden reduction of security protection."[184]

D.M. Dassanayake, Sinhalese MP and Minister of Nation-Building

255. D.M. Dassanayake, a Sinhalese MP and Minister of Nation-Building, was killed in a roadside claymore bomb attack on 8 January 2008 in Ja-ela.[185] Three suspects said to be linked to the LTTE were arrested subsequently by police. Trials of LTTE cadres suspected of the murder are ongoing, one of whom was charged under the PTA and given a suspended sentence in November 2011, but it is not clear what the specific charge was. Two others have been indicted by the High Court of Negombo and are due to be heard in September 2015, according to Government sources.

182 See Final Report Udalagama Commission.
183 IPU Governing Council resolution, adopted on 9 October 2013.
184 Session January 2013.
185 IPU case.

Jeyaraj Fernandopulle, MP and Minister of Highways and Road Development

256. On 6 April 2008, Jeyaraj Fernandopulle, a Tamil MP for the Sri Lanka Freedom Party and Minister of Highways and Road Development, was killed in a suicide bomb attack at a marathon race in Weriveriya. Responsibility was allegedly attributed to the LTTE. OISL has not had access to details of investigations into the murder. Following TID and CID investigations, three suspects have been arrested, including a former police officer, according to Government sources. The case is due to be heard again on 23 November 2015 by the High Court of Gampaha, seven years after the killing.

Killings of journalists

257. The number of journalists and media workers killed in Sri Lanka also ranks among the highest in the world and placed severe restrictions on freedom of expression. The Committee to Protect Journalists (CPJ) documented the killing of 13 journalists in Sri Lanka between 2004 and 2009 and ranks the country among the top ten countries with the highest rate of impunity for killings of journalists.[186] In its 2006 global annual Press Freedom Index, the organisation Reporters without Borders has ranked Sri Lanka as one of the worst ranking democratic countries, noting a significantly deteriorating situation since 2005.[187] An increasing number of Sri Lankan journalists left the country out of fear for their own safety and that of their families, having received death threats accusing them of being traitors for raising concerns about human rights violations.[188] The attacks on journalists resulted in a growing climate of self-censorship which persisted until a new Government took office in January 2015.

258. The LLRC report observed with concern the number of journalists and media institutions attacked, recommending that "steps should be taken to expeditiously conclude investigations so that offenders are brought to book without delay". [189]

259. OISL met with several journalists who had been forced to leave the country after receiving threats and who had witnessed how other journalists received multiple death threats prior to being killed.[190] OISL also received a number of allegations from witnesses, including some closely involved with the security forces, of the security forces' direct participation in attacks against the media and journalists perceived to be critical of the Government, sometimes in collusion with paramilitary groups.[191] Recent developments in the case of disappeared cartoonist Eknaligoda – with the arrest of several military personnel appear to indicate military involvement in such cases (see chapter on Enforced Disappearances).

260. OISL notes that attacks against journalists in Sri Lanka were widespread, occurred over an extended period of time, continued throughout and after the period covered by OISL's mandate, and appear systematic in their repeated targeting of specific media known for being critical of Government policies or figures. In several instances, media workers were offered insufficient protection measures despite recurrent attacks against them and there has been little progress in investigations of their killings.

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186 https://cpj.org/killed/asia/sri-lanka/,https://cpj.org/reports/road_to_justice2014-english.pdf

187 See the annual Press Freedom index by Reporters without Borders, http://en.rsf.org/press-freedom-index-2006,35.html

188 See for example the SG reports on reprisals for cooperation with the UN in the area of human rights, A/HRC/14/19 and A/HRC/21/18

189 LLRC report, paras. 5.152- 5.156

190 WS on file

191 WS on file

261. The following are cases of targeted killings of journalists and media workers documented by OISL:

Attacks on Uthayan

262. The newspaper *Uthayan* in Jaffna has been the target of multiple attacks which continued until recently. [192] In the evening of 2 May 2006, armed Tamil-speaking gunmen entered the newspaper's office in Jaffna and killed two employees, Ranjith Kumar and Suresh Kumar, wounded two others and caused extensive damage to computers and other equipment. The day before the killings, the newspaper had published a cartoon of Douglas Devananda, the Tamil leader of the EPDP paramilitary organisation. The killers left by motorbike and managed to escape despite the fact that the office was in the immediate vicinity of a military base and security force checkpoints. The Government claimed that investigations into the killings indicated that they were done in a manner to implicate the Army and bring the Government into disrepute.[193] However, OISL has received allegations that the attack was planned jointly between military intelligence in Jaffna and EPDP and carried out by EPDP members.[194]

263. According to Government sources, five suspects were arrested and brought before the Magistrate's Court in Jaffna on 3 May 2006. They were released on bail due to lack of evidence. CID investigated allegations of the involvement of a member of the EPDP but "no useful information was forthcoming to incriminate him in the incident."

264. On 29 April 2007, an Uthayan reporter Selvaraja Rajivaram was shot dead, reportedly while riding his bike some 600 metres from a military checkpoint in Jaffna.[195] There has been no Government response to the Special Rapporteur on extrajudicial execution's request for information on investigations into this case. On 29 July 2011, the Uthayan editor Gnanasundaram Kuganaadan was seriously injured on his way home from the office. According to Government sources, two individuals were arrested in 2011 but released without further legal proceedings against them on 4 February 2013.

265. While the perpetrators of the various attacks against Uthayan newspaper have not been identified, the *modus operandi* and the information obtained by OISL indicate that there are reasonable grounds to believe that they were carried out by paramilitary groups operating in collusion with security forces.

Sunday Leader editor Lasantha Wickrematunge

266. In the morning of 8 January 2009, Sunday Leader editor Lasantha Wickrematunge, an outspoken critic of the Government, was killed on a main street in Colombo while on the way to his office.[196] The cause of death was never formally established: some witnesses state that he was beaten to death at a busy intersection near a checkpoint within the high security zone of the airport, other reports allege that he was shot. The editor had received numerous death threats and had been the victim of previous attacks. In an editorial, published posthumously, he wrote that 'murder has become the primary tool whereby the state seeks to control the organs of liberty…when finally I am killed, it will be the Government that kills me.'

[192] Special Rapporteur on Extrajudicial, summary or arbitrary executions, Allegation Letter (AL), August 2007; WS on file.

[193] Government response to Special Rapporteur on Extrajudicial, summary or arbitrary executions, 21 Nov 2007

[194] WS on file

[195] CPJ http://cpj.org/killed/2007/selvarajah-rajeewarnam.php

[196] WS on file

267. There has been little progress in the investigations so far, although Government sources indicate that the case is being reactivated, having been handed from TID back to CID. The next court hearing was set for 18 September 2015. A number of military officers had been arrested but released, amid allegations of poor handling of key evidence, including sim cards used to track the victim.

268. Following the killing of Mr. Wickrematunge, two other editors at the Sunday Leader received death threats, after articles were published about video material allegedly showing the execution of Tamil detainees by Sri Lankan soldiers during the final phases of the military operation in 2009. The letters, handwritten in red ink, reportedly stated the following: 'if you write anymore, we will kill you, slice you into pieces'. Mr. Lasantha Wickrematunga received a similar red ink handwritten death threat prior to his death.[197]

Unlawful killings of Muslims

269. After the ceasefire in 2002, the LTTE attempted to consolidate its influence in the east, and there were confrontations between Muslims and Tamils. These resulted in several attacks and increased unlawful killings of civilians in the districts of Ampara, Batticaloa and Trincomalee.[198] After Karuna's defection from the LTTE in 2004, intense power struggles for control took place. Members of the Muslim community were the targets of killings by the LTTE and the Karuna group, but also allegedly by the security forces. The following are examples of the cases reported to OISL.

270. On 18 November 2005, there was a hand grenade attack on the mosque of Akkairapattu in Ampara district during the morning prayers. Six persons were killed and some 30 persons wounded. A few days earlier, two LTTE cadres had been killed, allegedly by Muslims cooperating with the Karuna group. While responsibility for the attack has never been clearly established, it is likely that the attack was an act of retaliation by the LTTE against the Muslim community.[199]

271. On 17 September 2006, ten Muslim labourers were found hacked to death near an STF camp, in Pottuvil. Responsibility for the attack remains contested. The local Muslim community considered the STF as the most likely perpetrators, while the Government indicated that the killings had been undertaken by the LTTE to increase rifts between the Muslim community and the security forces[200]. The killing was one of the incidents investigated by the Udalagama Commission, which dismissed the allegations against the STF and identified the LTTE as the most likely perpetrator.

Killing of five students in Trincomalee

272. In the early evening of 2 January 2006, nine Tamil university students were gathered at a public location known as the Gandhi statute near the Trincomalee beach.[201] The area was surrounded by checkpoints manned by the Navy, Police and Army. Around 7.30 pm a green rickshaw appeared and someone in it threw a hand grenade which wounded five of the students before continuing along the beach road past a Security Force checkpoint towards the SLA HQ. Special Task Force Police arrived at the scene and allegedly beat up

197 Special Rapporteur on Extrajudicial, summary or arbitrary executions, 6 November 2009.

198 ICG report, Sri Lanka's Muslims: Caught in the Crossfire, 29 May 2007.

199 E/CN.4/2006/53/Add.5, 27 March 2006, Op.cit. Report of the HRC Special Rapporteur on Conflict-related human rights violations report, March 2006.

200 WS on file; SLMM documentation; Udalagama Commission report; University Teachers for Human Rights (UTHR), Special Reports 23 and no 25; ICG report, Sri Lanka's Muslims: Caught in the Crossfire, 29 May 2007.

201 WS on file; SLMM documentation.

the students before shooting them multiple times at close range. The five bodies were brought by the police to the local hospital morgue, other students survived by feigning death. There were many witnesses in the vicinity, including family members who witnessed the events from nearby checkpoints. Based on the information collected by OISL, there are reasonable grounds to believe that security force personnel, including STF personnel, killed the five students. This case demonstrates again the challenges in pursuing accountability for such alleged crimes at the domestic level in the context of Sri Lanka, as further explained in the chapter on Justice and Accountability.

Unlawful targeted killings of LTTE political wing cadres

273. On the basis of the information obtained by the OISL, there are reasonable grounds to believe that, between 2004 and 2006, LTTE political wing cadres who worked in the political offices in Batticaloa and Amapara districts were targeted by the Karuna Group with the tacit consent and in some cases collusion of the security forces. Many such cases were documented by the SLMM and reveal a pattern in which political wing cadres were killed on the streets, often by assailants on motorcycles or in guerilla style ambushes while they were travelling in Government-controlled areas. Among the most high profile are the following cases.

274. On 5 July 2004 at about 0915h Batticaloa LTTE Political Wing Leader Ramalingam Pathamaseelan, alias Senadhirajah, was shot by two unidentified armed assailants on a motorcycle. The victim was immediately admitted to the General Hospital, Batticaloa and subsequently died from his injuries. The incident took place in a busy area of town and although there were several witnesses to the incident, the perpetrators were not identified. Few police investigations were carried out, no arrests were made and no evidence was collected. Information available to OISL indicates that the alleged perpetrators of the killings were reportedly Karuna Group members who had come out of Batticaloa prison to do the killing. The perpetrators were allegedly linked to SLA military intelligence and had privileges that other prisoners did not enjoy, including permission to carry arms.

275. On 7 February 2005, at around 1945hrs, LTTE Political Leader for Batticaloa - Ampara District E. Kausalyan was travelling with Ariyanayagam Chandra Nehru, former TNA MP[202] in a Toyota Hiace van on the Batticaloa - Polonnaruwa road or A 11 highway. Kausalyan was travelling from LTTE controlled area through Omanthai to Batticaloa when the vehicle came under attack about five or six kilometres from the nearest army checkpoint. He died in the attack, and Ariyanayagam Chandra Nehru subsequently died from injuries he sustained. Four other LTTE cadres were also killed.

Killings of other civilians

Killing of 64 civilians in Kebethigollewa

276. At around 7.30 am on 15 June 2006, a crowded bus carrying some 150 passengers was attacked with two claymore mines near the town of Kebethigollewa in a Government-controlled area near Anuradhapura.[203] Many villagers were travelling to work and school, some to a funeral, along a road which was used primarily by civilians and where there were no military camps, checkpoints, police posts or potential military targets nearby. All the passengers were Sinhalese. Sixty-four persons were killed in the attack and some 70 persons were injured. Fourteen of the victims were children. Observers believed that the

[202] Chandra Nehru was also a member of the LTTE-affiliated Northeast Secretariat on Human Rights (NESOHR).

[203] SLMM documentation.

perpetrator/s were able to see the bus approach and to set off the mines at exactly the right moment for them to cause maximum casualties.

277. The LTTE publicly denied their involvement in the incident, claiming that other armed elements executed the attack in order to discredit the LTTE. Other information available to OISL indicates that the attack on Sinhalese civilians was most likely a deliberate retaliation for recent killings of civilians and of LTTE cadres in LTTE-controlled areas in the North and the East. The Udalagama Commission was assigned to investigate the case and concluded that "even though there is no eyewitness evidence with regard to the perpetrators of this attack, the circumstantial evidence overwhelmingly points to LTTE involvement."

Killing of 11 people, mostly girls, near Mallavi

278. The SLMM investigated several incidents where civilians travelling in ambulances in the Vanni became the victims of claymore mine attacks. On 27 November 2007, an ambulance carrying 13 people, the majority girls between the ages of 14 to 17 years, was hit by three remotely detonated claymore mines about 7.5 kilometres north of Mallavi. The group was travelling to Kilinochchi to provide first aid during a public event. Eleven people died in the attack, including eight of the school girls. According to the information available, the alleged perpetrators may have been SLA Special Forces engaged in long range reconnaissance patrol operations were responsible.[204]

Killings of fishermen and attack on Pesalai church

279. In the North Western districts of Jaffna and Mannar, civilians became victims of the increased military operations between the Navy and the LTTE in late 2005 and 2006.[205] The deteriorating situation around Pesalai, Mannar District, in particular led to increased tensions between the civilian population and the Navy detachment in the area. Navy officers reportedly came to surrounding villages, threatened and assaulted them, asking if they were passing information to the LTTE. In one case, witnesses describe how SLN members wearing black scarves to cover their faces entered houses and inquired about specific individuals.[206]

280. In the early morning of 17 June 2006, hostilities broke out at sea between the Navy and the LTTE Sea Tigers in the vicinity of Pesalai.[207] Three Navy boats were sunk by the Sea Tigers, causing several casualties among the Navy. Within hours, in what appeared to be reprisal acts, Navy personnel and police officers were allegedly alerted to the presence of six local fishermen in a boat close to the shore. They came on shore holding their identity cards up for the security forces to see. Four of them were made to kneel on the beach and shot through the mouth. The perpetrators were allegedly identified as two Navy personnel and two police officers.

281. Some 2,000 civilians, fearing reprisals from the security forces, gathered in the Catholic Church of Our Lady of Victory in Pesalai. According to the information received, around 08:00 hrs, Navy personnel and police officers came to the church and took positions outside its walls. At this point four men (one wearing shorts and t-shirt and three in camouflage uniform) entered the church compound and started firing at the church walls, doors and windows. Navy personnel fired into the church through the opening between the main door and the floor and as the people inside the church were lying down on the floor,

[204] SLMM documentation.
[205] See attack on Pesalai church, (Mannar), below.
[206] SLMM documentation.
[207] SLMM documentation; http://www.defence.lk/new.asp?fname=20060627_03

many of them sustained injuries. One of the Navy personnel then opened one of the windows and hurled two hand grenades into the church. One of these fell back striking the window grilles and the other blasted into the church killing one person and wounding 47 people, some of whom received serious injuries.

282. While the Navy claimed it was targeting the LTTE, no weapons were found inside the church and none of the injured was identified as LTTE cadres, according to the information received. OISL has furthermore had access to CID investigations into the case and has reasonable grounds to question their impartiality and credibility. Despite the extensive security force presence at the time of the incident, the CID was not able to link a single Navy officer to the location at the time of the incident. OISL further notes that while the Udalagama Commission was mandated to investigate the incident, its final report states that it "could not carry out investigations due to the non-availability of time."[208]

Killing of 13 villagers, Kayts

283. On May 13, 2006, six to ten men entered the villages of Allaipiddy, Puliyankoodal, and Vangalady on the island of Kayts near Jaffna and shot dead 13 people, including two children. In all three incidents, Sri Lankan Navy entered homes and opened fire on the residents. The deadliest incident took place in Allaipiddy, where nine people, including two children, died. Three more were killed in Puliyankoodal and one in Vangalady. Several people were wounded. The killings took place two days after the LTTE launched a suicide assault on a naval convoy in which 18 navy personnel were killed. On the basis of the information available to OISL, there are reasonable grounds to believe that these killings were allegedly perpetrated by Navy personnel.[209]

Sexual Assault and Murder of Illayathambi Tarshini

284. At Maduththuveli in Jaffna district, in the early evening on 16 December 2005, Ms. Illayathambi Tharshini (age 20), on her way to her aunt's house, which is about 300m from her own house, was abducted allegedly by the SLN and subsequently raped and murdered. The victim's body was found in a well near the Urathevu Murukan temple.[210] According to the post mortem report, the victim was strangled and injuries on her body suggested sexual abuse. After initial investigations by Kayts Police, the case was handed over to CID in Colombo. The case was scheduled for court proceedings several times in 2006 and each time the case was postponed. On 12 July 2006, the police failed to appear in court.[211] OISL did not obtain information on possibly subsequent court proceedings, but, according to open sources, the case is still pending.

Allegations of extrajudicial executions in the final phase of armed conflict

285. OISL has documented a number of alleged extrajudicial executions committed by members of the security forces, which are thought to have occurred during the last week of the armed conflict from 11 to 18 May. The Government has asserted that many LTTE cadres were captured by the security forces, following surrender throughout the last months of the armed conflict and were transferred to detention facilities or to "Protective Accommodation and Rehabilitation Centres". However, on the basis of the available

[208] Udalagama Commission Report.
[209] SLMM documentation; Amnesty International, Op.cit.
[210] SLMM documentation
[211] SLMM documentation

information, there are reasonable grounds to believe that a number of military cadres, who had laid down arms and were thus *hors de combat*, were unlawfully killed after having surrendered unarmed to the security forces. There are also reasonable grounds to believe that a number of LTTE cadres, such as those belonging to the political wing, and other individuals not or no longer taking direct part in hostilities, including children, were also extrajudicially executed.

286. Whether or not the individuals were LTTE fighters or persons taking no direct part in the hostilities, such a distinction would not be relevant once the individuals had passed into the custody of the armed forces.

287. OISL received information from witnesses about so-called white flag 'surrenders' taking place in two locations in the final days of the armed conflict, one to the north of Vellamullivaikkal where people 'surrendered' to 53rd and 59 Div.[212] and one to the south near the Vadduvakal bridge where they surrendered to 58th Division. The cases described below are those where OISL received strong and corroborated information from witnesses as well as photographic and video material in the case of specific individuals or groups of individuals.

Balasingham Nadesan, Vineetha Nadesan and Seevaratnam Puleedevan

288. Despite earlier public statements that the LTTE would never surrender,[213] LTTE figures engaged with the Government and a number of intermediaries in negotiations for the 'surrender' of political wing cadres and a number of others believed to be a mix of LTTE cadres with military and non-military functions, and other persons not taking direct part in hostilities.

289. The LTTE political wing leaders, Head of LTTE Peace Secretariat, Seevaratnam Puleedevan and Head of the LTTE Political Wing, Balasingham Nadesan began informing intermediaries about their plans for surrender.[214] Although the details of the surrender was not discussed openly, some of the cadres close to Nadesan and Puleedevan were reportedly aware of some planning and communications with others about it from 13 May.[215] At this point, Puleedevan and Nadesan were in Vellimullivaikkal together with among others LTTE Police Chief, Ilangko (Ramesh), Nadesan's wife Vineetha, Nadesan's head of security Kangan, and other political wing cadres and their families.[216]

290. OISL has substantial information, including testimonies of those who were directly involved in Colombo and abroad, witness accounts, SMS records and other material showing communication and negotiation for the 'surrender' of groups and individuals associated with the LTTE from 13 May onwards.

291. According to several witness testimonies, on 14 May, Nadesan and Puleedevan expressed to local as well as foreign intermediaries their intent and that of other LTTE cadres to lay down arms and surrender.[217] This intention was communicated the same day to Basil Rajapaksa, brother of the President.[218] Later that day, Tamil MPs who were in contact with Nadesan and Puleedevan also reported to Basil Rajapaksa, that the LTTE had

[212] Sources on record
[213] WS on file ; http://www.livemint.com/Politics/hDu232kfgm0Dr1qvLoeeOO/LTTE-vows-no-surrender-to-Sri-Lankan-Army.html
[214] WS on file
[215] WS on file
[216] WS on file
[217] WS on file
[218] WS on file

laid down arms and ceased fighting.[219] Basil Rajapaksa responded that the army was already making announcements and dropping leaflets that people should hold up white flags and walk towards the military.[220]

292. Between 16 and 18 May, a number of foreign intermediaries were involved in facilitating communication with senior representatives of the Government, primarily Permanent Secretary Ministry of Foreign Affairs Palitha Kohona, Senior Adviser to the President Basil Rajapaksa, Defence Secretary Gotabaya Rajapaksa and President Mahinda Rajapaksa. Communications at this stage also included others, such as senior UN officials and foreign journalists.

293. According to witness testimonies, sustained efforts were made by intermediaries to have independent witnesses go to the planned surrender area and several options were discussed with senior representatives of the Government, as well as the UN, the Secretariat for Coordinating the Peace Process (SCOPP)[221] and others. The LTTE had rejected the idea of SCOPP officials witnessing and favoured independent witnesses, because they feared they would be shot. Witnesses said that the ICRC was asked to be on stand-by to witness the 'surrender' but was reportedly never called upon to do so.

294. Tamil intermediaries also offered to go to the conflict area and witness the 'surrender'. The Government rejected this citing security reasons and that it found it unnecessary as they had arranged for religious leaders themselves to go to the area.[222] This option never materialized and Government officials simply gave instructions to intermediaries that the LTTE cadres should walk slowly towards the security forces with a white flag and comply with instructions.[223]

295. On 16 May, while President Rajapaksa declared military victory, the LTTE issued a statement saying it was "prepared to take all necessary measures that would immediately stop the current carnage" and restated "its categorical position to enter a political process facilitated by neutral international parties and find a meaningful solution to the ethnic crisis." [224]

296. According to a witness, on 17 May between 06:00 and 06:30 local time, Nadesan spoke to Basil Rajapaksa and was told that the LTTE cadres should walk a specific route to the Forward Defence Lines to surrender holding a white flag high and that the other civilians should travel separately.[225] The senior LTTE leaders may also at times have been in direct contact with senior military officers on the ground.[226]

297. Initially, negotiations had focused on a larger number of LTTE cadres and civilians, but during the night between 17 May and 18 May Puleedevan communicated the intent to surrender of three high-level cadres, "40 ordinary cadres and 60 civilians."[227] Nadesan and Puleedevan told intermediaries that the security forces continued shelling, which made it impossible for them to come out, as instructed, with a white flag. The intermediaries

[219] WS on file
[220] WS on file
[221] SCOPP closed on 31 July 2009, http://www.peaceinsrilanka.lk/about-scopp
[222] WS on file
[223] WS on file
[224] http://www.tamilnet.com/art.html?catid=13&artid=29381
[225] WS on file
[226] WS on file
[227] WS on file

themselves on several occasions heard heavy fighting, including artillery fire, in the background when speaking to Puleedevan and Nadesan.[228]

298. Several international intermediaries sent SMS messages during the night between 17 and 18 May and early hours of 18 May to senior members of the Government saying that Nadesan and Puleedevan were ready to surrender.[229] Sources linked to the security forces were also aware, during the night between 17 and 18 May, of the imminent surrender of senior political wing leaders, Puleedevan and Nadesan specifically.[230] On 18 May, in the early morning witnesses heard heavy gunfire/shelling in the background of their phone conversations with Puleedevan.[231] The last contact between international intermediaries and Puleedevan was just after 06:00 local time on 18 May when Puleedevan said he was with Nadesan and ready to go out from the bunker.[232]

299. On 18 May 2009, the Defence Ministry announced that LTTE leader Prabhakaran and several other senior LTTE leaders had been killed in the fighting and the Sri Lankan Government formally announced its military victory over the LTTE and complete territorial control over the entire country. According to the official website of the armed forces, Puleedevan and Nadesan (along with Col. Ramesh) were killed in fighting by the 58th Division on 18 May.[233] But this version of events is countered by information gathered by OISL and others that certain high-level LTTE leaders were summarily executed despite assurances from the Government that they could safely surrender.

300. OISL has received testimonies from a number of witnesses, who report independently seeing Nadesan and Puleedevan, unarmed (wearing civilian clothing - a few specify that they were wearing white shirts and sarongs) and carrying a stick with a white cloth (possibly a veshti) surrendering to the security forces. The specific location and the details of the surrender vary to some degree. At least six witnesses indicate they saw Puleedevan and Nadesan just north of the Mullivaikkal bridge in the morning of 18 May 2009 consistently detailing the location of these sightings on the A-35 road towards Vadduvakal bridge.[234]

301. Witnesses described three surrender groups, the first group led by Puleedevan and Nadesan; the second by the LTTE Police Chief Ilangko (Ramesh, not to be confused with military commander Col. Ramesh in the following section), a witness and two other LTTE cadres; and the third group comprised of four cadres.[235] They all were unarmed and held white flags, Nadesan held the flag for the first group and Ilangko (Ramesh) for the second group. There was a distance of 20-25 metres between each group. The witnesses saw the first group comprising of Nadesan, Nadesan's wife Vineetha, Puleedevan and another unidentified person surrendering in the Vadduvakal area north of the bridge and being surrounded by soldiers in SLA uniform.[236]Three witnesses independently state they saw the

[228] WS on file
[229] WS on file
[230] WS on file
[231] WS on file
[232] WS on file
[233] http://www.defence.lk/new.asp?fname=20090518_11, http://www.defence.lk/new.asp?fname=20090518_09, http://www.defence.lk/new.asp?fname=20090621_02_TerrList
[234] WS on file
[235] WS on file
[236] WS on file

dead bodies of Puleedevan and Nadesan (one witness also recognized Vineetha Nadesan among the dead) on the south side of the bridge on 18 May.[237]

302. OISL is in possession of high resolution electronic photos of a group of dead bodies, among them clearly identifiable are Puleedevan, Nadesan, and Vineetha Nadesan, as well as a number of recognizable but unidentified men and possibly a young woman (face outside the frame of the photo).[238] According to a forensic pathologist, the colour digital photographs are all amateur 'trophy-type' images which show groups of bodies, individual bodies and include images of head and shoulders. Despite their amateur nature, these photographs capture many injuries, patterns of blood flow, disturbance of clothing and post-mortem changes. The resolution of the images is mostly sufficient for professional diagnostic purposes, particularly where there are images documenting the same scene from different angles. The information provided by the images is inevitably incomplete because in no case has the entire surface of the body been photographed in a manner to photo-document the totality of the injuries present on the bodies. Nevertheless the injuries that are visible can be seen clearly and are undeniable.

303. Estimates based on these photos indicate there were about a dozen bodies lined up. This, together with plastic sheeting laid on the ground nearby, suggests that the location is a temporary site for the collection of the dead rather than the place of death. The matting beneath one of the bodies (Nadesan) may have been used to carry the body to this location. All male bodies are in undergarments, one has a prosthetic leg next to his body.[239] Various brightly coloured clothing items are partially covering bodies or around bodies.

304. Although the exact time and cause of death cannot be definitively determined based on the photographs, the following are some of the conclusions suggested by the forensic observations related to the bodies of Nadesan, and Puleedevan: photographs of Nadesan's body showed that cause of death would be at least one and possibly three gunshots to the front torso. With regard to Puleedevan, the analysis identified multiple gunshot wounds to the torso entering from the back and exiting the front, as well as gunshot wounds to both arms. Given that the multiple gunshot wounds to the torso are from back to front, the forensic analysis suggests that a similar trajectory for the right arm wound could only be achieved with the arm twisted, with the right hand behind the back. The analysis also noted that the left wrist appears to show a ligature impression mark associated with bright red bruising of the skin. According to the analysis, taken together, the pattern of injuries indicates that Puleedevan was shot multiple times in the back, almost certainly whilst his arms were restrained behind his back. Based on this forensic analysis of photographic as well as video material, witness testimonies and open sources, OISL concludes that there are reasonable grounds to believe that LTTE senior political wing leaders Balasingham Nadesan and Seevaratnam Puleedevan as well as Nadesan's wife Vineetha Nadesan may have been executed by the security forces sometime after 06:00 on 18 May.[240] However, further investigation is required to determine the full facts as to what happened and who was responsible for the killings.

305. The LTTE political wing members demonstrated clear intent to 'surrender' and according to witnesses, complied with Government instructions to walk slowly towards the security forces unarmed, in civilian clothes and waving a white flag. OISL further concludes that there are reasonable grounds to believe that the Government of Sri Lanka possessed the requisite knowledge about the intent to surrender to have been able to convey

[237] WS on file
[238] Young woman only partially visible in the photo.
[239] WS on file
[240] WS on file

this to the ground forces in time for them to ensure protection. Intermediaries made multiple attempts and a sustained effort to convince key government figures to allow for independent witness to the surrender, which was rejected.

Thambirasa Thurairajasingham alias Col. Ramesh

306. OISL received several witness testimonies describing LTTE Commander Thambirasa Thurairajasingham alias Col. Ramesh wearing civilian clothing and unarmed on the road on the north side of the Vadduvakal bridge and walking across the bridge with a small child in his arms.[241] Witnesses state that around 0700 hrs on 18 May Col. Ramesh accompanied by a group of his relatives passed through the SLA sentry points on the south side of the Vadduvakal bridge and proceeded to the large holding area south of the bridge along with thousands of other civilians.[242] Here he was identified and approached by Tamil military intelligence officers working for the security forces.[243] Two witnesses independently identified one of the military intelligence officers (former LTTE turned informer) by name.[244] One witness says this intelligence officer was a Karuna cadre well known to Ramesh and Piraba, an Eastern LTTE cadre travelling in the same group with Col. Ramesh.[245] The other witness states that the intelligence officer was a former body guard of Piraba.[246] Both witnesses state that Piraba and Ramesh were escorted away by the SLA and military intelligence officers.[247] The relatives accompanying them on 18 May across the bridge never saw the two men again.

307. In addition to witness testimonies, OISL has examined photographic and video material that show Col. Ramesh alive being interrogated by Sri Lankan security forces as well as images of his dead body showing clear indications that he was extrajudicially executed. The photos have been reviewed by an independent forensic expert.

308. Although the chronology of events cannot be firmly established on the basis of available information, photographic and video information indicate that after Col. Ramesh, dressed in civilian clothes, was separated from his family inside a holding area, he was taken in a military vehicle and at some stage made to change his clothing. In some images Col. Ramesh is wearing a green army uniform, in others he is in LTTE camouflage trousers. In video images he is seen being interrogated in several locations by security forces in Tamil as well as English, at one point his shirt is removed exposing an injury with medical dressing around the right shoulder blade.

309. Additional images show the dead body of Col. Ramesh wearing the green uniform and with a bleeding entry bullet hole to the left side of his head, a massive exit hole on the right side, blood and tissue splattered on his uniform. No blood is seen on the ground and the position of the body in these images which suggest he was shot dead elsewhere and dragged to the location where the photograph was taken. In the assessment of an independent forensic expert the images depict a killing in execution-style with a single gunshot to the head. Embedded metadata states that the image was taken on 22 May 2009. However, this would need to be investigated and confirmed.

310. OISL finds that witness testimonies in conjunction with the video and photographic material constitute a reliable body of information to establish reasonable grounds to believe

[241] WS on file
[242] WS on file
[243] WS on file
[244] WS on file
[245] WS on file
[246] WS on file
[247] WS on file

that T. Thurairajasingham alias LTTE Col. Ramesh was alive and was in the custody of security forces after witnesses saw him on 18 May 2009 that he remained in their custody until he was extrajudicially executed sometime between 18 and 22 May 2009.

311. *Balachandran Prabhakaran*

312. OISL is in possession of photographic and video material that show Balachandran Prabhakaran, the 12-year-old son of Villupillai Prabhakaran, sitting in a bunker, alive and in the custody of Sri Lankan troops as well as images of the dead body of Balachandran lying on the ground beside the dead bodies of five semi-naked men. Based on the assessment of an independent forensic pathologist of the photographs, Balachandran appears to have been killed with five gunshots to the chest. One gunshot wound with soot markings indicate the weapon was fired from a distance of 60-90 cm.[248] A witness stated he saw Balachandran alive and then saw his body with bullet wounds; he did not see Balachandran being killed.[249]

313. The Sri Lankan authorities have maintained that Prabhakaran's son was killed in crossfire.[250] OISL finds there are reasonable grounds to believe that Balachandran Prabhakaran was captured or otherwise taken into custody by the security forces who subsequently extrajudicially executed him.

Shobana Dharmaraja alias Isaipriya

314. The well-known LTTE news presenter, Isaipriya, appears in several photographic and video images that suggests she was taken into custody and killed by the Sri Lankan security forces. Witnesses saw her on several occasions during the week before 18 May[251], and last saw her alive late morning on 18 May, when SLA soldiers pulled her out of the lagoon alone and unarmed and took her into custody in a muddy area of the Nandi Kadal Lagoon shore north of Vadduvakal bridge.[252] According to the official website of the security forces, Isaipriya was killed on 18 May by soldiers of the 53rd division.[253]

315. OISL has viewed photos and video footage consistent with witness accounts showing Isaipriya pulled out of the Nandi Kadal lagoon alive but mistaken by the security forces for being the daughter of Prabhakaran.[254] In the video sequence Isaipriya is wearing khaki /green trousers and a flesh coloured bra. The soldiers in this footage are handing her a white cloth to cover her upper body and generally behave in a respectful manner. In other photographic images, Isaipriya is seen with the white cloth wrapped around her sitting or lying next to another young woman.[255] In stark contrast to these images, another video as well as a number of photographs show Isaipriya's dead body among a group of male bodies, many naked, blindfolded with hands tied behind their backs. In this video, Isaipriya is half-naked with her trousers pulled down exposing her upper thighs, genital area and lower abdomen. Her midriff is covered with the now bloodied white cloth and her bra appears to have been deliberately moved to expose her breasts. Her hands appear to be tied behind her back. A cloth similar to the blindfold worn by other victims appears to have been pulled away exposing her entire face.

248 http://www.dailymail.co.uk/news/article-2113459/Sri-Lankan-government-executed-civilians-war-Tamil-Tigers.html
249 WS on file
250 http://www.defence.lk/new.asp?fname=Balachandran_on_Sale_20130221_09
251 WS on file
252 WS on file
253 http://www.defence.lk/new.asp?fname=20090621_02_TerrList
254 Presented by Callum Mcrae and Channel 4, Isaipriya capture, No Fire Zone.
255 Source on record.

316. Independent forensic examination of the photographs and video footage indicate that Isaipriya was shot in the head. In the images her body is positioned such that only the exit wound on the left side of her in temporal area is visible. Skull pieces and protruding brain are visible. Based on the video footage and photographs along with witness testimonies, OISL has reasonable grounds to believe that security forces captured Isaipriya alive and then killed her with gunshots to the head execution-style. Further, based on the images of Isaipriya's dead body and those of many other women, OISL believes that Isaipriya's dead body was desecrated.

Other alleged extrajudicial killings

317. OISL has reviewed numerous photos as well as videos of dead bodies of men and women, some in LTTE uniform, some blindfolded and hands tied behind their backs, some wearing civilian clothing and many naked. Some dead bodies appear to be underage.

318. According to forensic examination of the photographs, the bodies consistently show signs of having been executed by gunshots to the head. The following three cases are presented as examples representative of these cases. In these cases, the victims appear in photographs or videos to be in the custody of the security forces; photos and videos depict the dead body of victims with security forces appearing in many of the images; and some videos depict actual extrajudicial killing of victims by members of the security forces whose faces are clearly visible and who appear to be members of the Sri Lankan Army.

319. Case 1: In several photos, five men seen lying beside the body of Balachandran (three in underwear, one wearing sarong and t-shirt, one in short pants) appear to have been shot dead (blood seen underneath the bodies and no other visible damage to the bodies). The men appear to have had their hands tied behind their backs and the cord taken off before the photographs were taken, one body has a loosened blindfold beneath his face, and all bodies are facing down.

320. Case 2: Several photos and video sequences show an unidentified teenager (age uncertain, but he is possibly a minor, as he is significantly slighter than other individuals shown in the same photos and video sequences) among a group of adult persons. In one photo, he is sitting next to a young woman, identified as Ushalini, and among a group of men all naked sitting or lying in a sandy pit. Other images depict his dead body with hands tied behind his back and a massive trauma to his head. The boy is easily identifiable in photos by his long jeans shorts and a blue dressing or bandage around his left upper arm just above the elbow. His body is also identifiable in several images depicting the victim, in the vicinity of a woman's body, with his hands tied behind his back, a blue blindfold dislocated possibly by the massive trauma to the front of the head caused by a gunshot wound to the back of the head. In other images, the body of someone, who may be the unidentified boy, is seen among a pile of naked bodies piled on a truck. In these images, the individual is naked but a blue armband is faintly visible.

321. Case 3: A man identified by a witness to be LTTE Col. Vasanthan [256] is seen in photos alive, naked, hands tied behind his back and in the custody of security forces. In a video in which the summary execution has been authenticated by independent experts for the Special Rapporteur on Extrajudicial Executions, a soldier in a camouflage uniform leads an unidentified person, believed to be Col. Vasanthan, by a cord in front of the camera next to men who have already been executed. He is made to sit down and the soldier fires one shot with a T-56 at close range to the back of his head . Witness testimonies[257] in

[256] http://white-flags.org/
[257] WS on file

conjunction with the video images depicting the execution of unidentified men being executed naked, blind-folded and with hands tied behind their backs along with Col. Vasantan provide reasonable grounds to believe a number of individuals, including presumably LTTE cadres, were extra-judicially executed by the security forces during the last days of the armed conflict.[258]

322. In all of the above cases of identified and unidentified victims, witness testimonies, photographic, video and other material, collected by the OISL indicates that these individuals had been captured and detained by the Sri Lankan security forces, and were subsequently killed. In many cases the material collected indicates that the victims were shot from close range and were blindfolded and had their hands bound when killed. These acts amount to extrajudicial executions, a clear violation of the right to life. In addition, as these acts were linked to the armed conflict, these killings amount to a violation of Article 3 Common to the four Geneva Conventions of 1949 which prohibits violence to life, in particular murder of persons taking no active part in hostilities or of those placed *hors de combat* by detention. Depending on the circumstances, if established by a court of law, such killings may amount to a war crime.

Sexual mutilation/desecration of bodies in the context of the conflict

323. The OISL team viewed disturbing video and photographic material, allegedly taken on the mobile phones by soldiers, showing the outrageous treatment of female bodies, clothes having been removed or bras pulled up and trousers and underwear pulled down to fully expose their breasts and/or genital areas. The case of Isaipriya is a clear example of such desecration and outrage upon personal dignity. OISL reviewed numerous other photos and videos of unidentified dead women demonstrating a similar pattern, some obviously LTTE fighters partially in uniform or wearing wide-legged trousers and checked men's shirts, and others in civilian clothing, all having breasts and genitalia exposed. In some cases the legs had been spread wide. Some also had their hands tied behind their backs indicating they had been detained before their deaths. Others had multiple bullet entry marks visible on the front of their chests. In videos, the cameras often linger over the genital areas, while the uniformed soldiers present can be seen and heard making sexual comments. The commentary which accompanies this video is particularly shocking. The soldiers are heard making very graphic, lewd and offensive sexual comments about the naked female corpses. In one of the videos, the semi-naked bodies of women are thrown onto a lorry without any kind of respect for the dignity of the deceased.

324. In a similar video, the soldiers are seen to be celebrating their achievements, laughing and enjoying filming the genitalia and breasts of deceased naked Tamil women. One deceased woman is shown naked from the waist down, and several weapons have been placed in a decorative formation on her stomach. The soldiers say: "She seems like someone who newly joined (the LTTE)!" "She looks like someone's clerk – look how many pencils and pens she's got!" "I really want to cut off her breast – if you were not around here…"

325. These videos should be considered in the broader context of the humiliating and degrading sexual abuse to which detainees were treated when alive, described in a later chapter, as well as the various witness statements that have been gathered which corroborate allegations that soldiers were using their mobile phones to film naked women and girls. If established, these acts could amount to the war crime of outrages to personal dignity.

[258] WS on file

VII. Violations related to the deprivation of liberty

Introduction

326. In its final report, the LLRC reported that it "was alarmed by a large number of representations made alleging arrests, enforced or involuntary disappearances, and arbitrary detention"[259]. In the course of its investigations, OISL documented pervasive violations and abuses related to detention perpetrated by the security forces and related paramilitary groups.

327. This chapter reviews the *modus operandi* of the security forces with respect to patterns of unlawful and arbitrary arrest and detention. It describes how Sri Lankan legislation provided a quasi-legal framework for practices that are in clear violation of international legal safeguards related to the deprivation of liberty of any person. This chapter also examines security operations where individuals or groups were specifically targeted, in incidents that occurred before, during and beyond the OISL investigation period, and which are often referred to as "white van" cases. The chapter also documents violations related to the mass detentions that occurred at the end of the conflict.

328. Abductions by the LTTE are documented in subsequent chapters on Abduction and forced recruitment of adults, and the Recruitment and use of children by armed groups.

Emergency legislation and PTA

329. The Sri Lankan Constitution and the Code of Criminal Procedure (CCP) provide for freedom from arbitrary arrest and detention. It imposes a legal time limit for police custody, requires notification to the Magistrate's Court of arrests without warrant by any police officer, and demands that persons are provided with the reason for their arrest.[260]

330. However, these safeguards were undermined by Emergency Regulations issued under the Public Security Ordinance Act, and the Prevention of Terrorism Act (PTA), which remained in force throughout the period covered by OISL's mandate. Emergency Regulations were ended in 2011. They gave extensive powers to the Secretary of Defence to order arrests and detention, and to the Sri Lankan security forces to carry out such arrests. Some of their provisions contravened provisions of ICCPR.

331. The PTA was introduced in 1979 and remains in force today. It permits Sri Lankan security forces to arrest without warrant individuals suspected of "acting in any manner prejudicial to the national security or to the maintenance of public order" [261] or having conducted "any transaction" with a person or group engaged in terrorist activities, and to detain people for up to 18 months without bringing them before a court.[262]

332. Under the Act, the Minister of Defence may order the detention of individuals for investigation or as a preventive measure[263]. The Minister may order that such persons be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister. Any such order may be

[259] LLRC Report, para. 5.34
[260] Constitution of Sri Lanka, article 13, CCP articles 37, 38 & 53.
[261] Emergency (Miscellaneous Provisions and Powers), (EMPP) Regulations, No. 1 of 2005, 13 August 2005, Part 4, regulation19.
[262] PTA 1971, Part II, paragraphs 6(1), 9(1).
[263] Section 9(1) of the Act.

extended from time to time for a period not exceeding three months at a time. By placing individuals in prolonged administrative detention, the PTA violates many international standards regarding due process and the right not to be arbitrarily detained. In particular, with regard to the right to judicial review of the lawfulness of detention, the Human Rights Committee held as follows:

333. "In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant."[264]

334. Of particular concern is section 7.3a of the PTA which states that a police officer carrying out an investigation under the PTA "shall have the right of access to such person and the right to take such person during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation". In its final observations and recommendations, the LLRC, acknowledging the unlawfulness of these provisions, noted that "all places of detention should be those which are formally designated as authorised places of detention and no person should be detained in any place other than such authorised places of detention. Strict legal provisions should be followed by the law enforcement authorities in taking persons into custody such as issuing of a formal receipt of arrest and providing details of the place of detention."

335. Emergency Regulations were lifted only in 2011, although some of the provisions remain in force as provisions under the PTA and are similar to those of the regulations which were lifted.

336. Following the assassination of the Minister of Foreign Affairs, Lakshman Kadirgamar, in August 2005, new regulations entitled the Emergency (Miscellaneous Provisions and Powers) Regulations No.1 of 2005, were issued under the PSO, and gave sweeping powers to the Secretary to the Ministry of Defence to order arrests and administrative detention if "he is of the opinion" that a person's detention is necessary to prevent *inter ali*a an act prejudicial to national security or the maintenance of public order.

337. Furthermore, under these Emergency Regulations (20(1)) "Any public officer, any member of the SLA, SLN or SL Air Force or any other person authorised by the President…. may search, detain for the purposes of such search, or arrest without warrant" anyone they suspect of committing offence under the emergency regulations. The regulations required that the detainee be brought before a magistrate "no later than 30 days after the arrest" (21(1)).

338. Under the Emergency Regulations[265], so-called "surrendees" could be detained in "rehabilitation centres" for 12 months, which could be extended for up to two years without charge or trial for the purposes of "rehabilitation

339. Subsequent Emergency Regulations issued in December 2006 - Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation No. 07, under Section 5 of PSO - not only defined "terrorist" offences in very vague terms, but

[264] General Comment No. 29: (Article 4) Derogations in a State of Emergency, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 16. The Human Rights Committee referred to its Concluding Observations on Israel (1998, CCPR/C/79/Add. 93), where it stressed that a State party may not depart from the requirement of effective judicial review of detention.

[265] Regulation 22 of the EMPP Regulations No.1 of 2005, as amended by Emergency Regulation 1462/8, 2006.

also gave broad immunity from prosecution to officials in the course of implementing the regulations.[266]

340. While the Sri Lankan Constitution (Article 141) guarantees the right to habeas corpus, both the PTA and the Emergency Regulations provided that anyone held under these provisions had no right to challenge the detention in the courts, in violation of article 9 of ICCPR.[267] This effective suspension of habeas corpus was noted by the United Nations Human Rights Committee in 1995: "The Committee is concerned that the undetermined detention that may be ordered by the Secretary of the Ministry of Defence violates the Covenant […]. In view of this, the Committee remains concerned about the effectiveness of the habeas corpus remedy in respect of those arrested under the Prevention of Terrorism Act."[268] This is particularly serious in the case of enforced disappearances as relatives of victims rely on habeas corpus to seek urgent clarification of the whereabouts of the person abducted. (See Chapter VIII on enforced disappearances).

341. For individuals considered as a security threat and the individuals considered to be "surrendees" by the Government, the PTA and Emergency Regulations thus permitted preventive detention, and facilitated the holding of detainees in unacknowledged secret detention, including former LTTE cadres who were captured at the end of the armed conflict. This form of preventive detention, according to the United Nations Working Group on Arbitrary Detention, is arbitrary in nature and in breach of Article 9 of ICCPR, even in the context of counter-terrorism measures/operations.[269]

342. On 7 July 2006, President Rajapaksa issued directives on protecting Fundamental Rights of Persons Arrested and/or Detained, which were circulated to the Commanders of the Army, Navy and Air Force and to the Inspector General of the Police. These included instructions that no person be arrested or detained under the PTA or Emergency Regulations, except in accordance with the law and proper procedure; that child or female detainees be placed in the custody of a women's unit of the armed forces or police; that the national Human Rights Commission be informed within 48 hours of an arrest, and be given access to visit detained persons in any detention facility.[270] These directives, however, had no separate legal force. Many of the procedures followed by the security forces violated international standards, and those that were compliant were routinely violated by the authorities.

Patterns of unlawful arrests by security forces and affiliated paramilitary groups

343. OISL conducted over 50 interviews with persons (one third were women) who had been unlawfully arrested or otherwise arbitrarily deprived of their liberty during the investigation period in the context of the armed conflict in Sri Lanka. It also reviewed other information on such cases, including many cases of enforced disappearance that reportedly

266 Regulation 19, Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation No. 07 2006, 6 December 2006.

267 PTA 1971, Part II, paragraph 10. EMPPR No.1 of 2005, paragraph 19(10).

268 United Nations Human Rights Committee, 1995, Consideration of Reports Submitted by States Parties under Article 4 of the Covenant, Comments of the Human Rights Committee: Sri Lanka. CCPR/C/79/Add.56, paragraph 17.

269 United Nations Human Rights Council, 2009, Report of the Working Group on Arbitrary Detention, A/HRC/10/21, paragraph 54.

270 Presidential Directives on Protecting Fundamental Rights of Persons Arrested and/or Detained available at < http://www.defence.lk/new.asp?fname=20070425_02>

occurred after unlawful arrests by security forces. The information gathered shows the widespread use of arbitrary and unlawful arrest and detention by the State, as well as arrests by paramilitary groups supporting the Government forces.

344. In the overwhelming majority of cases documented by OISL, the manner in which the arrests and in some cases abductions were carried out failed to comply with international standards and were often unacknowledged. In all these cases, no warrant was produced at the time of the arrest or abduction, and in only a handful of cases were detainees informed of the reasons for their arrest and of the location to which they were being taken, were brought before a judge, charged, or given access to legal counsel. Victims of such violations included suspected LTTE cadres or sympathisers, as well as journalists and civil society activists. OISL also documented a pattern of arrests of individuals of Tamil origin who were trying to leave the country, or who had returned to Sri Lanka from abroad, either voluntarily or after having been denied asylum abroad.[271]

345. *Modus operandi of the security forces: the "white van" arrests.*

346. In most of the cases documented by OISL, unlawful and arbitrary arrests were carried out by members of the security forces, including CID, TID, STF, members of SLA (especially Military Intelligence) and SLN.

347. Arbitrary arrests documented by OISL were perpetrated in locations throughout Sri Lanka, in particular Colombo, including Colombo airport, Jaffna, Batticaloa, Trincomalee, and, particularly after 2009, in areas around Vavuniya.

348. Victims were arrested near their homes or work places, or as they were travelling through checkpoints or airports, sometimes as they were trying to leave the country. Armed perpetrators – either in uniform or in plain clothes – would usually bundle victims into the back of unmarked vehicles, most commonly "white vans", blindfolded them and tied them up. They were then generally driven to a first place of detention, the location of which was often unknown to the victim. Vehicles were usually driven along indirect routes to confuse victims as to their whereabouts.[272]

349. One victim described his arrest in Vavuniya, in 2009, typical of many others documented by OISL: "I was at home with my mother and sister. At around 8 or 9 p.m., I heard dogs barking outside. I went out to see if there were thieves. I was wearing a T-shirt and shorts, without shoes. I saw three men outside, two of whom were wearing civilian clothes; one was wearing a green army uniform. Two of the men had guns, and one of them pointed a gun at my mother and sister. I began to shout and scream. The men told my mother and sister not to make any noise and that I was being taken away for purposes of investigation. Nobody said anything about an arrest warrant. It all happened very quickly. The men put me in a white van that they had parked outside the gate. It was a normal white van, not a military vehicle. They dragged me to the van and pushed me into the back. They beat me and I fell unconscious. When I regained consciousness, I had pain in my head and in my back. I was in a small room, a cell, with a toilet in the corner and no windows."[273]

350. Arbitrary arrests were generally perpetrated against pre-determined individuals, often after a period of surveillance and thus pre-planned.[274] For example, several victims reported that in the days preceding their arrest, they had been followed in the street or saw suspicious vehicles parked outside their homes or places of work.[275] On many occasions,

[271] WS on file
[272] WS on file
[273] WS on file.
[274] WS on file
[275] WS on file

victims were asked for their identity papers immediately prior to their arrest, and the alleged perpetrators would present victims with information they had on them.[276] One victim described to OISL how, in Vavuniya in 2010, he was the victim of an arbitrary arrest. Someone he did not know came to his workplace, asked for him and left. The next day, the victim was in a shop near his office, when someone called his name, and a second person struck him on the head with the butt of a rifle. He woke up in a dark place, naked, with bruises and bleeding. He was interrogated by a group of seven or eight individuals who were beating him.[277] He alleges he was severely tortured and raped during six weeks in detention by the security forces.

351. Arbitrary arrests were often violent, with many victims describing being assaulted while being driven to a place of detention. In one case, according to witnesses, in Jaffna, in 2006, over 30 armed SLA soldiers came to a house at 11.30 p.m. Ten soldiers, some wearing balaclavas, entered the house. The soldiers were aggressive, and hit members of the family. The victim's wife was beaten with a chair. The soldiers blindfolded the victim, forced cloth into his mouth to stop him from screaming and then dragged him along the street.[278] His whereabouts remained unknown at the time of finalizing this report.

Alleged perpetrators

352. According to the information gathered by OISL, the different branches of the Sri Lankan security forces worked together in perpetrating unlawful and arbitrary arrests, demonstrating a high degree of coordination[279], joint intelligence and information sharing, as well as joint planning, which continued throughout the period of detention, interrogation, torture and release or transfer to prison. Where identified, the security forces carrying out the arrest were often members of the SLA, TID or CID, sometimes with the support of SLA, especially Military Intelligence. The security forces had at their disposal information gathered through informants, including former LTTE cadres, some of whom had been detained prior to becoming informants, and that information had been extracted under torture or threat of torture.

353. Over time, collusion between the Karuna Group, the STF of the police and Military Intelligence in 'white van' arrests became more apparent.[280] The Karuna Group was not necessarily initially under the total control of the security forces, but over time, its links with security forces became increasingly evident and the fact that it enjoyed immunity and was able to carry out unlawful actions, either on its own accord, or directly on behalf of or with Government forces. [281]

354. The Karuna Group had full freedom of movement within Government-controlled areas, circulating freely through checkpoints back to their bases that were organized in close proximity to army camps. By 2006, the Karuna Group clearly operated from Welikanda Army camp, alongside or on behalf of SLA and SLN intelligence operatives, conducting 'white van' arrests and unlawful killings.[282] Following the arrests, the vehicles

[276] WS on file
[277] WS on file
[278] WS on file.
[279] See op.cit interviews with police officials in Business Today, April 2009, where they described the close coordination, weekly meetings with the Secretary of Defence to plan counter-terrorism investigations and operations.
[280] SLMM documentation
[281] WS on file
[282] SLMM documentation

passed through army and police checkpoints without being stopped, on their way to detention facilities run by various State security agencies.[283]

Unlawful and arbitrary arrests in SLA cordon and search operations

355. The SLA also frequently carried out arrests during "cordon and search" operations, conducted in areas with concentrated Tamil populations particularly in Colombo and the Northern and Eastern Provinces. They were particularly prominent between 2006 and 2008, and after the end of the conflict as the security forces continued to seek out LTTE cadres who might have escaped.

356. The search operations were commonly referred to as "SLA round ups". Prior to the house-to-house searches, the Army would arrive in armoured vehicles, sometimes in vans with blackened windows, and surround the village, cordoning it off with roadblocks so that residents would be unable to leave. The search was usually conducted by SLA from the nearest SLA camps. The following is an account, drawn up by human rights defenders, of monthly cordon and search operations in Vavuniya as they were taking place in 2008:

357. "The SLA and police arrived at villages around 4a.m. and ordered all residents to assemble at a public space like a playground. The people were then divided according to age – over 40 years old, under10 years old, 10-18-year-olds and others. The over-40s and under-10s were allowed to return to their homes first, the 10-18-year-olds were subjected to checks. Finally, the others, usually 18-25 year-olds, were checked, and sometimes videotaped collectively and photographed individually. Men and women were assembled separately. The men would be asked to line up and walk towards an armoured truck parked a few feet ahead. The truck would have a tinted glass panel through which the inside could not be seen. An army officer would stand on the roof of the truck and through an open hatch on the roof look down at the person in the truck standing in front of the glass panel, who would indicate whether any of those lined up and walking toward the truck need to be taken in for further questioning. Often the soldiers were accompanied by hooded or masked men."

358. Accounts given to OISL include that of an entire village being cordoned off for an entire day after the end of the armed conflict, in 2009 by SLA. Officers went door-to-door, arresting suspected LTTE sympathisers without warrant.[284] In a much earlier case, in 2006, army vehicles drove into a village in the North, and villagers were told to gather at a public building. The soldiers surrounded the village, to prevent anyone from leaving. SLA identified a number of men suspected of involvement with LTTE. Because of the villagers' protests, the men were not taken away on that occasion but ordered to report to an SLA camp later on.[285] Young girls or single women would stand close to their own or another family, fearing harassment and intimidation during or after questioning, especially during night visits by SLA personnel.

359. Witnesses said that sometimes, the family members of the victims would chase the van until the next village as they felt that, as long as they followed the van, they had a chance to know their relative's whereabouts. [286] Human rights workers who spoke to villagers after such operations described the terror and anguish they experienced being rounded up in the middle of the night, as well as not knowing what had happened to their loved ones.

[283] WS on file
[284] WS on file
[285] WS on file
[286] WS on file

Mass arrests/detention at the end of the armed conflict

360. Chapter XVI of this report describes the screening process and deprivation of liberty of almost 300,000 civilians who crossed into Government territory in the final weeks of the conflict. OISL focuses in this section on the "surrendees" (the term used in Emergency Regulations) who, at the end of the armed conflict, were selected at the screening points and taken into the custody of military and police forces for "rehabilitation" and/or for further investigation because of their real or suspected links with the LTTE. Some of the individuals were also arrested at IDP camps in "white van" operations.

361. Under the 2005 Emergency Regulations[287], "surrendees" could be detained in "rehabilitation centres" for 12 months, which could be extended for up to two years without charge or trial for the purposes of "rehabilitation". The legal status of some 11,696 individuals who, according to the Government, had "varying degrees of involvement" with the LTTE was not always clear. As of September 2010, the Government stated "6,500 "surrendees" are undergoing short term rehabilitation, while around 3,500 are subjected to longer term rehabilitation. Only less than 1,500 which had identified (sic) as hard core LTTE activists who have direct evidence regarding the activities were involved will be prosecuted." The Government stated, "the philosophy would be "restoration rather than retribution." There was no clear indication of the legal or policy basis on which shorter or longer rehabilitation was based.

362. The detainees were mostly arrested at various checkpoints and screening points at the Vadduvakal Bridge, Mullaitivu and Omanthai; others after they had already been registered as IDPs inside Manik Farm. Although this chapter focuses mainly on mass detention at the end of the armed conflict, others who crossed over earlier into Government territory had also been detained.

363. Those detained at the end of the armed conflict were identified in a number of ways. Many responded to the repeated calls for anyone having even one day of service with LTTE and voluntarily handed themselves over to the SLSF, either immediately or during questioning. Young women with cropped, short hair were easily identified by soldiers as LTTE military cadres and thus particularly vulnerable. Young men were warned during questioning that if they did not admit involvement with LTTE they would suffer severe consequences.[288] The military authorities made no distinction at the screening points between LTTE military cadres who had been taking part in hostilities and others who were not military cadres. Child "surrendees" were initially taken to adult rehabilitation centres, but were eventually transferred to special rehabilitation centres for children (see chapter on Recruitment and use of children in armed groups.)

364. In all three holding areas where screening took place at Mullaithivu and at Omanthai, members of paramilitary groups or former LTTE cadres who had become informants (some with their faces covered), assisted military intelligence officers in identifying former LTTE military cadres, members of the LTTE and LTTE in support functions.[289] Some former combatants who had surrendered or had been captured before the end of the conflict confirmed to OISL that military intelligence officers took them to Mullaithivu to identify their former cadres.[290] [291]

[287] Regulation 22 of the EMPP Regulations 2005, as amended by Emergency Regulation 1462/8, 2006.
[288] WS on file
[289] WS on file
[290] WS on file
[291] WS on file

365. The informants also regularly entered the camps making up Manik Farm with military intelligence officers to identify LTTE members.[292] They would walk amongst the IDPs and identify individuals, who were taken away for questioning. Some were reportedly dragged away and beaten in the presence of other IDPs,[293] while others were taken away at night.[294] Conflict for resources within the camps also reportedly turned IDPs against each other, and some IDPs denounced others as LTTE members to the military, who were then taken away.[295] In some cases, individuals told the SLA at Omanthai that they had left the LTTE some years before and they were not taken into custody at that time, but were apprehended later after their transfer to Manik Farm.

366. As described in the previous chapter, some of those who surrendered were reportedly extrajudicially executed. In the case of those who disappeared, the relatives are still seeking the truth. Some were taken to detention centres inside military camps and other places of detention where they were held *incommunicado*, sometimes for months, before their place of detention became known or before their release, often on payment of a bribe. Chapters IX and X on Torture and Sexual and Gender-based Violence describe the treatment to which many detainees were subjected.

367. In a number of cases, the security forces summoned individuals to report to SLA camps or police stations after their release. In 2010, for example, one woman received a phone call from an SLA commander, who told her to report to an army camp in Kilinochchi, where she was interrogated and allegedly tortured.[296] In many other cases, and in the absence of a legal basis for their detention, victims were released from detention or from rehabilitation camps on the condition that they would report regularly – normally on a weekly, fortnightly or monthly basis (depending on the decision of the area commander) – to a police or army base, where they were sometimes re-arrested, tortured and/or suffered sexual violence.[297]

Places of detention

368. According to the information gathered by OISL, victims of so-called "white van" arrests and others arrested under the PTA and Emergency Regulations by Sri Lankan security forces were detained in various locations. Some of these locations were official, gazetted places of detention, such as prisons, while others were not.

369. In Colombo, many Tamils were held in Welikada ("Magazine") remand prison[298], Negombo prison, various police stations in the city, including Kessalwatta and Hultsdorf, TID facilities in Colombo (sometimes referred to as the "6th floor"), and at CID headquarters, in Colombo (known as the "4th Floor"). To the south of Colombo, Kalutara prison and Boosa detention centre in Galle, were used to hold hundreds of Tamils arrested under the PTA or the Emergency Regulations.

370. Victims interviewed by OISL had also been held at a number of SLA bases, including Achelu, Atchuvely, Kachcheri, Kodikamam, Thaddar Theru and Urelu. Some said they were held in Navy facilities. In 2015, allegations were received that some

[292] WS on file
[293] WS on file
[294] WS on file
[295] WS on file
[296] WS on file
[297] WS on file.
[298] Those taken to a remand centre were detainees who had appeared before a Magistrate and thus officially detained with judicial oversight.

detainees were still being held at a secret Navy detention centre in Trincomalee - this however could not be confirmed by the OISL but requires urgent investigation.

371. Joseph Camp, the Security Forces Headquarters (SFHQ) for the Vanni in Vavuniya, commanded at the time by Major General Jagath Jayasuriya, was one of the main SLA camps where detainees were taken for interrogation (and often subjected to torture). It had a heavy presence of officers of the Military Intelligence Corps as well as CID and TID at times.

372. At the end of the conflict, many of those who identified as having links to the LTTE were initially taken to one of a number of "Protective Accommodation and Rehabilitation Centres" (PARC) which were set up, mostly in Vavuniya and Jaffna, but also one near Trincomalee (Kandaku Army Farm) and near Batticaloa (Triconamadu Air Force Farm). Conditions of detention reportedly varied, but OISL received allegations that most of these places were more like detention centres, with few or no rehabilitation activities. Effectively, being held in the PARCs amounted to administrative detention for the majority of "surrendees". OISL was not able to investigate conditions or activities at the Protective Accommodation and Rehabilitation Centres other than when reviewing accounts of detainees held there. OISL, however, received allegations of torture and sexual violence perpetrated in several of these places of detention. Many others who "surrendered" were taken to secret camps or detention places inside army camps, official detention centres or police establishments.

373. Schools were among the locations turned into temporary detention facilities at the end of the conflict. One woman who was taken into custody after being identified by an informant at Omanthai in May 2009, described how she was detained initially in Poonthotham Rehabilitation Centre, a converted technical school, where several thousand women, mostly former LTTE fighters, were held by the SLA in a large hall, with barely enough space to lie down. The woman was then taken to Pampaimadu Rehabilitation Centre, a converted agricultural college where conditions were crowded and detainees slept in tents. CID and TID officers reportedly were present and carried out interrogations.[299] She said she was transferred four times between May 2009 and her release in late 2010.[300]

374. Like this victim, detainees were frequently moved between different detention centres and PARCs[301]. These multiple transfers[302] are indicative of the close cooperation between the different branches of the security forces. The LLRC also recognised the difficulties this practice caused for relatives trying to find the detainees, noting "a major concern raised before the Commission was the fact that many people did not know the whereabouts of family members in detention as they were constantly being shifted from camp to camp". For example, a man who was arrested as he was crossing from the Vanni, in May 2009, told OISL that he was first detained at Vavuniya police station for two days, transferred to Boosa detention centre for five days, then to a TID facility in Colombo, and returned to Boosa. In late 2009, he was transferred to Colombo remand prison and to Welikanda, until his release nearly four years later.[303] However, detainees often did not know where they were being held, during part or all of the time of their detention.

[299] WS on file
[300] WS on file
[301] Under emergency regulations, a detainee could be first held for 18 months on a detention order, then sent to a PARC for up to two years, then taken back to a detention centre on another detention order.
[302] Multiple transfers also took place frequently in the years before the end of the conflict.
[303] WS on file

375. Families who eventually found out where their relative was being held would not be informed of any transfer and would travel to one place only to find that the person had been transferred elsewhere.

376. As indicated above, in its fifth Periodic Report to the Human Rights Committee dated 21 January 2013, the Government claimed that a "database of all the cadres in detention was created and released". However, OISL was not able to confirm that such a database existed. In 2011, according to a habeas corpus petition filed in an enforced disappearance case, a notice appeared in the press stating that close relatives of those seeking information about persons deprived of their liberty could approach TID offices. However, there is no indication that this was any kind of official mechanism to assist the families of the detained or disappeared.

Lack of access to detention facilities

377. There was little, irregular or no access to many of the detention centres for independent monitors, particularly unofficial places of detention such as military camps. Lawyers also did not have access to many of the places of detention, particularly when the detention was not acknowledged.

378. The Human Rights Commission of Sri Lanka (HRC) Act specifies that the Commission may "monitor the welfare of persons detained either by a judicial order or otherwise by regular inspection of their places of detention and to make such recommendations as may be necessary for improving their conditions of detention". The 2006 Presidential Directives ordered security forces to notify the HRC of arrests and to grant the HRC access. OISL has not received any information to suggest that the HRC was regularly informed of the detentions under Emergency Regulations, nor that it had access to those detained, for example, in military camps.

Prolonged detention without charge or trial

379. The length of detention described by the former detainees varied from days to months to several years, often well beyond the two years permitted under the Emergency Regulations, which in itself contravenes international standards. According to the Government, by September 2010, 7,382 detainees were still being held, 16 months after being detained.[304] As of July 2011, some 5,000 of the approximately 12,000 "surrendees" originally detained were reportedly still being held in "Rehabilitation Centres", apparently without having been brought before a judge or other officer authorized by law to exercise judicial power. Some still remain in detention today, although there is no official list available as to how many, who they are or where they are being held.

380. In 2010, the LLRC, in its interim recommendation to the Government, noted "persistent complaints pertaining to persons being held in detention for long periods without charges", and recommended that a special mechanism be set up "to examine such cases on a case by case basis and recommend a course of action in regard to disposal of each case". LLRC also recommended the publication of a list of names of those in detention, and the issuance of a certificate to those "discharged" so that they would not taken into custody again, unless there was new evidence. The LLRC's recommendation for a special mechanism to review cases was not implemented at the time.

381. In its final report, the Commission issued a series of strong recommendations with regard to safeguards in relation to arrests and detention. These included the setting up of a "centralised, comprehensive database containing a list of detainees, which should be made

[304] Diplomatic sources on file.

available to the next of kin, with names, place of detention, as well as a record of transfers so that families can have access to such information". The LLRC also recommended the establishment of an Independent Advisory Committee to "monitor and examine detention and arrest of persons taken into custody under any regulations made under the Public Security Ordinance or the PTA." (paras 9.53 to 9.71)

382. Most importantly, the LLRC stated that "the refusal by the Police to record an arrest, detention and transfer or to record complaints of abductions and failure to investigate the same would constitute a criminal offence and steps should be taken to prosecute such wrongdoers" (para 9.55). This LLRC recommendation has also not been implemented.

383. As mentioned above, the criteria for the eventual release of "surrendees"/detainees from detention were not clear. In 16 cases documented by OISL and also in cases reported by others, release was secured upon payment of a large bribe by a family member of the detainee, often through intermediaries. The EPDP was commonly cited as one such intermediary.[305] The acceptance of payments to grant release of detainees appears to have been widespread. This is in direct contradiction with the authorities' claim that the individuals detained constituted a threat to national security.

384. Upon release, detainees were not always issued with documents confirming their release from detention, and therefore, could be called to report regularly to the security forces, face ongoing surveillance, harassment, and fear of re-arrest.[306] One victim told OISL that he continued to live in fear after his release from SLA detention in 2010, as he was not given release documents. He was later ordered to report on a weekly basis to CID, until November 2011. He was eventually re-arrested and described being severely tortured.[307]

385. The Government which took office in January 2015 pledged to review the cases of all those still held under the PTA. The Government appears to be facing challenges in consolidating a comprehensive list of detainees and has stated it was working closely with ICRC on this.

VIII. Enforced Disappearances

Introduction/ Context

386. The phenomenon of enforced disappearance has affected tens of thousands of Sri Lankans for decades during all stages of the armed conflict, as well as during the previous periods of insurgency by the Janatha Vimukthi Peramuna (JVP, People's Liberation Party), with devastating effects on their families, as well as on the wider communities.

387. The scale of enforced disappearances in Sri Lanka has long been exceptional. In its 2014 report, for example, the Working Group on Enforced or Involuntary Disappearances (WGEID) reported a total of 12,536 complaints of enforced disappearances registered over the years, the second highest number of disappearances on the list of the Working Group from any country in the world[308], all the more significant given the relatively small

[305] WS on file
[306] Diplomatic sources on file.
[307] WS on file
[308] Report of the Working Group on Enforced or Involuntary Disappearances, 4 August 2014, A/HRC/27/49

population of Sri Lanka[309]. In 2007, the Working Group stated that it transmitted more cases of "disappearances" as urgent appeals to the Sri Lankan Government in 2006 than to any other country in the world[310].

388. The previous chapter has detailed the many factors which have facilitated enforced disappearances in Sri Lanka. This section looks at enforced disappearances which persisted on a large scale during much of the period of OISL mandate, including targeted disappearances perpetrated in the context of security forces operations, sometimes in conjunction with paramilitary groups. It also documents the cases of a number of individuals who disappeared after identifying themselves to the military as LTTE cadres and associates at the end of the conflict. Even after the period of the OISL mandate, allegations of new cases of enforced disappearances were received.

389. OISL did not review individual cases of persons who had disappeared in the periods before its mandate. However, as enforced disappearances constitute a continuing violation, OISL reviewed information from families who continue to seek truth and justice for their loved ones who disappeared. This section highlights, in particular, the quest of families for information about the whereabouts and fate of their loved ones.

390. Most importantly, this chapter examines the responses of consecutive governments to victims' claims of enforced disappearances, whether or not the cases occurred within OISL's mandate period. In spite of thousands who have disappeared, and the numerous national commissions of inquiry set up to look into their cases, the fate of only a small number has been fully clarified, and only few perpetrators held to account. Most of the mechanisms established to address issues related to the disappeared did not provide meaningful responses to clarify the fate of the disappeared and bring to justice those responsible.

391. Not all cases of 'missing' persons fall within the definition of enforced disappearances. For example, members of the armed forces who are "missing in action" during the conduct of hostilities are excluded from this definition. Nonetheless, the Government has a duty to make every effort to trace the whereabouts of such persons, to inform the families of any progress in locating the missing, to ensure reunification with their families if appropriate, or to hand over the body of the person, if confirmed as deceased.

392. Cases of abductions by LTTE, including in the context of forced recruitment, are dealt with in Chapter XI.

393. The complex nature of enforced disappearances requires demonstrating multiple elements, including the deprivation of liberty; the involvement of State officials; and the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person, placing the person outside the protection of the law.

394. Nevertheless, OISL gathered consistent information amounting to patterns of enforced disappearances and impunity. In the course of its investigation, it reviewed large amounts of existing information gathered by international and Sri Lankan NGOs and other mechanisms, such as WGEID, which have extensively documented such cases[311]. OISL

309 Op.Cit. p31

310 A/HRC/10/9, para 366.

311 Human Rights Watch, Recurring Nightmare. State Responsibility for "Disappearances" and Abductions in Sri Lanka, March 2008; SLMM documents; Human Rights Watch, The Legal Limbo. The Uncertain Fate of Detained LTTE Suspects in Sri Lanka, 2010; Human Rights Watch International Crisis Group, *Complicit in Crime*, 2007; Sri Lanka's Human Rights Crisis; Amnesty International; Stop Torture, 5 years on: The White Flag Incident 2009-2014, 2014

interviewed members of organisations working directly with relatives of the disappeared, as well as relatives of those who disappeared, and witnesses to arrests, detention or abductions where the victim remains disappeared. For example, a number of former detainees interviewed by OISL said they had seen individuals in army custody who subsequently disappeared. Such information was further corroborated through the review of written submissions sent to OISL.

395. In addition, OISL reviewed unpublished reports of several Sri Lankan commissions of inquiry on disappearances, and copies of complaints lodged with the Sri Lanka Police and other competent national and international bodies.

Government responses to allegations of enforced disappearances

396. Despite the scale of the issue, the Sri Lankan authorities have for the most part downplayed the phenomenon of enforced disappearances and have denied the involvement of the security forces. An exception was President Chandrika Bandaranaike Kumaratunga, who was elected on a pledge to end enforced disappearances in 1994. She took a series of measures to address the issue while in office, although, as will be seen, there were many obstacles which constrained the efforts to bring about accountability.

397. Under the presidency of Mahinda Rajapaksa from November 2005, Government authorities repeatedly denied any responsibility for enforced disappearances. For example, in March 2007, the then Human Rights and Disaster Management Minister, Mahinda Samarasinghe, claimed that the reports about people who disappeared were the result of the "propaganda strategy" by "a ruthless terrorist organization" which tried to "paint a bleak picture internationally to bring pressure on the government so that our resolve will be weakened"[312]. In October 2007, President Rajapaksa himself claimed that among those reported as disappeared under his presidency, "some have gone on their honeymoon without the knowledge of their household"[313]. He added that "these disappearance lists are all figures. […] I do not say we have no incidents of disappearances and human rights violations, but I must categorically state that the Government is not involved at all"[314].

398. Similar statements were made in May 2012 by the then Defence Secretary Gotabaya Rajapaksa, who claimed that many disappeared had left Sri Lanka to go abroad and that the allegations of enforced disappearances are "lies to give a wrong picture of Sri Lanka...a wrong image of Sri Lanka by the rump of the LTTE who is remaining outside and trying to damage the image of Sri Lanka".[315] In 2014, on the occasion of the consideration of its 5th Periodic Report to the Human Rights Committee under ICCPR, the Government claimed that "the reference to "white vans" as a means of disappearances is a sensationalised allegation that appeared in some media reports, rather than being based on realistic facts." The Government also categorically rejected allegations of involvement of the military in enforced disappearances.[316]

312 "You cannot expect everything to be normal", The Nation, 18 March 2008, http://www.nation.lk/2007/03/18/inter3.htm

313 Western Powers Despise My Non-Elitist Leadership in Sri Lanka - Mahinda Rajapaksa, The Asian Tribune, 4 October 2007, http://www.asiantribune.com/node/7650

314 Ibid.

315 Gotabaya Rajapaksa: Sri Lanka north 'not just for Tamils', BBC, 28 May 2012, http://www.bbc.com/news/world-asia-18207198

316 CCPR/C/LKA: Human Rights Committee, Consideration of Sri Lanka's Periodic Report under ICCPR, 7-8 October 2014 – Information by the Government of Sri Lanka to questions raised by the Human Rights Committee, in addition to earlier written response given by the Government of Sri

399. A few Government officials did, however, acknowledge Government responsibility for disappearances. In early February 2007, the then Foreign Minister Mangala Samaraweera, in a letter to the President stated that "a person is abducted every five hours" in Sri Lanka and that "no matter who does it, as a government we are responsible for it"[317].

400. In its 2010 interim report to the President, the LLRC, in paragraph 9.47 of its report, also emphasized the urgency of resolving cases of enforced disappearances, calling on the Government to take immediate action. It reported receiving more than 1,000 complaints of enforced disappearances during its hearings, and emphasised that "it is the responsibility of the State to ensure the security and safety of any person who is taken into custody by governmental authorities through surrender or an arrest".

Patterns of enforced disappearances

401. Enforced disappearances, as evidenced in this section, have been used by consecutive governments to target those perceived as critical of the Government, supportive of opposition movements or involved in armed conflict. For example, according to WGEID reports, NGOs and others, during the JVP insurgencies of 1971 and from 1987-89, thousands of Sri Lankans, mainly Sinhalese males, disappeared after being taken by security forces. In 1996, after Government forces recaptured Jaffna from LTTE control, hundreds of Tamil men disappeared after arrest. Many others, mostly Tamils, perceived as linked to the LTTE have disappeared since that time.

402. The scale of enforced disappearances fluctuated throughout the period covered by OISL investigation. After a drop due in part to the 2002 Ceasefire Agreement, consistent reports from different sources indicate that the number of cases increased dramatically from 2005 onwards. In the report of his visit to Sri Lanka in November 2005, the Special Rapporteur on extrajudicial, summary or arbitrary executions reported that he was "very disturbed" to receive reports "which appeared to indicate a re-emergence of the pattern of enforced and involuntary disappearances that has so wracked Sri Lanka in the past. I flag them […] as an alarming warning that the escalating security situation could trigger a reversion to abusive practices of the past" [318]. The Special Rapporteur then called on the Government to ensure "that all the necessary safeguards with respect to detention are fully observed"[319].

403. In its 2006 report, WGEID indicated that it was "gravely concerned at the increase in reported cases of recent enforced disappearances occurring primarily in the north-east of the country in the context of renewed fighting in the region"[320]. According to figures published by the Human Rights Commission of Sri Lanka in the middle of 2006, 419 persons had disappeared in the Jaffna peninsula since December 2005.

404. Between 2007 and 2009, the number of enforced disappearances reported to WGEID continued to increase. In 2007, WGEID stated that it was "gravely concerned at the increase in reported cases of recent enforced disappearances in the country". It added that it was "particularly concerned about new worrying trend concerning recently reported

Lanka to the 'List of Issues'; Introductory Statement of H.E Mr Ravinatha P. Aryasinha, Ambassador, Permanent Representative of Sri Lanka,7 October 2014.

317 Foreign Minister exposes corruption in Governmentt., The Sunday Leader, 28 January 2007, http://www.thesundayleader.lk/archive/20070128/news.htm

318 E/CN.4/2006/53/Add.5, 27 March 2006, paragraph 68.

319 Ibid.

320 Report of the Working Group on Enforced or Involuntary Disappearance, 25 January 2007, A/HRC/4/41, paragraph 396.

cases in Colombo, in addition to the cases that have reportedly occurred in Jaffna, which seem to indicate a widespread pattern of disappearances in the country"[321]. According to a list published on 31 October 2007 by three NGOs, which specified it was not exhaustive, there were 540 cases of enforced disappearance from January to August 2007[322].

405. Again, in its 2008 annual report, WGEID stated it was "alarmed" by the large number of cases of enforced disappearances in Sri Lanka[323], noting it had transmitted 43 cases concerning people who had disappeared between February and October 2008 under its urgent procedure[324]. In its report issued in 2012[325], WGEID cited renewed allegations that more than 500 persons had disappeared between January and August 2007, in Jaffna District, and around 100 persons were alleged to have disappeared between 2008 and 2009 in Mannar District.

406. After another surge in allegations of enforced disappearances at the end of the armed conflict in 2009, the numbers of reported cases eventually dropped, although some cases of disappearances continued to be reported after the end of the timeframe covered by OISL's mandate.

407. Cases of enforced disappearance reviewed by OISL were perpetrated throughout the country, though certain regions were particularly affected. Most of the documented cases during its mandate period occurred in the Northern Province - in the districts of Mannar, Jaffna and Vavuniya, all under strict military control. The second most affected area was the Eastern Province, especially between 2006 and 2008, when the Government forces defeated the LTTE there. Cases of enforced disappearance in Colombo were also documented by OISL, with most of the victims being originally from the North and the East of the country.[326]

408. The majority of victims of enforced disappearances which occurred during the period of OISL's mandate are individuals perceived to have links with the LTTE. Young Tamil males, whether or not they had any links to the LTTE, were particularly vulnerable to enforced disappearances in Government-controlled areas. Others who disappeared in the Government-controlled areas included individuals perceived as critical of the Government, such as human rights defenders, national humanitarian workers and journalists. In a press

321 Report of the Working Group on Enforced or Involuntary Disappearances, 10 January 2008, A/HRC/7/2 paragraph 344.

322 Civil Monitoring Mission, Free Media Movement and Law & Society Trust, Second submission to the Presidential Commission of Inquiry and public on human rights violations in Sri Lanka: January – August 2007, http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/AFMD_LKA_UPR_S2_2008anx_LSTreportondisappearancesandkillings.pdf

323 Report of the Working Group on Enforced or Involuntary Disappearances, 25 February 2009, A/HRC/10/9 paragraph. 366.

324 Ibid, paragraph 351.

325 Report of the Working Group on Enforced or Involuntary Disappearances, 2 March 2012, A/HRC/19/58/Rev.1, para 497.

326 In its final report, the Zonal Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sbaragamuwa Provinces, 1997, noted that "the evidence before the Commission is that the issue of involuntary removal/disappearances in Colombo of persons of Tamil origin should not be subsumed in the phenomenon" of such cases in Southern Sri Lanka", indicating that the targeting for disappearances of Tamils in Colombo had persisted for many years. (As quoted in A Legacy to Remember: Sri Lanka's Commissions of Inquiry 1963-2002, Ed. Kishali Pinto-Jayawardena, The Law & Society Trust).

release of 11 June 2008, WGEID expressed concern that humanitarian workers were being targeted[327]. Some of these cases are documented in the chapter on unlawful killings.

409. An emblematic case, illustrative of the patterns described, is the disappearance of cartoonist Prageeth Ranjan Bandara Eknaligoda, who worked for Lankaenews. An outspoken critic of the Government, he disappeared in Colombo on 24 January 2010 during the presidential election campaign. According to information received by OISL, he was first arrested on 27 August 2009, by unidentified armed men travelling in a white van, and was released the following day, though he continued to receive anonymous telephone calls and believed he was being followed. On 24 January 2010, Mr Eknaligoda left his office in the evening, but never arrived at the place where he was supposed to meet a colleague. His fate and whereabouts have been unknown since then. Lankaenews' offices were searched by unidentified men without producing a warrant four days after Mr Eknaligoda had disappeared.[328]

410. The Eknaligoda case has been raised with the Government by the High Commissioner for Human Rights, the Committee against Torture and WGEID, among others. Efforts to find information on his whereabouts are detailed below as well as recent developments in the case.

Disappearances after arrests by security forces

411. Over the years, OHCHR, WGEID and other United Nations bodies, and NGOs have gathered an overwhelming amount of information confirming the direct involvement of the Government, and in particular security forces in enforced disappearances. With the emergence of the Karuna Group in 2004 and the continued paramilitary activities of the EPDP during the mid-2000s (both of which worked closely with security forces), patterns of enforced disappearances became part of the low intensity armed operations between the different groups.

412. According to WGEID reports of 2007, 2008, 2009 and 2010, the Sri Lankan Army, the police (CID, TID, STF) and paramilitary groups were allegedly responsible for the majority of the cases of enforced disappearances. The Sri Lankan Navy, in particular, was responsible for cases of enforced disappearances in Jaffna and Mannar. Allegations, however, also point to joint operations and collusion between the different branches of the security forces (as well as support of paramilitary groups), involving several different entities in different stages of arrest, detention and disappearance.

413. Attributing the acts to specific forces or units as well as identifying individual perpetrators is often challenging, as the security forces, whether police or military, did not always identify themselves and denied having taken persons into custody, and because there were often no witnesses to the arrest. OISL also found that even when they knew the identity of the perpetrators, family members often hesitated to name them for fear of reprisals.

414. While the identity of the perpetrators is not always easily identifiable, the manner in which the arrests were carried out is consistent. Many OISL witnesses described being forced into a white van and driven away by the perpetrators, or witnessing others being taken away in such vans, often without licence plates. Perpetrators would speak Sinhala

[327] Press release of 11 June 2008, "United Nations expert group deplores recent wave of disappearances in Sri Lanka".
http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9278&LangID=E

[328] WS on file

and/or Tamil, wore either plainclothes or uniforms, and sometimes had their faces covered. In a number of cases, the perpetrators verbally identified themselves as CID or TID before taking the victim away. Relatives who were present during the arrest or abduction of those who subsequently disappeared were often told that the victims were taken for questioning. However, the perpetrators systematically failed to provide a formal arrest warrant or any information about where they were taking the victim. In such cases, the police or the security armed forces later denied that the person was under their custody.

415. An illustrative case, which occurred in 2008, is that of a man arrested at his home by five men dressed in civilian clothes, stating they were police and CID officers from Trincomalee[329]. The officers allegedly informed the victim's family that he was being taken for questioning and that they should go to the police station in the morning. The victim passed through a Navy checkpoint following his arrest, but the Navy officers provided no information to the family confirming this. The police also denied his arrest

416. In other cases, uniformed army personnel were more easily identifiable even though the army subsequently denied involvement. In one case reported to OISL that occurred in 2006, a man was arrested late at night at his home in Jaffna by a group of armed individuals, some in army uniform, some in civilian clothes.[330] He was accused of assisting the LTTE. The alleged perpetrators spoke Sinhala and broken Tamil. Witnesses reportedly saw the man being taken to a nearby SLA camp. Yet the following day, the Army denied any involvement in taking the victim[331]. In spite of complaints submitted to police and other organizations, there has been no information as to the victim's whereabouts.

417. Factors indicating the involvement of Government security forces also include the scale and nature of the operations leading to disappearances, and the fact that the perpetrators were able to operate with impunity in Government-controlled areas. This is particularly the case where incidents occurred close to SLA or SLN checkpoints and camps, including after curfew. A typical case is that of a young man who was seen being abducted in December 2007 by unidentified individuals driving a white van without licence plates coming from the direction of the SLA camp. The van was then seen driving back towards the army camp. Yet, the SLA denied having any knowledge of the abduction of that person.[332]

418. Transcripts of representations to the LLRC made by witnesses at public sittings in Trincomalee highlight a number of cases of alleged abductions perpetrated mostly in 2007 and 2008 by individuals who had identified themselves as Navy personnel, often indicating the victim was being taken for questioning. In a number of cases, the witnesses were informed that their relative would be released if they paid a bribe but, despite payment, they were not released.[333]

419. In 2005, a victim had to pass by a Navy base while on his way to visit relatives in a village in Mannar district. Witnesses had observed navy patrols and guards along the road that evening. When the victim did not return home that evening, the police were alerted; they reportedly suspected navy personnel to be the perpetrators. According to OISL

329 WS on file.
330 WS on file
331 WS on file
332 WS on file
333 Proceedings of public sittings of the Commission of Inquiry on Lessons Learnt and Reconciliation, District Secretariat Trincomalee, 3 December 2010. These give a number of accounts of all the steps the witnesses took in each case to try to find out the whereabouts of their family members, and the obstacles they met which are consistent with many others reviewed by OISL.

information, three months after the disappearance, the police had not actively pursued any investigation but were waiting passively for witnesses to come forward. [334]

420. In another case, in 2006, a group of eight men from a village in the north were victims of enforced disappearance from a temple, where the men were staying overnight at the time of a festival. Witnesses indicated that they believe the SLA was responsible for their disappearance. [335] Three SLA camps were located in the area of the temple. According to several sources, there had been some military presence during the festival. On the night the men disappeared, witnesses saw military vehicles moving about in the area and heard gunshots being fired from the direction of the temple. [336]

421. The following morning, several bullets were found on the ground, as well as some of the victims' clothes and ID cards. Military vehicles were seen driving away that morning. Villagers went to a nearby SLA camp, but the security guards denied having arrested anyone. The villagers filed a complaint with the national Human Rights Commission in Jaffna and the local police. The police said, at the time, that they were investigating the case and had no further information. The day after the alleged disappearances, the SLA searched houses in the village. WGEID sent the case to the Government of Sri Lanka under its urgent action procedure, which responded that investigations were being carried out [337].

422. Witnesses in some cases told OISL that the victims disappeared in Government-controlled areas during curfew hours or after security forces conducted one of the regular night-time cordon and search operations described in the previous chapter.[338] Following one cordon and search operation in Vavuniya in August 2008, 12 persons were initially arrested and six released; as of October 2008, the whereabouts of the other six remain unknown. OISL was also told that, at the time, in August 2008, the security forces made some changes to the methods of detaining individuals. Instead of individuals being detained during the cordon and search operations, they were arrested the following night by officials travelling in white vans. In September 2008, four persons were arrested and disappeared the night after a search operation in Vavuniya. [339]

423. In some such cases, victims were seen being taken to military camps, or received visits, were questioned, threatened or harassed by security forces before they disappeared. OISL received information about the case of a man who, in mid-May 2009, went to work in an Eastern town and never returned. The day before his disappearance, the SLA had carried out a search operation and, during the week preceding the disappearance, an SLA captain had come to his house on three separate occasions to inquire about him. The victim was allegedly seen being questioned by two men in SLA uniform. There has been no information about his fate or whereabouts since then, despite efforts to trace him. [340]

Enforced disappearances involving paramilitary groups

424. Enforced disappearances were also carried out by security forces operating in collusion with paramilitary groups and vice-versa, particularly from 2004 onwards. Indeed, the resurgence of a pattern of abductions and arbitrary deprivation of liberty, sometimes resulting in enforced disappearance, also mirrors the emergence of the Karuna group

334 SLMM documentation.
335 WS on file
336 SLMM documentation.
337 A/HRC/4/41, paras 382 and 384
338 Chapter VII Violations related to deprivation of liberty.
339 Name of village on file.
340 WS on file

following its split from LTTE in 2004, particularly in the East.[341] For example, in 2006, as the hostilities intensified, at least 167 adults were allegedly abducted by elements of the Karuna group in Batticaloa District.

425. Abductions of those suspected of having links with the LTTE in Ampara, Batticaloa and Trincomalee were sometimes carried out jointly by the security forces and the Karuna Group.[342] By October 2006, according to the information available to OISL, there was growing collaboration between the Karuna Group, the STF and the SLA in Batticaloa and Ampara. Numerous cases in Batticaloa from 2005 and 2006 also point to persistent cases of the Karuna Group using white vans to abduct people - including children - from public places in front of SLA camps or checkpoints, and later releasing them with the inferred purpose of warning and demonstrating the extent to which they were able to operate in Government-controlled areas.[343] The presence of several Karuna Group camps in the vicinity of SLA camps and in a few instances within SLA camps, for instance close by the headquarters of the Sri Lanka Army 23rd Division in Welikanda, illustrate that the SLA was fully aware of their presence, and cases of abductions perpetrated by the Karuna Group, often carried out during daylight hours, [344] could not easily have gone unnoticed by the SLA.

426. In one case documented in 2006, individuals believed to be from the Karuna Group were reportedly seen abducting young people in the vicinity of an SLA camp. The SLA who were present did not intervene to prevent the incident.[345]

427. In another case, SLA soldiers took a group of young men from a street in an eastern village on a morning in October 2006 and brought them to a nearby army camp. According to the available information, the soldiers made a phone call and shortly afterwards Karuna cadres arrived at the camp, took the young men's ID cards, and instructed them to report to the local TMVP office that afternoon. In several cases, victims described to international observers that while abducted by the Karuna Group and transported in a white van, they would go through a number of SLA checkpoints. They observed that the van stopped at each checkpoint, and that the Karuna Group cadres would talk to the soldiers and be allowed to pass.[346]

428. In October 2006, the Special Rapporteur on extrajudicial executions and international observers found increasingly strong indications of collaboration between the Karuna Group and the security forces, particularly the Special Task Force (STF) of the police and in some cases, between the Military Intelligence and the Karuna Group.[347] According to reports, the victims of enforced disappearances abducted by the Karuna Group were often temporarily held in one of the TMVP offices before being handed over to the STF. In one case from 2006, a man was reportedly arrested by the STF in the middle of Batticaloa, was later handed over to Military Intelligence, who then handed him over to the Karuna group. The STF reportedly claimed the victim had been released despite witness statements to the contrary.[348]

341 WS on file; See also Human Rights Watch, Complicit in Crime – State Collusion in Abductions and Child Recruitment by the Karuna Group, January 2007.
342 WS on file
343 Op.cit.
344 WS on file
345 SLMM documentation.
346 SLMM documentation.
347 E/CN.4/2006/53/Add.5 27, March 2006.
348 SLMM documentation.

Enforced disappearances at the end of the armed conflict

429. In spite of the Government's persistent denials[349], a body of credible information has emerged supporting allegations that a significant number of individuals, principally LTTE fighters who had laid down their arms, LTTE non-military cadres, their associates and family members, disappeared on 18 May 2009, after they had crossed the Vadduvakal bridge "surrendering" [350] to the SLA.[351]

430. Some of these cases were reported to WGEID and reference to them is included in its annual reports of 2012 and 2014.[352] OISL received other testimonies, including submissions from people who allegedly witnessed the surrender of former LTTE cadres or civilians who have not been seen since[353]. The LLRC itself registered a total of 53 LTTE cadres who surrendered during the final days of the war and were alleged to have disappeared at the time of its report.[354] In May 2015, the International Truth and Justice Project Sri Lanka published a list of 110 names of individuals seen by eyewitnesses "surrendering" to the SLA on or around 18th May 2009[355].

431. Witnesses told OISL that after the initial screening process, some of their family members were approached within a fenced holding area at Mullaitivu by soldiers or Tamil informants who led them away. OISL was also told that those individuals who acknowledged their link to LTTE were moved into separate lines, away from their families, before being taken away.

432. Witnesses told OISL that the security forces gave them no information as to where they themselves or those separated from them would be taken. Witnesses (wives, mothers, grandparents) saw their loved ones being taken away, including five children between the ages of two and 10.

433. The most widely documented case is the surrender of the group led by a Catholic priest, Father Francis Joseph on 18 May. That morning, a number of witnesses saw Father Francis in the holding area, together with[356] a group of LTTE fighters who were *hors de combat* and non-military cadres[357] that had identified themselves to the SLA at Vadduvakal.[358.]

349 In January 2013, the then Defence Secretary, Gotabaya Rajapaksa, stated that none of the LTTE cadres who had surrendered to the security forces at the end of the war went missing. All of them, he said, underwent a proper rehabilitation programme and were reintegrated into society; Sri Lanka Brief, No LTTE surrendee went missing – Gotabaya Rajapaksa, 25 January 2013, http://srilankabrief.blogspot.ch/2013/01/no-ltte-surrendee-went-missing-gotabaya.html

350 The term « surrender » is only applicable to members of an armed group that hand themselves over. It has been used here even though it is unclear who the LTTE cadres were, whether military or political.

351 These cases may also be linked to the alleged extrajudicial executions described in the previous chapter.

352 WGEID Annual report 2012, A/HRC/19/58/Rev.1 pages1pages 111-113.

353 WS on file. OISL also received a large number of submissions.

354 LLRC Report, para. 1.49: According to the Commissioner General of Rehabilitation, the Commission understands that there were 11,954 former LTTE combatants undergoing rehabilitation after they surrendered or who were otherwise taken into custody.

355 International Truth & Justice Project Sri Lanka, Sri Lanka : Disappearances in Custody Six Years Ago Today, 18 May 2015, http://tamilsforum.co.uk/wp-content/uploads/2015/05/Statement-18-May-2015-ITJP-SL-Disappearances.pdf

356 WS on file

357 WS on file

358 WS on file

434. He was seen facilitating the "surrender" of LTTE cadres directly with security forces members, one of whom was believed to be a senior-ranking security official with "a lot of security around him and a lot of badges on him".

435. Shortly afterwards, Father Francis and the group were seen by witnesses being led by the security forces to the road to the left of a first aid centre by the screening post at Mullaitivu and down the road to the south.[359] Some witnesses saw Father Francis and the group of LTTE cadres boarding buses east of the last holding area.[360] Father Francis and other members of the group have not been seen or heard from since.

436. Fourteen habeas corpus petitions have since been filed on behalf of 22 individuals (including five children), 13 in the Vavunya High Court (five on 20 March 2013, seven on 22 August 2013, one on 23 May 2014) and one in Mannar High Court in June 2015. The 22 are: Father Frances Joseph; Muralitharan Nadesu, his wife Muralitharan Krishnakumary and two young children; Mahalingam Sinnathamby (alias Illamparithi), his wife Mahalingam Sivanjni and their three children aged 10, eight and three at the time; Sinnathurai Sasitharan (Elilan); Selliah Vishwanathan; Ponnampalam Kanthasamy; Uruthirammoorthy Krishnamkumar; Kandasamy Thushisankar; Thiyagajah Thinesh; Nadesamoorthy Vishnukumar; Mahendran Murugathas; Thangabalasingam Vijayabaskar; Sivagnanam Gobalaratnam and his wife Sivalingam Pathmalosini, Kalimuththu Sajeevan; and V.Balakumaran.

437. In all but two cases, the individuals were among those last seen at Mullaitivu holding area on 18 May. One individual was seen being taken away at Omanthai on 18 May, another being taken away from the Mullaitivu holding area on a tractor two days earlier because he was injured. All of the petitions state that the disappeared were last seen in the custody of the 58th Division of the Sri Lankan Army.

438. In response to the petitions, the SLA stated that it had not arrested or detained the individuals. In some cases, it responded it had "acted lawfully and ensured the safety and welfare of the civilians who came to the areas liberated by the Army." In other cases, it replied that "at all times, Sri Lankan Armed Forces followed the applicable international norms governing warfare". It also claimed that many of those missing either died during confrontations with the military or fled the country illegally and were living in western countries.

439. In its report, the LLRC expressed its "grave concern" about the "number of representations concerning alleged disappearances of LTTE cadres who had surrendered to or been arrested by the Sri Lanka Army particularly in the final days". "Family members of these cadres…stated that when they, along with their husbands had reported at Army points, they had been told that their husbands were required for investigation and were being detained, and the family members were asked to proceed to the IDP camps. In some other cases, the spouses had seen their husbands surrendering to the Sri Lanka Army. The Commission also heard instances of families surrendering to the Army. The consistent theme that emerges from these representations is that the last they had seen of their husbands was their surrendering to the custody of the Sri Lanka Army, and had not heard or seen them since then."

440. The LLRC emphasized "the clear duty of the State to conduct necessary investigations into such specific allegations, and where such investigations produce evidence of any unlawful act on the part of individual members of the Army, to prosecute

[359] WS on file
[360] WS on file

and punish the wrongdoers." It therefore noted that "the launching of a full investigation into these incidents is an imperative.[361]

441. The Government is not known to have conducted any credible, thorough and independent investigation into these cases to clarify the fate and whereabouts of those taken away. In some of these cases, the Government claimed that the victims were killed in combat, in spite of witnesses having seen them taken into custody.

442. It is not clear how many individuals disappeared at the end of the armed conflict. The lack of transparency and clear procedures for registering those coming out of the conflict areas and separating them according to categories, notably LTTE cadres and civilians, is an additional factor, which facilitated disappearances. The initial screening and subsequent detentions were not consistently monitored independently. As a result, the figures remain unclear and a precise determination cannot be made whether others who were arrested during the last stage of the conflict remain unaccounted for.

443. In light of the information available to OISL, the fate of a significant number of LTTE cadres who surrendered at the end of the conflict, remains unknown, and a number of witnesses have testified to the fact that their loved ones remain disappeared. OISL therefore believes that an independent review of the lists of individuals registered as "surrendees" is necessary, clarifying the fate of each one of them.

The quest for truth

444. Victims of enforced disappearance are not only the disappeared themselves, but also their family members. Enforced disappearances cause "anguish and sorrow"[362] to the families of those disappeared and their suffering may amount to torture or cruel, inhuman or degrading treatment.[363] Under international law, family members have the right to truth[364] and the State has an obligation to demonstrate that all feasible efforts have been made to clarify the fate or the whereabouts of the disappeared person, the circumstances of the disappearance, and the identity of the perpetrators.[365] The restriction of the right to truth only adds to, and prolongs, the continuous suffering inflicted upon the relatives.[366] A disappearance is considered to be a continuing violation so long as the State continues to conceal the fate and whereabouts of the disappeared person[367].

445. In its report, the LLRC drew particular attention to the impact of disappearances on women: "The issues pertaining to missing persons, abductions, arbitrary detentions, long and indefinite detentions and disappearances have a direct bearing on women as the victims are most often their husbands, sons, fathers and brothers etc., who play a vital role in a traditional household as breadwinners as well as providers of security. As such these issues

361 LLRC report, paras 4.318-4.319.

362 See 5th pre-ambular paragraph of the Declaration.

363 Article 1, para. 2 of the Declaration : « Any act of enforced disappearance(…) constitutes a violation of the rules of international law guaranteeing, (…) the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment."

364 Article 32 of the Protocol I to the Geneva Convention; Article 24 of the 2006 International Convention on the Protection of All Persons from Enforced Disappearances; Article 13 of the Declaration of All Persons from Enforced Disappearance; WGEID, General Comment on the Right to the Truth in Relation to Enforced Disappearances.

365 WGEID, General Comment on the Right to the Truth in Relation to Enforced Disappearances.

366 Ibid.

367 WGEID, General Comment on article 17 of the Declaration on the Protection of All Persons from Enforced Disappearances, E/CN.4/2001/68, paragraph 25

need to be addressed as a matter of priority, recognizing that these women have a right to know the whereabouts of their loved ones, have the right to the truth and legal remedies as equal citizens of this country". [368]

446. Witnesses described to OISL the many steps they had taken to find out what happened to their family members. Families of disappeared persons have filed complaints with multiple organizations, including the police, the SLA, the national Human Rights Commission and various domestic commissions of inquiry, often only to receive a letter to acknowledge the receipt of the complaint and no further information[369], or denials that the person had been detained.

447. In the majority of cases received by the OISL, witnesses stated that when they tried to submit a complaint to the local police station, the police would record the statement about the disappeared person(s) in Sinhala, and request family members to sign statements, which they usually did without however understanding the content of the document[370]. In none of these cases were their statements followed up[371].

448. Families were sent from one place to another, without receiving any information regarding the fate or the whereabouts of their missing relatives. This made the search psychologically as well as financially onerous. One witness stated that she had to pay an interpretor when she visited different Government offices. When family members had little or no information on the circumstances of the disappearance or the alleged perpetrators, they usually tried to search in the various IDP camps where thousands of displaced Tamils were living. [372]

449. Few families of the disappeared have filed writs of habeas corpus to try to obtain information. Applications for such writs have not generally been an effective remedy, due to various factors, such as lack of investigation, delays, disregard for witness protection, and the court's discretionary dismissal of cases based on the lack of evidence. For example, the habeas corpus petitions filed with the Vavuniya High Court in 2013 regarding the disappearances of the group seen surrendering in May 2009, including Father Francis, remain pending to this day.

450. The LLRC, in response to the many complaints of disappearances it received, recommended the creation of a central database of detainees and places of detention that families and their lawyers would be able to access. WGEID made the same recommendation many years earlier to no avail. In its periodic reports to the United Nations Committee against Torture and Human Rights Committee, the Government noted the existence of such databases. However, OISL has not been able to confirm the veracity of this information, nor has it been given access to these databases. The fact that the new Government has faced difficulties consolidating a list of those currently in detention suggests that this information has not been previously recorded in any systematic and transparent way.

451. As already indicated, the lack of transparency concerning places of detention, particularly after mass detentions during the last days of the war and in the years after the

368 LLRC Report, Summary of principle observations and recommendations.
369 Human Rights Watch, Recurring Nightmare. State Responsibility for "Disappearances" and Abductions in Sri Lanka, 2008
370 See also the Summary of the Report of the Committee on Disappearances of the National Human Rights Commission of Sri Lanka, 28 October 2003, p. 8.
371 WS on file. HRW, Recurring Nightmare…Op.cit.
372 WS on file

end of the conflict, and the lack of a central registry of detainees, has facilitated enforced disappearances, and made it impossible for families to trace their loved ones.

452. In some cases, relatives desperate for news of their loved ones have been contacted by unidentified individuals who claimed that their relative was alive and would ask for money to reveal the location. However, once payment was made, no further information was made available. One witness, whose daughter disappeared in 2009 in the Vanni stated that he had received an anonymous call saying that she was in a camp, asking for money to show her to him. The interviewee was asked for more money with the promise that he would be allowed to see his daughter and talk to her. The witness paid a large amount of money but never saw his daughter[373].

453. The case of Prageeth Ekinaligoda illustrates the situation of many searching for their loved ones. Police initially refused to open a case when he failed to return home. An investigation was launched by the Mirihana police station on 27 January 2010, following an order from the Inspector General of Police. The case was handed over to the Colombo Criminal Investigation Division on 30 January 2010, until recently without any result.[374]

454. On 19 February 2010, his wife, Sandya Eknaligoda also filed a habeas corpus petition in the Colombo Appeals Court, requesting that the police launch a thorough investigation immediately. However, the police have repeatedly called for postponements of the case to give them more time to conduct an investigation. For years, nothing was produced by the police in the courts. The case has been repeatedly postponed, frequently because the magistrate was on leave. A hearing was scheduled for 6 February 2015, but postponed until 26 March, as the judge was on leave. Eknaligoda's case was also dealt by WGEID under its urgent action procedure[375].

455. On 9 November 2011, the Attorney-General at that time, Mr Mohan Pieris, told the United Nations Committee Against Torture that "with regard to the journalist Eknaligoda… we have actually investigated that matter very closely. Our current information is… that Mr Eknaligoda…has taken refuge in a foreign country…"[376] This statement was confirmed in writing to the Committee and Ms. Eknaligoda presented it to the court in Colombo which was dealing with the case. The Attorney-General subsequently had to retract the allegations he made before the CAT.

456. Since then, there have been important developments, which are described in OHCHR's report to the Human Rights Council[377] In August 2015, just before the Parliamentary elections in Sri Lanka, police announced they had arrested several military personnel, including two Lieutenant Colonels, and two former LTTE cadres in relation to the disappearance of journalist and cartoonist Prageeth Eknaligoda.[378]Unconfirmed media reports alleged that the investigation has so far revealed that Eknaligoda was taken to an army camp in Girithale in North Central province following his abduction on 24 January 2010. [379] While this is an important breakthrough, OISL believes that this investigation

373 Source on record.
374 WS on file
375 Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/16/48, 26 January 2011
376 Letter provided by the Chairperson of the Committee Against Torture quoting Mohan Pieris, 11 May 2012, which was submitted to the court dealing with the case in Colombo (date unknown). See also the Summary Records; see also CAT/C/SR.1033, 22 May 2012
377 A/HRC/30/6/
378 http://www.dailynews.lk/?q=police-legal/cid-arrests-four-army-officers, http://www.dailynews.lk/?q=local/sgt-major-confesses-grilling-ekneligoda
379 http://www.dailynews.lk/?q=local/sgt-major-confesses-grilling-ekneligoda

must not only clarify the circumstances of the arrest and disappearance but, as with all other cases, the cover up and chain of command responsibility.

Issuance of death certificates

457. According to the 2010 amendment to the Registration of Deaths (Temporary Provisions) Act,[380] families are allowed to register as deceased any person reported missing for over a year "in the course of the civil disturbances that have taken place in Sri Lanka due to terrorist or subversive activities or civil commotion".

458. While the Act allows relatives of the disappeared to apply for a death certificate, this does not lead to any recognition that the victim disappeared following unlawful and arbitrary arrest by the security forces, nor does it clarify the fate of the loved ones. Furthermore, witnesses have expressed concern that acceptance of a death certificate may be used to stall any investigations into the person's disappearance.

459. OISL received testimonies from family members who were offered, and sometimes forced, to accept death certificates in order to receive monetary compensation. In cases documented by OISL, this practice occurred when relatives lodged complaints with the police, or during inquiries by the CID, as well as in the context of the hearings held by the Presidential Commission to Investigate Missing Persons[381]. As a general principle of human rights law, no victim of enforced disappearance shall be presumed dead over the objections of the family[382].

460. Many families have accepted death certificates for economic reasons. These certificates are the only legal documents that allows for the transfer of property, re-marriage, compensation applications and access to social welfare and pensions. In some cases in the past, it has also enabled access to compensation.[383]

461. However, OISL received many testimonies of relatives who refused to accept a death certificate of their loved ones without proof.[384] One person whose daughter was last seen at Omanthai checkpoint refused a death certificate, on the grounds that she could not accept it without evidence of her daughter's death and without being able to bury her.[385]

462. The issuance of death certificates and compensation does not, however, remove the Government's obligation to take measures to provide the truth about the fate and

380 Parliament of the Democratic Socialist Republic of Sri Lanka, Registration of deaths (temporary provisions) act, no. 19 of 2010, http://documents.gov.lk/Acts/2010/Registration%20of%20Death%20Act%20No.%2019%; In 1995, the Government had enacted the Registration of Deaths (Temporary Provisions) Act No. 2 in order to simplify and expedite the process of issuing death certificates in respect of persons who are presumed dead. The procedure was further simplified by the Registration of Deaths (Temporary Provisions) Act No. 58, enacted in 1998.

381 Source on file.

382 WGEID, General Comment on article 19 (the right to compensation),E/CN.4/1998/43, para. 74; see also A/HRC/22/45, para.50

383 Between 1995 and 1999, some 15,000 death certificates were issued to families of the disappeared and compensation paid to thousands of families. This followed recommendations to simplify the process of obtaining death certificates made by commissions of inquiry that had been set up under the Government of Chandrika Bandaraike Kumaranga (see below).

384 WS on file

385 Source on file

whereabouts of victims, and the obligation to return the remains to the family so that they can dispose of them according to their own tradition, religion or culture.[386]

463. OISL recommends the enactment of legislation clearly indicating that the acceptance of a death certificate where a person continues to be disappeared is not a bar to seeking justice. Relatives of the disappeared who do not accept the death certificates are continuing to face economic hardship as a result.

Reprisals against relatives of disappeared and human rights defenders working on enforced disappearances

464. Relatives of disappeared persons have been subjected to often persistent threats, restrictions and harassment, designed to prevent them from seeking truth, justice and accountability. Over the years, it has become a regular practice for the police (primarily CID, TID, STF) and units allegedly operated by SLA to monitor the movements of people who have lodged complaints or campaigned for information about the whereabouts of their loved ones. In many of the cases documented by OISL, relatives of the disappeared have been visited and interrogated by the security forces at their house, and/or called in for inquiry, and threatened. In particular, as the majority of disappeared in Sri Lanka are men, women put themselves at risk in seeking to obtain truth and justice for cases of enforced disappearance.[387]

465. Several women whose husbands disappeared after arrest – in the 1990s, in 2006, 2009 and 2010 - described to OISL how they were threatened and harassed, and in one case abducted in a white van and beaten because of their persistent inquiries into what happened to their loved ones. In some cases, the SLA were reportedly responsible, in others CID.[388]

466. Family members who sought accountability using international mechanisms also faced harassment from the Sri Lankan authorities. Sandya Eknaligoda was threatened and harassed by several supporters of the delegation of the Government of Sri Lanka after she spoke during the 19th session of the United Nations Human Rights Council in Geneva. They accused her of receiving money from foreign organizations and of betraying the country[389]. A day after returning from Geneva, Mrs. Eknaligoda reportedly attended a hearing at the High Court in relation to her husband's disappearance, during which the Attorney General's representative questioned her for more than one hour on matters related to her participation in the Human Rights Council, rather than on the circumstances of her husband's the disappearance.

386 WGEID, General comment on the right of truth.. par. 6: "The right to know the truth about the fate and the whereabouts includes, when the disappeared person is found to be dead, the right of the family to have the remains of their loved one returned to them, and to dispose of those remains according to their own tradition, religion or culture. The remains of the person should be clearly and indisputably identified, including through DNA analysis. The State, or any other authority, should not undertake the process of identification of the remains, and should not dispose of those remains, without the full participation of the family and without fully informing the general public of such measures. States ought to take the necessary steps to use forensic expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation."

387 Working Group on Enforced or Involuntary Disappearances, General comment on women affected by enforced disappearances, A/HRC/WGEID/98/2, Preamble

388 WS on file

389 See Asian Human Rights Commission, Sri Lanka: Sandya Eknaligoda harassed, 2012, http://www.humanrights.asia/news/ahrc-news/AHRC-STM-092-2012

467. In its last annual report, in 2014, WGEID noted with concern that it had transmitted four urgent allegation letters during the reporting period concerning the alleged intimidation of and reprisals against human rights defenders working on the issue of enforced disappearances. [390]

Justice and accountability for enforced disappearances

The role of the Human Rights Commission of Sri Lanka in investigating enforced disappearances

468. Established in 1996, the Human Rights Commission of Sri Lanka must be notified of any detention including those under the Emergency Regulations or the Prevention of Terrorism Act and it is entitled to visit any place of detention.[391]

469. Until 2006, the Commission visited many places of detention to follow up on cases of arrest. In 2002, a Committee on Disappearances in the Jaffna Region was appointed by the Commission to look into disappearances from 1990 to 1998, and to identify cases of complainants with special needs for relief and support. The report of the Committee on Disappearances, finalised in October 2003, included lists of disappeared as well as of the individuals alleged to be responsible. However, there is little information to suggest that any follow-up action was taken.[392]

470. In 2005, the Commission, together with partners, began setting up a National Database on Disappearances to compile information on all cases of enforced disappearances that it and other sources had collected. The Commission had also received for review more than 16,000 complaints from the All Island Commission, one of the commissions of inquiry established by the Government in 1998 to investigate cases of enforced disappearances (see below).

471. On 1 January 2006, the Commission appointed a Special Rapporteur to investigate conflict-related human rights violations. This included an emblematic case of the disappearance of five staff members of the Tamil Rehabilitation Organisation (TRO) and their driver in January 2006. The investigation confirmed that they were abducted by armed masked men on 29 January 2006, on their way from Batticaloa to Kilinochchi. They remain disappeared to this day, as do two other TRO members abducted the following day, whose cases the Special Rapporteur was reportedly unable to investigate.[393]

472. After a change of leadership in 2006, however, the Commission did not pursue its work on enforced disappearances in any meaningful way.[394] One of the first measures the new Chair, Justice Ramanathan, took was to order the staff to cease work on the database of the disappeared[395]. In a response to WGEID dated 11 August 2006, concerning allegations that the Commission had stopped investigating disappearance cases at the request of the Government, the latter stated that the Commission was an independent body and that "the

390 A/HRC/24/49, para 94

391 Presidential Directives on Protecting Fundamental Rights of Persons Arrested and/or Detained available at < http://www.defence.lk/new.asp?fname=20070425_02>

392 During the period covered by the commission, LTTE was in control of Jaffna from 1990-1995 and the Government for the rest of the period. According to the report, 256 of the investigated cases were Tamils, most of them disappeared at the hands of the Army, and 25 Muslims taken by the LTTE (as reported in A Legacy to Remember, Op cit.)

393 Report of the Special Rapporteur on Conflict-Related Human Rights Violations, 2006.

394 International Crisis Group, Sri Lanka's Human Rights Crisis, Asia Report, no. 135, June 14, 2007, p. 19; Human Rights Watch, Recurring Nightmare…p. 103-107.

395 Source on record.

Government can only transmit to the Human Rights Commission of Sri Lanka any representation forwarded, with the request for appropriate action."[396]

473. The decision to stop working on disappearance cases, and the manner in which the Chair and other members were appointed, led to the October 2007 decision of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights to downgrade the Commission to its current "B-status", citing that "it is not clear whether the actual practice of the Commission remains balanced, objective and non-political, particularly with regard to the discontinuation of follow-up to 2000 cases of disappearances in July 2006"[397].

474. A former staff member of the Commission informed OISL that in the 1990s, when he first started working with the Commission, if someone was taken by the police or the army he was able to go immediately to the police station or army camp to make enquiries and, if appropriate, to intervene to obtain the release of the detainee. He stated that after the change of leadership of the Commission in 2006 and under the Rajapaksa Government, this was not possible any more.[398] The Commission officials encountered difficulties in following up on complaints made by hundreds of civilians because they feared repercussions for raising cases in a heavily militarized environment.[399]

475. OISL received testimonies from several reliable sources who claimed that when a complaint about an arrest and detention was received by the Commission, all the details were sent to the persons in charge of the investigation within the institution allegedly responsible. The institutions did not usually provide any response, or they would often deny any knowledge of the person allegedly arrested and detained, and there would be no further follow up.[400]

Commissions of inquiry to investigate enforced disappearances

476. Between 1991 and 2013, different Governments established a significant number of commissions to look into enforced disappearances, with different mandates, timeframes and personnel. Many were criticised for their lack of independence and transparency, and their recommendations, when made publicly available, were never followed up in a systematic manner. Some of the commissions drew up lists of alleged perpetrators. However, for the most part, only in a small number of cases did the investigations lead to convictions of those responsible.

477. Some of these commissions predate the period covered by OISL's mandate. However, taking into account the importance of their findings and the fact that their work concerned individuals who continue to be disappeared, and because the results of their investigations fed into judicial mechanisms active after 2002, OISL considered it was important to refer to their work. Moreover, the information they gathered continues to be of relevance today.

396 A/HRC/4/41, par. 382-398.

397 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Sub-Committee on Accreditation, Geneva 22 to 26 October 2007. 5.3

398 WS on file

399 PEARL submission to the Sri Lanka first Sri Lanka UPR review, 2008

400 WS on file

Presidential Commissions (1991, 1992, 1993)

478. The first Presidential Commission to inquire into disappearances was appointed by President Ranasinghe Premadasa, on 11 January 1991.[401] Its mandate was to inquire into allegations "that persons are being involuntarily removed from their places of residence by persons unknown" after 11 January 1991.[402] It reportedly concluded investigations into some 140 cases by the time it ceased to function in 1993.[403]

479. Two other Commissions were subsequently created, in 1992 and 1993. The warrants of these commissions were reportedly revoked in 1993 by President D.B. Wijetunga who, on 23 August 1993, appointed another Commission of Inquiry into Involuntary Removals of Persons.[404] Its mandate was to look into the "credibility" of complaints[405] of disappearances, was limited to the period 1991-1993, failing to cover the period from 1987 to 1990, during which large numbers of enforced disappearances linked to the JVP uprising allegedly occurred.[406] The final reports and recommendations of these commissions have never been made public.

The Zonal Commissions (1994) and the All Island Commission (1998)

480. Three Zonal Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons were set up by President Chandrika Bandaranaike Kumaratunga in 1994. Each Commission was mandated to cover a specific geographical area: Central, North Western, North Central and Uva Provinces; Northern and Eastern Provinces; Western, Southern and the Sabaragamuwa Provinces. The three Commissions were mandated to inquire, *inter alia*, into "whether any persons have been involuntarily removed or have disappeared from their places of residence after January 1, 1988". [407] The timeframe covered by the Commissions again excluded many disappearance cases alleged to have occurred in 1987 in relation to the JVP uprising. Nevertheless, they were able to conduct a significant number of inquiries, including investigating new cases of enforced disappearances that occurred after they were set up, since they did not have a time-limit.

481. During the three years of their existence, the three Zonal Commissions received and analysed 27,526 complaints, out of which some 16,800 cases were established to amount to enforced disappearances. The Commissions found "credible material indicative of those

401 The Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary, No. 644/27 of January 11, 1991.

402 Schedule 'A', Extraordinary Gazette No. 644/27 of January 11, 1991

403 A Legacy to Remember; Sri Lanka's Commissions of Inquiry 1963-2002, Ed. Kishali Pinto-Jayawardena, The Law and Society Trust.

404 The Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary, No. 784/1 of September 13, 1993. The term "involuntary removal" in the warrants that created the commissions does not correspond to the definition of enforced disappearances in international law: see the Warrants of the Commissions Gazette No. 644/27 of January 11, 1991, The Gazette of the Democratic Socialist Republic of Sri Lanka, No. 697/5 of January 13, 1992, Gazette No. 751/1 of January 25, 1993, and Gazette No. 784/1 of September 13, 1993, all of which use this same language regarding involuntary removal of persons; See also A Legacy to Remember; Sri Lanka's Commissions of Inquiry 1963-2002, Ed. Kishali Pinto-Jayawardena, The Law and Society Trust,

405 A Legacy to Remember, Op.Cit p.22

406 Amnesty International, "Time for Truth and Justice: Observations and recommendations regarding the commissions investigating past human rights violations", April 1995.

407 The Law and Society Trust, A Legacy to Remember; Sri Lanka's Commissions of Inquiry 1963.2002: A Reference Guide to Commission Reports with a Tabulated List of Recommendations. September 2010, p. 20, http://www.lawandsocietytrust.org/PDF/a%20legacy%20to%20remember%3B%20sri%20lanka's%20commissions%20of%20inquiry.pdf

responsible" in 1,681 cases[408], and compiled lists of names of several hundred alleged perpetrators, mostly from the Armed Forces (Army, Navy and Air Force) and police, but also some politicians. For example, the Zonal Commission working on the Central, North-Western, North Central and Uva provinces included specific findings and evidence in respect of the individual complaints investigated and perpetrators in separate annexes.

482. The reports of the three Zonal Commissions of Inquiry were submitted to the President in September 1997. Their observations and recommendations were made public, but not the lists of perpetrators, which have remained unpublished. OISL has nevertheless received copies of those lists.

483. In April 1998, the All Island Commission of Inquiry into Involuntary Removal and Disappearances of Certain Persons (known as the All Island Commission) was established by the President to inquire only into the 10,136 complaints submitted to, but not investigated by, the three Zonal Commissions[409]. It completed its Final Report in 2001, having investigated 4,473 complaints of disappearances. Its findings on some cases were referred to the Missing Persons Unit and the Disappearances Investigation Unit of the Police set up following the Zonal Commission's recommendations (see below, criminal investigations). The All Island Commission's recommendations and observations were made public, but not its information relating to alleged perpetrators. However, OISL has obtained a confidential list of 318 alleged perpetrators named by the All Island Commission.

484. While the Commissions did not resolve all cases of disappearances or lead to the prosecution of many of those responsible, they did nevertheless collect extensive material about disappearance cases, structures and individuals allegedly involved. OISL believes that the extensive information and evidence gathered by these Commissions and the subsequent police and judicial investigations should be reviewed as part of any new comprehensive investigation into all patterns and cases of enforced disappearances, and should be used as part of a vetting process for all security forces.

Presidential Commission on Abductions, Disappearances, and Killings (September 2006) and its follow-on Commission (May 2007)

485. In September 2006, in response to increasing criticism about the resurgence of abductions and disappearances after 2005, President Rajapaksa set up a Presidential Commission on Abductions, Disappearances, and Killings, headed by former judge Mahanama Tillakeratne.[410] His final report was submitted in May 2007 but not made public. However, OISL has also reviewed a copy of the unpublished report.

486. While highly critical of police failure to investigate and even ignoring evidence of "certain powerful persons" behind the incidents, the report appeared to undermine allegations of disappearances linked to the security forces, suggesting that they were the result of criminals, family disputes, "abductions …to win over young girls", and heroin

[408] United Nations Human Rights Committee, Fourth Periodic Report of Sri Lanka, CCPR/C/LKA/2002/4, 18/10/2002, para. 156

[409] See "Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces", 1997, "Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces", 1997; "Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island), 2001.

[410] Gazette (Extraordinary) No 1462/30- 2006 and Gazette (Extraordinary) No 1505/17-2007.

addicts involved in disputes.[411] The involvement of security forces was underplayed: "It came to light that at times military personnel and police officers too had carried out abductions. They should be treated as persons who have performed an illegal act."

487. Statements made by Justice Tillakeratne demonstrate the lack of serious and credible investigations by his commission. For example, in May 2007, he reportedly claimed that "some invisible hand" in Jaffna and Batticaloa was responsible for abductions and that "no one said a single word against anyone in the army or police". He also noted that "a majority of the abductions were not exactly abductions as [the persons concerned] have left their homes temporarily over trivial matters like family disputes among others[412]. He also stated that, according to the evidence gathered by the Commission, some of the abductees when they were last seen seemed to have gone with the people whom they knew and of their own free will."[413] The report noted that only a few people had been taken away by force.

488. The unpublished findings of the Commission, reviewed by OISL, confirm the lack of credibility and independence of the investigation. In stating that cases of disappearances were used as a tool of political propaganda against the Government, the Commission downplayed the phenomenon. The Commission also attributed lack of proper investigation to police inexperience with domestic legal provisions relating to the maintenance of law and order such as Penal code provisions, the Emergency Regulations and the Constitution.

489. Following the submission of the final report of the Tilakeratne Commission, another one-man Presidential Commission, headed by the same Judge was set up by President Rajapaksa in June 2007, to investigate into abductions, disappearances, killings by unknown persons that had occurred in all parts of Sri Lanka during the period starting 13 September 2006. Its final, unpublished report covering the period September 2006 to November 2009, also received by OISL, was submitted to the President in December 2009.

490. As with the previous Commission, this report appeared to be primarily aimed at undermining and dismissing allegations of disappearances as part of a propaganda campaign to stain the image of the country. It described as "baseless propaganda" reports of disappearances, rapes of Tamil women and security force killings of Tamil youth, and referring to a "sensationalisation of minor incidents"[414].

491. At the top of the list of recommendations in the report was to bring legal action against those "who made complaints to the Police of abductions or disappearances knowing very well where the person concerned was at the time." The report stated that "from the reports made available by police, it became apparent that the incidents of disappearances which were reported [in the media] were stories that were "baseless and cannot be believed." The Commission stated that in 90 per cent of the cases, people had left their home for various reasons such as family disputes, love affairs, to avoid arrest on warrants issued by the Court, joining a terrorist organization. Out of 22,474 complaints of disappearances received, the report stated that 20,637 individuals had either returned or had been found, and that the remaining cases needed to be investigated.

411 Report of the Presidential Commission on Abductions, Disappearances and Attacks on Civilians resulting in deaths throughout the Island, May 2007, OISL unofficial translation of extracts of the original report.

412 International Crisis Group, "Sri Lanka's Human Rights Crisis", Asia Report no 135, June 14, 2007.

413 Majority of "abductees" found to have returned https://lrrp.wordpress.com/2007/06/30/majority-of-%E2%80%9Cabductees%E2%80%9D-found-to-have-returned/)

414 Report of the Presidential Commission of Inquiry to Investigate Abductions, Disappearances, Killings by unknown persons that have occurred in all parts of Sri Lanka during the period from 13 September 2006 to 25 November 2009, December 2009, extracts unofficially translated by OISL.

Presidential Commission of Inquiry appointed to investigate and inquire into alleged serious violations of Human Rights arising since 1 August 2005

492. In November 2006, a Presidential Commission of Inquiry, referred to as the Udalagama Commission, was established to investigate 16 specific incidents of alleged serious violations of human rights since 1 August 2005. These included a number of high profile cases at the time, including the enforced disappearance of Father Jim Brown and his aid Wenceslaus V. Vimalatha, a local parishioner.[415] The unreleased findings of the Commission's report which OISL has seen indicate that Father Brown's disappearance was not investigated "due to a lack of evidence, importantly the inability to find the body of the alleged deceased". [416]

493. According to the information gathered by OISL, Father Brown was a Tamil Catholic priest who had offered refuge in his church to people during shelling by security forces of Allaipiddy, on 12 August 2006, during which many civilians, including children, were injured and some died.[417] On 20 August 2006, Father Brown and Wenceslaus V. Vimalatha were travelling by motorbike to Jaffna from the island of Kayts. They were last seen at a Navy checkpoint in Allaipiddy. The surrounding area was under the control of the SLN. A complaint of the disappearance of the two men was filed with police and the Acting Magistrate of Kayts began to investigate. Her attempts to obtain the logbook at the Navy checkpoint were blocked by the Navy. The next day, the Magistrate was reportedly told that her post was being taken over by another magistrate and she was transferred to other duties. Her investigation into Father Brown's disappearance was thus curtailed and little was done following her removal.[418]

494. According to the CID report handed to the Udalagama Commission, the CID took on the investigation on 30 August 2006. As of November 2006, it appears that the investigation, though continuing at the time, was focussing more on accusations made by a Navy Commander that Father Brown had helped the LTTE dig bunkers than establishing the circumstances of the disappearance. In March 2007, a torso was found on the beach and a magistrate ordered DNA tests to assess whether it was that of Father Brown. The Government subsequently announced that DNA tests had shown that this was not the case[419]. However, OISL's attempts to confirm that tests were carried out and if so what happened to the results have been unsuccessful. It has no information to indicate that investigations into the two disappearances continued.[420]

495. Prior to his disappearance on 20 August 2006, Father Brown had lodged two complaints with the Human Rights Commission of Sri Lanka, stating that he felt threatened.[421] He was repeatedly accused by the SLN of supporting the LTTE, and had reported to others that he felt threatened, in particular by a local Naval commander.

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415 Report of the Presidential Commission of Inquiry appointed to investigate and inquire into alleged serious violations of Human Rights arising since 1 August 2005, page 8, May 2009.

416 Ibid.

417 On this case, see also Human Rights Watch, Recurring Nightmare, cit. March 2008, p. 66; See also, proceedings of public sittings of the LLRC, Representation by Mr. A. Santhiapillai, 12 November 2010; Submission by the Catholic Diocese of Mannar to the LLRC, 8 January 2011.

418 University Teachers for Human Rights (UTHR), Special Report No. 25, 31 May 2007; though unverified by OISL, the report gives a detailed account of the attempts of Father Brown and also the local Magistrate to transfer the injured to hospital in spite of obstacles created by the Navy.

419 'DNA report surfaces misinformation campaign'- Colombo http://www.defence.lk/new.asp?fname=20070613_07

420 'DNA report surfaces misinformation campaign'- Colombo http://www.defence.lk/new.asp?fname=20070613_07

421 WS on file

Reports suggest that a senior SLN commander may have been involved in the disappearance.

Criminal investigations

496. The lack of a specific offence of disappearance in the Sri Lankan Penal Code represents an obstacle to the investigation, prosecution and punishment of those responsible for enforced disappearances. LLRC, WGEID, the United Nations Human Rights Committee, and the Committee against Torture have all recommended that Sri Lanka criminalizes disappearances[422].

497. In its replies to the list of issues in relation to its Fifth Periodic Report to the Human Rights Committee, in September 2014, the Government stated that "the existing provision in the Penal Code, sections 350 to 360, adequately covers any situation of kidnapping, abduction or disappearances".[423] However, this provision has rarely been used to prosecute cases of enforced disappearances, indicating that the main obstacle is more related to the lack of political will or interest to uncover the possible involvement of security forces in enforced disappearances.

498. In paragraph 9.46 of its 2011 report, the LLRC stated, in relation to cases of disappearances, that "In many instances it was revealed that formal complaints have been made to police stations, the Human Rights Commission of Sri Lanka and the ICRC. In some cases, submissions had also been made to the previous Commissions of Inquiry. Yet, the next of kin continue to complain that the whereabouts of many of those missing persons are still unknown… The Government therefore is duty bound to direct the law enforcement authorities to take immediate steps to ensure that these allegations are properly investigated and the perpetrators brought to justice" (para 9.46).

499. OISL has observed that in the vast majority of cases of enforced disappearances in Sri Lanka, with the exception to the follow-up to the three Zonal Commissions and the 1998 All Island Commission, the authorities have made little or no efforts to undertake any criminal investigations in this regard.

500. On the basis of recommendations from the three above-mentioned Zonal Commissions, at the end of 1997, the Government decided to "institute criminal proceedings against the perpetrators". It set up a "Disappearances Investigations Unit" (DIU) under the Deputy Inspector General of the Criminal Investigations Department in order to conduct criminal investigations, and to collect the additional evidence needed for cases to proceed to court. According to one report, police investigations were initiated against 1,560 alleged perpetrators of disappearances, from the police and armed forces.

501. In July 1998, the Government established a separate unit in the Attorney's General's Department named the "Missing Persons Unit" (MPU).[424] According to information provided to WGEID during a visit to the country in October 1999, by the following year, MPU had received 890 cases of disappearance from DIU and, as a result, criminal proceedings had been initiated against 486 individuals in relation to 270 cases.[425]

422 E/CN.4/2000/64/Add. 1, para. 63 ; CCPR/CO/79/LKA, para. 10; CAT/C/LKA/CO/3-4, para.9; LLRC Report para. 9.59

423 Human Rights Committee, List of issues in relation to the Fifth Periodic Report of Sri Lanka, Addendum – Replies of Sri Lanka to the list of issues, 17 September 2014, para. 62.

424 Ibid.

425 E /CN.4/2000/64/Add.1: Report on the visit to Sri Lanka by a member of the Working Group on Enforced or Involuntary Disappearances (25-29 October 1999), 21 December 1996 Human Rights

502. In its Second Periodic Report to the Committee against Torture (CAT)[426] in 2004, the Government stated that the DIU had carried out investigations into 3,615 cases, of which 2,462 had been completed. Of these, most were closed on the advice of the Attorney General. According to the Government, 376 cases were filed before the High Court, nearly 300 of them for abduction and unlawful confinement. One hundred and thirty-five cases had been completed, but only 12 had resulted in convictions by the High Court. The first conviction was on 14 September 1999, when a police officer was convicted for the crime of abduction and sentenced to five years of imprisonment.

503. According to sources close to the Zonal and All Island Commissions, most of the cases referred to courts involved alleged perpetrators of a low rank in the police and military. Since DIU itself consisted of police officers, credible sources told OISL that it was reluctant to pursue investigations against superior officers.

504. A circular issued by the Inspector General of Police at the commencement of the investigations by the Zonal Commissions of Inquiry, directed all Officers in Charge of police stations in the country to preserve all books and records pertaining to the period of terror in Sri Lanka until the investigations of the Commissions were concluded. The reports of the Commissions reportedly mentioned many instances where the Officers in Charge of certain police stations destroyed the relevant books, disregarding the circular, and thereby destroying incriminating evidence against certain police officers who were responsible for disappearances. A recommendation by the commissions to take disciplinary action against such officers was reportedly ignored.

505. Furthermore, some of those named by the Zonal Commissions as alleged perpetrators have reportedly since been promoted. For example, according to the Central Zone Commission's 7th interim report, one particular police officer was named in most of the complaints inquired into at Anamaduwa Police Station at that time. According to the Central Zone Commission, there was credible material indicating that he had also threatened some of the witnesses who had given evidence before the Commission. He was publicly named in the Commission's report but was not prosecuted. He has received several promotions as Assistant Superintendent of Police (ASP) Colombo and Superintendent of Police (SSP). He is now Deputy Inspector General of Police (DIG).

506. In another case, a DIG appointed by the Government of President Rajapaksa in charge of Trincomalee district, was included in the list of alleged perpetrators of disappearances submitted to the Government by the Zonal Commission on the Southern Province.

507. In another case, a Lieutenant Colonel, whose name is on file, was alleged to be one of the main perpetrators of disappearances that occurred in Jaffna in 1996 and1997 when he was commander of an SLA camp there[427]. Criminal investigations were reportedly launched, including into the disappearance of a group of villagers in 1996.[428] The Additional Magistrate in Jaffna, who pursued the case while in the post from 2003-2006, as she had tried to do in the case of Father Brown, reportedly received threats, was transferred to Colombo in 2007. OISL received unconfirmed media reports in February 2015, that the

Committee, Fourth periodic report, CCPR/C/LKA/2002/4, para. 156-162; United Nations Committee against Torture, Second Periodic Report, CAT/C/48/Add. 2, para.63.

426 CAT/C/48/Add.2, 6 August 2004

427 Report submitted by the Committee of Inquiry into Disappearances of Persons in the Jaffna region, appointed by the Human Rights Commission of Sri Lanka,2003;

428 Wikileaks: US was following ..Case Involving the Disappearance of 25 Villagers from Jaffna; Colombo Telegraph, 15 October 2012.

individual had reportedly been reinstated into the Army and appointed initially as Director of Operations at the Army Headquarters and subsequently as Director of Infantry[429].

508. Various United Nations human rights mechanisms have noted that the majority of prosecutions initiated against the authorities on charges of abductions have been inconclusive due to a lack of satisfactory evidence.[430] In the time available, OISL was not able to gather information about or assess the cases which were referred to the courts by DIU and MPU but believes that all such cases should be reviewed.

The Lessons Learnt and Reconciliation Commission

509. In its 2011 report, the LLRC took a very strong position on the issue of enforced disappearances. It highlighted the failure to implement recommendations of previous commissions dealing with enforced disappearances, stating that they "warrant immediate implementation, as these will help address this serious issue". It added that "Continued failure to give effect to such critical recommendations of past commissions gives rise to understandable criticism and scepticism regarding government appointed commissions from which the LLRC has not been spared".

510. Although not set up as a Commission of Inquiry nor focussed on disappearances, the LLRC received, during its hearings, 1,018 complaints of cases of persons who had allegedly disappeared after arrest by the Army and Navy[431] in particular, as well as by armed groups[432]. Given the large number of representations received, the LLRC called on the Government "to direct the law enforcement authorities to take immediate steps to ensure that these allegations are properly investigated into and perpetrators brought to justice[433]." The LLRC also recommended that the Government assist families to deal with the trauma of not knowing the whereabouts of their family members[434].

511. The LLRC specifically recommended that "given the complexity and magnitude of the problem, and considering the number of persons alleged to have disappeared, and the time consuming nature of the investigations involved…, a Special Commissioner of Investigation be appointed to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings as appropriate.[435]

The Presidential Commission to Investigate Complaints Regarding Missing Persons (2013)

512. In a response to the recommendations by the LLRC and to mounting international pressure, President Rajapaksa appointed a new Presidential Commission to Investigate Complaints Regarding Missing Persons on 15 August 2013. Its original mandate was to investigate the cases of "persons resident in the Northern and Eastern Provinces during the period 10 June 1990 to 19 May 2009, who have been abducted or have disappeared from their places of residence".[436] The Commission had three members with Justice Parakrama

429 Military top brass shuffle casts doubts on Sri Lanka "internal mechanism", JDS, 4 March 2015.
430 CCPR/CO/79/LKA 2003, par.9
431 See Transcripts of LLRC Sittings – Mullaitivu and Trincomalee for example.
432 LLRC Report, Annex 5.1
433 LLRC Report, para. 9.46
434 LLRC Report, para. 9.58
435 LLRC Report, para. 9.51
436 Gazette [Extraordinary] No 1823/42-2013. Harischandra Gunaratna, « missing Persons Commission could not be influenced, would not rush – Chairman », 27 November 2013, The Island, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=92960. See National Plan of Action for the Implementation of LLRC Recommendations (November 2014)

Paranagama named as Chair, although two additional members were subsequently appointed. This Commission's mandate has been extended twice and was due to complete its task by 15 August 2015.[437] Latest reports indicate the mandate of the Commission has been extended further, but this has not been formally gazetted.

513. After her mission to Sri Lanka in 2013, High Commissioner Navy Pillay in referring to the appointment of a new Commission of Inquiry into disappearances urged the Government to broaden the Commission's mandate: "unfortunately the new Commission will only cover disappearances in the Northern and Eastern provinces between 1990 and 2009, which means that the many 'white van' disappearances reported in Colombo and other parts of the country in recent years will not fall within its scope"[438]. The WGEID also expressed similar concerns. In 2014, the period covered by the Commission was broadened from 1 June 1990 to include the period 1 January 1983 - 19 May 2009. On 15 July 2014, the scope of the Commission's mandate was also extended to inquire into and report on matters that have been referred to in paragraph 4.359 of the LLRC report. These include issues related to respect for the principles of proportionality and distinction; the applicability of IHL to the LTTE, and the violation of IHL or IHRL through the use by LTTE of civilians as "human shields" in the context of the armed conflict that ended in May 2009.[439] Following the expansion of its mandate, an international advisory council was also appointed to assist the Commission. The mandate of the advisory council has recently lapsed.

514. Despite the widespread mistrust in national mechanisms expressed by the majority of witnesses interviewed by the OISL, and the sense of desperation felt by family members, nonetheless many still addressed complaints to the Commission. According to its Interim Report of April 2015 (which remains unpublished, but a copy has been reviewed by OISL), the Commission had received 13,378 complaints from 25 Districts, covering alleged disappearances from January 1983 to 19 May 2009[440]. The majority of the complaints relates to cases which occurred between 2005 and 2009, mainly in Batticaloa, Jaffna, Mullaitivu, Kilinochchi, Mannar, Trincomalee and Vavuniya. By November 2014, the Commission said it had initiated inquiries into almost 1500 complaints. By April 2015, the Presidential Commission had held a total of eleven public sittings in Kilinochchi, Ampara, Trincomalee, Jaffna, Batticaloa, Mullaitivu, Mannar and Vavuniya.

515. In the interim report, the Commission identified a list of ten cases in which there is "*prima facie* evidence" against members of the security forces who were named at the public hearings as responsible for disappearances and recommended domestic legal action against them[441]. It also said it had identified 59 cases for in-depth investigation with a view to recommending judicial action[442].

516. The Presidential Commission also noted that a vast majority of cases of disappearances resulted from the practice of arrests without warrant and the lack of

437 More Time For Probe on Missing, http://www.thesundayleader.lk/2015/02/08/more-time-for-probe-on-missing/, 15 February 2015.

438 Human Rights Council, Oral Update of the High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka, 25 September 2013, A/HRC/24/CRP.3/Rev.1, para. 13; see also Centre for Policy Alternatives, A Commentary on the Presidential Commission to Investigate Missing Persons During the period of June 1990 – May 2009 in the Northern and Eastern Provinces, March 2014, p. 5.

439 Gazette 1871/18 (July 14, 2014)

440 Interim Report, Presidential Commission to Investigate into Complaints Regarding Missing Persons, April 2015

441 Interim report, cit., Annex H

442 Id., Annex L

notification of the detention centres where detainees are held. The Presidential Commission noted that the Ministry of Defence and Ministry of Justice had failed to comply with its written requests to release a list of names of persons who were detained in prisons, detention camps, refugee camps, and rehabilitation centres. It also made important recommendations to the Government to "instruct the Security Forces to provide all information…particularly details of persons who surrendered at Vadduvahal, Mulliwaikal, Omanthai and the disappearance of persons taken into custody from refugee camps for questioning" and that "if any person is in detention, the family or relatives of such persons so held should be notified where such person is held, including facilitating visits by such person's relatives to the detention centres".

517. Following the Commission's recommendations, in July 2015, the Government announced the appointment of a special investigation team under a retired judicial officer to expedite investigation into some cases, although its status is not known.[443]

518. In spite of these important findings, there has been considerable concern expressed about the work of the Commission and, in OISL's assessment, has so far failed to conduct a comprehensive, independent and transparent inquiry. The expansion of the mandate of the COI in July 2014 to include investigations into broader violations related to the conflict, and particularly focussed on LTTE abuses, raised strong concerns among human rights organizations and family members of disappeared persons that this would detract from the Commission's ability to deliver on its primary responsibility: to assist families of the disappeared.[444]

519. Family members who approached the Commission were usually asked to fill in a form with details of the "disappeared" person, and the circumstances of the disappearance and were told that the Commission would send a team to enquire. In many cases, there has not yet been any follow-up.

520. Although OISL recognizes the importance of public hearings, the quality of the proceedings are reported to have been affected by various factors, such as the family members' lack of knowledge of the Commission's mandate, the inadequate time that has been allocated for hearings[445] and the poor quality of translation at times. In particular, from the reports of independent observers, it appears that the Commission often did not provide an adequate number of Tamil-speaking official interpreters and the interpretation provided was at times summary, incomplete or inaccurate. Questions and answers were often allegedly misinterpreted.

521. The selection of the complainants for the public hearings was also reportedly not based on clear criteria. According to diplomatic sources, during the public hearings in Kilinochchi, most of the cases selected were cases in which the suspected perpetrators were non-state actors, predominantly the LTTE. In a press statement regarding its interim report[446], the Presidential Commission said that in the Northern Province, 60 percent of the

443 http://www.pcicmp.lk/images/NewsEvents/Press%20Release%2024.07.15.pdf

444 Amnesty International, Press Release: Sri Lanka: Activists petition parliament on Day of the Disappeared, http://www.amnesty.org/en/for-media/press-releases/sri-lanka-activists-petition-parliament-day-disappeared-2014-10-27; Center for Policy Alternatives, Concerns On The Expansion Of The Mandate Of The Commission Of Inquiry To Investigate Into Complaints Regarding Missing Persons, 25 July 2014

445 For example, during the first day of the hearings in Jaffna in February 2014, most of the cases were given an average time of 20-30 minutes which became 10 minutes on the last day.

446 Presidential Commission on Missing Persons, Press release – Submission of the Interim Report by the Presidential Commission on Missing Persons, http://www.pcicmp.lk/images/press%20release%20Interim%20Report.pdf

allegations of enforced disappearances received were levelled against the LTTE. However, the Commission's analysis of written complaints shows the security forces were responsible for 19 per cent, the LTTE for 17 per cent, and persons or groups unknown for more than 50 per cent, suggesting a higher proportion of LTTE cases have been selected for the public hearings, raising questions of selectivity.

522. Furthermore, OISL received testimonies from several witnesses highlighting the Commission's lack of contextual knowledge on key issues related to disappearances as well as the ambiguous and irrelevant nature of some of the questions posed.[447]

523. OISL also received reports of cases of families of disappeared persons who suffered interference, intimidation and surveillance by the security forces after having provided testimony before the Presidential Commission of Inquiry.[448] In its interim report, the Presidential Commission accused "certain sections of the media" of reporting that persons appearing before it had been harassed by security forces' personnel and stated that "not a single complaint was made by any person appearing before the Commission that they were harassed by security forces personnel"[449].

524. OISL received information, however, that security personnel dressed in civilian clothing have attended and carefully monitored those attending the hearings and families have been intimidated and told not to attend the hearings.[450] According to diplomatic sources, "a considerable number of testimonies disclosed the nature of the interferences of TID, but [the] Chairman stated that there are many different institutions such as the TID, CID etc, which have been investigating disappearances, hence families are encouraged to cooperate with these investigations whenever possible".[451]

International mechanisms: the role of the Working Group on Enforced or Involuntary Disappearances (WGEID)

525. In the face of repeated obstacles to establishing the fate of their loved ones, family members and supporting NGOs have submitted large numbers of cases to the WGEID in the hope of clarifying their fate and whereabouts. Since its establishment in 1980, the Working Group has transmitted 12,536 cases of disappearances to successive Sri Lankan Governments. According to the most recent figures contained in the last annual report of the Working Group, the total number of outstanding cases in Sri Lanka amounts to 5731[452].

526. The Working Group has played a key role in examining reports on cases of enforced disappearances and pressing the Government to conduct investigations into such allegations. It undertook three field missions to Sri Lanka in 1991, 1992 and 1999. It had not been allowed to visit the country since, despite repeated requests and follow-ups.

447 For example, during one set of public hearings the Commissioners often asked questions that were not relevant to an inquiry into enforced disappearances such as whether the families are living peacefully with the presence of the SLA.

448 WS on file; See also HRC ; Written statement submitted by the Asian Forum for Human Rights and Development, a non-governmental organization in special consultative status, 5 September 2014, A/HRC/27/NGO/91

449 Presidential Commission to Investigate Into Complaints Regarding Missing Persons, Interim Report , April 2015, p. 7.

450 Sources on record.

451 Public sitting - Mullaithivu, Northern Province (July 5-8, 2014); Public sitting - Mannar Northern Province (August 8-11, 2014)

452 Report of the Working Group on Enforced or Involuntary Disappearances, 4 August 2014, A/HRC/27/49, page 13

527. The new Government that took office in 2015 has since agreed to a visit. The visit, initially scheduled for 3-12 August 2015, was postponed at the request of the Government due to the proximity to Parliamentary elections on 17 August. It has now been reconfirmed for November 2015.

528. Following its visits in the 1990s, the Working Group made a number of recommendations to the Government in order to prevent and investigate disappearances.[453] The Government at that time provided a considerable amount of information on cases[454] which led the Working Group to consider 4,390 cases as clarified in 2002.[455]

529. In a number of cases, the Government replied that death certificates had been issued and/or compensation granted or was in the process of being granted. With regard to the remaining cases, the Government claimed that it was unable to trace the persons concerned because the addresses that had been provided were incorrect or unclear, or because the family had left the area; no such person had disappeared from the address provided; cases were pending in courts of law; family members had not requested or had declined death certificates or compensation; the persons were reported to be alive; the disappearance had not been reported to any government authority.[456]

530. However, the Government failed to implement crucial recommendations made by the Working Group, such as the establishment of an independent body with the task of investigating all cases of disappearances which had occurred since 1995; the setting up of a central register of detainees as provided for in article 10(3) of the Declaration and that the prohibition on enforced disappearances should be included as fundamental right in the Constitution of Sri Lanka.

531. From 2008, the Government consistently provided a high number of replies to WGEID in relation to pending cases. However, for most of them, the information was considered not sufficient to clarify the cases.[457] In addition, the Government has not provided adequate responses to general allegations detailing the Working Group's concerns relating to enforced disappearances in Sri Lanka which occurred from 2006 to 2009.[458]

IX. Torture and other forms of cruel, inhuman or degrading treatment

Introduction

532. OISL focused on torture and other cruel, inhuman or degrading treatment or punishment allegedly committed by Government security forces as one of its priority themes because of the scale and gravity of the allegations it received. In the time available,

453 See E/CN.4/1992/18/Add.1; E/CN.4/1993/25/Add. 1; E/CN.4/2000/64/Add.1

454 Report of the Working Group on Enforced or Involuntary Disappearances, 18 January 2002, E/CN.4/2002/79, par. 286

455 A/HRC/27/49, para 287; 6581 of these cases were considered clarified by WGIED, most of them after the Government reported they were deceased – it should be noted that many relatives of the disappeared received death certificates in the late 1990's even though the fate of the victims had not necessarily been clarified (see Issuance of death certificates above).

456 Ibid.

457 A/HRC/21/45, para 506; A/HRC/16/48, para 444 ; A/HRC/WGEID/99/1, para 126; A/HRC/WGEID/100/para.95; A/HRC/WGEID/102, para 139; A/HRC/WGEID/103, para 156, A/HRC/WGEID/104 para 118;

458 A/HRC/4/41 para. 337-340; A/HRC/19/58/Re v.1 par. 495-501

it investigated primarily cases of torture linked to the conflict, including in the post-conflict period when security forces continued to detain individuals suspected of having links to the LTTE.

533. OISL is mindful, however, that torture and ill-treatment are prevalent in the broader criminal justice system in Sri Lanka, and some cases are routinely reported from police stations throughout the country. Also, not all of the alleged torture was inflicted in relation to the armed conflict. NGO reports suggest that torture has been widespread within the criminal justice system in general. One NGO reported that it had documented 1,500 cases of torture in police custody between 1998 and 2011.[459] These and similar allegations should be part of a broad effort to investigate and address the use of torture by Sri Lankan security forces. It was clear from the interviews OISL conducted that the brutality of the torture inflicted has had a long-lasting impact on many of the victims, who continue to bear the physical and psychological scars. The following chapter describes patterns of sexual violence in the context of torture which, for many of victims - men and women, was the most distressing form of torture.

534. OISL also received some reports of torture or ill-treatment of people detained by the LTTE between 2002 and the end of the conflict in 2009, but had limited scope to investigate these due to the methodological constraints outlined in Chapter II.

Patterns of torture by Government security forces

535. The use of torture by the security forces predated the period covered in this report, and continued afterwards. In its consideration of the initial report submitted by the Government of Sri Lanka in 1998, the Committee Against Torture (CAT) said it was "gravely concerned by information on serious violations of the Convention, particularly regarding torture linked with disappearances".[460] Following a visit to Sri Lanka in 2007, the United Nations Special Rapporteur on torture reported receiving indications that torture was "widely practised" in the country.[461] OISL received testimony from witnesses who had been victims of torture in Sri Lanka as recently as August 2014.[462]

536. OISL conducted 48 extended and detailed interviews with Sri Lankans, aged 23 to 58, including 12 women, who were direct victims of torture and other cruel, inhuman or degrading treatment by the security forces. These confidential interviews took place in six different countries. The high number of detailed testimonies given independently in these different locations provided extensive corroboration for the findings below.

537. Additional information was gathered through interviews with other sources, including organizations who work with victims of torture, as well as from medical files of victims (who consented to share these files with OISL). The findings were further corroborated through the review of written submissions sent to OISL and of other reports and documentation.

538. All the victims of torture interviewed gave their testimony voluntarily. This meant reliving traumatic events that many found distressing. For this reason, interviews were

459 Asian Human Rights Commission, 2011, A report on 323 cases of police torture. < http://www.humanrights.asia/news/ahrc-news/AHRC-STM-085-2011 >

460 Report of the Committee Against Torture, United Nations, New York, 1998

461 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Mission to Sri Lanka. < http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/111/35/PDF/G0811135.pdf?OpenElement >

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interrupted for breaks and, on some occasions, certain details of victims' experiences were not explored in depth. Investigators witnessed visible physical scarring and the psychological trauma of the interviewees. Medical reports seen by OISL and interviews with medical doctors highlighted physical scarring that can last for years, as well as traumatic symptoms, including suicidal thoughts, sleeplessness, intrusive thoughts, inability to concentrate, depression and other symptoms of PTSD.[463]

539. Investigators with many years of experience interviewing victims of torture noted the particular cruelty and brutality of the cases documented by OISL. Many of those interviewed recounted being subjected to sexual violence during their detention in addition to the other methods of torture. These allegations are dealt with in Chapter X of the report.

540. Victims of conflict-related torture perpetrated by Government forces and documented by OISL were generally Tamils, often arrested and detained in Government-controlled areas, in particular Jaffna, under PTA and the Emergency Regulations.

541. The findings related to the earlier period corroborate those of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, following his visit in October 2007. In his mission report, he stated that "… in the context of detention orders under the Emergency Regulations and in particular with respect to LTTE suspects, the clear majority of all detainees interviewed by the Special Rapporteur complained about a broad variety of methods of torture, some extremely brutal. In many cases, these allegations were corroborated by forensic reports. The considerable number of clearly established cases of torture by TID and other security forces [..] leads him to the conclusion that torture has become a routine practice in the context of counter-terrorism operations, both by the police and the armed forces."[464]

542. OISL documented widespread, systematic and particularly brutal use of torture by the Sri Lankan security forces in the final days and the immediate aftermath of the armed conflict when security forces detained *en masse* civilians and former LTTE cadres as they crossed from the Vanni into Government-controlled areas.

543. Victims were often repeatedly tortured throughout a period of detention that would typically range from a few weeks to several years. The acts of torture throughout the period under investigation were premeditated and designed to inflict severe physical and/or mental pain or suffering on persons in the custody of the perpetrator, and were frequently used for the purpose of obtaining information or a confession from suspected LTTE cadres or supporters as part of interrogation.

544. Acts of torture were perpetrated by State agents from the Sri Lankan Police (SLP),[465] including the Special Task Force (STF),[466] the Criminal Investigation Department (CID),[467] and the Terrorism Investigation Department (TID),[468] the Sri Lankan Army (SLA),[469] particularly the 53rd, 55th and 58th brigades,[470] the Military Police,[471] the Military

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[464] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Mission to Sri Lanka. < http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/111/35/PDF/G0811135.pdf?OpenElement >
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Intelligence,[472] and the National Intelligence Bureau (NIB).[473] OISL recorded cases of torture perpetrated by members of the Karuna Group from 2004 onwards, often in conjunction with Government agents.[474] State agents occasionally identified themselves to victims as working for CID or TID. In other cases witnesses were able to identify alleged perpetrators based on their uniform or the location where they were detained and tortured. A significant number of victims were tortured by agents of different security forces, who took turns to interrogate and torture them.[475]

545. OISL documented the use of torture in multiple facilities, including army camps, police stations, "rehabilitation camps", and prisons. In the period around the end of the conflict, the security forces rapidly set up detention centres, for example in school or college buildings, where torture was carried out on a routine basis. Use of torture or ill-treatment was documented in the following locations:

546. *Army camps:* Atchuvely-Atchelu SLA camp, near Jaffna;476 Joseph SLA camp, Vavuniya;477 an army base near Kurisutta Kulam;478 a navy base near Mannar;479 SLA base near Pulinerwa.[480]

547. "*Rehabilitation centres*" including temporary detention centres: Cheddikulam camp, a former school in Vavuniya;481 Nellikkulam, former technical college, Vavuniya;482 Omanthai Central College;483 Pampamadhu college, Vavuniya;484 Poonthotham camp, former educational institution, Vavuniya;485 Ramanathan (Menik Farm);486 Rambakulam Ladies College, Vanuniya;487 Vavuniya secondary school.[488]

548. *Prisons:* Trincomalee prison;[489] Welikada prison, near Colombo.[490]

549. Police stations: Hulftsdorp, Colombo;[491] Kalmunai; Kadawatha.[492]

550. CID facilities: "Fourth Floor" CID centre, Colombo;[493] Veppankulam CID camp.[494]

551. TID facility near Colombo airport as well as other TID facilities;[495] Boossa detention centre Galle. [496]

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552. Detainees were often blindfolded when arrested;[497] and driven for up to several hours, so would not necessarily know the place of detention. Some, however, were able to recognize where they were held from local landmarks or from where they were released.[498] Detainees were often moved between different detention centres.[499]

553. Some of the more commonly used centres, such as Joseph military camp in Vavuniya (Security Force Headquarters for Vavuniya) or the CID "Fourth Floor" detention facility in Colombo had rooms that were set up with torture equipment, illustrating the premeditated and systematic nature of the use of torture by units of the Sri Lankan security forces.[500] These rooms contained objects including metal bars and poles used for beatings, barrels of water used for waterboarding, and pulleys and other apparatus from which victims were suspended. Victims described seeing bloodstains on the walls or floor of these rooms. In different locations used for torture, witnesses described either seeing or hearing other people being tortured.[501]

554. One victim described to OISL how he was arrested in an IDP camp in 2009 and driven away in a van: "When we stopped, I was taken into a small room with a toilet and a bucket of water. I was alone in the room. We were prevented from sleeping by soldiers who would tap on the bars the window with a metal rod. I could hear people screaming." The following day, the victim was taken from his cell: "Two officers came and took me to a bigger room for interrogation. The room was full of equipment that was used for torture. I could see blood stains on the wall, a barrel of water." [502]

555. A number of torture techniques were commonly used according to the multiple testimonies taken by OISL. Victims were frequently tied up and beaten with various implements including rifle butts, plumbing pipes filled with sand or concrete, metal bars and wooden poles.[503] Victims were frequently beaten until they lost consciousness.[504] They described being suspended upside down while being beaten on the back, the head, the legs, and the soles of the feet.[505]

556. Waterboarding[506] was frequently used, whereby victims were suspended upside down, their heads lowered into barrels of water.[507] Partial suffocation with the use of plastic bags soaked in petrol, or dusted in chilli powder, placed over the heads of victims was another technique described by many victims,[508] as well as being burnt or "branded", with heated metal rods, or burned with lit cigarettes.[509] Fingernails and toenails were removed with pliers, or needles were inserted between the nail and the flesh.[510] In many cases,

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506 In its 36th session, the United Nations' Committee Against Torture states that interrogation techniques, such as waterboarding, constitute torture or cruel, inhuman, or degrading treatment or punishment.
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witnesses described a combination of different methods of torture being used. Many victims described in detail the ordeal they suffered at the hands of perpetrators. One victim, who said he was severely tortured and sexually assaulted in a jail for over three months, told OISL that he asked his torturers to kill him in order to be spared from the agony.[511] Another victim described being kicked by officers in the "4th Floor" CID facility in Colombo in 2009 "as if I was a ball being kicked by 11 players". The victim was repeatedly kicked and beaten with sticks and poles, including on the head, and was also partially suffocated with a plastic bag that had been soaked in petrol.[512]

557. After crossing to the Government-controlled area at Omanthai in May 2009, another victim was taken away from an IDP camp, and driven to Joseph Camp where he was subjected to severe torture and sexual violence. "They beat me with whatever they could find: boots, poles, sticks. I was beaten everywhere on my body. We were taken to a jungle area where the torture was particularly severe. I was with other men and women, though as I was blindfolded I could not clearly tell how many."[513]

558. In another case documented by OISL, a man suspected by the Sri Lankan authorities of being an LTTE cadre was tortured after his arrest in 2010 near his place of work in Vavuniya. During six weeks in detention, the man said he was interrogated and tortured on multiple occasions by TID officials. He was beaten with plumbing pipes filled with cement; suspended upside down and his head lowered into water; his toenails were pulled off; for two days he was kept in a narrow cage with barbed wire where he was unable to sit down; a plastic bag soaked in petrol was put over his head and chilli power was rubbed on his genitals. The man said he was also raped on several occasions. He was released after his father paid a bribe to TID.[514]

559. OISL documented cases where witnesses made credible allegations that torture led to the death of detainees.[515] One witness described his cellmate in a military camp struggling for his life after repeatedly being tortured. After he died, his body was left in the cell for three days before being removed.[516]

560. Detainees were also subjected to acts of degrading treatment, such as being forced to drink urine, lick blood off the floor, being spat or urinated on, or being made to eat food "like a dog".[517] OISL also documented cases where victims were subjected to non-physical acts of torture and ill-treatment.[518] Methods included threats, including death threats to victims or members of their family, threats that family members would be raped, or victims being forced to watch others being tortured and being threatened with similar treatment. Detainees were also frequently subjected to ethnic slurs, for example being called a "Tamil dog".[519]

561. Torture normally took place during the interrogation of suspected LTTE cadres or supporters. Victims described being taken into rooms by groups of three or four officials. While one or two of the group – often wearing civilian clothes and introduced as belonging to the CID or TID – would lead the interrogation, sometimes in possession of a "file" on the accused, the others – often wearing military or police uniforms – would perpetrate acts of

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torture.[520] Sessions would typically last between 30 minutes and two hours, and different methods of torture were used during this time.

562. Sessions were repeated daily, or several times per week throughout the first weeks and months of a victim's detention.[521] One witness described being beaten after each question.[522] Witnesses describe that eventually, over time, interrogation and torture became less frequent and less severe.[523] Interrogation related to suspected LTTE activities, such as the location of weapons caches, information on commanders or foreign support networks, or on planned attacks.[524] Suspected high-ranking LTTE cadres, and those suspected of having belonged to "elite" units such as the LTTE Sea Tigers or intelligence service were singled out for particularly brutal torture. Accusations of lying or hiding information often led to the intensification of torture. Torture was frequently used to make victims sign "confessions" - pre-prepared documents written in Sinhalese, which many victims were not able to understand.[525] On some occasions, victims were forced to sign blank sheets of paper.[526]

563. One victim, arrested as he was crossing an SLA checkpoint while leaving the Vanni in 2008, and subsequently taken to Joseph Camp, described to OISL his ordeal, that started shortly after he arrived. The victim was too distressed to give a detailed description of the acts of physical torture he was subjected to. "I was taken to an interrogation room. I could see black stains on the wall, and objects such as metal bars and wooden poles. I was locked inside the room, alone, for one hour. Three people then entered the room, wearing army trousers and t-shirts. They told that if I told lies, I would be killed. They asked me questions about why I had left the LTTE areas. They made me sign documents in Sinhalese that I did not understand. After two hours they left the room and four different men came in, also wearing army trousers and white t-shirts. They told me that I had told lies. I experienced severe torture – there are no words to describe what happened. I was beaten with metal rods, suspended upside down, sometimes with my head submerged in a bucket of water. I was in such pain. They did this after each question. They accused me of being an LTTE fighter, but they had no proof. Each time they would ask the same questions and then hit me."[527]

564. In another case, after being arrested and driven for two hours in the dark to an unknown location, a man was given three documents written in Sinhalese, which he did not understand, and was ordered to sign them under the threat of violence. On the first day of interrogation, he was told that the papers he had signed were admissions of full responsibility for all charges brought against him. Interrogation focussed on the LTTE command structure, foreign support networks for the LTTE, and the location of LTTE weapons caches. During his first eight months in detention, the interrogation and torture took place on a daily basis, each session lasting several hours. The victim described the different torture techniques he was subjected to: "They put a bag which had been soaked in petrol over my head, which made me collapse. I was stripped naked and hung upside down from the ceiling and beaten until I vomited. I was beaten with an iron rod, burned with cigarettes and heated metal. I was hit on the stomach, the back, the arms and the legs. I was hung upside down and my head pushed into water. I had toenails pulled out, then the leg of

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a chair was placed on my toe and an officer would sit on it. Teams of four men would torture me: one would lead the interrogation, who wore civilian clothes, and three others, in uniform, would beat me". The man was detained for two years and a half in a camp located in the jungle. In late 2011, he was taken to hospital, from where he was able to send a message to his family, who paid a bribe to arrange his release.[528]

565. Another victim described his ordeal after being arrested and driven to a location in the jungle after crossing to Government-controlled areas in April 2009. "We drove for two hours to the thick jungle where we stopped and were taken inside a small building. After half an hour five or six people in uniform came into the room and started to hit people. I fell to the floor, unconscious. I was in so much pain that I started to scream. I was beaten for about 30 minutes. They stepped on my stomach and on my genitals. I could not stand the pain. The following day, the interrogation started. They told me to tell them what I had done with the LTTE, in which division I had served and for how long… For the first ten days, it was the same thing: the same questions and the same torture. They used a metal pipe to beat people. Normally one person would ask questions, while two or three others would beat. […] I was in the camp for 20 days during which time I was tortured every day." The victim was then transferred to another military camp where he was detained for a further seven months and subjected to various methods of torture: waterboarding, being whipped with electric cables, using a rope tied around his neck to smash his head against a hard wall. The man was told that he would be released if he admitted to being an LTTE cadre.[529]

Allegations of torture by the LTTE

566. OISL documented incidents of torture and ill-treatment perpetrated by LTTE, but not on a correspondingly large scale to that perpetrated by Government security forces. LTTE imposed a strong social control in areas under their authority, and this included some cases of LTTE "police" brutality, mainly beatings, often in relation to alleged criminal activities. More serious cases of torture by LTTE were perpetrated, in particular against people considered as "traitors", such as those who resisted forced recruitment, including recruitment of children, or who fled from fighting with the organization.[530]

567. A small number of submissions and other information received by OISL allege acts of torture committed by LTTE, including burning with hot metal rods, beatings and forcing the victim to sit for prolonged periods in the sun. Victims were detained and tortured at LTTE checkpoints, military bases, police and intelligence camps, and prisons known as "Alpha 2" and "Alpha 5" in Vallipunam.[531]

568. In 2005, one man who fled after being forcibly recruited by LTTE was recaptured and taken to "Alpha 2" prison in Vallipunam, where he was held for eight months. The man was accused of treason, and beaten repeatedly with pipes filled with sand and electric cables. He was released once he agreed to be sent back to the front lines as an LTTE cadre.[532]

569. OISL was not able to confirm many of the allegations of torture by LTTE, mostly because of a lack of access to the alleged victims and other constraints. It is therefore not

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possible to accurately assess the extent to which torture was prevalent in areas controlled by LTTE. This would require further investigation.

570. On the basis of the information it gathered, OISL has grounds to believe that LTTE committed human rights violations and violations of international humanitarian law by torturing and ill-treating people it held in captivity. However, there is insufficient evidence to establish whether these acts might have been systematic or widespread, and thus to assess whether they amounted to crimes against humanity.

X. Sexual and gender-based violence

Introduction

571. One of the most disturbing findings of the OISL investigation has been the extent to which sexual violence was committed, often extremely brutally, by the Sri Lanka security forces, with men as likely to be victims as women. The prevalence of rape, often on repeated occasions, was particularly shocking. OISL did not find any information to suggest that the LTTE was responsible for sexual violence, and different sources indicated that anyone found responsible for sexual abuse or violence risked harsh punishment by the LTTE.

572. Prior to OISL's investigation, a growing body of evidence had been emerging about the use of sexual violence by the Sri Lankan security forces against individuals they suspected of links with the LTTE.[533] In the context of its mandate, OISL focused primarily on allegations of sexual violence committed during the final phase and aftermath of the armed conflict. The sections below describe the sexual torture which occurred during interrogation sessions, and also patterns of rape, much of which appeared to occur outside of interrogation sessions. This chapter also looks into reports of sexual abuse committed during the various screening processes as civilians and LTTE cadres who had laid down their arms crossed over into Government-controlled territory, as well as reports of such abuse inside the IDP camps making up Manik Farm. A final section also examines justice and accountability for sexual violence.

573. OISL received some allegations of sexual violence beyond the period of its mandate. There have been numerous allegations that after the conflict, even up to this day, women living in the militarised north have been vulnerable to rape and other forms of sexual violence or exploitation by the military. Investigating and addressing such allegations is extremely delicate, particularly without access to Sri Lanka, and because of the serious risk of reprisals to women who may report such cases. These should be part of a broader investigation into sexual violence allegedly perpetrated by security forces in order to identify and punish the perpetrators, and to take preventive measures.

574. OISL interviewed a number of former detainees who stated they were subjected to sexual violence between 2005 and 2008. One witness who had worked closely with torture

[533] See for example: "We will teach you a lesson" - Sexual violence against Tamils by Sri Lankan security forces, HRW, February 2013; "An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014", Yasmin Sooka, Bar Human Rights Committee of England and Wales, and the International Truth and Justice Project, Sri Lanka, March 2014; Freedom from Torture up-dated submission to the Human Rights Committee for the 5th periodic review of Sri Lanka in October 2014; "Women's Insecurity in The North and East , ICG, 20 December 2011; "Island of Impunity," International Crimes Evidence Project, February 2014; "Crimes Against Humanity in Sri Lanka's Northern Province," Sri Lanka Campaign for Peace and Justice, 4 March 2014.

victims prior to 2004, told investigators that he had documented numerous cases of sexual violence committed by security forces, including burns on the genital areas of male and female detainees, insertion of thin rods into the penis of male detainees, objects inserted into the anus of male and female detainees, and bottles into the vaginas of women detainees, as well as chilli powder sprayed onto or inserted into genital organs. All of these are methods which OISL has documented in the more recent cases it has examined, indicating a continuation of such practices.

575. Allegations of sexual violence in the years before OISL mandate period have been documented in other reports both by NGOs and by United Nations Special Mandate holders, such as the Special Rapporteur on Violence against Women. In the time available, OISL was not able to investigate earlier patterns of sexual violence, nor did it assess whether detainees not held in connection with the conflict were subjected to such treatment. These should also be part of a broader investigation into sexual violence perpetrated by security forces.

576. As part of its investigation, OISL interviewed 30 survivors of sexual violence which occurred during OISL's mandate period. Eighteen were men and 12 were women. OISL also received detailed information on cases from other sources, which corroborated much of the information gathered in the course of its own interviews. OISL also interviewed a dozen other sources who had indirect information about such incidents, either because they had witnessed them, because of their work documenting such cases, or because of their alleged involvement with the security forces. In addition, OISL was given access to medical reports (with the consent of the victims concerned) which corroborated the allegations of sexual violence.

577. Collecting information about cases of sexual violence is always particularly challenging because of taboos related to discussing such issues, the stigma and shame experienced by the victims, as well as the trauma of the events themselves. The witnesses and survivors interviewed by OISL were without exception profoundly affected by their experiences and were being treated for post-traumatic stress. Some broke down at the point where they began to describe the sexual abuse, and expressed feelings of humiliation, embarrassment and utter degradation. One witness stated that "the sexual torture was the most painful psychologically: it was worse than the beating".[534]

578. An expert working for an organization which supports victims of torture told OISL that "the experience that seems to produce the most severe and persistent psychological damage as related by male and female survivors, is the sexual violence inflicted in detention", and stressed that it can have longstanding physical and psychological effects. "It is clear that the damage from sexual violence is great and permeates everything" in their everyday life[535].

579. The trauma of the sexual violence was often compounded by fears for family members who remained in Sri Lanka, some of whom had subsequently suffered threats and harassment. OISL is also aware that in several cases, victims of sexual violence have reportedly committed suicide or attempted to commit suicide[536].

580. In spite of the challenges to gather information, the following sections demonstrate the widespread and brutal nature of the sexual violence which was inflicted.

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Government's responses to allegations of sexual violence

581. Instead of ensuring that allegations of sexual violence are fully investigated and any perpetrators brought to justice, as required under international law, the Government has consistently sought to deny or play down the gravity of the allegations of rape and other forms of sexual violence by its security forces.[537] While acknowledging it was aware of allegations of sexual abuse, it denied large-scale abuse and even discredited and demeaned the victims. In December 2009, Rajiva Wijesinha, the Permanent Secretary to the Ministry of Disaster Management and Human Rights was quoted as saying that "there was a lot of sex going on" inside the camps, but he claimed that most reports involved abuse by fellow detainees. "I can't tell you nothing happened because I wasn't there" he said. "Individual aberrations could have happened but our position is 'Please tell us and they will be looked into'." Wijesinha said he was aware of one report from a United Nations agency but claimed that establishing the facts was very difficult. "We received a report that a soldier went into a tent at 11 p.m. and came out at 3 a.m. It could have been sex for pleasure, it could have been sex for favours, or it could have been a discussion on Ancient Greek philosophy, we don't know."[538]

582. Several years later, in February 2013, the Ministry of Defence stated that "What the Government can prove is that between 19 May 2009 and 31 December 2011, out of a total of 210 cases of rape and sexual offence, only 20 cases have been committed by Sri Lanka armed forces including police and CDS with cases against these members already in process and under investigation." [539] However, this contradicts figures given in a report by the Ministry of Defence[540], , which shows in tabulated form that only four cases of rape and one of sexual abuse by members of SLA had been either dealt with in the courts or by SLA disciplinary proceedings for the same period (see section below on judicial investigations into sexual violence).

583. In an interview with Al Jazeera TV on 27 December 2013, viewed by OISL, Major General Mahinda Hathurusinghe, the Commander of the Security Forces in Jaffna, laughed off reports of abduction, torture and rape. "I suppose my smile tells the story," he said. "They are all fabricated, no base at all, all stories. Because they just want to stay in UK. They want to continue in other countries. These are all lies. These are all lies."[541]

584. The Government, in its statement to the 24th session of the Human Rights Council, highlighted that a survey covering the period 2007-2012 had revealed that of the reported incidents of sexual violence in the North a large majority were carried out by close relatives/ neighbours and only a very few could be attributed to the Security Forces. It again claimed that in all cases involving security forces personnel disciplinary and legal action has been taken. "The military has taken strict action to either discharge or award other punishments to these personnel. Furthermore, cases have been filed in civil courts, some of which are pending in Courts and with the Attorney-General's department….." In its response to the High Commissioner's report to the Human Rights Council in March 2014, the Government reiterated that "there exists no basis for concerns as expressed by the High Commissioner with regard to presence of the security forces contributing to the

[537] As one example, "Sky News has been told women are being raped in Sri Lankan camps set up for Tamils who have fled the country's war zone. There are numerous reports of sexual assaults in the government-run camps, and claims that groups of young men are being rounded up and taken away." http://news.sky.com/story/694545/claims-of-abuse-in-sri-lankan-refugee-camps.

[538] http://www.theguardian.com/world/2009/dec/20/tamil-tigers-sri-lanka-refugees.

[539] Ministry of Defence Website, February 2013.

[540] Humanitarian Operation Factual Analysis, MOD, Op.cit.(p.79)

[541] Scars of Sri Lanka, Al Jazeera report, December 2013

vulnerability of women to sexual violence in the North. The Government deplores all acts of violence against women and girls and has taken concrete action against reported cases and will continue to do so".[542]

585. In its response to concerns raised by the Special Rapporteur on the Human Rights of IDPs, Chaloka Beyani, about continuing allegations of sexual violence in the North, the Government stated that such violence was "a relic of the conflict": "The references in the (Special Rapporteur's) report to the alleged gross violations of human rights of internally displaced women including sexual violence is unsubstantiated and incorrect. Strict legal action has been taken to combat sexual violence. There have been no allegations of gross violations of human rights of Internally Displaced women."[543]

Patterns of sexual violence documented by OISL

Sexual violence following individual targeted abductions or mass detention

586. As indicated above, OISL gathered overwhelming information, through direct interviews with victims and from other credible sources of information, showing that sexual violence was used against detainees, either as a very brutal form of torture or ill-treatment and as a form of sexual exploitation, at times involving gang-rape. Male detainees were as likely to be subjected to sexual violence as female detainees.

587. In many cases, the attitudes of the alleged perpetrators described by the witnesses highlighted a persecutory and degrading behaviour towards the victim, often referring to them as "Tamil dogs", the intent clearly being to break down that person emotionally and physically. Most of the reported cases occurred in 2009 and 2010. Testimonies of former detainees held between 2005 and 2008 described the same patterns and methods of sexual violence as cases reported later.

588. Those cited as being responsible for sexual violence included the whole range of security forces: police (CID, TID); the National Intelligence Bureau, Military Intelligence, SLA soldiers and Navy personnel. The grades of alleged perpetrators ranged from low level guards to individuals believed to be senior officers given the way other military staff reported to them. Though most of the alleged perpetrators described were male, in some cases witnesses described female officers being involved in the sexual abuse.

589. The previous chapter has listed places of detention where torture took place. Places of detention where sexual violence occurred included official gazetted detention centres and detention centres not officially recognized, such as those inside military bases – for example Joseph Camp, the Security forces HQ in Vavunya commanded by Major General Jagath Jayasuriya (where Military Intelligence was based but where CID and TID also reportedly took part in interrogation and torture sessions) was the place most commonly indicated. Other places included TID and CID facilities in Colombo and Veppankulam, Boosa Detention Centre, Omanthai Central College, Poonthoddaam Camp, Pulinerwa Camp, Welikanda Rehab centre.

590. Some people were subjected to sexual violence and other forms of torture after being arrested individually as part of the white van pattern. Others were subjected to sexual violence following the mass detentions at the end of the armed conflict, either after being separated at screening points or taken away subsequently from camps where the displaced

[542] Comments received from the Permanent Mission of Sri Lanka on the draft report of the Office of the United Nations High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka (A/HRC/25/23), para 14.

[543] A/HRC/26/33/Add.6, Comments by the State on the Report of the Special Rapporteur, para 36-37.

were interned. Some individuals who had surrendered at the end of the conflict and had subsequently been released were later re-arrested and subjected to torture and sexual violence during the second detention [544]

591. All of the information gathered by OISL indicates that incidents of sexual violence were not isolated acts but part of a deliberate policy to inflict torture (to obtain information, intimidate, humiliate, inflict fear). The practices followed similar patterns, using similar tools over a wide range of detention locations, time periods, and security forces, reinforcing the conclusion that it was part of an institutional policy within the security forces.

Sexual violence as a form of torture or cruel, inhuman and degrading treatment or punishment during interrogation

592. Whether or not they were subjected to sexual violence, most of the former detainees interviewed by OISL described how they were subjected to forced complete or partial nudity, sometimes on arrival at a detention centre, often during interrogation sessions. According to one detainee who was held blindfolded and naked in an area of jungle, "I could hear women pleading not to be attacked; that they would rather die. I believe the women were sexually assaulted. I cannot imagine one human being doing this to another." Another survivor told OISL he was suspended naked and beaten with a stick until he bled. [545]

593. Forced complete or partial nudity can be considered humiliating and degrading treatment. The impact of this treatment was exacerbated by derisive comments from the members of the security forces present. In addition, OISL received allegations that military personnel photographed or videoed the naked female and male detainees. Some described being touched inappropriately on the breasts or genitals. A former detainee described being made to lie naked and beaten on the genitals while his captors laughed. Another described being forced to somersault while naked, another that detainees had to dance with chairs above their heads while naked.[546] A number of former male detainees also reported seeing naked or semi-naked female detainees, in some cases in extreme distress, leading to speculation as to other kinds of abuse they may have been subjected to.

594. Former detainees described to OISL being subjected to methods of sexual violence during interrogation sessions which caused excruciating pain: genitals crushed under the weight of feet stepping on the detainee; beating and kicking of the genitals and inner thighs; chili powder placed on the genitals; metal or wire inserted in the penis, burns on the breasts; pliers used to squeeze breasts; ice cubes inserted in the anus, male genitals squeezed by the hands of the perpetrators. In several cases, witnesses said they fell unconscious because of the pain.[547] One man described having his penis put in a drawer which was then slammed shut.

595. Another witness, describing the torture he was subjected to in Joseph Camp over a period of months said: "They would tell me to remove my clothes. They would tell me to put my genitals on top of the table and then beat my private parts with sticks". He reported being subjected to sexual abuse again after his transfer to the 4th floor CID facility in

[544] WS on file. Former detainees were required to report regularly to military camps, CID or TID and/were kept under surveillance as police and intelligence services continued to pursue anyone they thought had links or information about LTTE activities.

[545] WS on file

[546] WS on file

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Colombo where he was also subjected to other methods of torture as they tried to get him to confess to being involved in LTTE.[548]

596. After being stripped naked and forced to lie on his back on the floor, another detainee described being held down by two captors while another squeezed his genitals. After this they turned him over and inserted an object into his anus, pushing it in and out.

597. One of the most barbaric methods of sexual torture described in a number of different testimonies involved the insertion of barbed wire through a pipe inserted into the anus. The pipe was pulled out first and then the barbed wire, causing "unbearable pain and bleeding".[549] One witness described being subjected to this treatment when he tried to refuse to have sex with his captors[550]. "He pushed the pipe in again with the barbed wire inside. He pulled the pipe out and left the barbed wire in me. I had a lot of heavy pain and bleeding." He said he was forced to have oral sex and gang-raped several times while in detention. OISL was also informed of a similar case by a credible source which allegedly occurred in Joseph Camp. A medico-legal report taken outside of Sri Lanka recorded that he had anal bleeding and ongoing pain symptoms due to sexual torture. Another source told OISL that cases had been documented where the victim's intestines were pulled out as a result, but that the victims did not survive[551].

598. Several former detainees described their captors proudly showing them photos or videos of naked or semi-naked LTTE cadres, in some cases dead, in others still alive by their captors. One witness said he was shown a video of a group of naked and crying LTTE cadres. A soldier laughingly told him that they had been executed. In another case, the source also described being shown a video of naked females alive and subsequently a video of naked dead Tamil females. [552] At least two former detainees were reportedly shown videos of sexual abuse, in one case of a naked Tamil woman being held by soldiers and raped; in another, the victim herself being abused. Another detainee described how one of his captors "showed a lot of pictures of dead naked women lying on the ground and bloody, often with close-ups of breasts and vaginas. There were also photos of female LTTE cadres alive sitting on the ground in LTTE combat pants but with naked upper bodies. Their hands were tied behind their backs…"[553]

599. OISL has not seen these videos and therefore cannot confirm their existence but believes that the use of mobile phones by security forces personnel to take images could amount to degrading treatment. Furthermore showing such videos and photographs to detainees could amount to psychological torture.

Allegations of widespread rape

600. Eighteen out of 30 victims of sexual violence (eight male and 10 female) told OISL that they were raped, by bodily parts and/or by objects inserted into the anus. Statements taken by other sources also indicate high rates of rape in detention. Much of the rape described did not appear to take place in the context of interrogation sessions. According to a number of consistent testimonies, detainees, both male and female, were also forced to perform oral sex on their captors and sperm ejaculated in the mouth or over their bodies.

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601. Sometimes the detainees were raped over period of weeks or months by the same perpetrators…in one case at least, reportedly by a senior commander. "During my four years in detention, I was raped on several occasions; I cannot recollect the number of times I was raped, four or five times a week for several months. I am still suffering and undergoing treatment. It was the same officer who raped me each time… The attacker wore military uniform. I think he was quite a senior officer, as he had status: other soldiers would salute him. The attacks were very violent. I was weak and helpless. I did not tell anybody what was happening. Other inmates would ask me why I was bleeding from the back passage – I would say that I was hit with a pole."[554]

602. Interviewees, male and female, reported being raped in their cells, or taken out in the night to other rooms where they would be raped, sometimes repeatedly and by more than one perpetrator. In some cases, witnesses described the perpetrators as having the smell of alcohol on their breath. One individual close to the SLA told OISL that often they were instructed to fetch girls from Manik Farm and bring them to Joseph camp, where the women would then be raped.[555]

603. Many of the former detainees interviewed who had been subjected to some kind of sexual violence during interrogation were also raped. The purpose of the actual rape was not directly to obtain information in many of these cases, but a combination of sexual gratification, degradation and humiliation of the victims, and the instilling of fear through degrading abuse of the detainees who were at the mercy of their captors and had no power to protect themselves. The humiliation element was compounded by the fact that detainees were constantly treated in a derogatory manner, such as being called "Tamil dogs" during the acts of sexual violence. The rape also added to the pressure constantly exerted over the detainees to provide information and/or sign "confessions".

604. In at least three cases, which occurred in three different detention centres, the interviewees – one male, two female – were raped while they were unconscious. They described individually how they woke up in great pain around the genital area. One of them reported having been made to drink alcohol until he passed out. When he eventually woke up he could barely walk. The second witness reportedly woke up partially undressed, bleeding from the vagina and had teeth marks on her breast.

605. A third witness, who was also repeatedly tortured during interrogation sessions, said that one night, after being taken to a room with two uniformed military present she fainted after a plastic bag smelling of petrol was put over her head. When she woke up, she was naked, "there was a lot of blood coming out of my vagina. I felt a lot of pain in my vaginal area both inside and outside." Several months later, she was raped again at night, by two men in army uniform, as she passed in and out of consciousness. The third occasion she was raped at night, she was burnt repeatedly with cigarettes on both legs before being raped by at least three military one after the other, again causing her to bleed. On each occasion afterwards she washed herself in the toilet before returning to her tent. She reported that she saw other women coming out of the same building at night and going directly to the toilet before returning to their tents. OISL also received other reports of rape in the same camp.[556]

606. In the case of one former detainee who was re-arrested when he reported to an army camp, he was taken to a secret detention place where he said he was forced "many times" to have oral sex during the three weeks he was held.[557] Another former detainee held by CID

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said he was raped so many times he could not recall, and that the sexual abuse was accompanied by verbal abuse and racial slurs. Like many victims subjected to sexual violence and other forms of torture, he described having frequent flashbacks, and became very disturbed during the OISL interview when referring to the sexual violence.[558]

Sexual harassment and other forms of sexual violence during screening processes and inside Manik Farm

607. During the final weeks of the conflict, tens of thousands of Tamil civilians, as well as LTTE cadres who had laid down their arms crossed over into Government-controlled territories. Chapter XVI describes in more detail the series of screening posts and checkpoints which they passed through between the Vaddukavil Bridge, Mullaitivu and Omanthai.

608. OISL received allegations of incidents of sexual harassment, humiliation and intimidation at these screening points. While OISL recognises that screening processes may be legitimate for security purposes, they should have been carried out without violating the rights of the individuals passing through. Reports indicate that strip-searching became routine after an LTTE suicide bomber blew herself up at an IDP registration point in February 2009. While strip-searching may have been justified to a certain extent, it is clear from the information gathered by OISL that it provided many opportunities for abuse, particularly of females when they were forced to strip naked or partially naked.

609. Some IDPs were taken into sentry posts made out of sandbags[559] or enclosures made from palmyra leaves, while others were made to strip in an area where they were visible to others.[560] Several females IDPs reported that they were checked by male soldiers or had male soldiers looking over the top of enclosures while they undressed and recording images of the nude women on their mobile phones. These abuses were also described to OISL by individuals linked to the SLA.[561] The forced nudity, especially of women and girls, went beyond security requirements but was part of a process of ill-treatment and humiliation of the IDPs fleeing the Vanni.

610. Allegations were also received of male soldiers peering at the women and girls once naked or semi-naked, and touching them inappropriately. One witness described how after being beaten and forced into the screening booth by a female army officer because she was resisting going into the booth, her clothes were forcibly removed. She described her breasts being touched by gun barrels poked in a degrading manner through holes in the sandbag walls by male soldiers. [562] Another said that she felt “like a corpse” when she was stripped naked and checked. [563] A witness said a soldier showed him a video on his cell phone showing him (the soldier) taking videos of totally naked females, with soldiers making sexual remarks about their bodies. Several witnesses said that these incidents took place in the presence of commanding officers who did nothing to stop them.

611. The strip searches in themselves clearly caused feelings of embarrassment, humiliation and degradation, and were often accompanied by insulting or derogatory comments. This impact was compounded by the vulnerability of a population traumatised by shelling, lack of food and shelter and their fear of the security forces.

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[563] WS on file

612. Several witnesses spoke of women being taken away "towards the jungle" by soldiers, allegedly for sexual abuse, as they crossed over into Government-controlled territory. Some said that they then heard screaming. One witness, for example, described a female cadre being taken behind a sentry post by two soldiers, and was visibly distraught and crying when brought back some 20 minutes later. In another case, the source recounted seeing soldiers dragging young women into the bushes and hearing screams. He said that he could also hear gunshots coming from the area. Another witness stated that she heard four or five "voices of girls screaming in the bushes" and calling to be saved as she approached a sentry point. She feared that they were being sexually assaulted, and initially resisted being strip-searched herself. [564]

613. Given the extent of the sexual violence documented with regard to detainees, and of sexual humiliation and desecration of bodies at the end of the conflict, OISL believes that the likelihood of sexual harassment and assault at the various screening and checkpoints was considerable, and that such allegations should be further investigated, to establish the extent and nature of the abuses, as well as the responsibilities, including of any commanders present.

614. A woman who went through the screening in early February 2009, before more systematic strip-searches were introduced, described how, even though she was not made to take off her clothes, a female soldier fondled and squeezed her breasts, and also groped her thighs and buttocks. She described the treatment as "a humiliating and degrading experience". [565]

615. It should be noted that civilians were searched at a series of screening posts and checkpoints, even though they had already shown that they were not carrying weapons or bombs at previous ones. This reinforces the conclusion that the purpose of screening was on many occasions to degrade and humiliate, rather than for genuine security concerns. The sexual humiliation that occurred during the screening processes should also be viewed in the broader overall pattern of inhuman and degrading treatment of civilians and LTTE cadres *hors de combat,* including offensive and derogatory remarks based on ethnicity.

616. OISL also received hearsay allegations from a range of different sources who had either been interned in camps within Manik Farm or visited the camps as part of their work, that they had heard of cases of rape or sexual assault inside Manik Farm, for example as women and girls were bathing or while fetching firewood; of soldiers going into tents at night to abuse the women or of women being taken away by soldiers and returning later in a distressed state[566]. A number of individual testimonies described how the bathing point was quite open and visible to soldiers who would watch the women.

617. One woman held in Manik Farm described to OISL how she was queuing for food when she was summoned by five men in green uniforms. Taken into a room somewhere in the camp, she described being violently raped, bitten, kicked and scratched. She was asked if her husband was in the LTTE before being allowed to return to her tent. She said that she thought this happened to other women in the camp but "nobody was talking about it". She said she had seen two other women being taken away as she had been and returning in a similar state.

618. In the time available, OISL was not able to obtain direct testimony on cases of systematic rape or other forms of sexual abuse by security forces within Manik Farm itself. However, OISL believes that this needs further serious investigation, given the prevalence

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of rape and other forms of sexual violence by security forces at that time, the militarised nature of the camps inside Manik Farm, with the constant presence of and abuse by security forces and paramilitary forces, and the fact that many households in the camps were headed by women and therefore particularly vulnerable.

619. The absence of any United Nations staff or NGOs inside the different sections of Manik Farm after dark prevented any kind of independent monitoring and increased the risks that IDPs could be subjected to sexual violence.

620. As described in Chapter XVI on screening and deprivation of liberty in the camps making up Manik Farm at the end of the armed conflict, access to medical care was severely limited. Furthermore, medical support could reportedly only be given to victims of sexual violence once a report had been made to the police. The extreme fear caused by the constant presence of and abuse by military, police and paramilitary personnel, and the absence of any confidential referral system would explain the lack of reporting of such cases that may have occurred, even to NGOs and others who visited the camps during the day. Humanitarian workers were also prohibited from speaking confidentially with IDPs. Furthermore, the Ministry of Social Services reportedly prohibited non-governmental psychosocial support inside the IDP camps. With time, some mechanisms supported by the United Nations were put in place to provide to victims of SGBV, but these operated with considerable constraints.

Judicial investigations into allegations of sexual violence

621. In spite of Government assertions either denying sexual violence or alleging that all cases by security forces have been prosecuted, a review of the information supplied by the Government on such cases shows that this is not the case and that perpetrators continue to enjoy impunity. A Government report to the Human Rights Committee in September 2014 refers to 39 cases of sexual violence by the security forces before the courts. Subsequent information obtained by OISL shows that most of these cases involved the sexual abuse of children. While it is positive that such cases are followed up in some way, even in these cases, not one member of the security forces has been convicted.[567]

622. According to information made available to OISL, 19 cases are before courts in the Northern Province, and 20 in the Eastern Province as of May 2015. According to the information, 31 out of the 40 victims were under the age of 18, the youngest being four, six, eight and 10 years old; most of the others were under the age of 18 being between 13 and 15. The majority of the victims were Sinhala, 12 were Tamil and two Muslim. One of the cases which occurred in 2010, is that of a woman who was reportedly gang-raped, and which has been repeatedly postponed by the courts, in spite of the fact that the alleged perpetrators have been identified.

623. Fifty-eight alleged perpetrators are accused in the 39 cases, five cases having multiple accused. Thirty-two are members of the SLA; 13 are Police (five of whom were subsequently discharged and acquitted); one is from the police Special Task Force; one is SLN; 11 are Civil Defence Force members (of whom nine were discharged and acquitted).

624. Only one of the 58 accused is on remand, the rest having either been discharged and acquitted or allowed bail. Only eight out of 39 cases were recorded as being at the trial stage, all of them in the Northern Province. None of the 20 cases in the Eastern Province was recorded as being at the trial stage. Ten cases, four of them in the Eastern Province,

[567] CCPR/C/LKA/Q/5/Add.1, 2 September 2014

had resulted in the acquittal of the accused (all CDF or police). Others were either reported as unsolved, pending, warranted or at the level of the Attorney General's Office.

625. Twenty-six of the 39 cases occurred during the period of OISL's investigation mandate: three cases in 2007, nine in 2008, two in 2009, six in 2010 and six in 2011, illustrating once more the slow pace of proceedings. While OISL does not have substantive details of most of the cases other than those provided, these statistics further reinforce conclusions that members of security forces enjoy impunity, even when serious offences against children are concerned, as well as the lack of concerted action to address patterns of sexual violence – both against men and women - by the security forces.

626. In the report of the UN Secretary General on Conflict-related sexual violence of 23 March 2015, he called on the "newly elected Government of Sri Lanka to investigate allegations of sexual violence, including against national armed and security forces, and to provide multi-sectorial services for survivors, including reparations and economic empowerment programmes for women at risk, including war widows and female heads of household."[568]

627. Without a full and comprehensive investigation in which witnesses can give testimony without fear of reprisals, it is impossible to assess the scale of the sexual violence used against those detained, both during interrogation and torture sessions and the rape and other forms of sexual violence which occurred outside of interrogation sessions. However, given the stigma and trauma attached to acknowledging sexual violence, the fact that many were initially held without any acknowledgement of their detention, access to lawyers or, outside monitors and thus highly vulnerable, it is safe to assume that the prevalence of sexual violence was much higher than it was possible for OISL or other organisations to document. Not one single perpetrator of sexual violence in relation to the armed conflict is so far known to have been convicted.

628. In its 2011 Concluding Observations on the fifth, sixth and seventh periodic reports on Sri Lanka, the Committee on the Elimination of Discrimination against Women said that "While noting the State party's explanation that women were not subjected to violence and discrimination during the last stages of the conflict and in the post conflict phase, the Committee remains deeply concerned about reports of gross violations of the human rights of women on both sides, particularly the Tamil minority group, the internally displaced women and the female ex-combatants. The Committee is particularly concerned about reports of sexual violence allegedly perpetrated also by the armed forces, the police and militant groups." It called on the authorities inter-alia to "promptly investigate, prosecute and punish" acts of sexual violence.[569]

629. The CAT Committee, in its concluding observations of 8 December 2011, also called on the Government to "provide the committee with information on the investigations of cases of war-time rape and other acts of sexual violence that occurred during the last stages of the conflict and in the post-conflict phase, and the outcome of such trials, including information on the punishments meted out and the redress and compensation offered to the victims."[570]

630. OISL believes that an extensive investigation needs to be carried out into the allegations of sexual violence, which it believes are likely to be much more widespread than reported to OISL or to other organisations, and that those responsible, including

[568] S/2015/203
[569] CEDAW/C/LKA/CO/7, paras. 40 and 41
[570] CAT/C/LKA/CO/3-4, 8 December 2011

commanders – whether they were involved, knew of the abuse but failed to act, or did not know of the abuse but should have known – are held to account.

631. Furthermore, in establishing any investigation – whether judicial, as part of a truth-seeking process or other means – special protection and support measures must be set up for all those who may testify in such cases – women and men - which also must take into account risks of re-traumatisation. Likewise, psychosocial support programmes need to be extended both in Sri Lanka and in countries with a significant population of Sri Lankan refugees who have or may have experienced such abuse. Although OISL did not receive detailed testimonies of sexual abuse of children, given the apparent prevalence, any investigation mechanism set up should also include strong measures to protect children.

XI. Abduction of adults and forced recruitment

Introduction

632. This section looks at abductions perpetrated by the LTTE mainly for the purpose of forcibly recruiting people for various military and other activities, including fighting as well as building defensive structures for LTTE forces. Abductions by the LTTE were at times also reportedly followed by unlawful killings, which are covered in Chapter VI. Child recruitment by the LTTE is covered separately in Chapter XII.

633. The focus of the chapter is on the final phases of the conflict, nonetheless adults were being recruited by the LTTE throughout the period under investigation. This section also describes the ill-treatment to which those who tried to avoid recruitment or to escape from the LTTE's ranks were subjected to. The information in this chapter is based on interviews with former LTTE cadres, family members or other witnesses of those forcibly recruited. It is also based on information from other sources who documented forced recruitment, including SLMM. OISL received a number of submissions from individuals whose family members were allegedly abducted by the LTTE, especially in 2008 and 2009. Since most of the victims are in Sri Lanka, their accounts remain unverified, yet the incidents they described were often consistent with those documented from other sources.

634. The information collected by OISL is unlikely to accurately represent the scale of this phenomenon, as families were intimidated and harassed by the LTTE, warning them not to report cases of abductions and forced recruitment. Also, families preferred at times to turn directly to the LTTE offices to obtain information or the release of their relatives rather than lodge complaints with the Government or other organizations.

635. After its split from the LTTE in 2004, the Karuna Group also engaged in widespread abduction and forced recruitment, particularly of children. These patterns of recruitment are documented in Chapter XII on the recruitment and use of children.

Patterns of abductions and forced recruitment by the LTTE

636. During the early years that followed the formation of LTTE, many people voluntarily joined its forces, some of them for political reasons, others motivated by anger at violations by the Government, in particular discrimination against the Tamil minority, or by LTTE propaganda.[571]

[571] UTHR, Trauma in the Vanni: Human Grist to the Mills of Dual Hypocrisy, 8 July 2008

637. Following the resumption of hostilities in 2006, fewer people were willing to join the LTTE, and the organization turned increasingly to forced recruitment. Although the CFA explicitly prohibited the abduction, harassment and intimidation of civilians, the SLMM received 1,248 complaints of abductions of adults between 2002 and 2007, most of which related to recruitment. The SLMM clarified that complainants in the Eastern Province often did not make a clear distinction between the LTTE and the Karuna Group as perpetrators. However, after 2004, it is likely that some of the cases related to the Karuna Group, which by then was operating in collusion with Government forces.

638. Cases of abductions have also been documented by the LLRC[572] and the Presidential Commission to Investigate Complaints Regarding Missing Persons. According to the Presidential Commission's April 2015 Interim Report, 17 per cent of the 13,378 allegations received in the form of written complaints concerned abductions by the LTTE.

639. Abductions and forced recruitment by the LTTE took place in all areas under its control, and throughout the period covered by OISL. Most of the reported abductions took place in Kilinochchi and Mullaitivu districts - territories controlled by the LTTE - but also in Jaffna, Batticaloa and Vavuniya. Forced recruitment became particularly aggressive in the East following Karuna's split in 2004. Many LTTE recruits left the LTTE with the Karuna Group and the LTTE then set about targeting these ex-combatants for re-recruitment in order to replenish its force strength.[573]

640. The LTTE forcibly and arbitrarily took young males and females to serve with the LTTE. They introduced a *de facto* one-person-per-family policy whereby each family within the area it controlled had to contribute one member[574]. Families were notified about this 'quota system' by vehicles making announcements, visits from house to house, and letters containing conscription orders and instructions to report to LTTE.

641. During the years before the final phase of the conflict, civilians were abducted from their homes, temples, churches, schools, places of work, and at LTTE checkpoints. When young persons were stopped at LTTE checkpoints, they were asked to produce their identity cards and questioned if anyone from their family had joined the LTTE. If the person could not prove that his/her family had performed service, they risked abduction and forced recruitment[575].

642. Once recruited, the individuals were trained in one of the LTTE camps, with separate camps for women[576]. Victims forcibly recruited for LTTE forces were made to serve in various capacities, including fighting, as nurses/ paramedics for wounded cadres, logistical and administration activities. Those who were assigned to administrative positions or who were already engaged in other activities supporting LTTE would not be sent to the frontlines[577]. Military training, particularly towards the end of the armed conflict, was reported to be very short, in some cases only a few days, before those recruited were sent to the battlefield.

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572 According to the representations made to the LLRC, a substantial number of cases of abductions involving the LTTE were reported during the Commission's visits to Batticaloa, Jaffna, and Muttur.

573 Human Rights Watch, « Living in Fear : Child Soldiers and the Tamil Tigers in Sri Lanka », 2004, p. 37

574 Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), Sri Lanka: Returns in the east but new displacements in the north, 27 August 2008, available at: http://www.refworld.org/docid/48b5428726.html.

575 WS on file

576 WS on file

577 WS on file

643. Families tried to avoid recruitment of their relatives by hiding them for long periods of time[578]. As married persons were initially exempted from forced recruitment, many opted to get married[579]. As a result, LTTE announced that all marriages after August 2006 were null and void[580]. Relatives who tried to prevent abductions faced harassment and violence, or threats of abduction or violence themselves if they did not comply with LTTE policies. In the absence of the person sought, another family member would sometimes be forcibly taken[581].

644. Many of those who managed to escape, were re-abducted by the LTTE and often subjected to punishment. For example, one such individual was forcibly recruited in 2005, and reportedly detained by the LTTE for several months in 2007-8 after he tried to escape. During his detention, he was reportedly beaten. Upon his release, he was forced to rejoin as a fighter[582]. A woman reported being forcibly taken by female cadres to a camp and interrogated, after which she was sent for military training. She was captured again at a checkpoint after trying to escape along with others[583]. In another case, a victim described an LTTE prison where new recruits were held before being taken to a training camp in February 2009. Some of those held there had reportedly tried to escape after being recruited. Some reports also indicate that those held were chained together by the legs in small groups and were beaten if they complained[584],

645. After September 2008, when the LTTE was under military pressure, it altered its policy of "one person for family", requiring two or more members from each family, depending on the size of the family[585]. In Mannar, LTTE cadres went from door to door, and recruited young women, men and children by force.[586]

646. The LTTE did not inform those forcibly recruited about the length of time of conscription or where they were being taken. nor did they inform the families. Families often received information about the whereabouts of their relatives from persons who had seen them held by the LTTE. Those who were abducted and taken to LTTE training camps were sometimes allowed to go back home for a few hours or days. Sometimes, families were allowed to visit their relatives in the LTTE camps, however this was not always the case.

647. The remains of those killed allegedly in battle were often returned to the family by LTTE officials. In one case, for example, a young male was witnessed being abducted off the street. His body was returned to the family just a few days later. His brother and sister were also reportedly forcibly recruited from their family home in 2008. Their fate remains unknown.[587]

648. Families sometimes reported their relatives' abduction to LTTE offices as well as to the National Human Rights Commission, and/or the police. However, they rarely received clarification about their fate and whereabouts.

[578] WS on file
[579] Human Rights Watch, Trapped and Mistreated . LTTE Abuses against civilians in the Vanni, 2008, p. 7
[580] ICG, Sri Lanka's Human Rights Crisis, p. 12, 2006
[581] WS on file
[582] WS on file
[583] WS on file
[584] WS on file
[585] HRW, Trapped and Mistreated. LTTE Abuses against Civilians in the Vanni, 2008, p. 7.
[586] WS on file
[587] WS on file

649. In the last weeks of the fighting, the LTTE substantially increased its forced recruitment, including within the No Fire Zones[588]. There were reports of people being abducted from tents.[589] Many witnesses described fearing forced recruitment while also fearing being killed in the SLA shelling.

650. In separate incidents in March 2009, two United Nations national staff members and their three dependent family members were forcibly recruited by the LTTE. Despite repeated requests from the United Nations to release the humanitarian workers and their relatives, the LTTE did not respond. They were eventually released, however OISL is not aware of the exact date and circumstances.

651. OISL documented the case of a large number of young adults and children who were abducted in late March 2009 by a group of LTTE cadres at the St. Mary's church in Valayarmadam, Northern Province.[590] At that time, a large number of civilians, NGOs workers and ex-LTTE fighters, some of whom had been forcibly recruited in the past, had gathered in the church to protect themselves from the army shelling, but also from forced recruitment by the LTTE.[591] There were several priests present at the time.[592] According to some reports, LTTE commanders Ilamparithy and Elilan had been pressing the priests to hand over those who had taken refuge but they refused to do so.[593]

652. Based on witness testimony collected by OISL, corroborated by representations and testimony to the LLRC[594] and the Presidential Commission to Investigate Complaints Regarding Missing Persons respectively[595], a large number of LTTE armed cadres led by Elilan and Ilamparithy arrived at the church, some on foot, some in vehicles. They surrounded the compound of the church. Shots were fired into the air both to prevent people from fleeing and also, according to some reports, because those outside the church (some of them parents of the children inside the church) began hitting the cadres, screaming and protesting.[596] Two witnesses saw some of the LTTE cadres forcing their way into the church, breaking down the door[597]. Some of the ex-LTTE cadres who were inside the church tried to resist the LTTE cadres[598].

653. Several hundred children and young adults alike were taken away by force[599] and family members who tried to resist were physically attacked by LTTE[600]. One witness said that shortly after he arrived near the church, he heard the sound of vehicles coming from the church grounds and saw several vehicles leaving the church[601]. They were full of young men and women. The vehicles made several trips picking up people from the church because there were so many of them[602]. Two witnesses reported that when they went to the

588 WS on file
589 WS on file
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593 University Teachers for Human Rights, Let Them Speak, Part III At Sea in 'Mattalan': Escape invites Death and Staying is Worse, Special Report No. 34, 13 December 2009, para. 3.8
594 LLRC Report, para. 5.84
595 Presidential Commission to Investigate Complaints Regarding Missing Persons, Interim report (April 2015).
596 WS on file
597 WS on file
598 WS on file
599 WS on file
600 WS on file
601 WS on file
602 WS on file

church later in the evening, they were told that hundreds of young men, women and children had been taken by the LTTE for the purpose of forced recruitment[603].

654. OISL also found that the LTTE abducted people and used them for the purpose of forced labour, such as digging bunkers[604]. OISL received information from witnesses indicating that civilians who tried to avoid forced recruitment or attempted to leave the area under LTTE control during the final stages of the armed conflict were forced to participate in military work or were assigned to build trenches along LTTE frontline positions, thus exposing them to the impact of hostilities, including attacks in the vicinity.

655. In addition, the whereabouts of many of those abducted for recruitment remains unknown as families were not always able to trace their relatives. Furthermore, when survivors of the armed conflict crossed over into the Government-controlled area in May 2009, those who had been forcibly recruited by the LTTE, even if only for few days, were considered as LTTE cadres and as such risked unlawful and arbitrary detention, torture and other violations already described in this report.

XII. Recruitment and use of children in hostilities

Introduction

656. This chapter documents the patterns of recruitment and use of children in hostilities in Sri Lanka during the period covered by OISL's mandate, as well as the action plans for their release.

657. The Convention on the Rights of the Child (CRC), ratified by Sri Lanka in 1990, requires States Parties to "take all feasible measures to ensure protection and care of children who are affected by an armed conflict".[605]

658. The Optional Protocol to CRC on the involvement of children in armed conflict[606], to which Sri Lanka is also a Party, prohibits the recruitment or use of children under 18 by non-state armed groups.[607] State armed forces may permit voluntary recruitment under the age of 18 years if safeguards are in place, including proof of age and consent of parents or legal guardians. However, the minimum age for participation in hostilities is set at 18.

659. Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities[608] is a war crime under customary international criminal law, as also evidenced by jurisprudence of international criminal tribunals.[609]

660. The International Labour Organization Convention on the Worst Forms of Child Labour, ratified by Sri Lanka in 2001, defines the scope of the Convention to encompass "all forms of slavery and practices similar to slavery such as […] forced or compulsory

603 WS on file
604 HRW, Trapped and Mistreated. LTTE Abuses against Civilians on the Vanni, 2008, p. 11
605 Convention on the Rights of the Child, Article 38 (4).
606 Ratified by Sri Lanka on 8 September 2000 and which came into force in February 2002.
607 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Article 1 and Article 4(1).
608 Rome Statute of the International Criminal Court, 2002, Article 8(2)(e)(vii).
609 Special Court for Sierra Leone and International Criminal Court

labour, including forced or compulsory recruitment of children for use in armed conflict."[610]

661. Sri Lankan authorities have an obligation to take measures with the view of combatting recruitment and use of children in hostilities by non-state armed groups. Furthermore, they shall take steps to ensure that children who are forcibly recruited or used by such groups are afforded protection and assistance in the aftermath of conflict.

662. While a number of armed groups were responsible for child recruitment during this period, the focus of this report is primarily on the LTTE and TVMP /Karuna Group because of the extent of their child recruitment. Other groups who recruited children and were named in United Nations reports on Children and Armed Conflict[611] including Iniya Bharathi[612], registered political parties PLOTE and EPDP, and former TMVP member and Eastern Province Chief Minister Sivanesathurai Chandrakanthan (also known as Pillayan).[613]

663. The LTTE recruited and used thousands of children throughout the armed conflict. Some were recruited by Karuna while he was LTTE commander of the Eastern Province before his split from the LTTE in April 2004. Reports suggest that recruitment in the Eastern Province, controlled by the LTTE until 2006, was more aggressive and that those recruited were younger than in other areas. After its split from the LTTE, the Karuna Group continued to recruit children. The patterns of child recruitment by the TMVP/Karuna Group are dealt with separately from LTTE recruitment.

664. As part of its investigation, OISL conducted in-depth, confidential interviews with victims and witnesses of child recruitment. These included individuals who had themselves been recruited as children, parents or other family members of children who had been recruited, former LTTE members, staff from child protection agencies working in Sri Lanka during OISL's mandate period, as well as other individuals and groups with information on child recruitment and use in hostilities. OISL also received a number of submissions from parents alleging that their children had been recruited and in some cases died in combat. In some of the cases the body of the child was returned to them.

665. OISL found that former LTTE cadres were often reluctant to discuss this issue, even though it was clear that the interviewee was most likely under 18 and, in some cases under 15, when they first joined the LTTE. Some denied outright that the practice occurred.

666. During the period under review, there were a number of monitoring mechanisms documenting cases of child recruitment and use, including the Sri Lanka Monitoring Mission (SLMM) and the Security Council 1612 Monitoring and Reporting Mechanism (MRM) Task Force led by UNICEF.

610 International Labour Organization Worst Forms of Child Labour Convention 182, Article 3(a).

611 On 20 December 2006, the United Nations Secretary-General submitted his first report on children and armed conflict in Sri Lanka (S/2006/1006) to the Security Council Working Group on Children and Armed Conflict (SCWG-CAAC). SCWG-CAAC considered this report on 9 February 2007 and issued subsequent conclusions on 13 June 2007 (S/AC.51/2007/9). The group had been mentioned in reports of the Special Representative of the Secretary General(SRSG).

612 In the report of his visit to Sri Lanka in December 2009, the Special Envoy for the SRSG-CAAC raised concerns about «recruitment and threats of re-recruitment of children in Ampara District" by Iniya Bharathi.

613 See relevant SRSG reports. See also Statement of Special Envoy of the SRSG for Children and Armed Conflict, 4 February 2010 and letter from the Permanent Mission of Sri lanka to the United NationsNaitons to the OSRSG on Children in Armed Conflict, 27 January 2010.

667. The February 2002 Ceasefire Agreement (CFA) prohibited "hostile acts against the civilian population, including such acts as: abduction, harassment and intimidation of civilians" which, while not explicitly referring to the recruitment of children, was interpreted by SLMM to cover it. From the very beginning of its operations in 2002 and until it left the country, SLMM documented and ruled on many cases of underage recruitment as a violation of CFA.

668. In 2005, Sri Lanka became one of seven pilot countries selected by the United Nations to implement the United Nations-led Monitoring and Reporting Mechanism under Security Council Resolution 1612.[614] SRC 1612 required reporting to the Security Council on six grave violations committed against children in armed conflict: the recruitment and use of children in armed conflict; killing and maiming of children; sexual violence against children; attacks on schools and hospitals; abduction of children; denial of humanitarian access. This chapter refers to SCR 1612 reporting on the recruitment and use of children.

669. Information gathered by OISL indicates that there is grounds to believe that the full scale of the recruitment and use of children in hostilities was greater than documented by the above-mentioned mechanisms particularly towards the end of the conflict, after the Government ordered the withdrawal of all international agencies from the Vanni in September 2008. Indeed, this withdrawal effectively meant that there were no independent monitors of child recruitment. Although national staff members, who were not allowed to leave by the LTTE remained, their capacity to monitor and raise cases with the LTTE was constrained by possible reprisals. Furthermore, relatives of United Nations staff members were themselves among those forcibly recruited by the LTTE towards the end of the conflict. In February 2009, the United Nations issued a statement condemning the forced recruitment of some of its staff by the LTTE, including the 16-year-old daughter of a staff member[615].

670. The LTTE often argued to representatives of the international community that children joined 'voluntarily', particularly older children between 16 and 18 years of age, citing a range of reasons, including death of parents, family separation, displacement, lack of food, ill-health, poverty, harassment by Government forces, detention, lack of educational and job opportunities, abuse in the home, identifying with the LTTE 'cause', or feeling hatred for the 'enemy'.[616] These are common reasons documented by independent reseachers in other contexts[617] and, in many instances, are factors in recruitment. Under international law and also Sri Lankan laws, however, all acts of recruitment and use of children under the age of 18 in hostilities by armed groups that are distinct from the armed forces of a State are prohibited, whether "voluntary" or forced.

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614 Sri Lanka established the required MRM Task Force in July 2006 to document the violations, and advocate for measures to end them, including through the development of action plans. In 2006, the Task Force submitted its first annual report to the Office of the Special Representative to the Secretary-General on Children and Armed Conflict (OSRSG-CAAC). Although chaired by the United Nations Resident/Humanitarian Coordinator with UNICEF as co-chair, unlike other Task Forces around the world, Government agencies were represented on the MRM Task Force in Sri Lanka. According to publicly available reports, the presence of national government authorities on the Task Force created an obstacle for the effective implementation of the MRM, including compromising its impartiality and neutrality.[614]

615 UN staff forcibly recruited, Colombo, 16 March 2009, Office of the Resident/Humanitarian Coordinator.

616 Former SLMM staff, former UNICEF staff.

617 See for example Wessells, M. (2005) Child soldiers, peace education, and post-conflict reconstruction for peace.

671. In any case, there are reasonable grounds to believe that children were often recruited by force, from homes, schools, temples, and checkpoints. In many cases, they were given basic training, and sent to fight on the front lines. The whereabouts of many of these children are still unknown.[618] At the end of the war, only about 500 children associated with the LTTE were formally included in the Government's rehabilitation and reintegration programme, with many others likely to be among those disappeared or missing.

672. The practice of child recruitment in Sri Lanka was widely condemned both nationally and internationally, for example by the SLMM and other international agencies. Senior commanders of the LTTE and paramilitary groups such as the Karuna Group and its TMVP party were made aware of both the violations committed against children, and also of their related international obligations, but, despite commitments made to release children from the ranks of armed groups and to stop recruitment, these practices continued until the end of the conflict in 2009 and even beyond, in some cases.

Patterns of recruitment and use of children

LTTE recruitment and use of children

673. The LTTE had a long history of widespread and systematic recruitment and use of thousands of children as fighters and in other roles. In the 1990s, the LTTE fought with brigades of fighters composed entirely of children.[619] On many occasions, the LTTE acknowledged the presence of children in their ranks, and committed to ending the recruitment and use of children in hostilities, only to violate these commitments. Following the May 1998 visit to Sri Lanka of the United Nations Special Representative of the Secretary-General for Children in Armed Conflict, the LTTE agreed not to use children in the armed conflict but the practice continued until the end of the conflict in 2009.

674. In 2003, the LTTE informed SLMM that its preferred age for children to start military training was at age l5 and upwards.[620] On 15 October 2006, the LTTE established a policy setting the minimum age of recruitment at 17 years.[621] In October 2007, the LTTE wrote to the Special Representative of the Secretary-General for Children and Armed Conflict, stating that they would change the minimum age of recruitment from 17 to 18, in line with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. However, information obtained by OISL indicates that the LTTE failed to respect these pledges and that both child recruitment and their use in hostilities continued.

675. In 2005, the United Nations estimated the average age for children recruitment by the LTTE to be 16. [622] The LTTE nevertheless at that time still reportedly recruited some children below the age of 15, some as young as nine. [623] If established by a court of law, these would amount to war crimes.

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618 LLRC, Chapter 9, para 9.75

619 Human Rights Watch, 2004, Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka.

620 SLMM documents.

621 S/2007/758, 21 December 2007, Report of the Secretary-General on Children and Armed Conflict in Sri Lanka.

622 S/2006/1006, 20 December 2006, Report of the Secretary-General on Children and Armed Conflict in Sri Lanka.

623 S/2006/1006, 20 December 2006, Report of the Secretary-General on Children and Armed Conflict in Sri Lanka, S/2009/325, 25 June 2009, Report of the Secretary-General on Children in Armed Conflict.

676. From 2002 until the end of the conflict, UNICEF maintained a database of known cases of child recruitment. It documented 6,905 children recruited by LTTE, including 2,689 girls. During its mandate the SLMM also registered many complaints from parents of child recruitment. However, as previously indicated, the information collected by these organizations is unlikely to represent the total scale of the phenomenon since many families were reluctant to report recruitment.

677. International child protection staff members working in Sri Lanka at the time noted "an overwhelming increase in child recruitment by the LTTE during the final phases of the conflict".[624] According to numerous reports, in the last few months of the conflict, the LTTE increasingly recruited children younger than 15 years.[625]

Recruitment processes

678. For many years, in areas under its control, the LTTE implemented a *de facto* policy whereby each family had to provide LTTE one child to the organization. The LTTE recruited children throughout the CFA period, with indications that recruitment increased as the ceasefire broke down from 2006. Later on, particularly from 2008, one witness reported to OISL that in some cases, in certain areas, three or four children were taken from families.[626] In many cases, families felt that they had no choice but to give children to the LTTE, as those who resisted faced harassment, violence, and the abduction of other family members if they refused.

679. Recruitment of children occurred in all areas where the LTTE was present. Furthermore, children were recruited in Government-controlled areas and taken across to the Vanni. The Political Wing, Women's Wing, and in some cases the Intelligence Wing were particularly involved in the recruitment of children.

680. Children who refused to join risked being subjected to beatings or threats of violence by the LTTE, and their relatives or guardians who did attempt to resist were often beaten. OISL documented cases of children who "volunteered" to join the LTTE to avoid their brothers or sisters being taken by force.[627] OISL spoke to witnesses who saw children being beaten by LTTE cadres because they had resisted recruitment, and received other reports of such practices.[628] Other witnesses said parents and guardians who attempted to prevent the recruitment of children were beaten up, stabbed and/or abducted by the LTTE.[629]

681. Credible reports indicate that in some cases, children that were recruited in the East were sent to the Vanni in less than two days after their recruitment. Reportedly, the SLA observed in one instance that 90 per cent of the recruits escorted from Batticaloa into the Vanni, appeared to be under 18 years old.[630] Former SLMM monitors reported that once it was learnt that a child recruited in Government-controlled areas had been transferred to the LTTE military structures in the Vanni, there was little hope of getting them released[631]. While they were still in the Government-controlled areas, negotiations by family members or international agencies with the Political Wing in particular, sometimes resulted in the release of the child.

624 WS on file
625 S/2009/325, 25 June 2009, Report of the Secretary-General on Children in Armed Conflict.
626 WS on file
627 WS on file
628 WS on file
629 WS on file
630 SLMM documentation
631 Source on record.

682. From at least 2003, the LTTE carried out extensive campaigns, aimed at enticing children to enrol as fighters. They would place loudspeakers near schools and broadcast patriotic songs, celebrated "martyrs", and encouraged people to join the fight. In schools, the LTTE ran social and cultural programmes, including propaganda theatre, for students aged 13, with the intention of motivating them to join as fighters. Such activities often targeted poor communities and children were led to believe that they would receive schooling and material benefits, such as food and monetary..

683. There were many reports of cadres visiting schools to persuade children to join. In 2004, for example, several hundred LTTE cadres led such activities in schools and other locations in Jaffna, Mannar and Vavuniya, in particular. Sometimes children were taken away immediately from these sessions without their parents being alerted. Other children were abducted on their way to or from school, often by individuals on motorbikes or in a white van[632] and often without being able to inform their parents. In November 2007, a girl aged 15 was returning from school in the Northern Province when she was chased by three people dressed in civilian clothes. The girl's father, who was coming to her school to pick her up, pleaded with the three men, but was beaten up. The girl was taken wearing her school uniform. The father later received a letter from LTTE telling him that his daughter was fighting with them. She was later killed in combat, and her body was returned to her family for burial.[633] This *modus operandi* was frequently reported to UNICEF and SLMM during monitoring they conducted.

684. LTTE recruiters also passed from house to house, or distributed letters to parents, in towns and villages, asking households to "volunteer" children or young adults to join the LTTE. Witnesses described children, often between the age of 14 and 15 years old, being snatched and dragged away from their screaming mothers during house to house visits by the LTTE in 2006. [634]For example, OISL received reports of several hundred LTTE cadres who came to the village of Vahaneri, in 2004, visiting each house, and requesting people to come to a meeting, from where several children were forcibly recruited.[635]

685. The LTTE also abducted children for forced recruitment into its ranks from orphanages, hospitals, churches and temples, especially during festivals in Batticaloa, Vavuniya and Mannar Districts. In 2004, over 20 children were abducted for the purposes of recruitment by the LTTE during a festival at a temple near Batticaloa. Following advocacy by child protection agencies, most of the children were eventually released.[636] In 2008, three men from the LTTE police entered a hospital, and abducted children and young adults, after beating the medical doctor who had attempted to prevent the recruitment.[637] One source described mothers throwing sand at the LTTE, which is symbolic of a curse, as the children were being dragged away.[638]

686. Throughout the conflict, families took extensive measures to prevent their children's forced recruitment, hiding them inside houses, in remote "jungle hideouts",[639] churches, schools or hospitals, or with relatives in other districts. In one incident in 2007, around 20 boys and young men were allowed to remain on the hospital premises in Kilinochchi to avoid recruitment. After a recruitment campaign by the LTTE in a village near Mannar,

632 Source on record.
633 WS on file
634 WS on file
635 Internal document from international organization seen by OISL.
636 Internal document from international organization seen by OISL.
637 WS on file
638 WS on file
639 WS on file

where families had refused a call to "volunteer" one person per family, and were subjected to threats and abductions, one family sought refuge in Madhu church.[640] If children were found in hiding by LTTE, they would be recruited and the parents severely beaten.[641]

687. Some parents believed that if their children were married, they would escape recruitment, which led to a pattern of early marriages.[642]

688. Often, the parents would come to the SLMM or UNICEF because they had been told by witnesses that their children had gone or were taken to an LTTE camp. Parents would also go to LTTE camps asking for their children, which would often lead to verbal and sometimes physical altercations with LTTE cadres.[643] In some cases, families received letters from the LTTE informing them that their children had been recruited. [644] In many cases, throughout their association with the LTTE, children were not able to have any contact with their families. In 2004, UNICEF spoke to the parents of 63 children recruited that year by the LTTE, none of whom were able to have any contact with their families.

689. Children associated with the LTTE were threatened, sometimes that they or their families would be killed, if they tried to leave the LTTE. Child protection agencies who did manage to separate children often moved them to safe locations, even in areas of the country far from the conflict to avoid the risk of re-recruitment or of punishment. OISL received reports of children who were tortured after being recaptured by the LTTE.[645]

690. A typical case reported to the child protection agencies was that of a 17-year-old girl who had been recaptured. She had been at a safe house but returned to Batticaloa to attend the funeral of her uncle. She was apprehended and was to be staked out on the ground for three days. After two days under intense sun and only given occasional water, she was given a reprieve.

691. In 2009, more children around or below the age of 14 were recruited, boys and girls, according to several sources.[646] Witnesses described seeing children screaming and trying to run back to their parents.[647](It should be stressed that the recruitment of children during this phase of the conflict was being carried out against a backdrop of intense fighting and shelling). On 17 February 2009, UNICEF issued a statement expressing grave concern for the safety of children in conflict areas, stating that "we have clear indications that the LTTE has intensified forcible recruitment of civilians and that children as young as 14 years old are now being targeted."

692. The mother of a young child described to OISL seeing at the end of March 2009 a bunker with a false wall which a family used to hide their child in and, on another occasion, a mother taking her three children out at night to bathe. When LTTE cadres started shooting at them the children ran away, but the mother was reportedly killed by a bullet. She herself had also escaped being recruited around the same time when a group of armed men in civilian clothes – who she believed were LTTE cadres - tried to force her into a truck. When she tried to resist, she was beaten, but was allowed to go when the cadres heard her daughter calling her.[648]

[640] WS on file
[641] WS on file
[642] http://www.hrw.org/reports/2004/srilanka1104/srilanka1104.pdf
[643] Source on record
[644] WS on file
[645] WS on file
[646] WS on file
[647] WS on file
[648] WS on file

693. One of the most serious incidents of forced recruitment reported during the last few months of the conflict was the alleged abduction of several hundred adults and children who had sought refuge at Valayarmadam church towards the end of March 2009 by LTTE cadres led by Elilan and Ilamparithy. This incident is described in the previous chapter.[649].

694. Another high level LTTE cadre allegedly responsible for child recruitment was Papa, head of the LTTE Sports Wing.[650] In April 2009, he reportedly arrived at the Valayarmadam church in a white van with other LTTE cadres who reportedly stepped out of the car and grabbed a young girl (around 17 years of age) who was walking on the street with an individual who tried to prevent her being taken away. People reportedly witnessed this incident but did not intervene, fearing being killed or recruited themselves.[651]

695. In the last few weeks and months of the armed conflict, forced recruitment caused increasing anger and distress amongst potential victims as the LTTE became more desperate to fill its ranks. With constant displacement, hiding children from recruitment became increasingly difficult. There were reports of children being kept hidden in bunkers. In one reported incident, a group of women and girls hidden in a bunker to avoid recruitment were killed after a shell reportedly fired from the direction of the SLA hit the bunker [652]

Use of children in hostilities by the LTTE

696. The LTTE used children in different ways, including deploying them to fight on front lines during major battles. The LTTE used them as infantry soldiers, security and intelligence officers, and even as suicide bombers.[653] OISL also received reports that at the end of the conflict, children were among those intercepting civilians at gunpoint as they tried to leave the conflict zone and that they were visibly distressed.[654]

697. Child recruits were given some military training, including in weapons handling. At times it lasted as little as two days before children were sent to fight. Training camps for children were located in Padathurapali school in Valipunam, Erimalai camp in Palai, and in Ananthapuram. One source suggested that there would be 3,000 to 4,000 children in such camps, most of them over the age of 15, but some as young as 9.[655]

698. A witness in 2003 interviewed a 13-year-old boy from Batticaloa who had been recruited and used in combat near Jaffna. The same witness saw fighters who were "clearly underage" guarding a jungle command post of the LTTE Eastern commander Karuna.[656] SLMM monitors also reported seeing military training of children[657], as well underage cadres manning checkpoints and handling weapons, including anti-tank weapons.[658] Children were also used to dig bunkers, as guards, and to retrieve weapons from fighters killed on the battlefield.

699. Children were also used in other non-combat roles, such as intelligence, recruitment or political activities. Significant reports were also received from 2003 onwards of children

649 WS on file
650 WS on file
651 WS on file
652 WS on file
653 http://www.hrw.org/report/2007/01/23/complicit-crime/state-collusion-abductions-and-child-recruitment-karuna-group
654 See Chapter XIV on Controls on Movement.
655 WS on file
656 WS on file
657 WS on file
658 Source on record.

working in the Intelligence Wing of LTTE. For example, in 2004, four girls who ran away and were assisted by a child protection agency, reported they had been deployed to different parts of the country, including Colombo to register GPS coordinates of key Government installations. The normal practice of the LTTE was for all girls to have their hair cut short following recruitment, whilst the LTTE had kept the hair of these girls long for the purpose of blending into the community.

700. It is not known how many children were sent to the front lines and how many may have died throughout the years of the conflict. In earlier years, the bodies of those who died were sometimes returned to the families[659]. Many of the families who have since lodged complaints with the Presidential Commission on Missing Persons report that their children were taken by the LTTE so they could now be among those killed, disappeared or missing during the armed conflict. A full investigation needs to be carried out to determine the full extent of the recruitment of children and the fate of all those who remain unaccounted for.

LTTE action plan to end recruitment and release children

701. Security Council Resolution 1460 (2003) requires listed parties to enter into talks with the United Nations to agree upon clear and time-bound action plans to end the recruitment and use of children in armed conflict.

702. In 2003, after the February peace talks in Berlin, the LTTE agreed to meet with UNICEF to set out concrete steps to implement its commitment to ensuring no children were recruited into its ranks, and to release children associated with them.[660] An Action Plan for Children Affected by Armed Conflict the North East of Sri Lanka was endorsed by the Government and the LTTE on 16 June 2003. In October 2003, a transit centre for children released by the LTTE opened in Kilinochchi in the presence of LTTE commanders. Forty-nine children were separated from the LLTE - 27 boys and 22 girls. The Action Plan was formulated in collaboration with key international partners for two years of programming, from July 2003 to June 2005, and was later extended to July 2006.[661]

703. While the LTTE committed to cease all recruitment of children as part of the Action Plan, recruitment continued. In the 12 months following the signing of the Action Plan, according to UNICEF figures, the LTTE recruited at least 1,406 children, while they released 625.[662] The number of children released by the LTTE decreased to such an extent that the Kilinochchi centre was effectively closed in 2005 due to the slow rate of release of children.

704. The LTTE's recruitment and use of children in armed conflict remained on the agenda of the United Nations Security Council until the end of the armed conflict in May 2009.

[659] WS on file

[660] http://www.priu.gov.lk/news_update/Current_Affairs/ca200302/20030203child_soldiers_released_unicef_chief.htm

[661] Report on Grave Child Rights Violations in Conflict Areas in Sri Lanka in accordance with UNSCR 1612, 1 November 2005 – 31 october 2006.

[662] UNICEF statistics in monthly reports, which were shared with SLMM and other international organizations operating in Sri Lanka.

Release and reintegration of children associated with the LTTE at the end of the conflict

705. In September 2006, President Rajapaksa appointed a Commissioner General of Rehabilitation (CGR) with specific responsibilities in relation to all "surrendees" in the conflict, including children. The CGR, in consultation with district authorities and the Provincial Commissioner of Probation and Child Care and Services and the National Child Protection Authority (NCPA), identified "protective accommodation and rehabilitation centres" for the purpose of receiving children who were associated with LTTE. Policies on protective care, rehabilitation and reintegration of children associated with the LTTE were developed by a multi-sectoral committee headed by the NCPA.

706. Emergency Regulation 1580/5 of 15 December 2008 includes specific procedures to be followed with regard to child "surrendees", including the options, to be decided by a Magistrate, of family reunification, or sending the child to a Protective Child Accommodation Centres.

707. Children coming out of the Vanni at the end of the conflict were initially taken to adult rehabilitation centres, but after advocacy by child protection agencies they were eventually taken to one of the three Protective Child Accommodation Centres. As of 2010, only Ratmalana centre in Colombo remained open, and more than 350 children had been released either to their parents or transit camps.

708. The Sri Lankan Security Forces started registering children associated with the LTTE, referred to as 'surrendee' children, in April 2009, at Omanthai, and in the IDP internment camps. By June 2009, the SLA had thus identified 181 children of whom 91 per cent were between 16 and 18 years old, and 9 per cent were between 14 and 16 years old.[663] A total of 556 children were identified during screening and taken to the centres, including about 200 girls. The majority had only spent between one and six months with the LTTE, according to a confidential report seen by OISL.

709. The Government has been commended by UNICEF and the Special Envoy of the Special Representative of the Secretary General for Children and Armed Conflict for its commitment to the prevention of new recruitments and the rehabilitation of children. OISL notes in particular that the Government focused on the rehabilitation of these children. While support was provided to those under 18 at the end of the conflict, a number of concerns were expressed by child protection agencies and others at the time. For example, the Special Envoy for the SRSG on Children and Armed Conflict, in the report of his mission to Sri Lanka in December 2009, called for the centres to be run by civilian rather than military staff. He also expressed some concerns about the delays in contact with families at one centre at that time. Furthermore, there were no provisions for those who had been conscripted while under age but who were adults by the end of the conflict.

Karuna Group/Tamil Makkal Viduthalai Pulikal (Tamil Peoples Liberation Tigers or TMVP)

710. At the time of the split from the LTTE, the Karuna Group integrated into its ranks a number of children formerly associated with the LTTE. Abductions and child recruitment were fundamental to the group's overall military strategy.[664]

663 UNICEF internal document, IDP protection WG Second Quarterly Update, 2009.

664 SLMM documentation.

Recruitment process

711. Child recruitment by the Karuna Group (and from 2007 its political party the TMVP) continued until at least 2008. In towns and villages around Batticaloa, Ampara and Trincomalee - areas in which the Karuna Group operated in parallel to Government forces, the Karuna Group went house-to-house recruiting children and young men and women in circumstances which often amounted to abduction.

712. In 2005, the United Nations estimated the average age for child recruitment by the Karuna Group to be 17. [665] By 2009, the average age of reported cases had dropped to 15.9.[666] However, since these estimates were based only on reported cases, it is not clear whether they were fully representative of age distribution.

713. In June 2006, four children were among 18 people abducted by elements of the Karuna Group during a religious ceremony at a temple in Kiran, Batticaloa.[667] TheKaruna Group reportedly offered financial incentives to children and their families in the form of monthly allowances to be paid upon completion of training, encouraging recruitment, especially from less well-off families.[668]

714. In July 2006, in Bakarai Kallady, near Batticaloa, members of the Karuna Group went from house to house during the evening, asking families to volunteer a male child, in some cases as young as 12. In the absence of a boy, the recruiters would take girls. On that occasion, witnesses saw Karuna Group elements forcibly snatching and dragging children from screaming parents.[669]

715. After abducting boys and young men, the Karuna Group often held them temporarily in its nearest political office. It has been reported that TMVP political offices were frequently guarded by the Sri Lankan army and police.

716. The OISL has not been able to establish the numbers of children recruited by Karuna Group. UNICEF registered 596 children, including two girls, recruited by the Karuna Group/TMVP between 2006 and 2009.

717. Based on the information obtained by OISL, there are reasonable grounds to believe that Government forces may have known that the Karuna Group (and subsequently the TMVP) recruited children . From 2006 onwards, the Eastern Province was under the control of the Government, and recruitment took place close to police and SLA camps, with newly recruited children reportedly cleared to pass through SLA checkpoints.[670] By 2007, Karuna Group openly passed security forces check points fully armed in the East.[671]

718. In a statement made following a mission to Sri Lanka in 2006, the United Nations' Special Adviser On Children And Armed Conflict, Allan Rock, reported he had "found strong and credible evidence that certain elements of the Government security forces are supporting and sometimes participating in the abductions and forced recruitment of children by the Karuna faction."[672] He had met with the parents of many of the children who had been abducted in Batticaloa District. Similar allegations were made by several other

665 S/2006/1006, 20 December 2006, Report of the SG on children and armed conflict in Sri Lanka.
666 S/2009/325, 25 June 2009, Report of the Secretary General on children in armed conflict.
667 United Nations, 2006, Report of the Secretary-General on children and armed conflict in Sri Lanka.
668 United Nations, 2007 and 2009, Report of the Secretary-General on Children and Armed Conflict in Sri Lanka.
669 WS on file
670 Internal document from international organization seen by OISL
671 SLMM documentation.
672 Statement from the Special Advisor On Children And Armed Conflict, Colombo,13 Nov 2006 < https://childrenandarmedconflict.un.org/press-release/13Nov06>

credible human rights organizations. The SLMM reported violations of the CFA in which security forces were reportedly found to be acting in collusion with Karuna Group and TMVP, including in cases involving abduction of children for the purposes of recruitment.[673]

Use of children

719. Children associated with the Karuna Group after its split from the LTTE received basic military training, for example in the main camp of the Karuna Group near Welikanda, in close proximity to a training camp of SLA.[674] A witness interviewed by OISL saw children wearing plain green uniforms of the SLA in the area of Weli Oya in 2005 .[675] In Trincomalee, armed 14-year-old Karuna Group recruits were seen on duty adjacent to an SLA base.[676]

720. The Karuna Group/TMVP was listed as a party that uses children in situations of armed conflict in the 2006 and 2007 reports of the Special Representative of the Secretary-General on Children and Armed Conflict to the Security Council.[677] In its 2007 report on the situation in Sri Lanka, the United Nations Security Council Working Group on Children and Armed Conflict expressed deep concern about "the fact that during the reporting period, and despite the public statement issued by the Working Group (S/AC.51/2007/11), the TMVP/ Karuna Group continued to recruit and use children, failed to release all the children present in its ranks and, despite some steps taken to release children and to issue internal regulations prohibiting the recruitment of children, failed to engage in a fruitful dialogue with the United Nations task force on monitoring and reporting in order to produce a concrete time-bound action plan."[678]

TMVP/Karuna Group Action Plan to release children

721. The TMVP/Karuna Group agreed an Action Plan in December 2008, with the Government and UNICEF, committing to end the recruitment and use of children and to release children from its ranks. At least 122 children were released after the signing of the Action Plan, and UNICEF recorded only 26 cases of further child recruitment by the TMVP/Karuna Group during the remainder of the conflict.[679] In 2011, the Secretary-General delisted TMVP/ Karuna Group under Security Council resolution 1612 following its compliance with the Action Plan.[680] Pillayan (who by then had broken away from Karuna) also cooperated with Government authorities in identifying children remaining within his ranks for release and reintegration.

Justice and accountability for the recruitment and use of children

722. Sri Lankan legislation criminilises the recruitment and use of children. The Penal Code (2006) states that any person who engages or recruits a child for use in armed

673 SLMM documentation.
674 US diplomatic cable, Karuna group emboldened in the east, 20 March 2007, < https://www.wikileaks.org/plusd/cables/07COLOMBO460_a.html>
675 WS on file
676 WS on file
677 A/61/529-S/2006/826; AS/2007/757; A/62/609-S/2007/757
678 S/AC.51/2008/11, 21 October, Working Group on Children and Armed Conflict Conclusions on children and armed conflict in Sri Lanka 2008.
679 United Nations, 2011, Report of the Secretary-General on Children and Armed Cin Sri Lanka.
680 https://childrenandarmedconflict.un.org/our-work/action-plans/

conflict, shall be guilty of an offence. A "child" is defined as a person less than 18 years of age, in compliance with international law.[681]

723. The LLRC described the conscription of children as "one of the worst crimes of the LTTE" and expressed concerns about the recruitment of children by other groups in the East. It recommended that "in instances where there is *prima facie* evidence of conscription of children as combatants, any such alleged cases should be investigated and offenders must be brought to justice." The LLRC also recommended that complaints of alleged child recruitment by "illegal armed groups affiliated with the LTTE or any political party should be investigated with a view to prosecuting offenders".[682]

724. OISL is however not aware of any prosecutions for child recruitment against former LTTE members, such as Elilan and Papa, or against TMVP/Karuna Group or other paramilitary leaders. Elilan and Papa were last seen in Government custody on 18 May 2009. Karuna and Pillayan have since served in ministerial positions at the central and provincial level. This is all the more inexplicable given the criminalisation of child recruitment from 2006 and the fact that the recruitment took place in Government-controlled territory.

725. In August 2007, the Government established a high-level inter-ministerial committee to investigate allegations concerning the aiding and abetting of child recruitment by elements of the Sri Lankan Security Forces. However, OISL did not obtain any information pertaining to any activities conducted by this committee or of the outcome of its work.

726. In August 2010, the National Child Protection Authority and a special police investigation team carried out a preliminary investigation into allegations of child recruitment by the Iniya Bharathi group, which was also reported to have recruited children, but OISL is not aware of any outcome of the investigations.[683] The group was delisted by the Security Council in 2012.

727. In 2012, Sri Lanka was delisted by the United Nations Secretary-General from Annex II of the United Nations Security Council Report on Children and Armed Conflict.[684] In its follow-up conclusions, the United Nations Security Council Working Group urged the Government of Sri Lanka "to continue to investigate violations and abuses against children by all parties perpetrated in contravention of applicable national and international law during the armed conflict", and urged it to "ensure that those responsible for violations and abuses committed during the armed conflict are held responsible.'[685]

[681] Penal Code of Sri Lanka, 2006, Section 358A.

[682] LLRC, Chapter 9, Summary of the principal Observations and recommendations, para 9.79

[683] K Pushpa Kumar (known as Iniya Bharathi) is the former TMVP paramilitary leader and SLFP Ampara District Coordinator,. His group was cited in Reports of the Secretary-General on Children and Armed Conflict including in the 2012 report mentioned above.

[684] S/AC.51/2012/3 Security Council Working Group on Children in Armed Conflict, Conclusions on the situation of children and armed conflict in Sri Lanka.

[685] S/AC.51/2012/3, 21 December 2012, Working group on Children and Armed Conflict, Conclusions on the situation of children and armed conflict in Sri Lanka, para 9.c.

XIII. The impact of hostilities on civilians and civilian objects during the final phase of the armed conflict

Introduction

728. This chapter examines incidents of attacks on civilians and civilian objects that mostly occurred between January and May 2009 during the final stages of the Government's military campaign in the Vanni. Although there were civilian casualties in earlier phases of the armed conflict, OISL gave priority to investigating the final months because of the intensity of the hostilities and the extensive impact on civilians and protected objects.

729. The OISL investigation focused on allegations of incidents where civilian objects, in particular hospitals or other zones established to shelter the wounded, the sick and civilians from the effects of hostilities, United Nations hubs and other humanitarian relief objects, were reportedly subjected to repeated attacks from positions of the Sri Lankan Army (SLA). These incidents will be examined by reference to obligations incurring on parties to the conflict to comply with the principles of distinction and proportionality and to take necessary and feasible precautionary measures, to prevent or, at least, minimize harm to civilians and civilian objects.[686] It will, however, be for an independent court to further establish the facts and circumstances of possible violations and to identify responsibilities.

730. The examples described in this chapter only represent some of the alleged attacks inside the three Government-declared No Fire Zones (NFZs) that caused civilian casualties. OISL selected these particular incidents because of the gravity of the alleged violations, including the extent of harm and damage caused in densely populated civilian areas. Most of the incidents examined took place inside the NFZs because, as the SLA advanced, displaced humanitarian facilities moved into the NFZs. However, the shelling affecting civilians and civilian objects were not restricted to the NFZs, as highlighted in some of the examples.

731. The investigation also examined the tactics used by the LTTE against their obligations under international humanitarian law, notably the obligation to take all feasible precautions seeking to minimize the risk of harm to the civilian population and civilian objects.[687] OISL focussed on allegations that the LTTE launched attacks from, and carried out military activities in close proximity to protected sites, such as hospitals. The nature and scope of restrictions that were imposed by the LTTE on the movement of civilians living in territory under its control are examined separately in Chapter XIV.

Conduct of hostilities: Government forces

732. Although OISL selected specific incidents to highlight the alleged violations related to the conduct of hostilities, they must be seen in the broader context of the evolution of the conflict. In late 2008/early 2009, the LTTE lost control of its key strongholds of Kilinochchi and Puthukkudiyiruppu (PTK) to the SLA. From that point, its military defeat became inevitable according to military analysts consulted by OISL. As the SLA divisions pushed forward from three different sides towards the north-east, Government forces employed a military strategy to confine LTTE and the civilians who remained in the LTTE-

[686] See Chapter V- Legal framework
[687] See Chapter V-Legal framework

controlled territories into ever-smaller areas, partly through of the creation by the Government of so-called "safe zones" or "No Fire Zones" (NFZs).

The Government's stated policy of "zero civilian casualties"

733. At the time of the conflict, and many times subsequently, the Government and security forces claimed that they had a "zero civilian casualty" policy as part of their operations in the Vanni, which was framed by the Government as a "humanitarian operation to rescue" civilians trapped by the LTTE.[688]

734. In his submission to the LLRC in 2010, the Secretary of Defence, Gotabaya Rajapaksa, stated: "the President and Security Council decided that we have to include a major concept that the zero civilian casualties […] was […] the first heading of all operational orders going from the Army headquarters, Navy headquarters, Air Force headquarters […] where all possible steps must be taken to avoid civilian casualties." This message went "from the headquarters down to all battalion levels so that they will know it is very important to plan to avoid civilian casualties".[689]

735. The Government claimed that its policy aimed at avoiding civilian casualties was supported by the following measures:

- Clear notification to all ranks of the armed forces that the President's directive on the "zero civilian casualty" policy was to be made a key consideration in all plans made and orders given, and was to underpin the rules of engagement of the security forces.[690]
- Detailed training of the Sri Lankan security forces in human rights law and international humanitarian law to ensure that commanders and troops actively engaging in operations are "aware of their responsibilities with regard to the safety of civilians and the protection of human rights, and to make appropriate and informed decisions in the heat of battle";[691]
- Battlefield intelligence, primarily from UAVs, provided commanders with clear information of the battlefield in order to confirm the absence of civilians.[692] According to one General: "UAVs gave us a tremendous support to minimise civilian casualties because we knew exactly where the LTTE was; we knew exactly where the LTTE reserves were; we knew exactly how the LTTE was concentrating their forces; we knew exactly where the civilian concentration were. Therefore we managed to take on the LTTE without any difficulties to the civilians since it was like you are looking at something with your own eyes";[693]
- General warnings provided to civilians to move to the NFZs, and specific warnings given prior to attack; the departure of civilians from the zone targeted was then confirmed through the use of technology;[694]

688 Humanitarian Operation Factual Analysis, MOD, July 2006, Op.cit.
689 Representation made by Gotabaya Rajapaksa, Secretary, Ministry of Defence to the LLRC, 17 August 2010.
690 LLRC Report, paragraph 3.17.
691 Humanitarian Operation Factual Analysis, MoD, July 2006, Op.cit. – paragraph 249.
692 Humanitarian Operation Factual Analysis, , MOD, Op.cit., paragraph 240.
693 Representation made by Major General Kamal Gunaratne, Commander 53 Division, to the LLRC, 8 September 2010.
694 Humanitarian Operation Factual Analysis, MOD, Op.cit. paragraphs 168, 228.

- Rigorous training to ensure security forces could hit the targets they were aiming at, enhanced by battle damage assessments;[695]
- Use of precision weapons by the Sri Lankan Air Force to minimise collateral damage.[696] Artillery fire was to be used with locating devices and radars would indicate the areas where shots were falling;[697]
- Detailed decision-making procedures for target selection, evaluation and engagement such that it could be guaranteed that only appropriate targets would be engaged.[698] The Commander of the Air Force said: "I personally check the targets again and I see whether there are any chances of collateral damage that can take place".[699] In cases of firing from the ground forces, the Commander of the Army said: "we check through our radio communications. We had control of our fire so we give instructions to check on that and take precautions accordingly."[700]

736. The Government's report *Humanitarian Operation-Factual Analysis* contains a section on *General Operational Procedures and Preparations to Safeguard Civilian Lives* which includes, for the Army, references to training on target identification and battle drills, protection of cultural property, use of artillery and mortar detecting radar, UAVs and fire controllers to help "verify targets and ensure precision". It also states that "[m]ultiple warnings for civilians were provided as needed prior to attacks and used sophisticated technology to confirm the departure of civilians and minimise collateral damage."[701]

737. OISL has seen several documents and reviewed statements by members of the Government and other officials referring to targeting procedures followed by the Air Force. Defence Secretary Gotabaya Rajapaksa insisted to the LLRC that as far as the Air Force was concerned, there was appropriately careful targeting, stating "we had a very clear process that any air strikes were undertaken only after the approval of the Air Force Commander." The Air Force Commander, Air Chief Marshal Gunatillake, in his statement to the LLRC, emphasized "how much care we take, the procedure that we follow before we decide to take a target… We had the surveillance assets overhead 24 hours a day. Whenever the enemy moves, we are able to spot them and either we take it or we tell the Army or the Navy."

738. He went on to detail the precise elements of that procedure, as; "initially we get a lot of intelligence… we send our UAVs or the Beechcraft… we try to find out if there are civilian places… or anything else that might get damaged if we take the target from the air. Once we are satisfied with all of this, we send the pictures to the attack squadrons that we detail to take the target, we match our weapons according to the target and we send our UAVs up into the sky and we give a live picture to the Squadron that is going to do this, and while monitoring the target from Air Force HQ as well."

739. He continued: "The Director of Air Force Operations prepares these targets…. And I personally check the targets again to see whether there are chances of collateral damage

695 Humanitarian Operation Factual Analysis, MOD, Op.cit., paragraphs 242, 244.
696 Humanitarian Operation Factual Analysis, MOD, Op.cit, paragraph 243.
697 Representation made by General Jagath Jayasuriya, Commander of the Army, to the LLRC, 8 September 2010.
698 Humanitarian Operation Factual Analysis, MOD, Op.cit., paragraph 239.
699 Representation made by Air Chief Marshall W.D.R.M.J. Gunatillake, to the LLRC, 8 September 2010.
700 Representation made by General Jagath Jayasuriya, Commander of the Army, 8 September 2010.
701 Humanitarian Operation Factual Analysis, MoD, Op.cit., paragraph228.

that can take place". He went on to confirm that through following this strict procedure "in every instance we have been hundred percent spot-on."

740. In his submission to OISL, a retired Air Force officer mentioned further measures by which appropriate targeting, and "proportionality" was to be assured, including training for effective command and control, the development of precision targeting methods, embedding forward air controllers with the ground troops, the use of precision weapons and a system for battle damage assessment after each mission to upgrade the procedure and de-brief the pilots.

741. In contrast to this detailed testimony about targeting procedures in the Air Force, neither the LLRC archives nor other documentation provides details of the targeting procedures for the use of artillery by the Army. OISL did not obtain copies of the Rules of Engagement used by the Sri Lankan Armed Forces or battle damage assessments, despite its requests to the Government. In his submission to the LLRC, the Commander of the Sri Lanka Army, General Jagath Jayasuriya, who had been Commander of the Security Force HQ-Vanni during the conflict[702], stated that they had "many restrictions on the use of heavy machinery and firepower. Tanks were never used." When artillery and mortars were used, he was sure of their accuracy because "we always had the locating devices… which would indicate day and night with the radars on the areas a shot is falling. All formations were equipped with the artillery fire radars that could give coverage of about 35km in front of them."

742. He said he and his subordinate commanders also had a good overview of the battlefield because "the UAVs were deployed continuously with night and day operations in order to be able to know the situation of the theatre of war… and this helped in minimizing civilian casualties and maintaining the zero casualty policy". General Jayasuriya also stated that all firing was being properly managed, saying "we check through our radio communications, we had control of our fire so we give instructions to check on that and take precautions accordingly."

743. Major General Kamal Gunaratne[703] told the LLRC of "the luxury, and I should underline the word luxury, of having the real-time information assets - the UAV support with the down-link right inside the operations room and supported by very experienced pilots that were detached from the Air Force to support us and to coordinate us."[704]

744. These statements indicate that the loss of civilian life and damage to civilian property reported below may have been anticipated, known and accepted by Government and military leaders in breach of international humanitarian law.

Use of direct and indirect fire

745. The types of weapon chosen and the manner of their use by parties when fighting in populated areas can significantly affect the likelihood of indiscriminate or disproportionate effects on civilians. Indirect fire is where the person firing the weapon does not have a direct line of sight between the weapon and the target. Instead, the weapon is fired in an upward trajectory such that the munitions fly in an arc and falls downwards from above.

[702] At the time of speaking to the LLRC, General Jayasuriya had been promoted to Commander of the Army.

[703] Commander of 53rd Division, originally subordinated to SFHQ-Jaffna on the Northern FDL, and later put in charge IDP reception in the Vanni. Major General Shavendra Silva, Commander of 58th Division, made similar comments about the value of UAVs in his submission to the LLRC.

[704] The repeated use of UAVs was confirmed by many witnesses who noted that the shelling often occurred shortly after the drones had been seen.

The firing of the weapons in this way allows for less accurate targeting. For this reason, multiple shells are fired simultaneously: instead of engaging a single "point target", they are used as an "area weapon" with a wide explosive impact. The use of indirect-fire explosive weapons including artillery and mortars can cause damage over a wide area, and have a "disastrous short-term and long-term impact on civilians".[705]

746. Direct fire implies the existence of direct line of sight between the weapon and the target engaged, and is generally more accurate. According to military sources consulted by OISL, the SLA possessed a range of different weapons, including direct fire options. However, it used weapons primarily designed for direct fire, such as rocket-propelled grenades (RPGs),[706] in a manner that increased their range but decreased the accuracy of the weapon, thus increasing the risk of civilian casualties.

747. Aerial surveillance conducted by the Sri Lankan security forces should have enabled precise identification of targets, which could be engaged with weapons that offer a high degree of accuracy and minimize incidental damage to the area around the target. Despite this, the SLA deployed and used a large number of indirect fire weapons, including artillery shells and multi-barrel rocket-launchers (MBRLs), which were placed in areas surrounding the NFZs, and continued to use such weapons until the very end of the conflict.[707]

748. The Government has consistently maintained that it restricted the use of heavy weaponry, and that it stopped using them altogether during the last weeks of the fighting. According to the Sri Lankan Defence Secretary: "During the latter stages, because of the civilians and the restricted area which was very small, the President decided that we should restrict the use of indirect fire, artillery, mortar and air strikes and troops had […] also to use personal weapons only".[708] Framing its operations as a humanitarian "hostage rescue mission", the Government stated that: "security forces on instructions ended the use of heavy calibre guns and combat aircraft and aerial weapons that might cause civilian casualties".[709]

749. In March 2009, the Minister for Disaster Management and Human Rights said: "there is absolutely no justification to use heavy weapons".[710] On 27 April, the Government announced "combat operations have reached their conclusion. Our security forces have been instructed to end the use of heavy calibre guns, combat aircraft and aerial weapons which could cause civilian casualties. Our security forces will confine their attempts to rescuing civilians who are held hostage and give foremost priority to saving lives."[711]

750. As shown below, according to military analysts who examined witnesses' testimony, and reports received from diplomatic sources, NGOs and others, the Sri Lankan Armed Forces used indirect-fire weapons, including artillery shells and MBRLs on the three NFZs and surrounding areas, causing widespread damage to civilian infrastructure and loss of civilian lives throughout the final phases of the armed conflict. At least four medical facilities - PTK, Mullaivaikkal, Udayarkaadu and Putumattalan – were shelled with

705 United Nations, November 2013, Report of the Secretary-General on the Protection of Civilians in Armed Conflict, paragraph 69.

706 WS on file

707 UNOSAT, Geo-spatial analysis in support to the Secretary-General's Panel of Experts on Sri Lanka.

708 Representation by Mr. Gotabaya Rajapaksa, Secretary Ministry of Defence to the LLRC, 17 August 2010.

709 Humanitarian Operation Factual Analysis, MOD, Op.cit., paragraph 183.

710 Democratic Socialist Republic of Sri Lanka Ministry of Defence, "Automatic ceasefire, if LTTE lays down arms – Minster tells 'BBC Hardtalk'", <http://www.defence.lk/new.asp?fname=20090306_02>

711 www.defence.lk/new.asp?name=20090427_06

unguided weapons and ammunition such as MBRLs according to witness testimonies. Witnesses, including some with military expertise, described how they were able to hear the launch of the fire, estimate its direction of travel and, in some cases, determine the type of weapons being used.[712] Others were able to determine the direction and type of fire from assessing the blast damage.[713]

751. Many witnesses said that "cluster bombs" (referred to by some as "Koththu Kundu" by witnesses) were used, and described the objects exploding in mid-air and releasing many smaller objects in the air before impacting the ground. Cluster munitions release bomblets over a wide area above a target that explode on impact. However, indirect fire munitions may also be configured to explode into fragments overhead. OISL believes that given the persistent nature of the allegations of cluster munitions, further investigation needs to be carried out to determine whether or not they were used.

752. Likewise, while OISL received allegations of the use of white phosphorous, and witnesses described such incidents, particularly in the last few weeks of the conflict where bombs caused intense burning and blackened skin, it was not able to gather enough information to confirm that white phosphorous was used. OISL therefore believes that these allegations should also be investigated further.

Creation of No Fire Zones

753. Between January and May 2009, the Government announced the successive establishment of three "No Fire Zones" (NFZs) or "safe zones" as part of its stated "zero casualties policy". This section gives an overview of the creation of the three zones. Information specific to each NFZ is then outlined in separate subsections below, together with details of incidents of attacks documented in each one.

754. The Government declared the NFZs unilaterally, without any agreement with the LTTE and thus they were not recognised as a safe, neutral protected zone by both parties to the conflict. The designated areas were inside LTTE-controlled territory to which the Government forces had no access at the time.

755. Each NFZ was smaller than its predecessor, coinciding with the movement of the displaced population and the retreat of the LTTE into a diminishing area of land under its control as the SLA forces advanced. In addition, the Government declared an "additional safety buffer zone" of one kilometre around all protected objects, including hospitals and the offices of humanitarian agencies.[714].

756. The logic behind the location of the NFZs was highly questionable. They coincided with pre-existing LTTE military positions, which were not removed from the designated areas beforehand.[715] The first NFZ was directly situated on the main axis of the SLA advance, along the A35 highway from Kilinochchi towards Puthukkudiyiruppu (known as PTK) and Mullaitivu. In order to defend its stronghold of PTK, the LTTE would have had to engage the SLA in the area of the first NFZ. Locating a "safe zone" in an area where there is considerable likelihood that it will become part of the area of hostilities raises questions of intent on the part of the SLA.

712 WS on file.
713 WS on file.
714 LLRC Report, November 2011, footnote 47 where reference is made to a letter sent from the Commander of the Army to the Head of Delegation of the ICRC on 19 January 2009 announcing the NFZ and the additional buffer zone near hospitals.
715 UNOSAT satellite imagery seen by OISL.

757. The LLRC noted in its report that "given the abuse of the sanctity of the NFZ by the LTTE, the absence of any agreed arrangement to ensure the LTTE compliance with the intended humanitarian objectives and the fact that there was no verifiable way to ensure that the LTTE complied with the status of the Government's unilaterally declared NFZ arrangements, it would be reasonable to conclude that civilian casualties must have occurred when Security Forces returned fire at LTTE gun positions in the NFZ from which the LTTE was firing."

758. In his representations to the LLRC, the Secretary of Defence stated that the NFZs were set up following discussions between the National Security Council and the President "who decided to earmark areas as No Fire Zones for the civilians to come into these areas so that the military can restrict their operations in these areas".[716] He continued: "Our intention was to get closer and closer to the civilians so that they could come into the government controlled areas."

759. The Government stated it had informed civilians of the creation of the NFZs, encouraging people to move to these areas where their security would be provided for, through leaflets that were dropped in the conflict zone, and messages conveyed through loudhailers.[717] According to the Government, 127,000 copies of 13 different leaflets were dropped between 16 January and 29 April 2009. Witnesses interviewed by OISL also stated that they had seen leaflets, or, in the later stages, heard the SLA encouraging civilians to cross over.[718] OISL obtained copies of several such leaflets.

760. One of the leaflets[719] calling on the civilians to move to NFZ 1, states: "We are waiting to provide innocent people like you the security and all other basic amenities you need. We have arranged to provide them to those who move into the area under the control of the government, an allowance of Rs100. per day, facilities to view television and to make telephone calls. There are also libraries near the camps along with other recreation facilities… Please come to us without waiting any longer. We are waiting your arrival in the area set apart for you as seen in the sketch below, an area from the Udayarkaddu Junction on the A35 at Mullaitivu to the Yellow Bridge to be a no-fire zone". (A vague sketch of the NFZ is included in the leaflet, which was initialled by "Lieutenant General, Commander of the Army".)

761. In one of the leaflets seen by OISL and headed "A safe zone has been created for the members of the public in the Wanni", the civilians were called on to go as soon as possible to a "safe zone" (NFZ1) which "includes the following areas in the Wanni: Puthukudiyiruppu, Paranthan, A35 road, the Yellow Bridge, from Udayarkaddu Junction to the North to an extent of 4 kilometers upto Iruddumadu (sic) and Thevipuram. We wish to inform you that the military will not conduct shell attacks or aerial attacks at these specified places as they have been allocated for those who have been displaced…."

762. In spite of this affirmation that the NFZs were safe, they were shelled repeatedly. While the Government denied using heavy artillery weapons, the SLA deployed such weapons in areas immediately surrounding all three NFZs during the last phase of the conflict, from January until May 2009. Analysis of satellite imagery provided to the United Nations Panel of Experts concluded that "there is compelling evidence that the SLA

716 Representation made by Mr Gotabaya Rajapaksa, Secretary Ministry of Defence to the LLRC, 17 August 2010. Representation made by General Jagath Jayasuriya, Commander of the Army, 8 September 2010. See Humanitarian Operation Factual Analysis, MOD, Op.cit.,paragraph 174.

717 Copies of leaflets seen by OISL.

718 The leaflets also often included an instruction to cross over during the day, which posed a dilemma for the civilians since, in order to avoid reprisals from the LTTE, they had to escape at night.

719 The leaflets were in Sinhala and Tamil, and these translations were provided by an OISL translator.

established, maintained and updated throughout the last five months of the conflict, an operational military capability to fire substantial quantities of artillery munitions into areas heavily populated with IDPs and specifically the No Fire Zones", and that there was "active and sustained SLA targeting of No Fire Zones".[720]

763. The Government has consistently stated that all attacks in the NFZs were carried out in line with international humanitarian law, arguing that any civilian casualties were the result of the "LTTE's cynical choice of tactics including the unlawful strategy of deliberately shielding their operatives and munitions in populated areas, NFZs and other protected sites", and that the LTTE "repeatedly fired artillery and other weapons from locations adjacent to NFZs and medical facilities".[721]

764. While the actions of the LTTE, as discussed below, were in some instances in violation of their obligations under international humanitarian law to take all feasible precautionary measures to protect the civilian population under their control against the effects of attacks, this did not relieve SLA of its obligations to distinguish at all times between civilians and civilian object, on the one hand, and lawful military targets, on the other, as well as to take all feasible precautions to avoid or, in any event, to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

765. Multiple testimonies show that the civilians heeded the Government's call to proceed to the NFZs. But, as the examples of attacks demonstrate, the NFZs created by the Government did not present safe havens for civilians. Almost immediately after their creation, the NFZs, including protected civilian objects, such as hospitals, came under sustained fire from the Sri Lankan security forces. The Government/SLA gave no warning or indication to the civilians who had taken refuge there that there would be military operations conducted within the NFZs, nor appropriate time for them to evacuate.

766. After a visit to Sri Lanka in April 2009, the Representative of the United Nations Secretary-General on the Human Rights of IDPs warned that the second NFZ "essentially overlaps with the conflict zone as LTTE forces have been pushed back into it. This creates an extreme and deadly risk for the remaining civilian population. Due to the zone's limited size and high population density, any military operation – even if undertaken with the utmost caution and with respect for the principle of distinction between civilians and combatants – is highly likely to be indiscriminate by nature and cause disproportionate collateral damage among the civilian population".[722]

Conduct of hostilities: LTTE

767. Under international humanitarian law, the LTTE had an obligation to take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks. Such precautions included the obligation to avoid, to the extent feasible, locating military objectives within or near densely populated areas, as well as taking all feasible measures to remove civilian persons and objects under the control of a party to the conflict from the vicinity of military objectives.[723]

768. Location of weaponry and other military objects

[720] UNOSAT, Geo-spatial analysis in support to the Secretary-General's Panel of Experts on Sri Lanka.

[721] Full Report of the Army Board on Implementation of the LLRC Observations Panel, available at <www.army.lk/docimages/image/LLRC_2013.pdf>

[722] Representative of the UN Secretary-General on the Human Rights of IDPs,visit to Sri Lanka, 2 – 6 April 2009.

[723] ICRC, Database on customary international humanitarian law, Rules 23-24.

769. Civilian objects lose their protected status if used for military purposes,[724] and therefore it was incumbent on the LTTE to avoid locating military equipment within civilian facilities, in particular, hospitals, or to use these facilities to commit acts harmful to the enemy.

770. Multiple witnesses informed OISL that all hospitals in LTTE-controlled areas had clear rules strictly prohibiting carrying of weapons inside hospitals, and these rules were reportedly respected.[725] According to eyewitnesses, the LTTE cadres who assisted in carrying injured people to the hospitals were generally unarmed.[726]

771. OISL received no information to indicate that Government-run or other hospitals and ambulances were used by the LTTE for military purposes. None of the medical or humanitarian personnel who were interviewed reported any attempt by the LTTE to carry out military operations inside the medical facilities. According to the information received by OISL, there were no LTTE military installations placed inside the hospitals.

772. On the basis of this information, OISL does not therefore have reasonable grounds to believe that there were legitimate military targets inside the hospitals at the time of the attacks by the SLA. The fact that wounded LTTE military cadres were being treated in some of the hospitals does also not remove the protected status of the objects, since these individuals were not, at the time, taking direct part in hostilities.

773. However, the information gathered by OISL indicates that there are reasonable grounds to believe that the LTTE launched attacks from the close proximity of hospitals. The incidents described below show that the LTTE constructed military fortifications (mostly earthen bunds and trenches) and positioned artillery and other weaponry close to, and sometimes adjacent to hospitals and the surrounding densely populated civilian areas, marked by a heavy presence of makeshift tents or shelters belonging to IDPs.[727] In doing so, the LTTE failed to comply with its obligation to take all feasible precautionary measures to protect the civilian population from attacks.

774. Additionally, OISL received no information to indicate that measures were taken by the LTTE senior leadership to prevent the placing of military installations near medical facilities or that precautionary measures were taken by the LTTE to prevent or minimize the risks for civilians, including by way of warning of their intention to launch attacks from near hospitals so that at least minimum protection measures could be taken by hospital staff, given the likelihood of retaliatory shelling.

775. The placing of military positions in close proximity to objects protected under international humanitarian law in densely populated areas contributed to civilian casualties by drawing fire. It also raises serious questions regarding the intent behind such acts, including whether they were done with the intent of shielding military objects or areas from attack or provoking fire by the SLA, which would be in violation of customary international law.

776. It is noted that, as the SLA pushed the LTTE and civilians into an ever-shrinking area, the possibilities that the LTTE had for separating military objects away from medical facilities and other protected objects became more limited. OISL stresses that this change in circumstances did not absolve any of the parties to the conflict from their obligation under

[724] ICRC, Database on customary international humanitarian law, Rules 10 and 28. See also Chapter V Legal Framework

[725] WS on file

[726] WS on file

[727] UNOSAT, Geo-spatial analysis in support to the Secretary-General's Panel of Experts on Sri Lanka.

international humanitarian law to comply with the principles of distinction, proportionality and to take feasible precautions in attack and against the effects of attacks. Complying with these obligations would have nonetheless required that the parties to the conflict adapt their tactics accordingly to ensure that they did not place the trapped civilian population in danger.

777. OISL recalls that the Government did not seek the agreement of the LTTE when unilaterally declaring areas as "safe zones". Nevertheless, the LTTE must have known where the NFZs were located and that their stated purpose was to protect civilians. The LTTE, through the constraints it imposed on the movement of civilians living in territory under its control, kept civilians in a confined area that was a conflict zone, thus exposing them to the dangers of military operations. Details on the constraints on movement which the LTTE enforced until the end of the conflict, are outlined in Chapter XX. Abduction of adults leading to forced recruitment and recruitment and use of children in hostilities also took place inside the NFZs, and is described in the relevant chapters.

Overview of attacks on civilian objects during the last months of the armed conflict

778. The presence of tens of thousands of civilians in the LTTE-controlled areas required the provision of essential humanitarian assistance and life-saving medical care. This was all the more critical as the population was concentrated into the successive NFZs, which were the object of heavy shelling from the SLA. Chapter XV examines the issue of humanitarian access and assistance in the Vanni area. This section looks at the shelling of the facilities which provided the services and the impact on the civilian population.

779. Even though international staff of United Nations agencies and humanitarian organizations had to leave the Vanni in September 2008 because the Government said it could no longer guarantee their safety, Sri Lankan staff of these organizations, who were often prevented from leaving by the LTTE, strived to provide assistance as best they could, in spite of increasing restrictions, repeated displacement, and the danger they faced[728]. A number of humanitarian workers lost their lives or were seriously injured during the final phases of the conflict, many of them by shrapnel from shelling.[729]

780. Many IDPs set up shelters near medical and food distribution facilities established by the United Nations and other humanitarian organizations in the belief that these locations would be safer than other areas. United Nations facilities were normally marked with the United Nations emblem and with flag, which would have been clearly visible to UAVs used by the Sri Lankan security forces to conduct surveillance operations. However, they and other humanitarian objects were not spared from the shelling, which not only placed humanitarian workers and their activities at risk, but also the civilian population.

781. During conflict, medical facilities provide vital life-saving treatment both to injured and sick civilians and to persons placed *hors de combat* by wounds or sickness. Medical facilities, the medical staff, and those being treated – whether civilians or persons *hors de combat* – cannot therefore be targeted under international law.

[728] According to documents seen by OISL, the Joint Operations Headquarters informed a number of humanitarian organisations in September 2008 that the security of their staff could not be guaranteed in "uncleared areas" (Government term for LTTE-controlled territories).

[729] ICRC, 13 May 2009, "Third ICRC staff member killed in conflict area", News release 09/100; ICRC, 08 April 2009, "ICRC staff member killed in conflict area", News Release 73/09; ICRC, 05 March 2009, ICRC staff member killed in the conflict area", News Release 48/09; CARE, 18 March 2009, "Care aid worker killed in Sri Lanka conflict", Press release; WS on file.

782. Within the LTTE-controlled areas, including the NFZs, there were a number of medical facilities. The hospitals were mostly staffed by Government employees, and marked with the Red Cross emblem – for example painted on the roof or clearly visible on flags. OISL has viewed one clip of UAV footage clearly showing the Red Cross emblem on the roof of PTK hospital. Satellite imagery also confirms that hospital buildings referred to in this section were clearly marked with the Red Cross emblem.

783. As the SLA advance progressed, medical facilities were often relocated, into schools and, towards the end of the conflict, tents and other makeshift structures. The relocated sites of medical and other facilities were also hit during shelling despite being clearly marked by the emblem. The transfer of seriously ill patients was sometimes carried out in the most precarious circumstances.[730] The attacks killed and injured patients receiving treatment. As conditions worsened, the capacity of medical staff to treat patients became even more stretched, yet medical professionals were determined to fulfil their duties to provide treatment at great risk to themselves. Medical personnel were also among those who were killed in the shelling.[731] Continued shelling, including on or near the roads leading up to the hospitals often prevented immediate access to civilians injured in other attacks in the area.

784. Letters seen by OISL, consistent with witness accounts, including from United Nations and humanitarian workers, indicate that GPS coordinates of most hospital and other humanitarian facilities, including when they were relocated due to fighting, were transmitted to the Government, the SFHQ in Vavuniya and other Sri Lankan security forces, as well as the LTTE, to ensure that these facilities would be protected from attack.[732]

785. In at least two instances, attacks on Vallipunam and Udayarkaadu hospitals occurred shortly after the coordinates were relayed.[733] Witnesses also told OISL that hospital and humanitarian workers alerted military and Government officials to the fact that hospitals were being shelled, and called for the shelling to stop. In some instances, the shelling from SLA positions continued, in others the firing was adjusted, suggesting that the SLA was able to control where the shells hit.[734]

786. According to witnesses, at least one makeshift (non-government) medical facility stopped using the Red Cross sign in an effort to remain hidden and decrease the likelihood of attack. This began shortly after the attacks on Udayarkaadu hospital in January 2009.[735] The witness said that the facility was not shelled while it was in operation.

787. Wounded LTTE fighters were treated in the LTTE's own medical facilities but also at times in government-run facilities. The Ministry of Healthcare and Nutrition knew that LTTE fighters were being treated in some of the Government-run hospitals, and that unarmed LTTE surgeons also worked in these hospitals and provided treatment to both injured LTTE fighters and civilians.[736] The presence of LTTE fighters who were placed *hors de combat* by injury, inside the medical facilities, whether in wards with civilians or in separate wards, did not affect the protected status of the facilities or of the individuals it sheltered.

730 WS on file.
731 WS on file.
732 WS on file. Letters seen by OISL sent to Government of Sri Lanka and SLA from UN and humanitarian organisations.
733 WS on file
734 WS on file
735 WS on file
736 WS on file;

788. The Government denied that medical facilities were targeted or, in some cases, hit by the shelling[737]. In its report, the LLRC stated that it was "satisfied, on careful consideration of all the circumstances that shells had in fact fallen on medical facilities causing damage and resulting in casualties." However, it was unable to reach a definitive conclusion as to who was responsible due to the "non-availability of primary evidence of a technical nature and also the fact that supportive civilian evidence is equivocal in nature and does not warrant a definitive conclusion that one party or the other was responsible for the shelling."[738]

789. The information gathered by OISL in the course of its investigation suggests, however, that the attacks were not isolated incidents but part of a pattern where the SLA not only failed to take adequate measure to ensure that protected facilities are not hit but, in some cases, may have deliberately targeted the facilities.

790. The attacks reflect the systematic use of indirect fire weapons, such as MBRLs, in a way that was inappropriate in areas that were densely populated, and where the SLA knew that protected objects were located. Notwithstanding the continuous surveillance using aircraft and UAVs, these locations were subjected to repeated artillery and aerial attacks as the hostilities intensified, causing deaths and damage to the infrastructure. As a result the staff, patients and equipment were forced to relocate, in some cases multiple times.

791. Within the confines of the NFZs, it is unlikely that the LTTE could have fired on the hospitals with artillery given the short range involved. However, the location of LTTE military positions, occasionally in the vicinity of hospitals and United Nations premises, and used at times to fire from near hospitals calls into question the LTTE's own respect for their obligations to take all feasible precautions to protect the civilian population and civilian objects against the effects of attacks.

792. The following section details attacks on hospitals and makeshift medical facilities, United Nations hubs and food distribution centres that occurred mostly in the NFZs. OISL examined attacks, sometimes multiple, against nine of the various medical facilities in the Vanni between October 2008 and May 2009. Seven of them were located in the so-called NFZs.

Examples of hospitals, United Nations and other humanitarian facilities attacked prior to the declaration of the first no fire zone

Offices of the United Nations and of NGOs, Kilinochchi[739]

793. The United Nations offices in the Vanni were located in Kilinochchi town in an area referred to as the "Kilinochchi City Box", or "the Box". Although Kilinochchi town was an LTTE stronghold, the "Box" had been recognised by the Government as a "safe" area, created to ensure and facilitate the safe conduct of humanitarian programmes and activities in the Vanni. The Government was thus aware of the location of humanitarian facilities in the area. Despite this understanding between the United Nations and the Government, United Nations facilities in the Box were subjected to bombardment by the SLA. The LTTE

737 www.nydailynews.com: Mortar shell strikes Sri Lankan war zone sole functioning medical facility; article 1.412744

738 LLRC report, paras 4.288 and 4.293.

739 Although this section focuses on shelling of civilian objects, other sources indicate that shellings were affecting the civilian population in the area surrounding Kilinochchi. For example, shelling on 26 December reportedly resulted in the death of seven people in two houses. There were reportedly no LTTE bases in the area. WS on file.

also had military positions, including artillery, close to the town of Kilinochchi. However, according to witness statements, there were no LTTE attacks launched from the Box during the times when it was shelled[740].

794. Between July and October 2008, as the 57th and 58th Divisions of the SLA advanced towards Kilinochchi, the area in and around the Box was subjected to aerial bombardment and shelling. In July 2008, an aerial bombardment resulted in minor damage to the compound of an NGO.[741] On 3 September, the SLA shelled Kilinochchi, with one shell landing in the Box, 300 metres from the compound of WFP and 100 metres from the compound of an NGO. United Nations concerns about the safety of its staff members based in Kilinochchi after these shellings were raised with the Government on 4 September. The following day, and again on 8 September, the Government advised that humanitarian agencies should close their offices in Kilinochchi as it could not guarantee the safety and security of staff and premises. Only the ICRC and Caritas were allowed to remain in the Vanni.

795. In the light of the Government's instructions, the United Nations began to withdraw staff from 8 September.[742] On 9 September, an artillery shell exploded near a United Nations warehouse in the Box.[743] The Sri Lankan security forces continued their advance on Kilinochchi, causing thousands of civilians to flee, and United Nations facilities were further damaged.[744] On 10 September, early in the morning, the Sri Lankan Air Force bombed Kilinochchi, damaging United Nations facilities in the Box; some of the shells landed about 50 metres from a United Nations bunker, cracking the concrete walls[745]; on 28 September five civilians were wounded when a shell landed near a United Nations compound;[746] on 3 October, an aerial bombardment by the security forces caused damage to three United Nations building in Kilinochchi Box.[747] All international staff left by 16 September. United Nations national staff members were unable to leave due to LTTE movement restrictions, and remained in Kilinochchi to continue delivering humanitarian assistance, until they too were eventually forced to flee the shelling. [748]

Kilinochchi hospital

796. Kilinochchi hospital, a long-standing, Government-run medical facility, also came under repeated shelling as the Sri Lankan Armed Forces advanced on Kilinochchi. The hospital came under shellfire on 25 October, 24 December and 30 December 2008, causing damage to buildings.[749] Witnesses stated that the shelling came from the direction of SLA positions to the south of Kilinochchi.[750] There were no LTTE positions located close to the hospital.[751] Medical services were relocated by 31 December.[752]

740 WS on file.
741 WS on file
742 WS on file
743 WS on file
744 WS on file
745 WS on file
746 WS on file
747 Letter from UN to Minister of Foreign Affairs, 8 October 2008 seen by OISL.
748 WS on file
749 WS on file
750 WS on file
751 WS on file
752 WS on file

Mullaitivu hospital

797. Mullaitivu hospital was one of the oldest Government-funded hospitals in the Vanni, and its location would have been well known by the SLA. It was clearly marked with a Red Cross emblem and the GPS coordinates giving its precise location had been relayed to the Government by humanitarian and medical workers several times.[753] The area in and around the hospital was shelled on several occasions between August 2008 and January 2009.[754]

798. On 8 August 2008, between midnight and 1 a.m., approximately 40 shells exploded in the immediate surroundings of Mullaitivu hospital,[755] reportedly fired from an area controlled by the advancing forces of the SLA, some 10 kilometres from Mullaitivu.[756] Hospital buildings were damaged during the shelling, though no serious injuries were reported. Witness reports indicate that an LTTE police station was located some 200 metres from the hospital, which was reportedly damaged during the attack.[757] When informed of the incident, the SLA reportedly denied responsibility for the shelling, though the shelling stopped after the SLA was informed.[758]

799. In October and November 2008 the hospital was again hit during shelling, including from the use of MBRLs fired from SLA positions to the south of Mullaitivu.[759] Hospital buildings were damaged and two people suffered minor injuries.[760] As the shelling of Mullaitivu intensified in December 2008 and January 2009, including in areas near the hospital,[761] medical staff decided to close the hospital, and relocate it to Vallipunam.[762]

800. OISL has no information indicating that LTTE had military installations positioned in or in the vicinity of Mullaitivu hospital at the time of the attacks in August, October, December 2008 and January 2009. On this basis, there was no known military target and thus no justification to fire on the hospital and surrounding areas.

801. After capturing Kilinochchi in early January 2009, the 58th Division of the SLA continued its advance eastwards along the line of the A35 highway towards the LTTE-controlled towns of Visuvamadu and PTK. As the SLA advanced, areas in and around PTK experienced significant bombardment from Government forces. Civilian infrastructure, including hospitals and facilities used by the United Nations and humanitarian organizations came under fire. The LTTE engaged the advancing forces sometimes from areas close to population centres, and fired from military installations set up in proximity to hospitals in a clear violation of its obligations under international humanitarian law to protect the civilian population and civilian objects against the effects of attacks.

753 WS on file
754 WS on file
755 WS on file; Communication from Special Procedures Division, OHCHR, to the Permanent Mission of Sri Lanka to the United Nations Office at Geneva, Allegation Letter sent by the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, AL/GSO214(33-24)LKA16/2008, 6 October 2008.
756 WS on file
757 WS on file
758 WS on file
759 WS on file
760 WS on file
761 WS on file
762 WS on file

Examples of attacks on civilians and civilian objects in the No Fire Zones and PTK

Attacks on No Fire Zone 1 and Puthukkudiyiruppu

802. The first No Fire Zone (NFZ1) was announced on 20 January 2009 by Major General Jagath Jayasuriya, Commander of the Sri Lankan security forces in the Vanni[763]. The NFZ covered an area of 35.5 square kilometres[764] to the north of the A35 highway between Udayaarkaadu junction and Yellow Bridge. The other boundaries were lines drawn on a map, which did not follow any recognizable features on the ground, making it difficult for civilians to know the edges. None of the leaflets seen by OISL show with any clarity the boundaries of the NFZ, nor the descriptions of the area covered. The strategic LTTE-held town of PTK was outside of the NFZ, to the southeast.

803. NFZ1 contained pre-existing LTTE military facilities.[765] It was located close to the front lines and offered few escape routes for the civilian population. Nevertheless, civilians crowded into NFZ1, reassured by the presence of international organizations and believing it was safe, but began abandoning it almost immediately due to the shelling. The following are examples of the incidents of shelling in or near NFZ1.

Vallipunam hospital

804. Located on the A35 highway on the edge of NFZ1, between Vallipunam and Thevipuram junctions, Vallipunam hospital was comprised of several buildings. The area around the hospital was densely populated with civilians displaced by the conflict, who had set up temporary shelters.[766] On 18 January 2009, and again on 20 January, the GPS coordinates of the hospital were communicated to General Fonseka, Commander of the Army, and to Major General Jagath Jayasuriya, the Security Force Commander for the Vanni.[767] OISL has seen a copy of a military communication dated 24 January, 10.50 p.m., to the 57th, 58th and 59th Division, as well as to Task Forces 2, 3 and 4, informing them of the coordinates of Vallipunam Hospital. It is not known if the coordinates were transmitted to the military on the ground before then.

805. On 19 January 2009, shortly before the announcement of NFZ1, shells fired from areas controlled by the SLA hit Vallipunam hospital[768] and landed close to a makeshift ward where LTTE fighters were being treated,[769] a fact that, according to OISL's information, the Government had been informed of.

806. Immediately after the declaration of NFZ1, between 21 and 22 January, three shells exploded inside the compound of Vallipunam hospital, causing damage to the main building, medical infrastructure, ambulances and temporary medical shelters.[770] At least five civilians were reportedly killed and 22 others were injured in the incident. One of the structures hit was a temporary ward where patients who were already being treated at the hospital sustained further injuries.

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763 Signed communiqué on file with OISL.
764 Internal OCHA map on file with OISL.
765 UNOSAT.
766 WS on file
767 LLRC Annexes, Annex 3, p.94. Available online at <http://www.llrcaction.gov.lk/assets/downloads/reports/en/Annexe-3_en.pdf>
768 WS on file
769 WS on file
770 WS on file; LLRC Report paragraphs 4.118 and 4.120.

807. The area around the hospital in Vallipunam also came under fire. One witness described being in his office when he heard the MBRL launches. Hearing crying from a nearby doctor's house he ran over and saw that branches of trees around the house had been blown off by shelling. The explosions had knocked down one side of the mud and brick house. The doctor was on the floor and parts of his stomach were ripped by shrapnel and were coming out. The doctor later died of his injuries.[771] Another witness told OISL that in early February 2009, the area close to Vallipunam hospital was attacked by "cluster bombs" that "exploded in mid-air, 20 to 25 metres above ground, which further divided into 40- 45 bomblets".[772]

808. Satellite imagery of Vallipunam hospital examined by OISL shows two impact craters in the hospital compound and four rooftop impacts on three different buildings, partial destruction of one building and total destruction of another eight buildings, that all occurred between 21 January and 18 February 2009. Over 50 additional artillery impact sites can be seen within a one-kilometre radius of the hospital, an area designated by the Government as an "additional buffer zone", indicating that the hospital and its vicinity were exposed to sustained shelling, despite being inside the newly declared NFZ.

809. The satellite images viewed by OISL indicate the possible presence of an LTTE earthen bund or defensive position approximately 650 metres to the southeast of Vallipunam hospital.[773] Such a military installation, at some distance from any civilian objects, would represent a legitimate target, yet the satellite imagery shows no signs of it having been hit during the period that the Vallipunam hospital area was shelled.

810. In examining the nature of the strikes on Vallipunam hospital, there appears to be no plausible justification for carrying out attacks on the hospital. OISL received no information indicating that the LTTE had positions in the hospital. If the object of the attack were the injured LTTE fighters receiving treatment, these were not lawful targets. Furthermore, the reported use of fragmentation munitions in an area densely populated by civilians maximized the risk of significant damage to civilians as well as protected objects, including hospitals and, if confirmed, is unlikely to have been in compliance with obligations under international humanitarian law.

Udayaarkaadu hospital, United Nations facility and food distribution centre inside the first No Fire Zone

811. Udayaarkaadu hospital was located in a large school on the northern side of the A35 highway, in the south-western corner of NFZ1. It consisted of approximately 11 permanent buildings, clearly marked with the Red Cross emblem, and was surrounded by temporary shelters used as makeshift wards.[774] Medical staff and humanitarian workers had relayed the location of the hospital with GPS coordinates to the security forces, first on 18 January, and again on 20 January.[775]

812. The United Nations humanitarian facility in Suthanthirapuram/Udayaarkaadu was set up on 23 January in an open field north of the A35 highway, approximately 700 metres from the hospital.[776] The GPS coordinates of the new United Nations facility were communicated to the security forces on or soon after 23 January.[777] Surveillance drones

771 WS on file
772 WS on file
773 WS on file.
774 WS on file.
775 WS on file; LLRC Annexes, Annex 3, p.94.
776 WS on file.
777 WS on file.

belonging to the Sri Lankan Armed Forces were witnessed overhead on 23 January.[778] A food distribution centre managed by the Office of the District Secretary, comprised a storage centre and approximately 10 distribution points in a field located adjacent to the United Nations facility.[779] Offices of several humanitarian organizations were also located nearby.[780]

813. The LTTE had a position of four cadres, with small arms, located some 100 metres to the north, and an LTTE radio station was located approximately 100 metres to the south.[781]

814. In the afternoon of 23 January, as the United Nations facility was being set up, the area around the United Nations and the hospital came under shelling from the SLA. At least 23 civilians were reportedly killed when three shells landed in proximity to United Nations workers who were constructing the site, one just 60 metres from the United Nations location.[782] Incoming fire, coming from the direction of SLA positions to the south, included MBRL fire and small arms fire.[783] When contacted, army officials denied that they were firing. However, there was reportedly a temporary lull in the shelling, though it did not last.[784]

815. During the night, more civilians were killed by at least 12 more shells that impacted the vicinity of the United Nations hub, one shell landing eight metres from bunkers where United Nations staff members were accommodated.[785] Children were among the victims, killed and injured as shrapnel ripped through makeshift shelters that were set up close to the United Nations base.[786] An elderly man lost his daughter and two grandchildren in the shelling. Photographic material submitted to OISL shows scenes of decapitated and mangled body parts of victims strewn around the area, including a young baby whose body was blown up into the trees near the United Nations bunker.[787]

816. After a lull early in the morning of 24 January, heavy artillery fire from SLA positions to the south and southeast of Udayaarkaadu resumed at approximately 10 a.m.[788] Despite the shelling, thousands of civilians queued up to receive food rations from distribution points located in a field near the hospital and the United Nations facility.[789] People lay on the ground as they heard the incoming fire approaching.[790] Five shells landed in close proximity to the food queues, reportedly killing 20 people and injuring many others.[791] One witness described the scene as “complete chaos”, and that “people who had come to take food were instead carrying away dead bodies”.[792]

817. At around 4 p.m. on 24 January, one shell hit the Udayaarkaadu hospital and another exploded close to the hospital compound. According to information received by OISL,

[778] WS on file.
[779] WS on file.
[780] WS on file.
[781] WS on file.
[782] WS on file.
[783] WS on file.
[784] WS on file.
[785] WS on file.
[786] WS on file.
[787] WS on file; Photographs seen by OISL.
[788] WS on file.
[789] WS on file.
[790] WS on file.
[791] WS on file.
[792] WS on file.

between five and 13 people were killed and 27 injured; one of the fatalities was a nurse who was hit by shrapnel as she was stepping out between two buildings.[793]

818. Analysis of satellite imagery provided to OISL by UNOSAT shows three impact craters in the open courtyard of the hospital and three rooftop impact craters and the destruction of three auxiliary buildings. The identified impact craters and damage are consistent with artillery fire.

819. On 25 January, on the advice of the SLA Chief of Defence staff,[794] the United Nations and some humanitarian organizations left the NFZ and moved back to PTK.[795]As the United Nations staff members left along the A35 highway, they witnessed scenes of devastation: "when we got to the A35 and turned towards PTK, a horrible sight awaited us. There were bodies of civilians everywhere on and beside the road".[796] Another witness told OISL that "virtually nothing was left standing" in the NFZ.[797]

820. Due to the intensity of the shelling, the decision was made in early February to move the Udayaarkaadu hospital to a safer area.[798] One medical worker told OISL that shortly after the attacks on Udayaarkaadu hospital, he decided to set up a smaller makeshift clinic, independent of Government-run hospitals. He did not use the Red Cross emblem on the buildings and he did not inform the authorities of the location of the facility. This clinic was not attacked.[799]

821. The LTTE had positions in the vicinity of the humanitarian facilities, which included a small position with a radio station and transmitter, reportedly taken off air as a result of the shelling.[800] Witness reports suggest that on 23 January, the LTTE fired from an artillery position located approximately 300 metres from the United Nations facility, but that there was no LTTE firing during the night of 24 January.[801]

PTK hospital and United Nations hub

822. PTK hospital was one of the most heavily hit medical facilities. It was located along the A35 highway about one kilometre from PTK junction. The Government-run hospital consisted of a complex of 10 main buildings and more than 20 auxiliary buildings. The hospital was marked with Red Cross emblems clearly visible from the air and in satellite images.[802]

823. After leaving Kilinochchi, the United Nations relocated some offices and staff to a United Nations facility in PTK, located 30-40 metres from the hospital.[803] More United Nations staff members relocated to PTK on 25 January due to heavy shelling inside the first NFZ, including on the United Nations hub (see above). The GPS coordinates of both the

793 WS on file; Written Communication sent from ICRC Head of Delegation to Lt. General S. Fonseka, Commander of Sri Lanka Army, 24 January 2009, LLRC Annexes, Annex 3, p.94. Available online at <http://www.llrcaction.gov.lk/assets/downloads/reports/en/Annexe-3_en.pdf>

794 Letter from UN Chief Security Advisor to Chief of Defence Staff, 4 February 2009. Available in LLRC annex <http://www.llrcaction.gov.lk/assets/downloads/reports/en/Annexe-2_en.pdf>

795 WS on file.

796 WS on file

797 WS on file

798 WS on file

799 WS on file

800 WS on file

801 WS on file

802 UNOSAT.

803 WS on file

hospital and the United Nations facility were known to the Government.[804] Witness statements indicate that there was frequent surveillance of the areas by the security forces using UAVs.[805] The SLA must therefore have been aware of the exact location of the hospital and adjacent United Nations facility in PTK.

824. PTK hospital and the United Nations facility were subjected to significant bombardments between 10 January and 6 February 2009. On 13 January, between 10 and 11 a.m., the hospital was directly hit by two rounds, reportedly fired from areas controlled by the SLA, causing damage to the buildings and severely injuring at least two patients.[806] In response to a letter from the United Nations referring to the attack, the Ministry of Foreign Affairs said that "the Sri Lankan Army categorically denies any involvement in [this] reported incident", reiterating its "zero civilian casualty policy" in its operations in the Vanni.[807]

825. Between 26 January and 4 February 2009, the area in and around PTK hospital came under renewed attacks by artillery shells and rockets fired, according to witnesses, from SLA positions.[808] Witnesses described multiple rounds falling sequentially on the hospital within a very short period of time, indicating the possible use of MBRLs by SLA.[809] Over 500 patients were inside the hospital, including people injured in earlier attacks on the first NFZ, as well as other civilians who had taken shelter in the hospital compound believing it to be a safe place.[810] The hospital was overcrowded and many patients were on the floor due to a lack of beds, as well as in hallways and outside, on the ground.[811] Witnesses told investigators that as shells fell, people ran to take cover, including several patients who ran towards bunkers located outside the hospital, carrying their intravenous drips with them.[812]

826. On 26 and 27 January 2009, shells and salvos of rockets were fired towards the hospital from the south and east, reportedly where SLA forces were located, causing damage to ambulances and other hospital vehicles.[813] The area was shelled again during the night of 28 to 29 January, using heavy artillery and MBRL fire.[814] On 29 or 30 January, one shell hit the male ward of the hospital, and two shells fell on the hospital grounds.[815]

827. On 1 February 2009, PTK hospital was hit directly with shells on three occasions reportedly fired from SLA positions around Oddusadduan, killing at least five people and injuring others, including children.[816] Between 3 and 4 p.m., two shells hit the hospital, the second killing at least one person.[817] A third attack, later in the evening, hit a ward with women and children, killing at least four patients and injuring at least 14 others.[818] The

[804] WS on file
[805] WS on file
[806] WS on file; LLRC report, paragraph 4.130.
[807] Letter from Sri Lankan Ministry of Foreign Affairs 15 January 2009, seen by OISL.
[808] WS on file
[809] WS on file
[810] WS on file
[811] WS on file
[812] WS on file
[813] WS on file
[814] WS on file
[815] WS on file
[816] WS on file; ICRC News Release 29/09, 4 February 2009, Vanni hospital evacuated - parties must do utmost to protect medical services and the wounded and sick.
[817] WS on file; ICRC, 2009, Sri Lanka: ICRC maintains support for hospital hit by shelling available online at < https://www.icrc.org/eng/resources/documents/interview/sri-lanka-interview-020209.htm>
[818] WS on file

hospital was hit again during the following evening, damaging the children's ward, reportedly killing seven people, including one medical staff member and a baby, and injuring 15 others.[819] The hospital's operating theatre was also damaged in an artillery attack, probably on 3 February.[820]

828. The attacks continued throughout the night of 3 February 2009, and intense shelling took place during the morning of 4 February.[821] At least 50 shells landed in the hospital grounds, causing deaths and injuries and extensive damage to the hospital buildings.[822] Five people were killed when shells fell near the entrance of the hospital.[823]

829. One hospital worker described the situation in the hospital by 4 February as "carnage", the likes of which she had never seen before.[824] Medical staff members were struggling to provide care to hundreds of injured patients, who continued to arrive, with medical infrastructure in ruins, and hospital personnel forced to hide in bunkers due to the ongoing shelling.[825]

830. Satellite imagery indicates that between 21 January and 5 February 2009, at least 10 primary buildings and 20 auxiliary buildings of PTK hospital were either severely damaged or destroyed. At least 30 rooftop impact craters consistent with artillery fire were identified across the hospital complex.[826] The images provide independent corroboration that PTK hospital was subject to significant bombardment while still operational during this period.

831. The Sri Lankan authorities had reportedly requested to the hospital management that PTK hospital be closed and patients and medical personnel moved to areas controlled by the SLA.[827] However, PTK was the only permanent hospital in the Vanni equipped with an operating theatre serving many patients.[828]

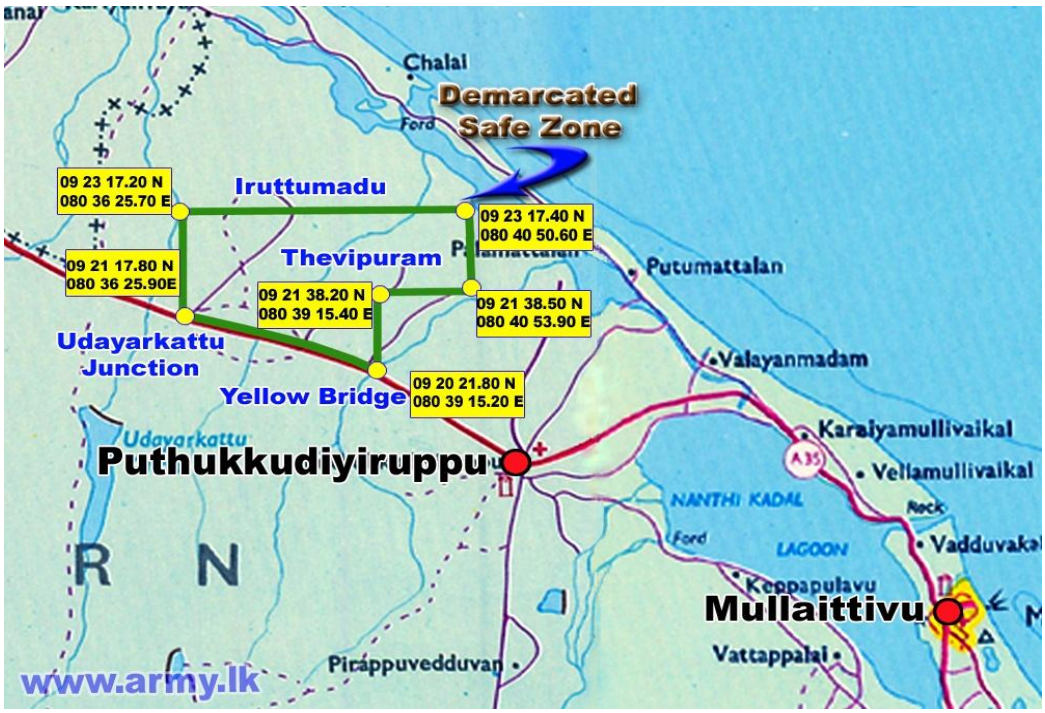
832. The Government and security forces were aware of the hospital's location and that it was functioning. The United Nations and other organizations present in PTK informed the Government and SLA on multiple occasions that the hospital was coming under attack.[829] On 2 February 2009, the Secretary of Defence, Gotabaya Rajapaksa, stated in a television news interview seen by OISL that PTK hospital was a legitimate target as it was located outside of the Government declared NFZ.[830] He stated "Nothing should exist beyond the No Fire Zone". When asked by the interviewer "Are you saying that if it is outside the NFZ it is a legitimate target", he replied affirmatively saying, "Yes, No hospital should operate in the area."

833. OISL received no information that PTK hospital was being used by the LTTE for military purposes. However, PTK was a strategic town for the LTTE[831] that held positions

819 WS on file
820 WS on file
821 WS on file
822 WS on file
823 WS on file
824 WS on file
825 WS on file
826 UNOSAT
827 WS on file
828 WS on file
829 WS on file
830 Sky News, 2 February 2009, "Packed Sri Lanka Hospital Shelled", <http://news.sky.com/story/667068/packed-sri-lanka-hospital-shelled>. Video footage available on https://www.youtube.com/watch?v=pKmM2qg95R0>
831 WS on file

on a bund located at least 400m from the hospital premises.[832] One witness reported that the LTTE fired mortars from a mobile position, possibly located closer to the hospital, but still outside of the hospital grounds.[833] LTTE military vehicles also passed along the A35 main road that ran alongside the hospital grounds.[834]

834. OISL has no information to suggest that the LTTE leadership took measures to prevent its forces from locating military positions close to PTK hospital, and no warning was given to civilians to vacate areas close to military positions.



Safe Zone declared on 21 January 2009 (source: Ministry of Defence)

Attacks on civilian objects in No Fire Zone 2

835. The second No Fire Zone (NFZ2), referred to officially as the Civilian Safety Zone (CSZ) was created on 12 February 2009[835] and stretched along a narrow strip along the coast, from Putumattalan in the north to Vellamullivaikkal in the south, and included the villages of Valayarnmadam, Ampalavanpokkanai and Karaiyamullivaikkal. It covered an area of 14 square kilometres, almost a third of the size of the first NFZ.[836] The creation of NFZ2 was communicated to the United Nations and other international agencies, as well as the Sri Lankan security forces on the ground, and was broadcast on the radio.[837]

832 WS on file
833 WS on file
834 WS on file
835 Memo from Chief of the Defence Staff, on file with OISL.
836 OCHA map on file with OISL.
837 Representation made by Commander of the Army, Jagath Jayasuriya to the LLRC 8 September 2010. Memo from Chief of the Defence Staff, on file with OISL. WS on file.

836. Many civilians had moved into this area prior to the creation of the NFZ2. Secretary of Defence Gotabaya Rajapaksa told the LLRC "once we realised that the LTTE had taken all the civilians from the [first] No Fire Zone out to another place, we shifted the No Fire Zone to that area".[838] However, available information indicates that the civilians had no other option to move from NFZ1 towards parts of LTTE-controlled territory, and since there were reportedly no safe corridors to move away from the shelling or the LTTE positions, even if they had wanted to.

837. The section below details some of the attacks on civilian objects in NFZ2 documented by OISL. As will be seen, the attacks increasingly impacted on civilians during this period. On 21 April, prompted by the intensity of the conflict and "mass casualties among civilians", the ICRC issued a press release calling on both parties to take "exceptional precautionary measures to minimize further bloodshed" in NFZ 2. It called on the LTTE to keep its fighters and military resources "well away from places where civilians are concentrated and allow civilians who want to leave the area to do so safely." It also called on the Government to "ensure that the methods and means of warfare they employ make it possible to clearly distinguish at all times between civilians and civilian objects on the one hand, and military objectives on the other. In this situation we are particularly concerned about the impact on civilians of using weapons such as artillery."[839]

Putumattalan hospital and the United Nations hub

838. On 5 February 2009, the United Nations, the ICRC, medical workers and Government officials relocated from PTK to Putumattalan (sometimes referred to as Mattalan) and Valayarmadam, on the coast.[840] As humanitarian agencies moved in convoy, they encountered shelling and airstrikes near Iranaipalai, and were forced to stop temporarily due to airstrikes along the road ahead.[841]

839. After the evacuation of PTK hospital, health workers established a makeshift hospital in a former school building adjacent to the road leading to PTK, on an area of raised ground near the shoreline of Nandi Kaddal lagoon.[842] The hospital was clearly marked with Red Cross emblem on the roof and the walls.[843] United Nations workers set up a small hub adjacent to the hospital, between the hospital buildings and the lagoon shore, which was identifiable as being a United Nations site as the United Nations flag was raised, and the Organizations' insignia was clearly visible on cars and trucks.[844]

840. GPS coordinates of the hospital and the United Nations hub were communicated to the Sri Lankan security forces who were positioned approximately one kilometre away across the lagoon, and could see the hospital and United Nations hub with the naked eye.[845] Government security forces were also aware of the location and function of the hospital and the United Nations hub via aerial surveillance.[846] Security forces present included the 53th and 58th Division and Task Force 8 of the SLA.[847]

838 Representation made by Gotabaya Rajapaksa to the LLRC, 17 August 2010.
839 ICRC New Release 09/81, 21 April 2009: ICRC calls for exceptional precautionary measures to minimise further bloodshed in "no-fire-zone.
840 WS on file
841 WS on file
842 WS on file
843 WS on file
844 WS on file
845 WS on file
846 WS on file
847 Information on file with OISL.

841. The LTTE had established positions on the shoreline of the lagoon, approximately 350 metres from the hospital,[848] but were not positioned between the hospital and the SLA on the opposite shore.[849] The LTTE positions were reinforced after the fall of PTK and, as fighting intensified in the area of Putumattalan in March and April 2009, the trenches were extended to within 100 metres of the hospital.[850] Injured LTTE cadres were treated in Putumattalan hospital, though they were kept separately, and there was no LTTE military presence in the hospital.[851]

842. Conditions inside the hospital were extremely difficult: the number of patients exceeded the capacity of the hospital, so patients were placed on mats and tarpaulins; due to a lack of equipment, for example, intravenous drips were hung from trees, and patients moved underneath.[852] Many civilians moved to the area around the hospital and the United Nations hub, setting up tents, many with white flags, in the belief that they would be safe from attack.[853]

843. OISL received information on multiple incidents of shelling of Putumattalan hospital and the adjacent United Nations hub between 9 February and 20 April 2009. During shelling on 9 February, 16 patients were reportedly killed in Puttumatalan hospital, and the boundary wall of the hospital was damaged.[854] On 12 February, humanitarian workers welcomed as "good news" that the area of the hospital fell within the second NFZ announced by the Government.[855] However, the shelling continued.

844. The day after the declaration of the NFZ, on 13 February, an artillery shell believed to have been fired by the Sri Lankan security forces landed in the kitchen tent of the hospital, killing at least three people, including two children.[856] Witnesses reported that during the night of 18 February, at least two patients in the hospital were killed when an artillery shell landed near the surgical ward, and six members of a family were killed when a shell landed on their shelter, on the edge of the hospital boundary.[857]

845. On 16 March, small arms fire and a rocket-propelled-grenade (RPG) that struck and damaged the roof of the hospital killed two people.[858] On 24 March, the hospital again came under small arms fire, artillery shelling and RPG attacks from SLA positions across the lagoon. Among at least three victims was one woman who was killed when an RPG hit her in the leg.[859] Later the same day, an RPG hit a civilian bus in the vicinity of the United Nations hub, killing one six-year-old boy.[860] The following day, on 25 March, one person was injured when the United Nations base came under RPG fire.[861] Early in the morning of 26 March, two health workers were injured when Putumattalan hospital came under

[848] UNOSAT.
[849] WS on file
[850] WS on file; UNOSAT.
[851] WS on file
[852] WS on file
[853] WS on file
[854] ICRC, 10 February 2006, News Release 34/09, "ICRC evacuates over 240 wounded and sick from the Vanni by sea"; WS on file.
[855] WS on file
[856] WS on file
[857] WS on file
[858] WS on file
[859] WS on file
[860] WS on file
[861] WS on file

renewed RPG fire.[862] Intense shelling of Putumattalan hospital continued in April. On or around 9 April, three people were killed by shells near the entrance of the hospital.[863]

846. The 58th Division of the SLA advanced on Putumattalan on 20 April. In his statement to the LLRC on 8 September 2010, the Commander of the 58th Division, Shavendra Silva, confirmed that he had been tasked with leading the operation to take Putumattalan which breached the LTTE defence lines. He said he was tasked "to do the biggest civilian rescue mission … in the world which was shown by the UAV pictures at Puthumathalan… My Division was tasked for this entire operation along with commandos and special forces…" He also confirmed that he had a UAV facility in his headquarters.

847. Exchanges of fire broke out between the LTTE and the SLA near the United Nations hub and the hospital, causing damage to the hospital buildings.[864] Many people were killed and injured: according to one witness, "doctors were unable to reach the dead and dying as the shelling and the amount of gunfire made it too dangerous for them.".[865] On 21 April, bombing from the air accompanied by artillery shelling set fire to tents housing hospital patients and their relatives, causing those who could to flee down to sand bunkers by the sea.[866]

848. Intense fighting continued in the NFZ, including around Putumattalan hospital, which the ICRC described as "nothing short of catastrophic". The ICRC expressed particular concern about the impact on civilians of using weapons such as artillery, and called on both sides to take extreme precautions, describing the context as "exceptional in that combat is occurring in a very densely populated area".[867]

849. Satellite imagery corroborates witness testimony gathered by OISL that Putumattalan hospital and the United Nations was shelled.[868] At least six impact craters were identified on the roofs of three separate hospital buildings. Several small temporary structures near the hospital were destroyed. The satellite images also show at least 20 more artillery impact craters within 400 metres of the hospital compound, some of which caused damage to the United Nations hub.

850. Witnesses alleged the use of cluster-type munitions by the Sri Lankan armed forces in their attacks on Putumattalan hospital and the United Nations hub.[869] Medical staff reported that they amputated the leg of a woman who had suffered injuries allegedly as a result of a "cluster bomb".[870] As indicated earlier, an investigation needs to be carried out to confirm that cluster munitions were used. RPGs were also fired by the SLA from positions across the lagoon, approximately 800 metres from where they hit.[871] From this range, RPGs would need to be fired indirectly in an upward parabola, hugely decreasing the accuracy of the weapon thus making such fire indiscriminate.[872]

862 WS on file
863 WS on file.
864 WS on file
865 WS on file
866 WS on file
867 ICRC, 21 April 2009, News Release 09/81, "ICRC calls for exceptional precautionary measures to minimise further bloodshed in 'no-fire zone'"
868 UNOSAT on file
869 WS on file
870 WS on file
871 WS on file
872 Munitions analysis carried out by OISL.

851. According to Major General Shavendra Silva, Commander of the 58th Division of the SLA, Government troops were shelling identified LTTE targets from their positions across the lagoon.[873] Satellite imagery does show that LTTE positions were hit in the shelling.[874]

852. In his statement to the LLRC, Major General Shavendra Silva denied hitting Putumattalan hospital and asserted that the facility was only used to treat LTTE fighters, that there were no civilians there. However, this would in no way change the nature of the hospital as a protected objected since LTTE fighters placed *hors de combat* by sickness or injury could not be targeted under international humanitarian law. However, testimony collected by OISL strongly contradicts this version of events. Putumattalan hospital was used to treat civilians, and came under repeated attack.[875]

Valayarmadam church and hospital

853. After leaving PTK, while many medical workers and the United Nations relocated to Putumattalan, some humanitarian organisations set up in Valayarmadam, some three kilometers to the south.[876] This location was also used as a temporary local government base.[877] Many civilians were sheltering in the church buildings in the same location.[878] A small hospital facility was located approximately 150 metres from Valayarmadam church.[879]

854. On 22 February, mortar shells from SLA positions were fired in the direction of Valayarmadam. One shell hit the local government base, killing a Government worker.[880] In mid-March, shells fired from SLA positions landed in an IDP area near the offices of a humanitarian organization in Valayarmadam, causing an unknown number of casualties.[881]

855. On 21-22 April 2009, the area in and around Valayarmadam was repeatedly shelled[882], including the church compound and the medical facilities. According to witnesses, the church and its compound were then packed with over 1,000 IDPs seeking shelter.[883] A humanitarian worker described the aftermath of the attacks: "it was a terrible sight: There were body parts blown everywhere. I even saw hands hanging on the trees. I saw human body parts all over the vehicles."[884]

856. Among the dead were five civilians killed when a shell or shrapnel landed in one of the IDP shelters. A mental health doctor was among those killed at the hospital. He had been part of a team providing counselling services to dozens of traumatized civilians, especially those who had lost family members due to the shelling. [885] It is not known how

873 Representation made by Major General Shavendra Silva, Commander of 58 Division of the Sri Lankan Army, to the LLRC, 8 September 2010.
874 UNOSAT.
875 Customary IHL, rules 28, 35.
876 WS on file
877 WS on file
878 WS on file
879 WS on file
880 WS on file
881 WS on file
882 WS on file
883 WS on file
884 WS on file
885 WS on file

many others were killed or injured, but one report stated that more than a hundred people died after being admitted into the hospital. [886]

857. Several witnesses again described bombs exploding overhead into "bomblets" before impacting on the ground during these incidents. One witness who was injured in the shelling said he could hear "a launch noise, the sound of the explosion and then as many as 40 or 50 smaller explosions which occur over a wide area". [887] Another such bomb landed on the roof of the hospital, but did not explode. [888]

858. The LTTE had an intermittent armed presence in and around Valayarmadam church. [889] Indeed, in March, the LTTE had raided the church and forcibly recruited dozens of young people who had sought refuge there to avoid recruitment by the LTTE or for safety (see Chapter XI on forced recruitment). However, witnesses said that there was no presence of LTTE military objects in or near the church at the time of the shelling in April, or that the LTTE fired from the church and its surrounding area when the church was shelled.

Attacks on food distribution queues

859. Witnesses involved in the distribution of food in the NFZ2 described how, on multiple occasions, people queuing for food were shelled. Prior to food distributions being set up, humanitarian agencies involved in the delivery of food informed the SLA of the location where the distribution was to take place. [890]

860. One witness reported the shelling of a queue of people waiting for the distribution of rice and lentils in Valayarmadam, on 11 March 2009. [891] The witness reported seeing a UAV flying overhead, which, he said, often preceded SLA shelling. The witness stated that minutes later, dozens of shells landed, killing a large number of people, including the witness' mother.

861. On or around 25 March 2009, at around 11 a.m., a centre distributing boiled rice to hundreds of people in nearby Ampalavanpokkanai, came under attack, reportedly from SLA positions in Kappapalavu. [892] One witness stated that the shelling lasted for approximately 15 minutes and that, during this time, some 50 shells fell, [893] killing a number of people. [894] Aerial surveillance aircraft were witnessed above the area during the distribution of food. [895]

862. In another widely reported incident in the NFZ2, on the morning of 8 April 2009, shells landed on a Primary Health clinic where milk powder was being distributed in Pokkanai [896]. [897] A rare commodity, the milk powder, had been delivered by ship a day or two before and had been announced over a loudspeaker to the local population who were

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[889] WS on file
[890] WS on file.
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[892] WS on file
[893] WS on file
[894] WS on file
[895] WS on file
[896] Also referred to as Ampanarpokkenai.
[897] WS on file

encouraged to go to the clinic the following morning. [898] The time and location of the distribution had also been communicated by humanitarian agencies to the Government.[899] Additionally, surveillance aircraft were flying in the area, which would have been able to see the queues of civilians, mostly women and children.[900] Furthermore, the SLA was located approximately 800 metres away.[901]

863. Witnesses told OISL that at least 50 people, including babies and young children, were killed in the attack.[902] They described seeing badly damaged bodies at the site of the explosions, and body parts scattered around. There was a scene of "devastation" at a nearby hospital where the injured were being treated: "there were so many women and children dead and injured there […] Some had injuries to the head and to the stomach; others, including children, had arms and legs blown off. The doctors were working frantically trying to save the lives of the injured."[903]

864. In none of the three incidents above did OISL receive any information of armed LTTE activity in proximity to the food distributions. Given that the SLAF were systematically informed of the location and time of food distributions, OISL has reasonable grounds to believe that they were deliberately targeted.[904]

Mullivaikkal hospitals

865. As a consequence of sustained shelling, Valayarmadam hospital was evacuated on or around 23 April 2009, and the clinic relocated to Mullivaikkal.[905] Families did not have time to bury their deceased loved ones as they rushed to find a safer place to stay.[906] One patient from Valayarmadam describes how he was carried to Mullivaikkal, where he was located in a tent with around 50 other patients.[907] Two medical facilities were established in Mullivaikkal - Mullivaikkal primary healthcare facility, and Mullivaikkal Hospital which, at that time, was the only hospital left in the NFZ2.[908]

866. Mullivaikkal hospital, also known as Mullivaikkal West, was a converted school building in Karayanmullivaikkal, and was clearly marked with white flags and the Red Cross emblem.[909] The GPS coordinates of the hospital were reportedly relayed to the Sri Lankan security forces on or around 26 April.[910] In addition, the Sri Lankan security forces conducted regular aerial surveillance of the area.[911] The hospital was located adjacent to a primary health care centre.[912]

867. As the situation in the NFZ2 became increasingly desperate, these remaining healthcare facilities were little more than makeshift structures in hastily converted

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[905] WS on file
[906] WS on file
[907] WS on file
[908] WS on file
[909] WS on file
[910] WS on file; Report of the UN Secretary-General's Panel of Expertson Accountability in Sri Lanka, 31 March 2011.
[911] WS on file
[912] WS on file; UNOSAT report on file.

buildings, overcrowded, and with acute shortages of medicines and other supplies. Medical personnel were exhausted.[913] One witness described this as being "a very distressing time to work. There was carnage all around. There were thousands of people wounded by shelling, bombing and now with RPGs and even rifle bullets". The operating theatre in Mullivaikkal was described as nothing more than a "shelter".[914]Another witness said the scene in Mullivaikkal was "indescribable": patients were lying outside in the sand due to a lack of beds, and bodies were decomposing in the heat.[915]

868. On 20 April, following intense shelling, the SLA cut NFZ2 into two parts after breaking through the LTTE defences. As a result some 100,000 civilians, as well as some LTTE cadres who had laid down their arms escaped from the LTTE-controlled area and passed into Government-controlled territory, where they were screened, interned in camps or taken into army custody as suspects. According to reports, around 150,000 remained in the lower part of the NFZ2[916]

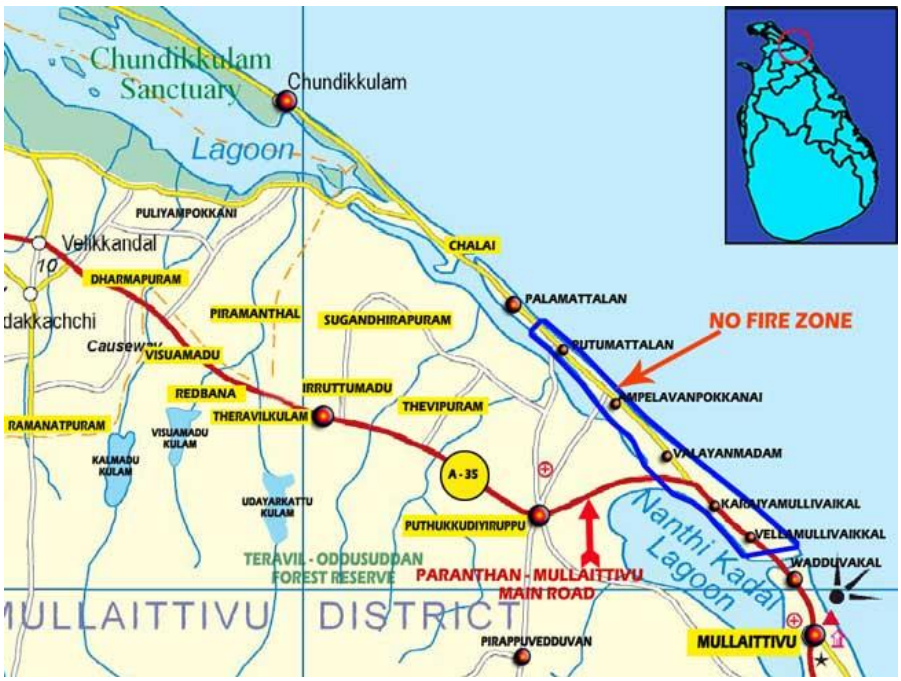
869. On 27 April, the Government had announced that the SLA had been instructed to end the use of heavy weapons. However, the shelling did not stop, and may even have intensified according to some sources.[917] From around 27 April, Mullivaikkal hospital, still in the NFZ2, came under repeated shelling from artillery shells fired from SLA positions in the direction of PTK.[918] On 28 April, at least six persons, including women and children, were reportedly killed when shells landed on the Primary Health Care facility.[919] On 29 April, shells damaged the roof of a hospital ward and nine patients died while 15 others were reportedly wounded.[920]

870. Shelling in and around the hospital on the morning of 2 May, when civilian activity was at a peak, caused heavy casualties.[921] One witness recalled seeing 30 or 40 bodies laid outside, some of them unrecognizable because of the severity of the injuries.[922] In addition, seven people died when a shell hit a bunker in the immediate vicinity to the hospital.[923] One witness described the scene: "there were many bodies everywhere and I could still smell the smoke from the shells hanging in the air. The smell of blood and the screaming from the injured was overwhelming. There were many women and children dead."[924]

871. Satellite imagery seen by OISL confirms that the medical facilities in Mullivaikkal were subject to artillery fire and were damaged as a result.[925] At least eight separate impact craters were identified on the roofs of four hospital buildings in the compound of Mullivaikkal hospital. At least two mortar impact craters were identified in the adjacent compound of the primary healthcare facility. The satellite imagery shows that these impacts were part of a larger bombardment that spread across Mullivaikkal district, and the NFZ2.

913 WS on file
914 WS on file
915 WS on file
916 WS on file
917 WS on file
918 WS on file
919 WS on file
920 WS on file
921 Internal document on file with OISL; WS on file.
922 WS on file
923 WS on file
924 WS on file
925 UNOSAT, on file with OISL.

872. As stated in Chapter III, at that stage of the conflict, the LTTE were no longer an organized, coherent fighting force. In Mullivaikkal, groups of LTTE soldiers were mixed with the civilian population, and the LTTE had set up some small positions near Nandi Kaddal lagoon, at least 200 metres from the hospital.[926] Based on information from satellite images and witness testimonies, OISL does not believe that the LTTE had military positions within Mullivaikkal and Valayarmadam hospitals.



Safe zone declared on 12 February 2009(source: Ministry of Defence)

Attacks on No Fire Zone 3 and the final days of the armed conflict

873. On 8 May 2009, the third and final NFZ was announced by the Government. Following SLA advances, the new NFZ3 included the small remaining central part of the NFZ2 still under LTTE control, covering less than two square kilometres. Communications announcing the NFZ3, including maps, was submitted to international organizations and were sent to SLA commanders, including those of the 53th, 55th, 58th and 59th Divisions of the SLA which surrounded the area.[927] Civilians were reportedly informed of the NFZ3 through the dropping of leaflets.[928]

874. Tens of thousands of civilians were squeezed into this tiny area. The SLA was on one side of a large lagoon, the LTTE on the other, the civilians being at some distance behind the LTTE.

926 WS on file
927 LLRC Report, paras. 4.44 – 4.88.
928 LLRC Report, para. 4.45.

875. According to the transcript of his statement to the LLRC[929], General Shavendra Silva, the Commander of the 58th Division, who was leading the military operations on the ground, stated: "At the last stages of the operation we just did not go blind, everything was planned through UAV pictures and where we exactly knew where the civilians and the LTTE were and where we found that at least a little bit of confusion whether the civilians are too close to the LTTE cadres we had to resort to other means and buy time to separate the two parties."

876. Witnesses, however, described the continuous shelling and devastation as the shells hit the ground: LTTE artillery was on the front line ahead of the civilians until 12 May according to one source, but firing from the SLA would pass over the LTTE front line "and impact on the civilians behind it".[930] He said that everyone was squeezed into a small piece of land and practically each time a shell fell, people would be injured and killed. Another witness said he saw nine people being killed when a shell hit a mango tree by a well where they had gathered. One saw a woman killed when a shell hit her bunker… she had a sewing machine and used to make cloth bags to fill with sand for the bunker. "Often, people fled when family members were killed – they had no time to mourn or bury the dead…" Another witness described seeing seeing more than a 100 dead bodies, including children, near his bunker.

877. There was only one health facility for all the civilians in the area, located in Vellmullivaikkal, also known as Mullivaikkal East.[931] The facility was located in a small former school, as well as additional tarpaulin and temporary tented structures, and was surrounded by many shelters housing civilians.[932]

878. Between 8 and 12 May the facility was shelled on several occasions as the NFZ3 came under intense daily bombardment by SLA artillery, the air force and the navy.[933] Both sides were also firing small arms, causing further risks given the proximity of the fighting.

879. According to witnesses, at around 8 a.m., on 12 May, shells fired by SLA fell directly in front of the admission ward of the facility, killing at least 20 people, including a district health administrator, medical volunteers, a nurse, and many patients[934]. Many died instantly, others succumbing to injuries, some as a result of lack of medical care and medicine.

880. The shelling occurred at a busy time of the day, with many injured civilians from earlier attacks waiting for their treatment[935]. One witness told OISL: "There were so many dead bodies that they could not be separated. There were pieces of bodies everywhere…" [936] "It was a terrible sight, with people dead and dying everywhere inside the hospital", said another source. [937] A third witness described how there were many injured patients and

[929] Representation made by Major General Shavendra Silva, Commander of the 58 Division of the Sri Lankan Army, to the LLRC, 8 September 2010.
[930] WS on file
[931] WS on file
[932] WS on file
[933] WS on file
[934] Documentation on file with OISL, including individual photos of 20 dead.
[935] Many of the civilians awaiting treatment had reportedly been injured, including many children, in shelling attacks on temporary shelters on 9-10 May, during which many other civilians were reportedly killed.
[936] WS on file
[937] WS on file

many dead bodies all together in one place, people crying all around. Medical supplies were almost exhausted. [938]

881. Later the same day, a shell landed near a tent accommodating hospital staff and volunteers, killing a nursing assistant and causing serious burns to six others.[939] At least two witnesses indicated that at that time, patients were being brought in with unusual burns, one of them describing the different parts of the body of the patients being blackened, with skin like "black charcoal". [940]

882. By 13 May, with shells falling all around, sometimes into the compound, the only treatment that could be given was basic first aid and medication[941]. During that time, the ICRC ship – which at that stage would have been the only possibility for taking patients for life-saving medical treatment - was not able to approach the shore because the shelling and gunfire was continuing[942] ,delaying much-needed treatment: "Evacuating the wounded and sick, among them children and elderly people – whose lives are in danger is the only way they will be able to receive suitable medical treatment: they need to be evacuated as soon as possible". By 14 May, the remaining makeshift hospital stopped functioning, as the shelling was getting closer and heavier.[943]

883. Medical personnel were seen putting up a white flag and moved some patients to shelter, then, with the patients who were able to, they started to walk towards the Vadduvakal bridge to the south.[944] Some 150 patients were left behind, as their injuries were too serious for them to be moved and they could not be evacuated by ship.[945]

884. The final days of the conflict in mid-May saw the remaining thousands of civilians, including members of the LTTE, as well as LTTE fighters who had put down their weapons and were now *hors de combat*, walk over to the bridge into the hands of Government troops.

885. Multiple witnesses described scenes of devastation, with hundreds of bodies of people killed by shelling scattered across areas within the NFZs.[946] Entire families had been killed as bombs landed in bunkers they were sheltering in. Witnesses talked of having to leave dead family members behind as they were further displaced by the shelling. Many witnesses were profoundly traumatized by their experiences and memories of the shelling and the devastation they witnessed.

886. Witnesses described the exhausted physical condition of the civilians as they eventually started to move toward the Government-controlled areas. People, including patients, were starving, children were visibly malnourished, and the elderly were very weak.[947]

887. OISL is concerned by serious allegations that SLA may have destroyed evidence after the end of the conflict, including by digging up and burning bodies that had been buried in the conflict zone. In addition to those who died in hospitals, multiple witness

[938] WS on file
[939] WS on file
[940] WS on file
[941] WS on file
[942] ICRC News Release 09/97, Fighting hinders further ICRC evacuations of severely wounded people.
[943] WS on file
[944] WS on file
[945] WS on file
[946] WS on file
[947] WS on file

testimonies recount burying civilian family members or seeing others bury individuals killed in the shelling before they hurriedly fled. There has been no systematic recording of the exhumation of graves since the war. Extensive forensic anthropological expertise will be required to examine those bodies that were buried and may be exhumed as part of investigations.

Safe Zone declared on 8 May 2009(source: Ministry of Defence)

Situation as at 13 May 2009 (source: Ministry of Defence)

XIV. Controls on movement

Introduction

888. Controls on movement by the LTTE date back many years before the start of the period covered by this investigation, notably by a pass system that was used to grant permission for leaving LTTE-controlled areas. The pass system was implemented with varying degrees of severity. From the beginning of 2009, however, the restrictions became more severe and the pass system was stopped other than for urgent medical cases.

889. This section examines the increasingly coercive controls and restrictions that the LTTE placed on the movement of civilians in the territories they controlled, the manner in which they prevented civilians from leaving, and related abuses and crimes. It also considers whether these actions amounted to using the civilians as human shields in accordance with international humanitarian law. These controls and restrictions on movement should also be considered in conjunction with the previous section on attacks on civilians and the location of LTTE military assets.

890. International human rights law guarantees to every person lawfully present within a territory the right to liberty of movement and freedom to choose one's residence.[948] This right can be subject to restrictions provided by law and necessary to protect national security, public order, public health or morals or the rights and freedoms of others. Any measures limiting the right to freedom of movement are nonetheless to be governed by the principle of necessity and the need for consistency with other guaranteed human rights.[949] Any restrictions not compliant with the conditions set out above amount to arbitrary interference with the right to freedom of movement.

891. In an armed conflict situation, parties to the armed conflict may evacuate or move individual civilians or the civilian population to the extent the security of the civilians involved or imperative military reasons so demand.

892. Arbitrary restrictions on the movement of individuals or groups may unduly infringe on a series of human rights, such as the right to adequate housing, the right to an adequate standard of living (including food, water, sanitation, etc.), the right to education, the prohibition of torture or inhuman treatment, the right to liberty and security of person and, under certain circumstances, even the right to life.[950]

893. For this reason, duty-bearers are required not only to refrain from forcibly displacing individuals or groups or from arbitrarily restricting their movement but also to take measures aimed at improving the situation of those who have been forcibly displaced or whose movement has been restricted due to circumstances such as armed conflict or natural disasters.

894. Controls and restrictions on movement as a result of the LTTE pass system pre-2009

[948] Article 12 ICCPR."Liberty of movement is an indispensable condition for the free development of a person. It interacts with several other rights enshrined in the Covenant, as is often shown in the Committee's practice in considering reports from States parties and communications from individuals." General comment no. 27 on Freedom of movement (article 12), CCPR/C/21/Rev.1/Add.9, 1999, para. 1

[949] Ibid, para. 2.

[950] See in general A. F. Bayefsky and J. Fitzpatrick (eds.), Human Rights and Forced Displacement, Brill/Nijhoff, 2001; G.S. Goodwin-Gill and J. McAdam, The Refugee in International Law, 3rd edn, Oxford University Press, Oxford, 2007.

895. In the early 1990's, the Head of the LTTE's Intelligence Wing, Pottu Amman established a pass system to restrict entry to and exit from the LTTE-controlled areas. Between 2002 and 2006, following the Ceasefire Agreement, movement was less restricted between the LTTE and Government-controlled areas. The LTTE at that time issued everyone over the age of ten a Transport Admission Card[951] and individuals and families were able to leave and enter LTTE-controlled areas with relative ease.

896. The easing of LTTE restrictions for travel between Government and LTTE-controlled territories was not, however, without controls. Entry and exit checkpoints continued to be operated by both parties, resulting in questioning, searches of vehicles and sometimes acts which reportedly amounted to harassment, particularly by the SLA.

897. With the collapse of the ceasefire in 2006, however, the LTTE reintroduced its earlier practice of issuing single entry and exit passes. [952] As in earlier years, anyone living in LTTE-controlled areas who wished to travel into the Government-controlled areas had to obtain written approval from the LTTE. The travel pass indicated the length of time the traveller could remain outside LTTE-controlled areas.[953]

898. Those living in LTTE-controlled areas did not have an automatic right to a travel pass, the pass was for a single trip, and there were restrictions on who could obtain one. A pre-requisite for obtaining a pass was that the traveller had to designate a family member as a guarantor vouching for the traveller's return. This requirement was strictly enforced by the LTTE, including when issuing passes to UN national staff.[954]

899. In the event that a pass was issued and the traveller failed to return to the Vanni, the nominated family member could risk punishment by the LTTE.

900. The pass system effectively tightened the LTTE's control over the civilian population and ensured that those who left LTTE areas would return. There was a belief, for example, that if people stayed outside the Vanni for prolonged periods, they would increasingly risk being subjected to Government pressure to divulge information on LTTE activities.[955] Several witnesses indicated that they were frequently told by LTTE cadres that its struggle would lose credibility or legitimacy if the people they professed to be fighting for left the Vanni.[956] The LTTE maintained that every Tamil had a moral obligation to support the LTTE's struggle and hence could not leave.[957]

901. The LTTE's pass system became closely linked to its policy of recruitment, including forced recruitment of civilians, either for military purposes or for forced labour, including the construction of LTTE military fortifications (mostly earthen bunds and trenches). [958] When applying for a travel pass, a certificate, issued by the LTTE Political Wing, would need to be produced attesting that a family member had already been

[951] Trapped and Mistreated, LTTE Abuses Against Civilians in the Vanni, Human Rights Watch, December 2008.
[952] WS on file
[953] WS on file
[954] S.S v The Netherlands, Communication No. 191/2001, U.N. Doc. CAT/C/30/D/191/2001 (2003), case examined by CAT Committee where in 1996 the complainant wanted to travel to Trincomalee to pay tribute to his deceased mother but was refused a travel pass by the LTTE because he did not have anyone to vouch for him.
[955] WS on file
[956] WS on file
[957] WS on file
[958] WS on file

recruited. [959] Families who had not provided the LTTE with a recruit were denied travel passes.[960]

902. Since the LTTE required a large pool of potential recruits, young people considered suitable for active service risked not being allowed to leave, as in the case of one young woman interviewed by OISL who was prevented from leaving in 2006. She later managed to escape. [961]

903. According to one source, families who provided land or other monetary or material assistance to the LTTE were sometimes exempt from "volunteering" a family member and usually were granted authorisation to leave the LTTE area.[962] According to a Human Rights Watch report, families who wanted to leave the area permanently had to hand over all their property, including land, to the LTTE.[963]

904. As the conflict intensified in 2008, the pass system became more and more restrictive to the point where passes were no longer issued except for urgent medical cases referred by a medical doctor for treatment not available in the Vanni. According to a credible source, the LTTE even exercised some control over the medical referral process.[964] LTTE cadres were assigned the responsibility to oversee and authenticate the personal details and medical condition of individuals who were being referred by doctors for treatment outside LTTE-controlled areas.

905. By the end of 2008, therefore, as military operations in the north began to intensify, the civilians in the Vanni were already enduring severe controls and restrictions on movement: they had no option but to stay in the LTTE-controlled territories, whether they wanted to or not.

Introduction of coercive measures to restrict movement - 2009

906. By early 2009, measures to prevent people from leaving became increasingly coercive as the LTTE was gradually losing ground, the conflict intensified and people were becoming more desperate to leave with the SLA advancing. It emerged clearly from numerous statements received by OISL that in early 2009, most likely January, there was a decision by the LTTE leadership to prevent all civilians from leaving if they tried.[965]. The LTTE Military Wing was instructed to implement the policy.[966] Some sources said that the instructions to military cadres were to shoot at the ground if those fleeing refused to turn back, and to seek instructions from commanders if they still refused to retreat.[967]

907. OISL received conflicting information as to whether the senior leadership had given instructions to shoot directly at those who tried to leave. At least one source said they heard a senior leader giving orders to military cadres to shoot people if they tried to leave. On the other hand, one source alleged that when such a shooting incident occurred those responsible were punished by LTTE leaders, though OISL could not confirm this.[968] OISL

[959] WS on file
[960] WS on file
[961] WS on file
[962] WS on file
[963] Trapped and Mistreated, LTTE Abuses Against Civilians in the Vanni, Human Rights Watch, December 2008.
[964] WS on file
[965] WS on file
[966] WS on file
[967] WS on file
[968] WS on file

can therefore not confirm whether the killings reported below were part of an official policy, or the actions of individual cadres.

908. Witnesses stated that the LTTE told the civilians that they could not leave because the international community would intervene to protect them. Several sources suggested that the reason why the civilians were not allowed to leave was also because some of the LTTE leaders believed that high civilian casualties as the SLA advanced would provoke the intervention of the international community.[969]

909. Available information suggests that the LTTE put in place physical measures to prevent people from leaving its controlled areas, including the creation of checkpoints and sentry positions. These positions together with LTTE mobile patrolling units were seen stopping civilians attempting to cross into Government-controlled areas.

910. Witnesses described how LTTE cadres blocked their path as they tried to leave the conflict area, forcing them to retreat. There were allegations that some were threatened and subjected to intimidation. In some instances people were beaten, following which some were forcibly recruited by the LTTE to participate in military work such as to build trenches along LTTE's frontline positions.[970] Fear of reprisals was often sufficient to deter many from leaving. [971]

911. On 9 February 2009, a female suicide bomber crossed over and blew herself up at an IDP registration point at Vishwamadu, Mullaitivu District, killing a number of soldiers and at least eight civilians, including a child. The United Nations spokesperson in Sri Lanka at the time stated "the UN deplores the attack that killed and endangered the lives of innocent civilians, especially those fleeing the fighting."

912. The Government claimed that all the civilians were "held hostage" or used as "human shields" and their goal was to liberate them. Some witnesses told OISL that they moved with the LTTE because they believed that the LTTE would successfully counter the SLA forces and a ceasefire would be announced, or they believed that the international community would intervene. Some said they felt a sense of moral obligation to follow the LTTE who they believed were fighting for the Tamil people.

913. A number of witnesses also said that they remained in the LTTE areas because they feared being caught in the crossfire whilst attempting to cross the frontline positions. "Between a combination of the LTTE preventing the people from leaving the Vanni and the dangers of trying to cross over the front lines between combatants (and often mines) we were helpless and trapped", stated one witness[972]. Others said that they felt they could not leave because they had a family member or relative with the LTTE – including those who had been forcibly recruited. Several others had relatives who were too old, sick or injured to leave and therefore decided to stay in the Vanni.

914. Many also feared harassment or abuse by the SLA if they crossed to the other side.[973] Several witnesses cited fear of sexual harassment and abuse, of being falsely accused or being perceived as LTTE supporters and being "white vanned" and disappeared by the SLA. Others expressed apprehension regarding the screening process and subsequent deprivation of their liberty that they would be subjected to in Government-managed IDP camps.

[969] WS on file
[970] WS on file
[971] WS on file
[972] WS on file
[973] WS on file

915. The available information suggests, nevertheless, that these fears were also manipulated by the LTTE in such a way as to discourage people from leaving the Vanni. The LTTE held public meetings where they warned people of ongoing abuses by the SLA.[974] At a meeting in April 2009, LTTE leaders reportedly used the fear of women being raped as a reason for justifying preventing people from leaving the Vanni.[975]

916. Witnesses described fears of punishment from the LTTE if they tried to leave and this exacerbated their constant state of panic at being forced to stay in an area that was under almost constant attack by the SLA. Witnesses told OISL that they continue to suffer from the psychological trauma of feeling trapped while exposed to artillery strikes and gunfire.[976]

917. Most of the cases of shootings reported to OISL were related to shots fired in the air or on the ground. In several cases, armed LTTE military cadres shot directly at civilians attempting to flee, reportedly causing fatalities. In some of these cases ricocheting bullets caused injuries (see below). Most of the incidents reported to OISL occurred in March 2009 and a few in April.

918. In spite of this policy of forcing tens of thousands of civilians to remain in an area which was constantly being shelled, with high civilian casualties, and in spite of the attempts by the LTTE to prevent people leaving through threats and violent means, an increasing number tried to do so. Many testimonies indicate that in the last few weeks of the conflict, most civilians, as well as some cadres, were desperate to leave because of the intense shelling and shooting, forced recruitment, multiple displacement, lack of food, water and sanitation, and they were prepared to risk being caught in cross fire or be subjected to reprisals from the LTTE.

919. People escaped by night[977] when they would not be seen, although in doing so they risked being shot at by the SLA. Others were able to escape by negotiating with local LTTE cadres they knew.[978] For example, on 4 February, a group of about 50 families who were initially denied permission to leave finally managed to obtain authorisation from a local commander that some of them knew. In spite of shooting from both parties, they crossed the lagoon carrying white flags on a stick.[979] About 100,000 fled when the Government forces broke through the LTTE defence lines on 20 April.

920. On 14 May, according to reports, LTTE leader Prabhakaran gave orders which were made public that the population were free to leave and would not be stopped by the LTTE.[980] Tens of thousands then crossed over into Government-controlled territory.

Specific incidents of reprisals for trying to leave the Vanni

921. A number of sources told OISL that they had heard of people being shot, or shots being fired, when civilians tried to leave. OISL received information from other sources about a number of specific incidents, including allegations of several incidents in which civilians were reported to have been killed. One witness described how, in the middle of the

974 WS on file
975 WS on file
976 WS on file
977 Although the civilians often tried escaping by night, the leaflets which OISL has seen calling on civilians to cross over repeatedly indicate they should do so during the day.
978 WS on file
979 WS on file
980 WS on file

night, on an unspecified date, they and about 40 or 50 others tried to get to a ship which was bringing in humanitarian supplies, but that the LTTE had set up sentry points by the water and threatened to shoot them if they tried to get past. They tried another route but were again stopped by the LTTE, whom they identified as new recruits because of their uniforms and because they looked like teenagers. According to the account, when one of the group started shouting at the cadres to let them go, one of the cadres fatally shot him in the chest.[981] The group were reportedly later blocked by a small group of teenagers armed with rifles who were visibly distressed at their task. Eventually they let the group move forward.

922. In another incident on 4 February, at Udayaarkaadu, hundreds of civilians, including children, were stopped by a group of armed LTTE military cadres as they tried to cross a paddy field towards the Government side.[982] The civilians were told to retreat but they kept moving. The cadres reportedly fired warning shots in the air and then on the ground causing bullets to bounce up towards the crowd. Several persons were reportedly injured on the legs from the ricocheting bullets and one person was killed as a result. [983] Bullet injuries to the lower legs were also described in another case, which reportedly occurred in April when two men were shot as they tried to leave. It is not clear whether the injuries were due to direct shots or ricocheting bullets.[984]

923. Other shooting incidents, reported in March, include the shooting and injuring of a 12-year-old girl. She was with her young sister and parents as they moved towards the lagoon to leave. LTTE cadres arrived and shot at them, injuring the girl in the thigh and causing the family to fall into the water. They were brought back to the shore by the LTTE and the girl was taken for treatment.[985] One of the cadres told the witness that they had orders to shoot at people if they tried to leave.

924. In another incident, on or around 20 March, thousands gathered on the beach after at least one very young child was killed, reportedly when the LTTE fired shots to prevent the crowd from leaving the previous night. Some reports indicate that others were also killed as they tried to flee. The protesting crowd pleaded to be taken on an ICRC ship that had arrived to deliver humanitarian assistance and evacuate seriously ill patients. Witnesses said that people were shocked and disillusioned after these incidents because they never expected the LTTE to treat the people in that way".[986] The crowd was eventually dispersed by several hundred LTTE cadres. Senior LTTE leader Elilan who was the then head of the LTTE's recruitment wing, was among those reportedly involved in the incident at the beach.

925. In another reported incident in March, almost a thousand people tried to escape across the lagoon. The LTTE had set up sentry points near the water, however. Some of those who tried to escape were beaten with sticks and PVC pipes. Men were reportedly taken away to build bunkers. Several young people, including children aged approximately 14 years old were reportedly forcibly recruited causing distress to them and their families. [987]

926. Witnesses described another incident on 22 April after intense SLA shelling, including immediately around Putumatallan Hospital, when thousands of civilians

[981] WS on file
[982] WS on file
[983] WS on file
[984] WS on file
[985] WS on file
[986] WS on file
[987] WS on file

attempted to leave the LTTE-controlled area. According to witness testimony, the LTTE threatened them and fired shots into the air to scare them, in an attempt to force the crowd to retreat [988]. Later that same night, they managed to escape from the LTTE-controlled area in spite of the continued shelling and shooting, reportedly coming this time from the SLA positions. According to witness testimony, people were very desperate to flee the fighting and began walking towards the Nandi Kaddal lagoon, some carrying their friends or relatives who were unable to walk due to injuries or exhaustion. The LTTE did not attempt to stop them this time, and some cadres even helped them. Unconfirmed reports suggest that some of those trying to cross may have been killed by the SLA shooting, because at the time there was no counter fire from behind where the LTTE military was located.[989]

927. In other cases, individuals were reportedly beaten by the LTTE, such as one man when he tried to leave with a crowd of some 200 individuals on 18 March. The LTTE was ultimately not able to control the angry crowd, who were then able to leave. Another witness recounted being beaten with a stick by LTTE cadres when she tried to leave and saw others also being beaten. Witnesses said people were desperate to leave, even though they risked also being shot by the SLA as they crossed over.

928. In one incident, around 14 March 2009, near PTK, the LTTE reportedly physically assaulted a couple and prevented them from leaving. [990] The man was forcibly taken by the LTTE for what she believes was military duties close to the LTTE's frontline positions, though he managed to escape a few days later.

Restrictions on the movement of national humanitarian workers and their dependents from LTTE areas

929. National UN and INGO staff from the Vanni who were engaged in humanitarian work were also obliged to obtain passes to leave and enter the Vanni when they were reintroduced from 2006.[991] As will be seen, this became a critical issue when national staff wanted to leave the conflict zone in the final phases of the conflict as many were refused permission to do so. Until the fall of Kilinochchi, an LTTE liaison officer was in charge of dealing with pass applications for the movement of locals working with humanitarian agencies.[992] Any travel by a national staff member from LTTE-controlled to Government-controlled areas required both an LTTE pass and a clearance from the Sri Lankan Ministry of Defence.[993]

930. In September 2008, shortly after the Government instructed international humanitarian agencies to leave the Vanni for security reasons, the UN requested travel passes for its national staff and their dependents. In subsequent engagement with LTTE Political Wing leaders, the UN urged them to comply with the LTTE's obligation under international law to ensure the protection and freedom of movement of civilians. [994] A few but not all national staff were eventually granted passes but passes for all dependents were

[988] WS on file
[989] WS on file
[990] WS on file
[991] Report of the Secretary-General on children and armed conflict in Sri Lanka, S/2007/758, 21 December 2007.
[992] WS on file
[993] International humanitarian workers wishing to travel to the Vanni did not need an LTTE pass and only had to register with the LTTE on arrival and departure from its controlled areas.
[994] Internal UN communication on file with OISL, 15 January 2009.

refused.[995] [996] The LTTE leadership told United Nations officials that they would be failing their obligation and duty to protect the people if they allowed civilians to enter the Government-controlled area.[997]

931. In January 2009, shortly after the UN (mainly national) staff and dependents relocated from Kilinochchi to Puthukkudiyiruppu (PTK) attempts were again made to request the LTTE leadership to authorise their movement and that of their dependants. The LTTE again responded negatively. The LTTE reportedly told the UN that the LTTE would not issue any more passes to UN national staff or their families.[998]

932. On 21 January 2009, more than 100 national staff members of the United Nations and their dependents were prevented by the LTTE from leaving PTK as part of a United Nations humanitarian convoy (Convoy 11), which was to travel to Vavuniya. According to witness accounts, the convoy comprised approximately 50 UN lorries, seven of which were carrying the national staff and their dependants. The convoy was stopped by LTTE police approximately 100 metres from the UN facility just after it set off. The police were reportedly heavily armed with automatic weapons and were accompanied by LTTE cadres who were armed with RPGs.[999]

933. According to an eye-witness account[1000], an LTTE commander was present, as well as a large number of cadres and police, several of whom were also armed with heavy weapons and small arms and others with sticks. [1001] LTTE police began hitting the sides of the United Nations vehicles with sticks and shouting at those inside to get out, causing fear among the staff and their dependants – predominantly women and children. Some LTTE police personnel attempted to force them out of the vehicles. The cadres and a group of protestors who gathered around accused them aggressively of being traitors who were trying to leave the Vanni while their own people were being killed.[1002]

934. The United Nations was unable to negotiate passage for the national staff and the convoy had to return to the United Nations base in PTK. On their return, they found LTTE cadres and police inside the UN facility. Some staff and dependents were reportedly threatened with arrest for trying to leave, while other LTTE cadres began filming them. The UN staff eventually managed to get the LTTE to leave the compound. However, the LTTE continued to refuse requests by the UN to allow its national staff and their dependents to leave the Vanni. A number of them eventually succeeded in escaping prior to the end of the conflict.[1003]

995 WS on file

996 UN correspondence with Mr B Nadesan, Head-Political Wing, LTTE, 21 August 2008, 15 September, 17 September, 19 September 2008, on file with OISL.

997 WS on file

998 WS on file

999 WS on file

WS on file

1001 WS on file

1002 WS on file

1003 WS on file

XV. Denial of humanitarian assistance

Introduction

935. Although LTTE controlled territory, the Government had for many years maintained a presence in those areas through Government Agents, and provided services, such as education and health. It also provided humanitarian assistance to the war-affected displaced and the tsunami-affected populations, with assistance also provided by the United Nations and other international humanitarian organisations. However, the provision of humanitarian assistance by these organizations, even in the years before the final phase of the conflict, was often challenging, with restrictions on access and on the transportation of certain goods. Humanitarian workers were frequently suspected or accused by the Government of having links with the LTTE[1004], and consequently suffered violations and abuses.

936. In its final report, the LLRC concluded that "having examined the material before it, the Commission is of the view that the Government of Sri Lanka with the cooperation of the international community, in particular the agencies referred to above as well as civil society groups had, in a spirit of international cooperation and solidarity, taken all possible steps in getting food and medical supplies and other essential items across to the entrapped civilians despite enormous logistical difficulties" (paras 9.19 and 9.20).

937. However, this chapter describes the increasing obstacles that humanitarian organizations faced in providing humanitarian assistance during the last few months of the conflict, as the SLA continued its advance into LTTE-controlled territory. In September 2008, humanitarian actors were forced to leave Kilinochchi, where most of them had a hub. From then on, the delivery of humanitarian assistance not only became increasingly difficult, but the quantities and nature of the supplies authorized for delivery did not meet even the basic needs of the civilian population for adequate food, water, sanitation and life-saving healthcare, which had a devastating impact.

938. With regard to international law in relation to humanitarian relief, OISL recalls that human rights, among them the right to an adequate standard of living (including necessary subsistence rights, such as the right to adequate food, water and housing), to education, and to physical and mental health continue to apply during armed conflict. Duty-bearers under human rights law have a core obligation to ensure the satisfaction at least to a minimum essential level of these rights[1005], including by providing essential foodstuffs, essential primary health care, basic shelter and housing, as well as the most basic forms of education[1006]. Furthermore, the obligation to ensure that basic needs of the civilian population are met is also recognized under international humanitarian law. International law prohibits the intentional use of starvation of the civilian population as a method of warfare by depriving them of objects indispensable to their survival, including by wilfully impeding relief supplies. Such conduct would also amount to a war crime under customary international law.[1007]

1004 Confidential NGO submission.

1005 CESCR, General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2 (1) of the Covenant), para.10.

1006 Ibid., para. 10, CESCR, General Comment no. 12 , para. 6; General Comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12), para. 47; and General Comment No. 15 (2003) on the right to water (arts. 11 and 12 of the Covenant), para. 40.

1007 ICRC Database on *customary international humanitarian law*.

939. Despite the Government's assurances that it sent in sufficient supplies throughout, the information presented in this chapter raises serious questions about its intentions in limiting the amount of food, medical and other supplies that reached the Vanni. It examines to what extent the Government thus breached IHL and IHRL, and whether it subordinated the rights of the civilian population in favour of its military strategy. There are also serious questions as to why the Government blocked almost all international humanitarian actors from the conflict area when it was clear that it was unable or unwilling to supply the necessary assistance.

940. On 29 January 2009, former High Commissioner for Human Rights Navi Pillay drew attention to "the perilous situation of civilians after many months of fighting, multiple displacement and heavy rains and flooding" and the lack of access for independent monitors and humanitarian workers, which, she said, only raised concerns that "the situation may be worse that we realise".

941. Five months later, on 14 May 2009, the ICRC summed up the desperate humanitarian situation in a press release describing "an unimaginable humanitarian catastrophe "[1008]. Despite high-level assurances, the lack of security on the ground means that our sea operations continue to be stalled, and this is unacceptable. No humanitarian organization can help them [the civilians] in the current circumstances. People are left to their own devices… We need security and unimpeded access now in order to save hundreds of lives." The press release went on to describe the situation of thousands of civilians who had sought protection in bunkers, "making it even more difficult to fetch scarce drinking water and food."

Government mechanisms to provide and coordinate assistance

942. In August 2006, after the LTTE attacked Muhamalai, the entry/exit point to Jaffna, the Government appointed a Commissioner General of Essential Services (CGES) to maintain all essential services in Jaffna Peninsula and "un-cleared areas" of the Vanni.[1009] The following month, it established the Consultative Committee on Humanitarian Assistance (CCHA) "to provide humanitarian assistance to the conflict-affected population in a centrally coordinated manner", convening on 28 occasions from October 2006 [1010]

943. The CCHA was chaired by the Minister of Disaster Management and Human Rights, with representatives from the Ministries of Nation Building, Resettlement and Disaster Relief Services, Health, Education, and Foreign Affairs. The Secretary of Defence, the Commissioner General of Essential Services (CGES), the Government Agents of the districts of the Northern Province, together with the Ambassadors of the United States, Norway and Japan, and representatives of the European Union Presidency (as co-chairs of the former peace process), the United Nations Resident Coordinator, all Heads of United Nations Agencies, ICRC and ECHO.

944. In his statement to the LLRC, the Secretary of Defence stated that all CCHA meetings were held at the Ministry of Defence, and that "although it is headed by the

[1008] ICRC News Release 09/103, 14 May 2009, humanitarian assistance can no longer reach civilians

[1009] Sri Lanka's Humanitarian effort, Presidential Task Force for Resettlement, Development and Security in the Northern Province 2011, pp ii-iii

[1010] Sri Lanka's Humanitarian effort, Presidential Task Force for Resettlement, Development and Security in the Northern Province 2011, pp ii-iii

Minister, I was there because most of the issues concerned with the Ministry of Defence, whether it was allowing people to go or allowing essential items to go." [1011]

945. While these meetings provided an opportunity for humanitarian agencies and others to raise concerns and formulate requests related to the provision of humanitarian aid, humanitarian officials cited instances when their requests to send what they considered to be essential life-saving assistance were refused.

946. On 20 November 2008, noting that requests by the United Nations and international NGOs for transporting humanitarian assistance were largely based on requests from Government Agents, the Commissioner General of Essential Service prohibited the agents of Vavuniya, Mullaitivu and Killinochchi from making any further requests for food and non-food items to United Nations agencies and international NGOs, and instructed that all requests had to be processed through him.[1012] This further tightened the control of the central Government on the provision of aid to the Vanni.

947. In the 2011 report of Presidential Task Force for Resettlement, Development and Security in the Northern Province, 'Sri Lanka's Humanitarian Effort', the Government concluded that throughout the conflict, it "provided humanitarian assistance to all areas including those that were under the influence of the LTTE. The Government, pursuing its commitment, made every effort to maintain an uninterrupted and sufficient supply line of food, medicine and other essential items. During heightened period of conflict, supplies were sent in spite of supply routes being subject to attack by the LTTE… The Government did not waver in its commitment even though Government had knowledge that the LTTE sustained itself with supplies sent by the government for civilians." [1013]

948. Whether or not the LTTE was taking supplies, the Government still had an obligation to ensure that the civilian population in the Vanni had sufficient food and other supplies. As described below, by restricting the involvement of international and local humanitarian actors in the emergency response and removing any international presence from the conflict zone, the Government was able to conduct "humanitarian" activities on its own terms, and to accommodate its overarching security objectives. Under the broad rubric of 'security issues', the Government imposed severe and disproportionate restrictions on medical supplies, water, sanitation and food that could go into the Vanni, which had an increasingly debilitating impact on the civilian population.

Government restrictions on goods entering LTTE-controlled territories

949. The 2002 Ceasefire Agreement contained clauses which continued certain restrictions on goods going into and out of the LTTE areas (at the time the Northern and Eastern Provinces): the banned items were non-military arms and ammunition, explosives, remote control devices, barbed wire, binoculars and telescopes, compasses and penlight batteries. In addition, it imposed strict controls on the transportation of diesel and petrol to be delivered through it Government Agents, as well as cement and iron rods, both in terms of procedures and quantities. The latter had previously been banned. Diesel and petrol in particular were critical to the functioning of medical facilities and food production.[1014] The restrictions on construction materials was particularly serious also as they remained in force

[1011] Representations made by Mr. Gotabaya Rajapaksa, Secretary Ministry of Defence to the LLRC, 17 August 2010.

[1012] Letter from SB Divaratne, Commissioner General of Essential Services, 20 November 2008.

[1013] See also www.defence.lk/PrintPage.asp?fname=20081206_13 Government services to all in Sri Lanka and especially to Internally Displaced Persons.

[1014] Ceasefire Agreement 2002, Annex A.

after the 2004 tsunami, severely hampering reconstruction within the LTTE-controlled territories.

950. More severe restrictions were re-imposed in mid-2006 when hostilities intensified. Once again, a range of goods and products were prohibited from entering the Vanni, some of them essential to the provision of basic needs, such as purified water. The ban on the transportation of fuel, cement and iron rods for construction was also re-imposed, with only the United Nations and Government departments being allowed to transport fuel, in quantities which had to be approved by the Government. The United Nations had to negotiate regularly with the Government regarding the humanitarian goods and fuel it was permitted to take into the Vanni, drawing attention to shortages that were impacting on relief work.[1015]

951. The Ministry of Defence retained ultimate authority over any relief assistance that entered the Vanni throughout the period under review, and at the local level the SLA and Navy were able to withdraw or delay authorization for goods to travel.[1016]

952. Restrictions on humanitarian organizations

953. All persons, including staff members of the United Nations and international humanitarian organizations, crossing at Omanthai, required documentation from the Ministry of Defence. They were not exempt from searches at checkpoints, their documents and property were not protected from seizure by the SLA, and their national staff members were vulnerable to harassment, arrest and other violations.[1017]

954. Nationals, including United Nations personnel, also required clearance from the LTTE, and only those with LTTE passes were allowed to leave the Vanni (see Chapter XIV). Despite these restrictions, the United Nations and humanitarian organizations remained in the Vanni, until their expulsion, and were able to assess needs and maintain assistance programmes in the LTTE-controlled areas in the Vanni.

955. On 3 September 2008, the Defence Secretary ordered all United Nations agencies and non-governmental humanitarian organizations to leave the LTTE-controlled area by 29 September. The United Nations was informed by letter from the Joint Operations Headquarters that the safety of humanitarian staff could not be guaranteed in "uncleared areas", and that authorization for travel beyond Omanthai into the Vanni would no longer be granted.[1018] As described earlier, the areas near the United Nations compounds were shelled almost immediately after the order was given. On 12 September, the United Nations announced the immediate withdrawal of its staff members from Kilinochchi for security reasons, prompting three days of protests among the population. United Nations facilities and international staff members were relocated to Vavunya on 16 September. However, the families of national staff members and some national staff members themselves were refused passes by the LTTE to relocate. (see chapter XIV on Control of Movement).

956. In a letter 18 September from the Additional Secretary for Foreign Affairs, the United Nations was informed "after 29 September, when the departure from Kilinochchi

[1015] UN correspondence, 24 July 2008, seen by OISL.

[1016] http://www.odihpn.org/humanitarian-exchange-magazine/issue-05/feedback-june-1996-members-contribution-banned-restricted-or-sensitive-working-with-the-military-in-sri-lanka

[1017] WS on file;

[1018] WS on file; UN correspondence 4 September 2008; http://www.island.lk/2008/09/10/news16.html; Ministry of Disaster Management and Human Rights Press Release, 3 October 2008, http://reliefweb.int/sites/reliefweb.int/files/resources/AF5D1F3435536F42852574D70063A679-Full_Report.pdf

will be completed, the Government of Sri Lanka will not be in a position to recognize any remaining UN staff in these areas" [1019].

957. Through these measures and subsequent actions, the Government failed to recognize its obligation to protect United Nations national staff members and their families, even though it was informed that the LTTE had refused to allow them to leave.

958. The forced relocation of the United Nations and other international humanitarian organizations was one of several ways the Government was able to minimize the flow of information about the impact of its military operations on the civilian population leaking from the theatre of war.[1020] The United Nations and other humanitarian organizations were unable to independently monitor the unfolding humanitarian crisis and the distribution of humanitarian assistance. Without a presence in the conflict zone, they were also unable to regularly assess the needs of the population in a rapidly changing situation, or to respond quickly to address those humanitarian needs. The absence of international observers left the population particularly vulnerable to abuses by both the LTTE and Government forces.

959. In a statement issued by the Government Information Department in September 2008[1021], the Minister of Disaster Management and Human Rights stated that "Relief activities will not come to a halt by the relocation of NGO and INGO offices from LTTE-held areas to Vavunya as the Government already provides adequate humanitarian and relief services to needy citizens in these areas." He noted that "at present there is uninterrupted flow of goods and services to civilians in the Vanni through government channels" and that these would be "strengthened" over the coming days. However, contrary to the Government's statement, the flow of supplies diminished.

960. The Government continued to claim, in a statement that first appeared on the website of the Ministry of Defence in December 2008, that it continued to provide free social services to all those requiring assistance in the conflict zone, including those in LTTE–controlled areas, claiming it was best placed to deal with the delivery of assistance to IDPs.[1022]

Impediments to the transportation of humanitarian aid into the Vanni

Transportation by road

961. Until road transportation ceased at the end of January 2009, the restrictions on goods entering the Vanni by road were implemented through army checks at the Omanthai crossing point and at Madawachchiya, which was the main crossing point from the south between Government-controlled territory and that held by the LTTE. In order to cross into the LTTE areas in the Vanni, all persons, vehicles and goods, including humanitarian aid, required clearance from the Ministry of Defence and the Sri Lankan military[1023]. All vehicles, including large trucks, had to offload their cargo for checking by the military. The vehicles were checked thoroughly, including by the removal of door panels and the deflation of tyres[1024]. Security checks and screening became more stringent as the conflict

[1019] Letter from Prasad Kariyawasam, Additional Secretary Foreign Affairs to UN, 18 September 2008.
[1020] Internal UN report, 2009,http://home.wfp.org/stellent/groups/public/documents/communications/wfp225450.pdf
[1021] http://www.defence.lk/new.asp
[1022] Government services to all in Sri Lanka and especially to Internally Displaced Persons, http://www.defence.lk/new.asp?fname=20081206_03
[1023] WS on file.
[1024] WS on file.

intensified. Commercial trucks from the south had to offload their goods at Omanthai, which were then reloaded on trucks from the North for transportation into the Vanni, after these had been cleared by the military.

962. Most times, no more than 20 trucks per day were checked. These checks resulted in long delays, and the deterioration of perishable goods. United Nations vehicles were also subjected to the same thorough checks in breach of privileges and immunities, although United Nations trucks that had been checked in Colombo or Vavuniya and sealed by the military were not required to offload their goods at Omanthai. United Nations personnel accompanying food convoys were not allowed to take with them cameras or satellite phones, although the latter equipment is considered as essential according to United Nations security regulations.[1025] According to witnesses, the lengthy delays holding back the humanitarian convoys also risked endangering the lives of the seriously ill or injured patients waiting to be transported out of the Vanni for treatment at Vavuniya Hospital. [1026]

963. The last WFP food distribution in the Vanni before the relocation of humanitarian agencies from Kilinochchi took place on 15 September 2008, providing six days of rations to 156,000 people. Following the relocation, between October 2008 and January 2009, the United Nations transported humanitarian assistance into the Vanni in 11 road convoys. However, the convoys faced numerous obstacles to reach their destinations and to respond to the urgent needs of tens of thousands of IDPs who remained without adequate shelter, water and sanitation, and faced a looming outbreak of waterborne diseases. [1027]

964. Prior to the departure of each United Nations convoy, an agreement had to be reached between the United Nations, SLA and the LTTE on the route the convoy would take, and about a temporary ceasefire to allow the convoys to travel safely. Once permission had been granted for the food/non-food items to be transported, as previously described all trucks had to be loaded under the close scrutiny and supervision of the military in Vavuniya, and the trucks had to be sealed by the military. On at least three occasions, trucks loaded with non-food humanitarian assistance, such as essential shelter and sanitation items, had to be withdrawn from the convoy due to delays in the military providing authorization or non-authorization.[1028]

965. On 23 December 2008, the Representative of the Secretary-General on the Human Rights of IDPs wrote to the Defence Secretary to express his fears that, as a result of the restrictions on the number of convoys permitted into the Vanni, new displacements and heavy rains, "many civilians may be without adequate food, water, shelter and sanitation". He urged the authorities to "significantly improve access for more humanitarian relief and humanitarian personnel to reach all civilians… I remain deeply concerned that the growing needs of the civilian population cannot be met by the amounts of relief now being received." Noting that the weekly convoy had only been allowed to transport food, he stressed the need for medical supplies, emergency shelter materials and water and sanitation equipment to be allowed in sufficient quantity to address the critical and life-saving needs of the population.

966. Despite agreements to allow the convoys safe passage and their exact location being known throughout the journey, shelling in close proximity to the convoys affected them on a number of occasions, putting their security at risk and delaying or preventing the delivery

[1025] UN correspondence, 16 December 2008.

[1026] WS on file.

[1027] HRW, 23 December 2008, http://www.hrw.org/news/2008/12/22/sri-lanka-end-detentions-and-aid-restrictions

[1028] http://www.logcluster.org/sites/default/files/documents/Minutes_Logcluster_LKA_Vavuniya_081006.pdf

of essential humanitarian aid[1029]. Both SLA and the LTTE reportedly used the convoys as cover in order to advance their troops according to witnesses.[1030]

967. Shelling in the vicinity of humanitarian convoys after there had been clear agreements by both parties to allow the convoys to travel raises questions about intent, including whether the shelling was deliberately intended to endanger or deter the convoys, or delay assistance.

968. The last convoy, Convoy 11, became temporarily trapped in the conflict zone in January 2009 (see Chapter XIII) and, from that point, the United Nations stated that it could not continue the delivery of humanitarian assistance due to lack of sufficient security guarantees and heavily mined roads.[1031]

969. Alongside the humanitarian convoys, the Government Agents arranged smaller convoys to transport food and non-food humanitarian assistance into the Vanni, which arrived without impediment. For example, during the first two weeks of October 2008, Government convoys transported 714 MT of food.[1032] On 1 December 2008, a Government Agent convoy transported 591.7 MT of food and other materials donated by the Government of India.[1033] WFP indicated that the last convoy to reach the Vanni was organized by the Government on 29 January 2009, and carried 153 MT of WFP food.[1034]

Transportation by ship

970. On 10 February 2009, the first ICRC ship resumed transporting humanitarian assistance to the Vanni, after a delay of more than three weeks, the sea route being the only way to transport assistance to the Vanni after the suspension of road convoys. The primary purpose of the ships was to carry quantities of food and other supplies for the civilian population, though only as authorized by the Government, and to evacuate the seriously ill and injured persons out of the Vanni. In all, the ICRC evacuated more than 13,000 patients and care-givers by ship, with the last ship arriving on 9 May, according to its 2009 Annual Report.

971. According to witnesses, very stringent procedures were put in place by the military for loading ships carrying humanitarian assistance in Trincomalee from where they departed. Prior authorization had to be obtained from the Navy and the entire ship, including the medical equipment, radio communication devices and relevant documents, and all goods loaded onto the ship, including food and medicines, had to be authorized and inspected by the Navy, in accordance with military procedures.[1035] Even once authorized by some authorities, the goods were sometimes not allowed to be loaded onto the ships at the last minute (see access to water and sanitation, below). .[1036]

1029 WS on file,

1030 War on the Displaced, Human Rights Watch, 19 February 2009; WS on file: UN correspondence, 17 October 2008.

1031 Sri Lanka: 250,000 People in War Zone Need Food, WFP, 6 February 2009 - https://www.wfp.org/stories/sri-lanka-vanni

1032 IASC Situation Report #148, 9-16 October 2008, http://reliefweb.int/report/sri-lanka/sri-lanka-jaffna-kilinochchi-mullaitivu-mannar-vavuniya-trincomalee-and-batticalo-1

1033 IASC Situation Report # 155, http://reliefweb.int/sites/reliefweb.int/files/resources/B571FB28A4286F5049257520001F4754-Full_Report.pdf

1034 Sri Lanka: 250,000 People in War Zone Need Food, WFP, 6 February 2009 - https://www.wfp.org/stories/sri-lanka-vanni

1035 WS on file

1036 WS on file

972. In at least one incident reported to OISL by witnesses on the shore, on 22 April, SLA began shelling around the ICRC ship with tank and mortar shells. Witnesses said that the position from which SLA was firing was clearly visible across the lagoon. The ship was eventually able to load the patients it had come to collect once the shelling had stopped. [1037]

Government's manipulation of estimated number of civilians in the Vanni requiring assistance

973. By the end of May 2009, the Government affirmed that some 284,000 civilians had come out of the conflict zone and had been transferred to IDP camps. In multiple statements to the LLRC and United Nations human rights mechanisms, the Government emphasized the humanitarian support it was providing to IDPs and how much assistance it had provided during the conflict itself. Yet Government officials in Colombo had repeatedly insisted that there were only 70,000 civilians in the Vanni when negotiating quantities of food and medical supplies to enter the Vanni.

974. For example, on 7 February 2009, the Defence Secretary was quoted in the media, saying: "The actual number of civilians trapped in the Vanni is less than 100,000."[1038] In a statement on 18 February 2009, the Minister of Disaster Management and Human Rights, Mahinda Samarasinghe, repeated the Government's "opinion that the IDP population of the No Fire Zone is, at present, less than 100,000".[1039] He further stated that the convoys which carried food into LTTE-controlled areas from October 2008 catered to inflated figures of 230,000 IDPs. He stated that Government Agent figures on the ground has contained duplicates and double counting. In one instance a Government official described the Government Agents' figures as *"*arbitrary and baseless".*[1040]* Yet the figures given by Government Agents in their requests for medical and food supplies…around 320,000…proved more accurate than those on which the Government insisted. In January 2009, the Government was basing its plans for internment of IDPs coming out of the conflict zone on figures of 200,000 people (see Chapter XVI on screening and deprivation of liberty of IDPs).

975. Humanitarian workers also confirmed that the Government repeatedly gave figures of around 70,000 civilians in relation to humanitarian assistance needs in the first quarter of 2009. The LLRC stated that "the strenuous efforts taken by the Government of Sri Lanka in coordination with international agencies such as the ICRC and WFP….does not warrant any possible inference that there was a deliberate intention to downplay the number of civilians in the NFZs for the purpose of starving the civilian population as a method of combat."

976. Government sources argued that the LTTE had inflated population figures so that it could take the excess for itself. The LTTE potentially had an interest in inflating population numbers to claim support from a larger constituency, as well as to syphon off excess humanitarian assistance entering the Vanni. However, allegations that the LTTE influenced

[1037] WS on file

[1038] "Tell the whole truth", Defence Secretary, Daily News, 7 February 2009, http://archives.dailynews.lk/2009/02/07/sec01.asp

[1039] Ministry of Disaster Management and Human Rights, *Government to send food to people in Mullaitivu No fire Zone*, 18 February 2009.

[1040] Letter from W.K.K Kumarasiri, Secretary, Ministry of National Building and Estate Infrastructure Development, 18 March 2009.

Government officials to exaggerate population figures were refuted by a number of credible sources interviewed by OISL.[1041]

977. There is no independent data to assess whether or how many supplies ended up in the hands of the LTTE, as monitoring of aid distribution did become increasingly difficult. Witnesses nevertheless described food distributions to civilians taking place, despite risks of food queues being shelled.

978. OISL received a number of independently taken testimonies which indicated that LTTE medical supplies were sometimes shared with civilian doctors when they were in need[1042] and that it had its own supply lines independent of the GA supplies.

979. OISL acknowledges that precisely calculating the population in the Vanni was complex because of the increasing intensity of the conflict as well as multiple displacements through the LTTE-controlled territory and out of it. However, the significant difference between figures provided by the Government and the number of civilians who eventually emerged from the conflict area in the final phases cannot be explained by inaccuracies on the part of the Government.

980. Multiple witnesses informed OISL that UAVs or drones regularly flew over the conflict zone, gathering aerial images, some of which appeared on the Ministry of Defence website and have been viewed by OISL. For example, UAV images of people at Puthamathalan, fleeing on 20 April 2009, show a high level of clarity, including tents and people on the beach.[1043] The Government itself had stated on a number of occasions, including to the United Nations Human Rights Committee in October 2014, that its use of UAV drones flying constantly over the conflict zone provided them with real-time imagery of what was happening on the ground.

Impact of the Government's actions on the rights to health, food, water and sanitation

981. The sections below demonstrate the impact of the restrictions on the provision of food, water, sanitation and life-saving medical care on civilians as they were repeatedly displaced in the final five months of the conflict. In its Humanitarian Action Update issued on 28 April 2009, UNICEF emphasized the "extreme conditions" which recently displaced civilians had endured in the conflict zone, "including scarcity of safe water, sanitation, insufficient health care and medicines as well as scarcity of food (more than one in four children under five suffer from acute malnutrition)."[1044] UNHCR also drew attention to the fact that "civilians coming out of the conflict zone are sick, hungry and suffering from acute malnourishment and dehydration."[1045]

982. Witness testimonies and other documentation refer to many dying of starvation, exhaustion or lack of medical care in addition to those killed by shelling and shooting. It remains to be investigated how many people - particularly the most vulnerable such as the elderly and children - died as a result of lack of access to food and medical care.

1041 WS on file
1042 WS on file
1043 Ministry of Defence Sri Lanka website: http://www.defence.lk/main_res.asp?fname=videos_ATRO
1044 Crisis for Children: 100,000 flee conflict zone, and tens of thousands still trapped, UNICEF Humanitarian Action Update, Sri Lanka, 28 April 2009.
1045 UNHCR, 20 May.

Deprivation of the right to food

983. The use of deflated population figures to justify the small amounts of food and medical supplies allowed into the Vanni during the last five months of the conflict (see below) had serious consequences on a population that had already been impacted by decreasing access to food, with growing levels of malnutrition and acute malnutrition. Already in 2003, a survey had found that the prevalence of malnutrition among the population in the Vanni was much higher than at the national level. [1046] The survey was carried out after years of restrictions on items allowed to enter the area. Although the Government temporarily eased the severe restrictions on transportation of food and non-food products into the Vanni during the ceasefire period, the survey results reflected the longer term impact of the conflict and restrictions imposed by the Government over the preceding decades on the population in the Vanni.

984. With the intensification of hostilities in 2006, the number of IDPs started to increase again, while restrictions on goods entering the Vanni became more severe. Due to the shortage of fuel after the severe restrictions were re-imposed, WFP estimated that only 30 to 40 per cent of the rice paddy in Mullaitivu would be planted in October 2006. The ban on diesel also affected the operations of rice mills.[1047] The large-scale displacement of populations forced farmers to abandon their crops. Large areas of farmland were cleared by the SLA, preventing farmers from returning. The SLA also took control of some reservoirs and dams, and restricted the flow of water to farmlands. Flooding during the monsoon and cyclone Nisha in November 2008 destroyed any crops that remained.

985. As a result, food production in the Vanni dropped considerably as the conflict progressed and as communities abandoned their homes and fled.[1048] In December 2008, a Government official in the Vanni informed the United Nations that only 50 per cent of the land in Mullaitivu was still accessible.[1049] Long term insecurity due to the war, the placement of landmines and large scale displacement reduced access to land and resulted in the scarcity of locally produced rice and vegetables, and consequent sharp increases in prices of staple foods. Due to the shortage of food and other products, the prices in the Vanni were usually between five and 10 times the official market price [1050]

986. The provision of food assistance became more difficult after the relocation of the United Nations and humanitarian organizations from Kilinochichi. During the four months when United Nations road convoys had operated (October 2008 to January 2009), despite the various security incidents, the average shipment of food had been 3,639 metric tons per

[1046] Justus-Liebig-University Giessen, Nutrition Baseline Survey commissioned by German Agro Action, March 2004, http://www.uni-giessen.de/cms/fbz/fb09/institute/ernaehrungswissenschaft/ag/krawinkel/forschung/nutrition-baseline-report

[1047] Emergency Food Security Assessment in the Vanni, October 2006, WFP, http://documents.wfp.org/stellent/groups/public/documents/ena/wfp130895.pdf?iframe

[1048] Keen, p. 13

[1049] Internal report, UN Interagency support mission to Vanni, convoy 9, 29-30 December 2009.

[1050] WFP, Emergency Food Security Assessment, The Vanni, Sri Lanka, October 2006, http://documents.wfp.org/stellent/groups/public/documents/ena/wfp130895.pdf?iframe; IASC Situation Reports #158 and #159; Tamil Relief Organisation, Humanitarian Crisis in the Vanni, September 2008, http://sangam.org/2008/09/TRO_Crisis_Vanni.php?uid=3066; SEDOT, Vanni Situation Report, September 2008, http://www.padippakam.com/document/ltte/General/v100670.pdf.

month. This figure included Government food contributions, as well as contributions from the Government of India and NGOs. [1051]

987. After 16 January 2009, however, the amount of food allowed into the Vanni plummeted. In March 2009, the United Nations Resident Coordinator's Office indicated that at least 3,000MT was needed per month for between 150,000 and 200,000 people.[1052] Between 17 February 2009 - when aid delivery resumed by ship - and the last ship delivery on 9 May,[1053] authorized and delivered food shipments totalled only 2,442MT for the whole period, according to the Ministry of Disaster Management and Human Rights[1054]. A table prepared by the Ministry and detailing the shipments between February and May 2009 showed that most of the food was provided by WFP. While the Minister of Disaster Management and Human Rights stated on 17 February that the Government was "to send food to people in the Mullaitivu No Fire Zone", it only provided 105MT for the whole five-month-period. In a press release dated 7 May[1055], ICRC stated that it had delivered over 2,300 MT of WFP food by ship during this period. This was included in the above mentioned Government list of shipments.

988. Thus, according to this information, the total amount of food delivered for the five months amounted to a fraction of the 3,000MT per month on the basis of estimated figures of the displaced, which were already well below those given by local Government officers on the ground.[1056] Not only were the food supplies limited, but the shelling of food distribution queues and storage places further diminished stocks. Countless witness statements described queuing for food despite the risks of being shelled, and desperate efforts to make meagre amounts of food last or of people eating unknown plants and consequently falling ill.[1057]

989. The impact of the lack of food and food supplements was profound, with the elderly and children being particularly vulnerable. UNICEF's Humanitarian Action Report of 2009 stated that conflict-affected districts of Sri Lanka displayed figures higher than the national average with regards to chronic and acute malnutrition.[1058] Increasing levels of acute malnutrition were detected in children leaving the conflict area. By May 2009, according to a survey report given to OISL, acute malnutrition had reached 35 per cent compared to 25 per cent in March. A local survey carried out in March 2009 showed that of a random sample of 678 children aged 6 to 60 months, 69.91 per cent were under weight.[1059]

1051 Food Delivery to IDPs in the Vanni, March 2009, United Nations Office of the Resident Coordinator and Humanitarian Coordinator.

1052 Food Delivery to IDPs in the Vanni, March 2009, United Nations Office of the Resident Coordinator and Humanitarian Coordinator.

1053 On 14 May, an ICRC ship approached to try to offload 25 MT of food and collect medical passengers but had to turn back due to the intensity of the fighting. Another ship carrying 500 MT of WFP food was also unable to approach the shoreline the same day. ICRC News release 09/103, Humanitarian assistance can no longer reach civilians, 14 May 2009.

1054 Food and essential items sent to Mullaitivu by sea, Human Rights Unit, Ministry of Disaster Management and Human Rights, 2009

1055 ICRC evacuates 495 from conflict zone and delivers 25 tonnes of food, News Release 09/93, 07 May 2009.

1056 According to the Commissioner General for Essential Services, 3150MT was shipped during the period.

1057 WS on file.

1058 UNICEF, Humanitarian Action Report 2009. http://www.unicef.org/har09/files/har09_SriLanka_countrychapter.pdf

1059 Department of Health, Nutrition Survey, March 25-31 2009.

990. United Nations agencies requested high energy BP-100 therapeutic foods for severely malnourished children to be included in the shipments of aid, including at CCHA meetings, but the Government refused the requests, citing "serious concerns expressed by the Ministry of Defence". The Ministry of Defence had reported that high-energy BP-100 food had been found on the body of a dead LTTE cadre, which the Government used as proof that the food was being diverted by the LTTE.[1060] The Government stated it was sending its own such foods, which has not been confirmed. The high levels of acute malnutrition in children registered once they reached the IDP camps at the end of the conflict would suggest that such foods were not widely available.

991. One witness who was a medical professional described the conditions of a child in her family: "One of the children who was 18 months old was suffering severe lethargy, she could not stand up or walk and had to be carried all the time. Even though we favoured the children with food, they showed signs of muscle wastage in their legs, they had distended stomachs and their ribs where showing through their skin where the normal layer of fat in a child of this age had disappeared."[1061] Another witness said: "Everyone was starving. I could see the children were malnourished and the elderly were very weak."[1062]

992. Local government officials working in the Vanni as well as humanitarian organizations were sounding the alarm for months, and reports in early March 2009 indicated that several elderly people had died of starvation[1063]. In April 2009, a Vavuniya Magistrate ordered the release of elderly IDPs from the camps because of a series of deaths which he attributed to starvation (see Chapter XVI on Screening and Deprivation of liberty of IDPs). Numerous witnesses highlighted the difficulties that elderly people faced in accessing food, and that they became weakened with the continual displacements, lack of food and of carers.

993. A humanitarian worker who met with IDPs soon after they emerged from the Vanni also confirmed that they had visible signs of malnourishment.[1064] A senior United Nations official said they were amongst the worst cases of malnutrition he had ever seen. A local humanitarian worker told OISL that in mid-May, she saw scrawny women, men and children behind the barbed wire holding areas at Omanthai, and she witnessed an old man collapsing and dying before he could open a bottle of water that she had thrown over the fence.[1065] Photographs and video material taken between March and May 2009 provided by witnesses to OISL show children with bulging eyes, rib cages visible under the skin and very thin limbs, indicating clear signs of emaciation.

994. United Nations agencies, humanitarian organizations and NGOs regularly raised the issue of food shortages and the plight of the civilian population in the conflict zone with the Government, in confidential discussions and in public statements. [1066] On 27 February, Mr. John Holmes, United Nations Under Secretary-General for Humanitarian Affairs and Emergency Relief on Coordination briefed the Security Council on his visit to Sri Lanka, highlighting the extremely short supply of food, medical supplies, clean water, sanitation

[1060] WS on file
[1061] WS on file
[1062] WS on file
[1063] Correspondence from Regional Director of Health, 2 March 2009.
[1064] WS on file.
[1065] WS on file.
[1066] For example, on 6 February 2009, the WFP issued a press statement with the headline "Sri Lanka: 250,000 people in war zone need food".https://www.wfp.org/stories/sri-lanka-vanni

facilities and shelter, and calling for supply deliveries to be "scaled up much further".[1067] In a press release issued on 20 May 2009, UNHCR described the civilians coming out of the conflict zone as "sick, hungry and suffering from acute malnourishment and dehydration."[1068]

995. The Government subsequently denied that any concerns had been raised with it regarding food shortages, either by Government officials, United Nations agencies or others: "At no point was food shortage raised by the GAs or by the sectoral Committee on Food and Logistic, nor by the UN or other agencies, as an issue that needed additional attention by the GoSL."[1069]

996. Right to water and sanitation

997. There had already been long-term restrictions placed by the Government on transport into the Vanni of non-food items, such as plastic water tanks, toilets and fuel for water pumps. As a result, particularly as the conflict intensified, shortages of water and sanitation facilities increased, thereby increasing the risks of water-borne diseases.

998. In February 2009, for example, humanitarian organizations were already signalling the lack of clean water as a major humanitarian concern given the increasing number of displaced and local wells not providing enough water for drinking, washing and cooking. In March 2009, the United Nations stated that five times the available water was required to meet the needs of the people trapped in the second NFZ, and indicated that the available supply served fewer than 35,000 people per day.[1070]

999. Other humanitarian organizations also drew attention that same month to the fact that the clean water was becoming scarce, with risks of epidemics due to the lack of water and proper sanitation. A senior United Nations official told OISL that the authorities refused to allow the supply of water purification tablets and water tanks, which were desperately needed. On one occasion, in May 2009, a United Nations agency had received initial clearance to include drums of chlorine on the ICRC ship but, as it was about to be loaded on the boat, the military refused clearance on the grounds that it could be used as a weapon by the LTTE.

1000. Witnesses described the dire living conditions in the final months of the conflict, particularly in the third NFZ, where thousands of people lived in a small, confined space, almost on top of each other. They described the long queues for water and how entire families had to wash in the sea. Many described the embarassment and indignity of having to defecate along the beach within the presence of their own family members and thousands of others, sometimes with drones flying overhead. The water along the beaches was polluted, but the displaced people said that they had no choice but to wash themselves and their cooking utensils in the sea water. Fishermen caught fish in this polluted water and sold it to the starving population. A witness told the enquiry; "I knew that the fish was caught in polluted water, but I had no choice. I had to feed my family".[1071]

1067 Briefing to Security Council on the humanitarian situation in Sri Lanka, Statement by Mr John Holmes, the Under Secretary-General for Humanitarian Affairs and Emergency Relief on Coordination, 27 February 2009 - http://www.innercitypress.com/sri1holmes022709.pdf

1068 UNHCR concerned about conditions in IDP sites in Sri Lanka, 20 May 2009.

1069 Presidential Task Force, Sri Lanka's Humanitarian Effort, para. 48, p. 17.

1070 UN Office of the Resident Coordinator and Humanitarian Coordinator, Water, Sanitation, Health and Nutrition, March 2009

1071 WS on file

Deprivation of access to emergency medical care

1001. Even in the midst of conflict, international humanitarian law requires that life-saving medical care be provided for the sick and wounded, both to civilians and to those who are no longer taking part in hostilities. As the months progressed during the final government offensive, the availability of medical care diminished dramatically, for many reasons: the constant shelling and displacement of medical facilities, the decreasing capacity of health workers to provide the care despite their intense efforts and commitment, the increasing caseload resulting particularly from the intense shelling, and decreasing amounts of available medical supplies – through losses due to displacement, destruction from shelling and severe restrictions on essential medical supplies entering the Vanni.

1002. Since many of the hospitals in the LTTE-controlled area were Government-funded, they were largely dependent on obtaining supplies through official channels in Colombo. The complex ordering, approvals and screening procedures before the supplies were finally loaded onto ships by the Navy in Trincomalee resulted in severe shortages of essential supplies.

1003. Witnesses told OISL that medicines and medical equipment were provided by the Ministry of Healthcare and Nutrition based on quarterly requests submitted by the Regional Director of Health Services (RDHS) in each district to the Government Agent, who in turn submitted it to the Ministry. In accordance with established procedure, the Government Agent was required to obtain prior approval of the Ministry of Defence for all medical supplies transported into the Vanni. Witnesses told OISL that the Government systematically reduced the quantities of supplies that had been requested, approval was delayed, deliveries sometimes postponed, whilst in other cases, the military refused to authorize the transportation of certain medical supplies into the Vanni.[1072] Supplies were approved in and transported from Colombo to Vavuniya, but not always transported into the Vanni[1073]. Like other items, all medical supplies transported by road into the Vanni were off loaded and checked by the military at Omanthai. Already in 2006, WFP reported that the health sector in the Vanni was badly affected : Fuel and medication for essential activities used to be allowed across the line of control but at present rules are unclear and health facilities are struggling to maintain life-saving functions.[1074]

1004. From January 2009, the military exerted increasing control over the health sector and medical supplies. When medical supplies were transported by ship, a complicated approval process was put in place. Government medical personnel in the conflict zone were required to send a request for medical supplies to the Ministry of Healthcare and Nutrition, which sought the approval of the Ministry of Defence. After authorization was obtained, the Ministry of Healthcare transported the medical supplies to Trincomalee and handed them over to the Navy, which in turn checked the supplies and had to obtain further confirmation from the Ministry of Defence. The Navy then checked and loaded the Government medical supplies onto ships for transportation to the Vanni.[1075]

1005. Limited amounts government medical supplies were received by medical personnel in the Vanni from ICRC ships, on nine occasions between 19 February and 9 May 2009, according to the Ministry for Disaster Management and Human Rights,[1076] Blood bags,

[1072] WS on file
[1073] WS on file
[1074] Emergency Food Security Assessment , the Vanni, Sri Lanka, WFP, October 2006
[1075] WS on file.
[1076] WS on file, Letter from Secretary, Ministry of Health, Northern Province, Regional Medical Supplies Division, list of urgent medical supplies, 2 June 2009;

anaesthetics such as ketamine, and surgical blades were not authorized for shipment, despite repeated requests for such essential life-saving supplies, notably to treat patients suffering from war injuries and diseases caused by deteriorating living conditions. [1077] Witnesses told OISL that they believed that that quantities of authorized medical supplies such as antibiotics, latex gloves, pain medication and bandages were reduced by the Ministry of Healthcare and Nutrition.[1078]

1006. In response to one request for anaesthetics, the Secretary of the Ministry of Healthcare and Nutrition responded by letter, dated 17 March 2009, as follows: "Considering the safety of patients, anaesthetics are sent only to hospitals where trained anaesthetists are there to use them and surgeons are there to operate. Since your hospital does not have either of them it is not possible to send them."[1079] Witnesses told OISL that medical personnel treating war wounded included senior surgeons, many of them employed of the Government.

1007. The authorized shipments contained different quantities of medicines and supplies at different times, reportedly with little correlation to the needs of the sick and wounded. For example, on 3 March 2009, only four types of medicines in different quantities were authorized to be shipped. In explaining to the Director of Medical Supplies Division, Colombo, why only five types out of 55 requested medicines were sent by ship on 1 April 2009, the Officer in charge of the Regional Medical Supplies Division (RMSD) of Trincomalee stated that Navy officials had informed him that "it was unable to transport the other items in the list from the RMSD due to lack of time". The medical supplies not transported included intravenous antibiotics, intravenous pain relievers and bandages.[1080]

1008. On 27 April 2009, the authorized medical supplies transferred by ship consisted only of 10 types of vaccines and two types of contraceptives, despite lists of other supplies which had been requested.[1081]

1009. ICRC press releases at the time highlighted the shortage of medical supplies, for example on 20 April, it stated that it was "striving relentlessly to increase the amount of urgently needed medical supplies and sanitation equipment reaching the trapped population.[1082] It also highlighted the increased risk of wound infections due to the acute shortage of vital medical supplies and unsanitary conditions. In another press release on 7 May, ICRC noted that the food and medical supplies that had been delivered remained insufficient to cover the basic needs of the people there."

1010. The capacity of hospitals to function was also affected by fuel shortages, since fuel was needed to run electricity generators, refrigerators and ambulances. Witnesses told OISL that until the end of 2007, hospitals in Killinochchi were authorized to obtain 6,250 litres of fuel through the Government Agent. At the beginning of 2008, this amount was reduced

http://www.refworld.org/pdfid/4d89afd815c5.pdf; Food and essential items sent to Mullaitivu by Sea 2009, Human Rights Unit, Ministry of Disaster Management and Human Rights.

1077 WS on file

1078 WS on file

1079 Letter on OISL file, 17 March 2009.

1080 Letter on OISL file, 2 April 2009.

1081 WS on file

1082 ICRC News Release No. 09/13, 20 April 2009: Sri Lanka Over 10,000 evacuated from conflict zone since February; News Release 09/93, 7 May 2009: ICRC evacuates 495 from conflict zone and delivers 25 tonnes of food.

without any explanation to 2,850 litres.[1083] There was also delay in sending fuel to hospitals in the Vanni. For example, it was reported that fuel supplies for health services for September to November 2008 were not approved and that some ambulance services stopped as a result.[1084] This led to the introduction of a system of blackouts at the hospital concerned to spare fuel.[1085] According to information received by OISL, once the road convoys were stopped in January 2009, no fuel entered the Vanni until the end of the conflict.

1011. The supply of electricity for operating hospitals and medical facilities was also impacted by fuel shortages caused by the ongoing conflict and the continuous relocation of hospitals. The shortage of fuel also restricted the use of ambulances to transport patients.

1012. As the conflict encompassed areas in which Government hospitals were located, medical personnel systematically moved patients, equipment and medication to safer areas. As the hospitals moved, the people who had set up shelters around the hospitals moved with them.

1013. Medical supplies were progressively lost as territory was taken over by SLA. Initially, hospital personnel were able to move a large amount of medical supplies and equipment to new locations and the hospitals remained well stocked.[1086] However, as the conflict progressed, stocks became depleted, partly because it was difficult to move the supplies to new locations. One health worker said that at the beginning, when they moved from Kilinochchi Hospital in September 2008, they were able to take the supplies in large trucks; by mid-May 2009, the few medical personnel who remained had so few medical supplies left that they were carried in shopping bags. When Kilinochchi hospital relocated from Uddayaarkaddu at the end of January 2010, medical personnel were unable to transport medical supplies and these had to be abandoned on the side of the road.[1087]

1014. When there was heavy shelling around hospitals, medical personnel were injured or killed, reducing the number of doctors and nurses available to treat patients. On several occasions, medical personnel were not able to leave their bunkers for several hours and, in one instance, for an entire day because of the incessant shelling.[1088] (See Chapter XIII on Impact of hostilities on civilians and civilian objects).

1015. With the intensity of the conflict, the number of patients with war-related injuries requiring medical treatment increased, putting tremendous pressure on the small number of medical personnel and the meagre medical supplies. While medical supplies were being sent into the Vanni at intermittent intervals, the quantities were insufficient to treat the increasing number of injured and sick patients. For example, a witness told OISL that due to the shortage of antibiotics and intravenous drips, the mother of an infant died from septicaemia when a wound on her leg became infected.[1089] Medical personnel had to make difficult choices as to who they treated.[1090]

[1083] IASC Situation Report #140, 14 – 21 August 2009, http://reliefweb.int/sites/reliefweb.int/files/resources/AADCCC7F5BCF3CBAC12574B000480D3D-Full_Report.pdf

[1084] IASC Situation Report #145, 18-25 September 2008, http://reliefweb.int/sites/reliefweb.int/files/resources/5285B569C0A68021C12574D600427670-Full_Report.pdf

[1085] WS on file

[1086] WS on file; Affidavit on file.

[1087] WS on file

[1088] WS on file

[1089] WS on file

[1090] WS on file; ICRC press releases.

1016. The hospitals did not have sufficient storage facilities and fuel for the refrigerators.[1091] The shortage of blood donors and blood bags prevented the collection of blood for transfusions. When the conflict was most intense, it was difficult for blood donors to reach the hospital and for medical personnel to check blood for suitability and diseases. As a result, medical personnel sometimes did auto-transfusion, a practice where blood that had accumulated in the patient's body cavity was collected with a sterile swab, transferred to a sterile container and then transfused into the patient.[1092]

1017. According to the information gathered, due to the shortage of anaesthetics, medical personnel performed some minor surgery such as the removal of shrapnel from a flesh wound without administering any anaesthetic.[1093] OISL established that epidural anaesthetics were available and used during caesarean surgery right up to a few days before the end of the conflict.[1094]

1018. ICRC transportation of seriously ill or injured patients requiring urgent medical attention out of the Vanni by road or ship provided a life-line to many who would most likely have otherwise succumbed. Until all access by road was blocked at the end of January 2009, ICRC regularly arranged the transfers to hospitals in Vavuniya by road. According to witnesses, the usual practice was for patients and caregivers accompanying them (known as bystanders) to obtain a letter from a doctor, which was then presented to the LTTE for the issuance of passes. All patients and bystanders transported by road also had to go through SLA clearance procedures at Omanthai. The ICRC continued to transfer patients as part of the humanitarian convoys between September 2008 and January 2009.

1019. However, the disruption of the convoys sometimes delayed the transfer of patients requiring urgent medical attention for several weeks. The last convoy that entered the Vanni, on 29 January 2009, was able to transport 226 wounded and sick patients from the Vanni to Vavuniya Hospital.[1095] Evacuations resumed by ship on 10 February 2009. On each of its journeys, the ICRC evacuated an average of 500 patients and accompanying caregivers. Between 10 February and 30 April 2009, they evacuated more than 13,000 sick and wounded patients and accompanying caregivers. [1096]

1020. Witness accounts demonstrate that medical personnel and volunteers in the Vanni worked tirelessly to provide medical assistance to the thousands of civilians wounded during the conflict. They worked in incredibly difficult circumstances, with multiple relocations, continuous shelling and dire shortages of medicines and medical supplies. The medical facilities diminished each time they had to be moved, and in the end, medical personnel were only able to provide first aid.

1021. Yet, many of those who risked their lives to provide medical services to their compatriots were detained by the authorities at the end of the conflict.

1022. Despite knowledge about the increasingly severe humanitarian situation in the Vanni and the impact of shelling on hospitals and makeshift medical facilities, the Government and the security forces denied permission to send in emergency medical supplies, including certain life-saving supplies. The Government further failed to ensure the protection of medical personnel and facilities through shelling.

1091 WS on file
1092 WS on file
1093 WS on file
1094 WS on file
1095 ICRC News Release 09/25, 29 January 2009.
1096 ICRC Bulletin 03/2009; ICRCAnnual Report, 2009.

XVI. Screening and deprivation of liberty of internally displaced persons (IDPs) in closed camps

Introduction

1023. Despite the restrictions by the LTTE on movement, the exodus of civilians from LTTE-controlled territory had started to increase gradually in February 2009, but began to surge a few days after the SLA cut through the LTTE Defence Line and No Fire Zone 2 at Puthumathalan on 20 April, after which more than 100,000 civilians, together with LTTE fighters who had laid down their arms, crossed over to Government-controlled territory. Between 15 and 20 May, thousands more left the final fighting zone bringing the total number of people passing into Government-controlled territory to some 284,000, according to Government.[1097]

1024. From 14 May, tens of thousands civilians heeded the calls of SLA soldiers with megaphones and slowly walked along the A35 road lined with SLA positions towards the Vadduvakal bridge, which was one of the main crossing points. Most surviving LTTE fighters had discarded their uniforms, laid down weapons and other military equipment and donned civilian dress. Along with other LTTE political cadres, they walked amongst the crowds with their families.[1098]

1025. Witnesses described having to walk amongst hundreds of bodies strewn along the road towards the bridge and witnessing bodies floating in the lagoon. Most of them had been displaced multiple times during the conflict and had lost most of their personal possessions. Many were suffering the effects of lack of adequate food, and many amongst the IDPs had been injured as a result of shelling or small arms fire. Some witnesses described how weak, older relatives were left behind by family members who were themselves too weak to carry them.[1099]

1026. Others described ill or injured people pleading for help. Injured or disabled persons had considerable difficulties making the journey; some were pushed in wheelchairs by family members, while others described how they struggled through the crowds with the aid of crutches[1100]. Some people were killed or injured by landmines when they strayed off the road.[1101]

1027. After crossing the Vadduvakal bridge, the crowds had to walk about two to three kilometres, guided along the way by SLA soldiers, before reaching a large area near the town of Mullaithivu that was surrounded by barbed wire.[1102] This was the first of three fenced areas IDPs had to go through, and the start of the multiple security, screening and registration processes.

1028. Witnesses said that food and water were insufficient and often thrown to people from the back of trucks or delivered in other undignified ways, making it difficult for the most vulnerable to access them.[1103] The IDPs did not have access to ablution or toilet facilities. [1104] There was no shelter for the tens of thousands of people, many of whom had

[1097] Sri Lanka Post-Conflict Progress, Ministry of External Affairs, September 2010.
[1098] WS on file
[1099] WS on file
[1100] WS on file
[1101] WS on file
[1102] WS on file
[1103] WS on file
[1104] WS on file

to remain in the open for up to three days. Those who were seriously injured or ill were nevertheless separated and taken to medical facilities according to witness statements, though some were subsequently taken into detention facilities.[1105]

1029. This section describes the screening processes the IDPs went through and their subsequent deprivation of their liberty in closed camps. In reality, they were deprived of their liberty without legal basis until, many months later, the Government began to ease the restrictions on movement and to allow large numbers to resettle.

1030. Although the Government set up detention camps in various locations in Jaffna, Mannar, and Vavuniya, OISL's investigation has primarily focused on the situation in Manik Farm in Vavuniya, which contained by far the largest concentration of IDPs between April 2009 and September 2012, when it was finally closed, holding some 220,000 IDPs at its peak.

1031. This section is based extensively on witness testimonies of those who emerged from the Vanni at the end of the conflict in mid-May 2009 and of others who fled LTTE-controlled areas before the conflict ended. OISL has additionally drawn on interviews with humanitarian workers, submissions, Government and United Nations reports and other open source material.

Administrative detention by the Government

1032. Human rights law protects all persons against unlawful or arbitrary interference with their liberty, including deprivation of liberty.[1106] Arbitrary deprivation of liberty is also prohibited under international humanitarian law. Such a prohibition is implied in the requirement that civilians and persons *hors de combat* be treated humanely.[1107] In a situation of armed conflict what counts as arbitrary or unlawful deprivation of liberty will be determined by reference to both international human rights law and international humanitarian law.

1033. In addition to detention for the purpose of holding a person for criminal trial or pursuant to conviction by a court, authorities may impose administrative detention, not in contemplation of prosecution on a criminal charge. In this respect, the Human Rights Committee noted that administrative detention presents severe risks of arbitrary deprivation of liberty and would only be justified under the most exceptional circumstances, towards a person posing a "present, direct and imperative threat".[1108] In such cases the burden of proof lies on the authorities to show that the individual poses such a threat and that the situation cannot effectively be addressed by alternative measures. The Committee further stressed that this burden increases with the length of the detention.[1109]

1034. While Sri Lanka has derogated from its obligation under Article 9(2) of the ICCPR to promptly inform anyone deprived of their liberty of the reason for their detention and any charges against them, the derogation does not fully suspend Sri Lanka's obligations under Article 9(2) but only adjusts them, allowing for a delay in informing such persons, to the extent such delay is strictly required by the exigencies of the situation.

1105 WS on file

1106 Article 9, ICCPR. The Human Rights Committee interpreted "arbitrary" broadly to include "inappropriateness, injustice, lack of predictability and due process of law."

1107 ICRC, Database on customary international humanitarian law, Rule 99.

1108 GC 35, para. 15. See, e.g., Concluding observations Colombia 2010, para. 20; Jordan 2010, para. 11. Such threats may arguably be posed by a person taking direct part in hostilities.

1109 GC 35, para. 15

1035. Persons deprived of their liberty must be released as soon as the reasons for the deprivation of their liberty cease to exist.[1110]

1036. With respect to administrative detention imposed on internally displaced persons, the UN Guiding Principles on internal displacement[1111] emphasize that internally displaced persons should not be interned or confined to camps other than in exceptional circumstances when it is absolutely necessary and only for the duration required by the circumstances.[1112] Depriving IDPs of their liberty on the mere basis of their status as IDPs amounts to arbitrary detention and is prohibited. Moreover, to ensure IDPs' right to liberty of movement, such persons shall have the right to move freely in and out of camps or other settlements.[1113] Displaced persons have a right to voluntary and safe return to their places of habitual residence as soon as the reasons for their displacement cease to exist.[1114]

Screening processes at Mullaitivu and Omanthai

1037. The Government had an obligation to screen IDPs and to separate former LTTE combatants in order to maintain the civilian and humanitarian character of IDP camps, ensure the safety and security of IDPs. It was also a necessary first step to holding those who had violated national and international laws accountable for their actions. However, OISL believes that the manner in which the screening processes were carried out failed to meet international standards and facilitated ill-treatment and abuse.

1038. UNHCR guidelines on separation of combatants defines it as "the process whereby all available evidence indicating that an individual may be a combatant is examined by an appropriate authority in order to establish if the individual must be separated from the civilian population and interned."[1115] The guidelines state that the process for identification of combatants should include:

1039. Setting up a body to oversee the process with the power, amongst others, to review decisions identifying an individual as a combatant,

1040. Establishing clear operating procedures, including clear criteria for considering an individual as a combatant, developing a methodology for decision-making and creating a process to review decisions;

1041. Providing clear and concise information to explain the reasons for the process of separation, the procedures involved and the implications for the individuals identified as combatants.

1042. The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (known as the Paris Principles) set out specific guidelines for the release and reintegration of children under the age of 18 associated with armed forces and groups in any capacity, whether fighters or undertaking support activities (see Chapter XII on Recruitment and Use of Children).

1043. In the absence of a ceasefire or peace agreement with the LTTE, there was no formalized, well-defined process to disarm, demobilise and reintegrate fighters and other

[1110] GC 35, ICRC, Database on customary international humanitarian law, Rule 128.
[1111] E/CN.4/1998/53/Add.2
[1112] Principle 12.
[1113] Principle 14.
[1114] ICRC, Database on customary international humanitarian law, Rule 132.
[1115] UNHCR, Operational Guidelines on Maintaining the Civilian and Humanitarian Character of *Asylum*, September 2006, http://www.refworld.org/pdfid/452b9bca2.pdf

individuals affiliated with the LTTE, as often happens at the end of a conflict. Instead, in order to identify anyone with links of any kind with the LTTE, the Government embarked on screening processes that lacked transparent criteria or definition of procedures, and failed to meet international standards. The process did not differentiate between fighters and political or administrative cadres – those who had any links to the LTTE were expected to identify themselves. Despite its request to the Government, OISL did not receive any information on the criteria and procedures used to separate civilians and those suspected of or identified as LTTE fighters.

1044. Every individual who came out of the conflict zone had to pass through a series of SLA security checks, screening points and holding areas. Similar screenings and checks were then subsequently carried out within the IDP camps.

1045. There was no independent oversight of the process that had been established by the Government and run by the SLA for the screening and registration of IDPs at the main screening posts in Mullaithivu or Omanthai. Despite a tentative agreement and repeated requests, international agencies were not given full or continuous access to these screening sites or to Manik Farm later. For example, while UNHCR had been granted some access to Omanthai, its staff members were not allowed to speak with the IDPs independently.[1116].[1117] Even this limited access was revoked in the last weeks of the conflict, in May 2009.[1118] This created an environment lacking access for independent international agencies, which in turn facilitated widespread ill-treatment and other violations on a large scale, particularly enforced disappearances.

1046. Individuals, including children, were arbitrarily identified as being associated with the LTTE, separated from their families and taken away to detention centres. In Mullaitivu and Omanthai, witnesses described soldiers repeatedly announcing, sometimes over loudspeakers, that those who had been members of the LTTE had to identify themselves, even if they had worked with the LTTE for a single day.[1119] The fact that the authorities did not differentiate between fighters and civilians created uncertainty as to who would be transferred to IDP camps or detention centres, and on what basis. Furthermore, many of those taken away as suspects had actually been forcibly recruited by the LTTE, which was not given any consideration. Some IDPs who worked in a civilian capacity with the LTTE, for example medical personnel, were also taken to detention centres.

1047. During screening and registration, the security forces repeatedly questioned IDPs, including about their or their relatives' involvement with the LTTE. Young men were warned that if they did not admit their affiliation they would suffer severe consequences.[1120]. Neither IDPs nor those identified as having links with the LTTE were provided with information about the process.

1048. Furthermore, no information was provided to the families as to where their relatives were being taken, even though the 2005 Emergency Regulations (19.1) required that a family member be informed of the arrest of a relative.

1049. Mullataivu had three holding areas through which the IDPs had to pass after crossing the bridge. Thousands of IDPs remained in the first holding area at Mullataivu for several hours or overnight, while many others were taken along a narrow lane, created by

[1116] UNHCR, Flash Updates on the IDP Situation in Sri Lanka's North, 14 and 18 May 2009.
[1117] WS on file
[1118] WS on file
[1119] WS on file
[1120] WS on file

barbed wire, to another large holding area. In the second holding area at Mullaitivu, each person was required to go through a security check.[1121]

1050. Some IDPs were taken into sentry posts made out of sandbags[1122] or enclosures made from palmyra leaves, while others were made to strip in an area where they were visible to others. [1123] Several female IDPs reported that male soldiers checked them. Some women were checked by female soldiers but still risked being watched by male soldiers who looked over the top of enclosures while they undressed and recorded images of the naked or semi-naked women on their mobile phones.[1124] As described in Chapter X, one witness said that soldiers poked her breasts with their rifle barrels,[1125] and another said that she felt "like a corpse" when she was stripped naked and checked. [1126]

1051. In all three holding areas at Mullaithivu and at Omanthai, members of paramilitary groups or former LTTE cadres who had become informants, some with their faces covered, assisted military intelligence officers in identifying former LTTE fighters, members of LTTE and LTTE employees.[1127] Some former fighters who had surrendered or had been captured much earlier confirmed to OISL that military intelligence officers took them to Mullaithivu to identify their former colleagues.[1128]

1052. Some civilians who had been LTTE fighters or worked for the LTTE in a civilian capacity identified themselves to the soldiers, whilst others did not.[1129] Young women with short hair were easily identified by the soldiers as LTTE cadres and thus particularly vulnerable. At Mullataivu, those who identified themselves as members of LTTE or were suspected of having been associated with the LTTE were taken aside and questioned by military intelligence officers.[1130] They were separated from their families and kept in an open area guarded by soldiers before being taken away. [1131]

1053. At Mullaitivu and Omanthai, witnesses described seeing soldiers beating some of those who identified themselves as LTTE.[1132] In May 2009, UNHCR raised concerns about reports of physical assaults during screening processes in the Vanni and called on the Government to investigate such cases[1133].

1054. At Omanthai, where there was further registration, physical searches, screening and questioning[1134], there were areas where members of LTTE who served in different capacities were required to assemble. Those who were identified or had admitted at any of the screening points to having been part of the LTTE including in a civilian capacity, were taken away.[1135] Injured IDPs were allowed to see medical personnel and some were transferred to hospitals.[1136]

[1121] WS on file
[1122] WS on file
[1123] WS on file
[1124] WS on file
[1125] WS on file
[1126] WS on file
[1127] WS on file
[1128] WS on file
[1129] WS on file
[1130] WS on file
[1131] WS on file
[1132] WS on file
[1133] UNHCR Flash Update on the IDP Situation in Sri Lanka's North, 14 May 2009.
[1134] WS on file
[1135] WS on file
[1136] WS on file

1055. Once through the various screening points, those not identified as having links with the LTTE were taken to closed camps, designated as "Welfare Villages" by the Government. Most were taken to Manik Farm, from which they were not allowed to leave.

Deprivation of liberty of IDPs in closed camps

Establishment of closed camps for IDPs

1056. The Government began depriving IDPs of their liberty coming out of LTTE-controlled territories in military-guarded, closed camps, from March 2008. The first such camp to be established was in Kalimoddai[1137], and a second was set up in Sirukandal[1138], in July 2008, both of them in Mannar District. The camps were a precursor of what was to follow for those fleeing the conflict: Prolonged deprivation of liberty (for many months) in camps surrounded by barbed wire and guarded by security forces, and severe restrictions on movement out of the camps, IDPs were not allowed to resettle or be accommodated with host families.

1057. In the set of recommendations compiled after his visit to Sri Lanka in December 2007, and in his subsequent report to the Human Rights Council, Walter Kälin, the Representative of the Secretary-General on Human Rights of IDPs, had emphasized the importance of respecting the Guiding Principles on Displacement in Sri Lanka[1139], and that, as citizens of their country, IDPs "remain entitled to all guarantees of international human rights and international humanitarian law". He also reminded the Government "while the need to address security may be a component of the plan" [to address the immediate needs of the civilian population], it should be humanitarian and civilian in nature. In particular, IDPs' freedom of movement must be respected, and IDPs may not be confined to a camp."[1140]

1058. Throughout 2008 and early 2009, humanitarian organizations continued to engage the Government in discussions on the key minimum principles that must be respected in the establishment of IDP camps. In August 2008, UNHCR developed an *Aide-Mémoire* in which it stated that "it can only support IDP sites in which the physical safety and security, protection and well-being of IDPs is ensured." It set out the conditions for UNHCR involvement in the identification and camp management of future IDP sites, including "full and unhindered freedom of movement within, as well as in and out of IDP sites", free and unhindered access by humanitarian organizations to IDPs during displacement and in IDP sites. UNHCR advocated that its preferred option for emergency shelter was the host family arrangement.[1141]

1059. In January 2009, Basil Rajapaksa, Chairman of the Presidential Task Force for Resettlement, Development and Security in the Northern Province, presented the Government's draft "Urgent Relief Programme for the People of Vanni" to humanitarian

[1137] Kalimoddai was closed in May 2010, according to UNOCHA, Humanitarian Snapshot, June 2010.

[1138] In a fundamental rights' petition submitted to the Supreme Court in June 2009, the Centre for Policy Alternatives as petitioners noted that "the deprivation of liberty and detention of [700] IDPs in Kalimoddai and Sirukandal have continued for 15 months with no information publicly available as to if and when they would be released". Fundamental Rights Petition, CPA v. Five Respondents, June 2009.

[1139] E/CN.4/1998/53/Add.2

[1140] UN Human Rights Council, Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, 21 May 2008, A/HRC/8/6/Add.4, page 5 and page 22.

[1141] UNHCR Colombo Aide Mémoire of 29 August 2008, http://www.un.org/press/en/2009/090424_Awad.doc.htm

agencies and donors, which outlined its plans to build "welfare villages" to "provide safety and relief assistance" to some 200,000 IDPs it expected to come out of the conflict zone. The Government cited both security considerations and mine clearance as reasons for this proposal. [1142]

1060. Of particular concern to the international community was the Government's stated intentions to keep the IDPs in semi-permanent structures for up to three years, which were to be fenced and guarded by military. It is also interesting to note that at that time, in January 2009, while the Government said it was preparing to receive some 200,000 IDPs, in relation to the delivery of relief supplies to the Vanni, it was almost simultaneously insisting that there were only some 70,000 civilians left there.

1061. The same month, UNHCR developed a further guidance note on assistance to new IDP sites, reiterating the key principles of providing assistance in IDP camps, and conditioning the delivery of humanitarian assistance to the new sites in Vavunya, Mannar and Jaffna on the Government's adherence "to International Humanitarian Law and the Guiding Principles on Internal Displacement, including guarantees with regard to camp security, maintenance of law and order and an undertaking to ensure the civilian and humanitarian character of the IDP sites."[1143]

1062. An April 2009 mid-term review of the Guidance Note, while highlighting a number of Government achievements, showed continued failings to respect key principles, such as freedom of movement, and noted the continued presence of armed paramilitary and military personnel inside the camps, including at night. [1144] UNHCR called for "a plan with timeframes for returning IDPs their right to freedom of movement and release of IDPs from the camps", and for "procedures for a time-bound and transparent screening process". On 15 May 2009, Walter Kälin warned again that "prolonged deprivation of liberty of such persons would not only amount to arbitrary detention but it also aggravates the humanitarian situation needlessly."

1063. By June 2009, despite continued advocacy by the international community, 30 military- guarded and military-run closed sites had been established in Vavunya, Mannar and Jaffna[1145], in which some 284,000 IDPs were being held. Thus, the civilians – including families, elderly, children, and people with disabilities - who had found themselves trapped in the LTTE-controlled conflict zone subsequently found themselves confined in closed camps, with no clarity as to when they might be able to leave or return home.

1064. Despite strong protections in the Constitution of Sri Lanka as well as under international law concerning the rights to freedom of movement and not to be arbitrarily detained, and the right of those deprived of their liberty to be brought promptly before a judge,[1146] IDPs in the closed camps did not themselves have access to lawyers or to courts to challenge what amounted to arbitrary detention, although at least one Fundamental Rights Petition was filed by the Centre for Policy Alternatives, a Sri Lankan NGO, to challenge their detention as a group (see below). There was no law regulating the deprivation of liberty of IDPs and the period of their deprivation of liberty was at the discretion of the military authorities.

[1142] Sri Lanka's Humanitarian Effort, Presidential Task Force for Resettlement, Development and Security in the Northern Province, 2011.

[1143] Flash Update on the IDP Situation in Sri Lanka, 21 January 2009, UNHCR Representative Office in Colombo.

[1144] Mid-term review of the Guidance Note on Assistance to IDPs in Vavunya, Jaffna and Mannar-A Balance Sheet, April 2009.

[1145] IDP Protection Working Group, Second Quarterly Update on Protection Developments.

[1146] Articles 12(3), 13 (2) and 14(1)(h)).

1065. While demining was a concern that constrained resettlement, it is clear from the many accounts, as well as from the Government's statements, that the principle reason for holding the IDPs for prolonged periods in closed camps without allowing freedom of movement was to screen them for LTTE suspects. For example, in his 8 September 2010 statement to the LLRC, Major-General Kamal Guneratne, Competent Authority for IDPs in the Northern Province[1147], stated that "we had to impose certain restrictions on the movement of IDPs because among the IDP population there were dangerous IDPs. Everybody was pointing fingers at us - at the Government and security forces - saying that we are not giving any freedom of movement for these people… We had to keep them under certain movement restrictions for about two-three months[1148] because we knew that there was a huge amount of fighters who were hiding behind this population and we had to employ all our intelligence agencies to identify them."

1066. However, even though Governments are entitled to temporarily deprive IDPs of their liberty and separate out fighters, the deprivation of liberty must only be for the shortest time possible. Moreover, the deprivation of liberty of IDPs is permissible only if there are serious and legitimate reasons to believe that the IDPs would seriously prejudice the security of the state. Furthermore, for IDPs to continue to be detained, there needs to be a legal basis and charges must be brought against each individual.

1067. On 11 June 2009, the Centre for Policy Alternatives filed a fundamental rights case before the Supreme Court arguing that "the deprivation of liberty of an ordinary civilian in the latter type of camp (i.e. "welfare" or "displacement" camps) without a valid arrest warrant and without recourse to any law or regulation which permits the arrest of an individual amounts to an illegal and arbitrary arrest….It is reasonable to state that all such individuals interned in the latter type of camp…have in fact been illegally and arbitrarily arrested, in violation of their fundamental rights guaranteed by the Constitution." These rights include Article 14 (1) which guarantees freedom of movement. International law also requires that if an individual is to be deprived of their liberty s/he must be informed of the reasons for the arrest and detention in conformity with international standards.

1068. The petition *inter alia* sought an order to ensure freedom of movement for all IDPs held in the closed "welfare" camps, as well as recognition by the Supreme Court that named State authorities had violated the constitutional rights of the IDPs. The Supreme Court heard the application on 18 June 2009, but the case was postponed several times. According to information available to OISL, the judgement in the matter remains pending.[1149]

1069. After a further visit to Sri Lanka in September 2009, the Representative of the Secretary-General on Human Rights of IDPs, Walter Kälin, expressed deep concern about the slow pace of return of IDPs, stating that "the restoration of freedom of movement for more than 250,000 internally displaced persons held in closed camps …is becoming a matter of urgency..".[1150] He again urged the Government to allow IDPs to leave the camps, either to return home, to stay with host families, or to move to open transit sites. He also reminded the Government that: "According to international law, legitimate and imperative

[1147] The Resettlement of the civilians displaced during the humanitarian mission, GOSL, 26 November 2009, as uploaded on http://reliefweb.int.

[1148] The movement restrictions lasted for many more than 2-3 months according to the information gathered from a range of sources by OISL, and contrary to the Major-General's statement, screening and interrogation continued into 2010.

[1149] The Centre for Policy Alternatives v Minister of Defence (SC FR 457/09), http://www.cpalanka.org/the-centre-for-policy-alternatives-vs-minister-of-defence-sc-fr-45709.

[1150] Irinews, Sri Lanka: Concerns growing over pace of IDP resettlement, 30 September 2009. http://www.irinnews.org/report/86371/sri-lanka-concerns-growing-over-pace-of-idp-resettlement

security concerns may justify the deprivation of liberty of civilians during the height of a conflict, but it must not last longer than absolutely necessary to respond to these security concerns. Deprivation of liberty decisions must further be made on an individual rather than a group basis. Those who are not released must be informed about the reasons on an individual basis and be given a genuine opportunity to have this decision reviewed by an independent body."[1151]

1070. Walter Kälin warned that "the continued confinement of the civilians among the camp population to closed camps and sites…may even assume the character of collective punishment if no substantial progress in restoring the freedom of movement is made in the next few weeks."

Detention at Manik Farm, Cheddikulam Division, Vavuniya District

1071. Manik Farm itself spanned some 500 hectares and several kilometres, and was comprised of seven zones[1152], each one surrounded by barbed wire and guarded by military personnel. IDPs had first been taken to Manik Farm in February 2009, amongst them care-givers who had accompanied patients evacuated by ICRC ships and patients who recovered after treatment.[1153] Almost 90,000 IDPs were taken to Manik Farm after screening at Mullaitivu and Omanthai, between 17 May and 9 July 2009. At its peak, some 220,000 out of the total 284,000 IDPs were being held there.

1072. The IDPs were not only prohibited from leaving Manik Farm without authorization, but also could not leave the zone to which they had been assigned. Initially, they were also not allowed to visit relatives in other sections of the same zone. The lack of freedom of movement prevented IDPs from searching for relatives in other sections or zones. Parents had been separated from their children during the conflict or during screening[1154] and were desperate to find them. Family separation was a major concern of IDPs and caused added trauma to what those coming out of the conflict area had already witnessed. For some, this continued over many months, particularly for people whose relatives had been taken away by the security forces and whose whereabouts was not known, or for those who were detained and transferred to different centres.

1073. Witnesses told OISL that many IDPs were refused permission to attend the funerals of family members. [1155] Access to medical treatment in hospitals outside Manik Farm required special authorization, and the IDPs were escorted back to the camp with security once the treatment was complete, in the same way that detainees would be. [1156] Visits to IDPs outside of the camp were also strictly controlled. Soldiers ordered visitors to leave as soon as the allocated time had expired which at times amounted to no more than 15 minutes. A witness told OISL that these conditions were like visiting someone in prison.[1157]

1151 United Nations Press Release, *Freedom of movement for a quarter of a million displaced, UN Representative discusses with Sri Lankan government,* 29 September 2009. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=135&LangID=E

1152 Zone 0 (Kathirkamar Village) ; Zone 1 (Ananda Kumarasamy Village) ; Zone 2 (Pon Ramanathan Village) ; Zone 3 (Arunachchalam Village) ; Zone 4 (Chettikkulam); Zone 5; Zone 6 ; Zone 7 (Maruthamadu Welfare Centre).

1153 WS on file

1154 WS on file

1155 WS on file

1156 Letter on file from Secretary, Ministry of Healthcare and Nutrition, 11 May 2009.

1157 WS on file

1074. The militarized nature of the Government's approach to IDPs was highlighted by the appointment of Major General Chandrasiri as the Competent Authority in charge of IDPs in the Northern Province, in April 2009. He was subsequently replaced by the Commander of the 53rd Division of the SLA, which had been involved in the final offensive, Major General Kamal Gunarathne. Although civilian authorities were also involved in the management of IDP issues[1158], the Ministry of Defence and the SLA played key roles, particularly with regard to controlling movement in and out of the zones and camps. This was confirmed by Defence Secretary Gotabaya Rajapaksa in his presentation to LLRC when he stated that "It is the military who looked after the whole process, of course the other government officials, agencies [sic], but the majority of the work [setting up the IDP camps] was done by the military." [1159] Military commanders were in charge of each zone of Manik Farm, and military personnel were present throughout the camps to regulate the everyday life of the IDPs.

1075. The screening and interrogation processes - the main official justification for not allowing IDPs to leave the camps - continued inside the camps throughout 2009 and into 2010. Military Intelligence officers operating in civilian clothes, and CID personnel were present as part of the strategy to search for LTTE cadres and fighters.

1076. Members of paramilitary groups and former LTTE fighters who worked as informants regularly entered the camps with Military Intelligence officers to identify LTTE members.[1160] They would walk amongst the IDPs and point out individuals, who were taken away for questioning. Some IDPs were dragged and beaten in the presence of other IDPs when they were being taken,[1161] while others were taken away at night.[1162]

1077. Witnesses narrated how they were called by CID, often several times during their deprivation of liberty, to be questioned in an interrogation room in the camp about their suspected association with the LTTE or if they had information about LTTE members in the camp.[1163] Other sources also indicated that some IDPs were interrogated regularly by CID agents and sometimes made to sign a blank piece of paper or a document in Sinhalese that they were not allowed to read. Some IDPs were required to report daily to the CID. Wives of former LTTE members, who had been separated from their husbands during the screening and were held in detention centres, were questioned about the activities of their husbands.

1078. Witnesses described how they lived in a state of constant fear as soldiers regularly beat people or took away relatives for interrogation or to detention centres. If IDPs did not follow the strict instructions of the soldiers, they were beaten and verbally abused.[1164] They had no recourse to complain about the poor conditions or about their treatment by soldiers or CID.

1079. The continuous presence of military personnel, police officers and members of paramilitary groups also created a situation of insecurity for IDPs. While humanitarian

[1158] Several other ministries were involved in a national steering committee, which was headed by the Minister for Resettlement, Disaster Relief Services. At the District Level, the Government Agent and other agencies were also involved. (Sri Lanka's Humanitarian Effort, Presidential Task Force for Resettlement, Development and Security in the Northern Province, 2011).

[1159] Representation made by Mr. Gotabaya Rajapaksa, Secretary Ministry of Defence to the LLRC, 17 August 2010.

[1160] WS on file

[1161] WS on file

[1162] WS on file

[1163] WS on file

[1164] WS on file

workers, if given authorization, were present in Manik Farm at certain times during the day, the absence of protection or monitoring mechanisms, especially at night, left the IDPs very vulnerable, especially women and girls.

1080. In September 2009, UNHCR issued a statement expressing deep concerns about reports of security incidents in the camps. It reported an incident that had occurred in Manik Farm, on 26 September, when security forces tried to stop a group of IDPs from moving between two zones, which led to a confrontation and security forces firing shots. UNHCR reported that a child was paralyzed after being hit by a stray bullet, and called for measures to ensure the protection and physical security of the IDPs, and to accelerate the return process and restore freedom of movement for those displaced.[1165]

Camp conditions

1081. The situation for the detained IDPs was exacerbated by the conditions in the camps, particularly after the large influxes at the end of April and in May 2009, for which the Government was ill prepared, in spite of planning and discussions having begun in 2008.

1082. In a statement issued on 26 November 2009, the Government claimed that " it was able to, within a short period of time, establish hospitals, banks, Government offices, schools and sathosa shops to ensure a state of normalcy is enjoyed by the people living in the IDP camps…"[1166] In its 31 January 2013 report to the United Nations Human Rights Committee,[1167] the Government stated "Each welfare village was divided into blocks of shelters, which were provided with electricity, and each block had separate kitchens, toilets, bathing areas and child friendly spaces. Special priority was given for the public areas and recreational activities within the centres. Provision of water exceeded the standards adopted by the WHO, and the sanitation facilities were also kept to a standard. Food and nutrition was a particular area of focus… Extensive health-care facilities and adequate medical supplies were provided in the Welfare Villages…. "

1083. Conditions in the various zones making up Manik Farm "Welfare Village" varied significantly and changed over time. However, witness statements received by OISL, as well as reports by the United Nations, humanitarian organizations, NGOs, LLRC and others, show clear discrepancies between the conditions in the camps as described and the accounts provided by the Government.

1084. In April 2009, UNHCR raised concerns about overcrowding and poor conditions in IDP camps and lack of adequate health care. The review concluded that UNHCR had a number of serious protection concerns with regard to IDP camps in Vavuniya, Jaffna and Mannar, and made recommendations for immediate action by the Government.[1168]

1085. In a separate report issued in April 2009, the Epidemiology Unit of the Ministry of Healthcare and Nutrition set out the results of its assessment of IDP camps in Vavuniya in accordance with its "*Provisional guidelines for the management of public health problems*

[1165] UNHCR, 29 Sept 2009, UNHCR concerned about safety of displaced persons in Sri Lanka, reliefweb.int.

[1166] The resettlement of the civilians displaced during the humanitarian mission, report by Government of Sri Lanka. 26 November 2009, as recorded on relief.web/int.

[1167] CCPR/C/LKA/5,Consideration of reports submitted by State parties under article 40 of the Convention, Sri Lank, 31 January 2013.

[1168] UNHCR, Mid-term review, 15 April 2009.

of the internally displaced people". [1169] While the report acknowledged the influx of IDPs that had already taken place "places huge pressure on resources and created myriads of problems for the authorities", it detailed key findings regarding conditions in the IDP camps which needed to be addressed: Insufficient space inside the shelters and poor ventilation; lack of water for washing and cleaning clothes and the lack of safe, potable drinking water; inadequate number and poor maintenance of toilets, with several of them overflowing; and conditions of the communal kitchens, which made it difficult to ensure optimal hygiene in food preparation.[1170]

1086. The two above-mentioned reports corroborate statements from witnesses interviewed by OISL and other sources which highlighted similar deficiencies: Serious congestion, health and sanitation issues, lack of toilets, overflowing toilets, overcrowded tents sheltering up to 15 people, unbearable heat during the dry season and unusable tents in the monsoon season. In August 2009, for example, flash floods reportedly damaged almost 2,000 tents in Zone 4, and the inundation mixed effluent from 95 latrines with storm water in Zone 2, increasing the risks of disease.[1171]

1087. A witness described the conditions in Zone 2 of Manik Farm as follows: "Each of these camps had A to Z units. In my camp, each unit was a 6m x 6m space for 15 people and cooking was done there too. These were makeshift structures and some had tarpaulin roofs and others had roofs made of thin sheets of zinc. Sections A-C had only one toilet for about 45 people; we had to wait in long queues. The food we were given caused diarrhoea and many people had to go to toilet in the open. Conditions were very dirty."[1172]

1088. Other witnesses told OISL that Zone 2 only had tents and holes in the ground, with planks around to be used as toilets. Most of the toilets in the camps were overflowing.[1173] The toilets and ablution facilities had no facilities for persons with disabilities, causing particular difficulties and distress for the disabled and war-wounded. [1174] Hundreds of tents had to access water at a single hand pump. IDPs had to bathe in the river and women were regularly watched by soldiers while bathing.[1175]

1089. In their final report on the "Integrated Health and Medical Services Programme in Menik (sic) Farm and Districts of Vavunya and Jaffna", the Relief and Rehabilitation Unit and the Consortium of Humanitarian Agencies, which ran six primary health clinics in Manik Farm, noted increasing numbers of patients attending the primary health care centre in Zone 2 up to November 2009 "which could be attributed to the fact that diseases and ailments began to spread throughout the camps as time went by" [1176]. They also reported that skin diseases, such as scabies, as well as diarrhoea were particularly prevalent. "Those

[1169] Adopted in January 2009. The guidelines recommended measures to prevent the spread of communicable diseases, including ensuring the safety of water and food, safe disposal of excreta and refuse, treatment and management of people with illness, and disease surveillance.

[1170] Epidemiology Unit, Ministry of Healthcare and Nutrition, Sanitation, hygiene and disease surveillance in camps for internally displaced person in Vavuniya, Weekly Report Vol. 36, No. 17, 18 – 25 April 2009, http://www.epid.gov.lk/web/attachments/article/150/Vol_36_NO_17_English.pdf

[1171] Humanitarian Information Unit, U.S. Department of State, Sri Lanka: Manik Farm IDPs vulnerable to monsoon flooding, 21 August 2009, https://hiu.state.gov/Products/SriLanka_ManikFarmIDPsMonsoon_2009Aug21_HIU_U71

[1172] WS on file

[1173] WS on file

[1174] WS on file

[1175] WS on file

[1176] The Integrated Health and Medical Services Programme in Menik (sic) Farm and Districts of Vavunya and Jaffna, the Relief and Rehabilitation U and the Consortium of Humanitarian Agencies, March 2010.

who arrived at these camps had nothing but the clothes on their backs and have taken refuge in makeshift tarpaulin shelters, which has left them particularly at risk for chickenpox[1177], diarrhoea, viral fever, sore eyes and coughs. Without adequate shelter, open defecation is widespread due to the lack of toilet facilities…." The report noted in its conclusions that "the unhealthy environment provided for the camp's residents [in Manik Farm] almost always ensured a spread of disease or common ailments."

1090. Humanitarian workers also described the difficulties sick IDPs faced in reaching the medical facilities that were put in place, and once there, they often had to spend many hours in queues. There were frequent reports of patients not being able to communicate with doctors, many of whom only spoke Sinhala. Patients who had been transferred to hospital were sometimes returned to the camps before they were sufficiently recovered.[1178] Furthermore, family members taken to hospital were unable to communicate with their relatives inside the camps, who often did not know where the person had been taken. Vavuniya Hospital, where IDPs were taken for treatment once authorized, was also reportedly under SLA guard inside and outside, with access restricted both to patients and to information. Initially, the camp authorities did not allow IDPs to visit family members who had been sent to hospital for treatment. After a few months, they established a pass system, which required IDPs wanting to visit relatives in hospital to register with camp authorities. On arrival at the hospital, they also had to register with military officials. They were required to return to the camp by 6 p.m. the same day.

1091. Humanitarian reports indicate that lack of medical care, camp conditions and delayed medical treatment, partly due to restrictions on movement and lack of transportation, resulted in preventable deaths. The elderly were among the most vulnerable since many had no relatives to care for them. On 27 April, the Vavuniya District Magistrate Court had ordered that all IDPs over the age of 60 who were sick and without relatives in the IDP camps were to be transferred to homes for elderly people. The decision was based on his findings that there were more than five deaths each day of elderly persons in the IDP camps due to starvation and malnutrition, and that the deaths of 14 elderly people had been registered in Manik Farm the previous day.[1179]

1092. Humanitarian workers reported sometimes seeing the bodies of elderly persons lying on the ground[1180] including two in different camps in June 2009. Many elderly were unaccompanied in the camps, in some cases separated from families who were in other camps and not able to reunite with them. Many witnesses had also described the elderly as being particularly weakened by conditions in the conflict zone. Elderly persons started being released as a priority from around June, but often to institutions that, at least initially, did not have the capacity to care for them. (see below, Releases and resettlement) [1181]

1093. In its final report, the LLRC recognised that "elderly in the conflict affected areas have suffered immensely" and that the physical difficulties, psychological trauma and economic hardships" that they had undergone "needs more recognition" (para 9.96). It called on the Government and other stakeholders to "pay attention to the special needs of the elderly due to disability and other long-neglected health issues, including conflict-related trauma" and provisions to assist them in caring for their extended families.

[1177] An outbreak of chickenpox in June led to 12,195 cases being recorded. Op cit.

[1178] WS on file

[1179] WS on file

[1180] The Integrated Health and Medical Services Programme in Menik (sic) Farm and Districts of Vavunya and Jaffna, the Relief and Rehabilitation Unit and the Consortium of Humanitarian Agencies, March 2010.

[1181] IDP Protection WG, 31 June 2009, Second Quarterly update; WS on file.

1094. According to the Government, "Special facilities for psychiatric care, including support for individuals with Post Traumatic Stress Disorder were provided" in the camps. However, according to information gathered by OISL, mental health practitioners were initially denied access to the camps, in spite of some NGOs indicating that they were ready to provide such services. Most IDPs were struggling to cope with injuries they sustained during the war, the death of family members, the lack of information on the whereabouts of relatives, and uncertainty about their future. Some had seen their entire family killed during the conflict. The lack of freedom of movement within and out of the camps, uncertainty about how long they would remain in the camps, and the lack of meaningful activities, exacerbated the trauma of IDPs.[1182] Basic mental health services were reportedly provided to IDPs from September 2009, with the support of civil society organizations, but they were insufficient to meet the enormous needs.[1183]

1095. In June 2009, following a visit to Manik Farm after opening a new court building, the then Chief Justice Sarath Nanda Silva was quoted as saying: "I cannot explain the pathetic situation they undergo. I was unable to console them. They survive amid immense suffering and distress. .. We construct a massive building on our side. But these IDPs live in tent-shelters. Ten IDPs live in one tent-shelter. They could stand [up] straight only in the centre of the tent shelter. ….IDPs are seen waiting in queues extending from 50-100 yards to take their turn to answer a call of nature. This is the life of Vanni IDPs in Cheddikulam camp." [1184] "They live outside the protection of the law of the country…We are doing a great wrong to these people." [1185]

1096. Although the camp congestion eased with subsequent releases for resettlement (see below), and additional medical services were provided, conditions in the camps did not necessarily improve, with shortages of drinking water reported at times, deteriorating shelters, limited access to food, and continuing risks of communicable diseases because of the poor conditions.

1097. More than a year later, in August 2010, during a visit to the Cheddikulam camps (Manik Farm) to hear statements from IDPs still there, the Chairman of the LLRC described the conditions in the camps as "deplorable", and indicated they would be recommending that the Government expedites resettlement. [1186]The IDPs had described to the LLRC their prolonged deprivation of liberty in the camp, intolerable conditions, failure of the authorities to resettle them for a range of reasons, lack of income and assistance to buy food.

1098. In its report "Sri Lanka's Humanitarian Effort" of 2011, the Government noted that the plan it presented to the international community in January 2009 "was not fully endorsed by UN and International Agencies" because of their "belief that GOSL was planning to hold IDPs for a long period. In fact this belief made many agencies resisting (sic) the construction of better facilities, when it was perceived that the facilities had elements of a more permanent structure". It stated that as a result, "GOSL had to compromise and work on less than ideal plans." It went on to state that "several problems were caused by what seemed the determination of some agencies to thwart what they

[1182] An outbreak of chickenpox in June led to 12,195 cases being recorded. Op cit.

[1182] WS on file.

[1183] The Integrated Health and Medical Services Programme in Menik (sic) Farm and Districts of Vavunya and Jaffna, the Relief and Rehabilitation Unit and the Consortium of Humanitarian Agencies, March 2010.

[1184] Quoted in the CPA Fundamental Rights Petition, op. cit. june 2009

[1185] BBC, 'IDPs not protected by law' – CJ, BBC, 4 June 2009, http://www.bbc.co.uk/sinhala/news/story/2009/06/09html

[1186] Transcript of LLRC hearings in Cheddikulam camps.

mistakenly saw as the intention of the Government to hold IDPs for a very long period. This led to a refusal to upgrade facilities despite earlier pledges that this would be done if IDPs had to stay beyond three months. This created discomfort for IDPs with regard to the supply of short-life-span tents that were never intended to be used for more than three months; sub-standard toilets that ignored national standards of construction; and a refusal to assist with decongestion."[1187]

1099. OISL notes that it was the obligation of the Government to provide for the basic needs of the IDPs and to treat them with dignity. Furthermore, the humanitarian agencies faced many difficulties in providing assistance in the camps. Initially, they had to negotiate access to Manik Farm each time they arrived, but in June 2009, ID cards were issued to United Nations and NGO staff members who were pre-cleared to enter camps. However, even up to December 2009, humanitarian organizations were still required to request authorization from the military on a bi-weekly basis to access the camps.

1100. Stringent conditions were imposed on humanitarian workers once they gained access. There was a limit on the number of staff members and vehicles allowed into camps, and they were not allowed to take mobile phones or cameras into the camp. The movements of all humanitarian workers in the camps were closely monitored and some humanitarian organizations were restricted to certain areas of the camp. As they were not allowed to enter the tents of IDPs or speak with them in private, they could not collect data that was essential to assess the needs and protection concerns.

1101. The omnipresence of soldiers, police officers and informers within the camp also made it difficult for humanitarian organizations to undertake comprehensive needs assessments or to obtain information from IDPs about conditions in the camp, [1188] and then to provide adequate humanitarian assistance.[1189]

1102. Easing of restrictions on movement

1103. The restrictions on movements of IDPs in the camps were not eased until 1 December 2009, and even then movement in and out of the camps was strictly controlled, despite reported assurances by the Minister of Resettlement and Disaster Relief Services, Risath Bathiyutheen, on 30 November, that "the villages will be declared as open from this day… The Government has declared that any civilian will be free to leave the villages once they have given their personal details to the authorities concerned".[1190]

1104. Over the following months, those who were not released from Manik Farm for resettlement had to obtain temporary passes in order to leave the camps, which were issued according to changeable procedures, often differed between zones and were subject to time-limits. All permits required authorization from the military authorities and, while the new pass system gave them some limited freedom of movement, it nevertheless meant that the IDPs were not able to move around without permission, even between zones and camps. IDPs returning to the camp on expiry of their temporary passes were subjected to a thorough security screening. [1191]

1105. Indeed, many months later, IDPs were still reporting restrictions on visits to IDPs in other camps, which varied between zones. For example, in May 2010, IDPs from Zones 1, 2, and 3 could cross zones between 8.30 a.m. and 5.30 p.m. by leaving their IDs at the army

[1187] Presidential Task Force, Sri Lanka's Humanitarian Effort, p. 83, para. 159.
[1188] WS on file
[1189] Official cable from US Embassy, Colombo, 24 June 2009, https://www.wikileaks.org/plusd/cables/09COLOMBO637_a.html
[1190] www.defence.lk/new.asp?fname=20091130_04
[1191] WS on file

post and retrieving them upon return. IDPs in other zones had to apply for a temporary pass 24 hours in advance. For several weeks in May 2010, in Zone 2, only one member of a family could obtain a temporary pass to leave the camp.

Releases and resettlement of IDPs

1106. In a joint statement issued on 22 May 2009 after a meeting between India's National Security Adviser and Foreign Secretary and President Mahinda Rajapaksa, the Government had "indicated that it was their intention to dismantle the welfare villages at the earliest and reportedly outlined a 180-day plan to resettle the bulk of IDPs to their original places of habitation."[1192]

1107. Despite numerous promises by the Government, the release of IDPs from the camps and their return to their villages proceeded very slowly. Some humanitarian workers and medical personnel in the camps whose services were required by the authorities were released by the end of May 2009.[1193] The elderly, persons with learning difficulties and other vulnerable groups were among the first to be released. By September 2009, some 16,490 had been released to host families and homes for the elderly. A further 35,822 IDPs had been returned to their places of origin.[1194] However, according to OCHA, 238,000 IDPs still remained in the Vavuniya camps at that time.

1108. Others left the camps without permission, their release facilitated through the payment of bribes. Many witnesses stated that family members made arrangements for their release through the payment of large bribes to military personnel sometimes arranged with the assistance of EPDP paramilitaries.[1195] Witnesses told OISL that automatic teller machines were set up very early in the camps, which facilitated the payment of bribes. Families of LTTE cadrespaid large amounts to facilitate their release from the camps.[1196] Some IDPs handed over their family jewellery to military personnel to have their families released.[1197]

1109. On 9 September 2009, following increasing international pressure, the Government announced[1198], that it would allow IDPs to leave the camps to live with relatives. There was a surge in releases in October 2009, when almost 50,000 were allowed to leave the camps and resettle[1199].

1110. At the end of December 2009, however, the Government was quoted in the media as saying that there had been no deadline for the return of IDPs, and the Minister for Disaster

[1192] http://www.news.lk/ as accessed through reliefweb/web.int/report/sri-lanka/india-and-sri-lanka-agree-idp-timetable-political-solution

[1193] Source: W-037

[1194] UN, Joint Humanitarian Update, Report # 11, 10 – 23 October 2009, http://reliefweb.int/sites/reliefweb.int/files/resources/C14269A7E2A57F27C125765D00357EE3-Full_Report.pdf

[1195] WS on file

[1196] WS on file

[1197] WS on file

[1198] www.priu.gov.lk/news_update7Current _Affairs/ca200909/200909govt_to_release_idps_relatives.htm

[1199] IDP Site Locations and Capacity as of 29 October 2009, Vavuniya, UNOCHA; Vanni IDP Camps and Hospital Information, Arrivals since 01 April 2008-Updated as of 28 September 2009; AFP, 21 November – Sri Lanka to free all war displaced civilians: official.

Management and Human Rights admitted that more than 100,000 still remained in camps.[1200]

1111. After the presidential elections on 26 January 2010, return of IDPs increased significantly again. By March 2010, 92,000 people were still confined to camps, including 88,198 in Manik Farm[1201], facing continuing restrictions of movement.[1202] By the end of February 2011 there were nevertheless still 17,701 IDPs in Manik Farm.[1203] By the time Manik Farm was officially closed on 26 September 2012, some IDPs had spent more than three years there.

1112. After their return to their communities or resettlement, many faced the risk of surveillance, threats, and sexual and gender-based violence, particularly given the highly militarized environment documented in previous OHCHR reports to the Human Rights Council. Given the experiences that many had lived through, including loss of family members, the scars of the conflict will remain for a long time. At the end of her visit to Sri Lanka in 2013, former High Commissioner Navi Pillay stated: "Although the fighting is over, the suffering is not. I have been extremely moved by the profound trauma I have seen among the relatives of the missing and the dead, and the war survivors in all the places I have visited, as well as by their resilience…"[1204].

[1200] Daily Mirror, *Government now says no deadline to resettle IDPs*, 29 December 2009, http://www.dailymirror.lk/index.php/news/512-government-now-says-no-deadline-to-resettle-idps.html

[1201] IDP Camps and Resettlement Information, Updated as of 11 March 2010, UN OCHA.

[1202] UNHCR, Sri Lanka's displacement chapter nears end with closure of Manik Farm, 27 September 2009, http://www.unhcr.org/506443d89.html; The last 110 families were not allowed to return to their villages because their land has been occupied by the military, and they were relocated to state owned lands in Kepapilavu in Mullaithivu district.

[1203] UNHCR, Shelter/ NFI Sector Meeting Thursday, 3 March 2011, file:///D:/downloads/Shelter%20Meeting%20Minutes%20-%2003.03.2011.pdf

[1204] Press conference given by HC Pillay at the end of her visit to Sri Lanka, Colombo 31 August 2013.

Part 3

XVII. Principal findings of OHCHR Investigation on Sri Lanka (OISL)

1113. The following section summarises the principal findings established by the OISL as a result of its investigation and on the basis of the information in its possession. The sheer number of allegations, their gravity, recurrence and the similarities in their *modus operandi*, as well as the consistent pattern of conduct they indicate, all point towards system crimes. While it has not always been possible to establish the identity of those responsible for these serious alleged violations, these findings demonstrate that there are reasonable grounds to believe that gross violations of international human rights law, serious violations of international humanitarian law and international crimes were committed by all parties during the period under investigation. Indeed, if established before a court of law, many of these allegations would amount, depending on the circumstances, to war crimes and/or crimes against humanity. In many of these cases, these acts were apparently committed on discriminatory grounds.

1114. These allegations should all be promptly, thoroughly and independently investigated, and those responsible, directly or as commanders or superiors, brought to justice. Special measures must be taken to protect the victims, especially child-victims and victims of sexual violence, and to ensure that they have access to full redress, including psychosocial support. These findings also highlight the deeply rooted institutional structures and cultures involved and the need for profound institutional change to address them in order to guarantee their non-recurrence.

1115. While the findings listed below are analysed primarily within the framework of international human rights law, it is important to note that, in cases in which the incident is linked to the armed conflict, relevant rules of treaty and customary international humanitarian law apply. These include in particular article 3 common to the four Geneva Conventions of 1949, and the customary rules relating to the conduct of hostilities, as described in the above legal framework.

Unlawful killings

1116. On the basis of the information obtained by OISL, there are reasonable grounds to believe the Sri Lankan security forces and paramilitary groups associated with them were implicated in unlawful killings carried out in a widespread manner against civilians and other protected persons during the period covered by OISL's report. Tamil politicians, humanitarian workers and journalists were particularly targeted during certain periods, but ordinary civilians were also among the victims. There appears to have been discernible patterns of killings, for instance in the vicinity of security force checkpoints and military bases, and also of individuals while in custody of the security forces. If established before a court of law, these may amount, depending on the circumstances, to war crimes and/or crimes against humanity.

1117. These unlawful killings by all parties intensified after the Karuna Group split from the LTTE in April 2004. The nature and extent of the collaboration between paramilitary groups, in particular the Karuna Group and different branches of the security forces, including the Army's Special Operations units, the Intelligence branches of the military, and the STF of the police, is of great concern and must be further investigated. Persistent but unverified allegations that killings as well as disappearances were ordered by senior

government officials should be part of that investigation, particularly in terms of chain of command responsibilities.

1118. OISL also gathered information that gives reasonable grounds to believe that the LTTE also unlawfully killed Tamil, Muslim and Sinhalese civilians perceived to hold sympathies contrary to the LTTE. The LTTE targeted rival Tamil political parties, suspected informers and dissenting Tamils including political figures, public officials and academics, as well as members of rival paramilitary groups. Civilians were among the many killed or injured by LTTE indiscriminate suicide bombings and claymore mine attacks[1205]. In some cases claymore mines were detonated at the passage of civilian vehicles resulting in the death of several dozen civilians. Should these mines have been detonated despite the knowledge that the vehicles were civilian and transporting only civilians, such attacks would be in violation of the prohibition on direct attacks against civilians or civilian objects, depending on the circumstances. During the final stages of the conflict, the LTTE also fired at Tamil civilians who were trying to leave the conflict zone, resulting in some deaths and instilling widespread fear of reprisals if people tried to leave. Depending on the circumstances, if confirmed by a court of law, these may amount to war crimes and or crimes against humanity.

1119. OISL also investigated allegations of extrajudicial executions of identified LTTE cadres and unidentified individuals at the very end of the fighting on or around 18 May 2009, some of whom were known to have surrendered to the Sri Lankan military. Although some facts remain to be established, based on witness testimony as well as photographic and video imagery, there appears to be sufficient information in several cases to indicate that they were killed after being taken into custody by the security forces. Depending on the circumstances, if confirmed by a court of law, many of the cases described in the report may amount to war crimes and/ or crimes against humanity.

Violations related to the deprivation of liberty

1120. OISL documented long-standing patterns of arbitrary arrest and detention by Government security forces, as well as abductions by paramilitary organisations linked to them (including the Karuna Group in the East and EPDP in the North), which often reportedly led to enforced disappearances and extrajudicial killings.

1121. The typical *modus operandi* involved the arbitrary arrest or abductions of individuals by security forces' personnel, sometimes with the assistance of paramilitary group members operating in unmarked "white vans" that were reportedly able to pass security checkpoints or enter security force bases. These violations were and still are facilitated by the extensive powers of arrest and detention provided in the Prevention of Terrorism Act (PTA) still in force, as well as emergency regulations that were in force until 2011. Detainees were held for long periods under Emergency Regulations or the PTA, usually not informed of the specific reasons for their detention, and not presented with any charges. Only in very few of the documented cases were they brought before a judge and granted the opportunity to challenge the legality of their detention. They did not have access to legal counsel, and were often held *incommunicado*, without access to the outside world. In some cases, even some of the limited guarantees of the PTA and Emergency Regulations were allegedly breached.

[1205] OISL also reports on one case in which a claymore mine appears to have been detonated by the SLA near Mallavi in November 2007 hitting an ambulance which enjoyed special protection under international humanitarian law.

1122. Such unlawful and arbitrary arrest and detention are clearly in violation of Sri Lanka's obligations under international human rights law. Relatives of those arbitrarily detained were often not informed of the date and place of detention of their relatives, causing them anguish and distress, separately breaching Sri Lanka's human rights obligations.

1123. Those abducted or arbitrarily detained as described above were frequently subjected to torture and/or other cruel, inhuman or degrading treatment or punishment and/or sexual violence. These violations were not isolated or sporadic but rather were committed in a widespread manner.

Enforced disappearances

1124. Sri Lanka has one of the highest rates of reported cases of enforced disappearances worldwide, many of which date back decades to earlier periods of conflict and insurgency. During the course of its investigation, OISL reviewed reliable information on hundreds of cases of enforced disappearances that occurred within the period of its mandate in various parts of the country, with particular prevalence in the Northern and Eastern Provinces. Furthermore, the mass detention regime after the end of hostilities also led to enforced disappearances, and relatives continue to be unaware of the whereabouts of the detainees.

1125. Since the first reported cases of enforced disappearance in the 1970's, there have been numerous commissions of inquiry and other mechanisms set up by successive Sri Lankan Governments, with different mandates and different timeframes. Some of these commissions have awarded compensation or made concrete recommendations, however few have been implemented and few meaningful steps have been taken to ensure accountability or prevent the recurrence of such practices.

1126. Enforced disappearances constitute a unique and integrated series of acts that represent the continuing violation of various rights so long as the fate and whereabouts of the victims remain unaccounted for. Since Sri Lankan legislation makes it impossible to draw a pension or receive other means of support in the absence of a death of certificate, family members who refused to declare the death of their loved one without proof - are also denied several economic, social and cultural rights, such as the rights to health, education, social security, adequate standard of living and family life.[1206]

1127. On the basis of the information available, OISL has reasonable grounds to believe that the Sri Lankan authorities have, in a widespread and systematic manner, deprived a considerable number of victims of their liberty, and then refused to acknowledge the deprivation of liberty or concealed the fate and whereabouts of the disappeared person. This has, in effect, removed these persons from the protection of the law and placed them at serious risk. Family members of the disappeared persons - whether Sinhala, Tamil or Muslim - were also subjected to reprisals, harassment, and detention in response to their search for information. The victims and their relatives have been denied the right to an effective remedy for the violations, including the right to the truth.

1128. There are reasonable grounds to believe that enforced disappearances may have been committed as part of a widespread and systematic attack against the civilian population, given the geographical scope and timeframe in which they were perpetrated, by the same

[1206] In this context, it is important to note that the issuance of death certificates by the Government does not end the ongoing violation unless it is part of a transparent and independent judicial process which conclusively resolves the circumstances of the disappearance, confirming the death of the victim, and returning of the physical remains to the family.

security forces and targeting the same population. In particular, there are reasonable grounds to believe that those who disappeared after handing themselves over to the Army at the end of the conflict were deliberately targeted because they were or were perceived to be affiliated with LTTE forces.

Torture and other forms of cruel, inhuman or degrading treatment

1129. Torture has long been prevalent in Sri Lanka, both in relation to the armed conflict and the regular criminal justice system. OISL documented particularly brutal use of torture by the Sri Lankan security forces, particularly in the immediate aftermath of the armed conflict when former LTTE members and civilians were detained en masse. OISL documented the use of torture following similar patterns by a range of security forces in multiple facilities, including army camps, police stations and "rehabilitation" camps, as well as secret, unidentified locations.

1130. On the basis of the information obtained by OISL, there are reasonable grounds to believe that this torture was committed on a widespread scale. This breaches the absolute prohibition of torture, and Sri Lanka's international treaty and customary obligations. If established before a court of law, these acts of torture may, depending on the circumstances, amount to crimes against humanity if committed as part of a widespread or systematic attack, and as war crimes if a nexus is established with the armed conflict.

Sexual and gender-based violence

1131. The information gathered by OISL provides reasonable grounds to believe that rape and sexual violence by security forces personnel was widespread against both male and female detainees, particularly in the aftermath of the war. The patterns of sexual violence appear to have been a deliberate means of torture to extract information and to humiliate and punish persons who were presumed to have some link to the LTTE. The denial of sexual violence by public officials, the demeaning of victims and the failure to investigate indicate that such practices were apparently tolerated if not condoned by the authorities. [1207]

1132. The alleged victims reported being in unlawful, arbitrary and mostly i*ncommunicado* detention, in the custody or under the control of the alleged perpetrators. Victims reported being subjected to sexual crimes, including the penetration of a part of their body with a sexual organ, or of the anal or genital opening of the victim with an object or any other part of the body; or being forced to perform sexual acts on the alleged perpetrators.

1133. There are reasonable grounds to believe that sexual crimes were committed by force or under threat of force or coercion, and that this severe physical and mental pain and suffering was inflicted by the security forces for purposes such as obtaining information or

[1207] In its 2011 Concluding observations on the fifth, sixth and seventh periodic reports on Sri Lanka, the United Nations Committee on the Elimination of Discrimination against Women expressed concern that "While noting the State party's explanation that women were not subjected to violence and discrimination during the last stages of the conflict and in the post conflict phase, the Committee remains deeply concerned about reports of gross violations of the human rights of women on both sides, particularly the Tamil minority group, the internally displaced women and the female ex-combatants. The Committee is particularly concerned about reports of sexual violence allegedly perpetrated also by the armed forces, the police and militant groups." It called on the authorities inter-alia to "promptly investigate, prosecute and punish" acts of sexual violence. "CEDAW/C/LKA/CO/7, paras. 40 and 41.

a confession, punishment, intimidation or coercion or based on discrimination based on ethnicity and/or gender and/or political affiliation.

1134. Due notably to the fear of reprisals to victims and the other constraints this investigation faced, OISL has not been able to assess the scale of the sexual violence used against those detained, both during interrogation and torture sessions, and of the rape and other forms of sexual violence which occurred outside of interrogation sessions. Given the stigma and trauma attached to sexual violence, it is believed that the prevalence of sexual violence was in all likelihood much higher than documented by OISL and other organizations.

1135. Nevertheless, based on the information it has gathered, OISL considers there are reasonable grounds to believe that violations of international human rights law and international humanitarian law related to sexual violence have been committed by the Government security forces, and that some of these acts may amount to war crimes and crimes against humanity.

Abduction and forced recruitment

1136. OISL gathered credible information indicating a pattern of abductions leading to forced recruitment by the LTTE until 2009. The forced recruits were obliged to perform both military and support functions, often without being able to have contact with their families. Families were often not informed of the location of their relatives who had been forcibly recruited by the LTTE. Towards the end of the conflict, the abductions leading to forced recruitment became more prevalent. Victims and families who tried to resist, were physically mistreated, harassed and threatened.

1137. OISL observes that abductions leading to forced recruitment and forced labour were in contravention to Common Article 3 of the Geneva Conventions and the LTTE's obligations under international humanitarian law to treat persons taking no direct part in hostilities as well as those placed *hors de combat* humanely.

1138. In cases in which the movement of those forcibly recruited was severely restricted, OISL considers that this may amount to a deprivation of liberty, however additional information would be necessary to sustain that this was part of a systematic practice.

1139. There are grounds to believe that the LTTE also violated international humanitarian law by abducting adults and subjecting them to forced labour and exposing civilians to attacks, including as a consequence for trying to leave the Vanni. If established by a court of law these violations may amount, depending on the circumstances, to war crimes and/or crimes against humanity.

Recruitment of children and use in hostilities

1140. OISL documented extensive recruitment and use of children in armed conflict by the LTTE over many years, which intensified during the last few months of the conflict, including increased reports involving children under 15. OISL also gathered information on child recruitment by the Karuna group after its split from the LTTE and later by the TMVP. This was in violation of the Convention on the Rights of the Child and of the Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict by recruiting and using children under the age of 18.

1141. Cases of recruitment of children documented in this report were committed in the context of and associated with the internal armed conflict in Sri Lanka. The LTTE and the TMVP/Karuna Group recruited children they knew were under the age of 15 and these

children were used to participate actively in hostilities. As such, OISL has reasonable grounds to believe that both the LTTE and the TMVP/Karuna Group committed violations of customary international law that could constitute war crimes if proven in a court of law.

1142. Based on the information obtained by OISL, there are reasonable grounds to believe that Government security forces may have known that the TMVP/Karuna group recruited children in areas under their control.[1208] This indicates that the Government may also have violated the Convention on the Rights of the Child (CRC) and its Optional Protocol which it has ratified, in particular to ensure the protection and care of children affected by armed conflict. The recruitment and use of children under 18 is also a violation under the International Labour Organization Worst Forms of Child Labour Convention.

1143. OISL believes that those responsible for the recruitment and use of children should be investigated and prosecuted. Since 2007, Sri Lankan legislation has contained provisions which can be used to prosecute those who were responsible for child recruitment and it is regrettable that this has not been done, despite the appointment of individuals widely suspected of child recruitment to public positions. OISL also believes that the persistent allegations of child recruitment by Iniya Bharathi, including in reports of the SRSG for Children and Armed Conflict, should also be fully investigated and prosecuted.

1144. Special efforts should also be made to establish the whereabouts of all those children who were recruited by any armed group and remain missing.

Impact of hostilities on civilians and civilian objects

1145. On the basis of the information in OISL's possession, there are reasonable grounds to believe that many of the attacks reviewed in this report did not comply with the principles on the conduct of hostilities, notably the principle of distinction.

1146. Many of the incidents examined occurred in the NFZs that were declared unilaterally by the Government with the stated aim to provide "*maximum safety for civilians*" from the effects of hostilities. However, these NFZs were established in areas where the LTTE military was already positioned. Subsequent fighting in or around these Zones caused considerable civilians casualties, raising questions concerning the respective responsibilities for these civilian deaths and injuries, and damage to civilian objects.

1147. While it may have been permissible for the security forces to target the military objectives located in the NFZs, these attacks were subject to the rules on conduct of hostilities, including taking all feasible precaution to avoid or minimize incidental loss of civilians lives or damage to civilian objects. In the incidents reviewed in this report, the presence of large numbers of civilians, including numerous children, an increasing number of whom were living in flimsy shelters without sturdy protection or access to bunkers, highlighted the obvious risk that substantial loss of civilian lives and damage to civilian objects in the NFZs might occur as a result of an attack.

1148. OISL recognises the complexities inherent in conducting military operations against legitimate military targets in or near densely populated areas. Nevertheless, the presence of LTTE cadres directly participating in hostilities from within the predominantly civilian population did not change the character of the population, nor did it affect the protection afforded to civilians under international humanitarian law. Parties to the conflict retain at all times the obligation to conduct military operations in compliance with international

[1208] From 2006 onwards, the Eastern Province was under the control of the Government, and recruitment took place close to police and SLA camps.

humanitarian law. This implies that the NFZs as a whole could not be considered a lawful military target; only the LTTE military assets, positions and those taking direct part in hostilities could be lawfully targeted. The manner the attacks were carried out suggests that the security forces may have treated all of the NFZs as a single military objective.

1149. While OISL's investigation is not conclusive on the proportionality assessment for each of the incidents reviewed in this report, it believes that this matter must be investigated.

1150. Other cases that must be further investigated concern the attacks that impacted hospitals in the NFZs. Hospitals and other medical units and personnel enjoy special protection under international humanitarian law and cannot be made object of attack. The protection to which medical units and transports are entitled does not cease unless these are used to commit hostile acts, outside their humanitarian function. Even then, International humanitarian law however requires that a warning be given, with a reasonable time-limit, and that such warning remain unheeded before an attack can occur. Bearing this in mind, OISL notes with grave concern the repeated shelling of hospitals in Vanni. The recurrence of such shelling despite the fact that the security forces were aware of the exact location of hospitals, raises serious doubt that these attacks were random occurrences.

1151. Other civilian facilities in the NFZs were also impacted, notably humanitarian facilities and food distribution centres. The Armed Forces were regularly notified of their exact location. Moreover, they had real-time images from their UAV's, according to their own statements as well as witnesses. This again raises serious doubt that these attacks were random occurrences. The information available to OISL indicates that in none of the incidents reviewed were there any grounds which could have reasonably led the security forces to determine that these facilities were used for military purposes. These facilities therefore maintained their civilian character and could not be directly targeted under international humanitarian law.

1152. Directing attacks against civilian objects and/or against civilians not taking direct part in hostilities is a serious violation of international humanitarian law and, depending on the circumstances, may amount to a war crime.

1153. Another concern is that security forces employed weapons that, when used in densely populated areas, are likely to have indiscriminate effects. The use of such weapons, including of Multi-Barrelled Rocket Launchers (MBRLs), appears to have been a part of a consistent practice when firing towards the NFZs. Such weapons are area weapons not designed for hitting a point target, and cannot be precisely targeted at military objectives in densely populated areas.

1154. Furthermore, direct-fire weapons such as RPG's were fired 'indirectly' in an upward parabola to increase their range beyond their maximum effective range. The use of direct-fire weapons in this manner decreased the accuracy of the weapon such that there greatly reduced the likelihood of hitting the specific target. The international criminal jurisprudence has in similar circumstances stated that such indiscriminate attacks may qualify as direct attacks against civilians.[1209] Factors supporting this possible conclusion

[1209] ICTY, *Prosecutor v.Galic*, case No. IT-98-29-T, Judgement, 5 December 2003. The International Court of Justice in the Nuclear Weapons Case linked the prohibition of indiscriminate attacks to attacks against the civilian population, by stating that: "States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets." Para. 78. Article 8 of the Rome Statute of the International Criminal Court lists intentionally directing attacks against the civilian population or civilian objects as a war crime.

include the large numbers of civilians killed and injured; the considerable number of civilian objects damaged or destroyed; the sustained bombardment of the NFZs; and the terror and fear they caused amongst the civilian population.

1155. This is reinforced by the fact that the security forces reportedly had the means to use more accurate weapons and munitions so as to better respect their legal obligations, notably the requirements of distinction and precaution. In addition, the security forces publicly declared that they had means at their disposal, such as real-time images relayed from their fleet of UAVs, that would have helped them to accurately target military objectives.

1156. Another precautionary measure that parties to a conflict should take, unless the circumstances do not permit, is to issue effective warnings when attacks are likely to affect civilians, leaving them adequate time to evacuate before military operations commence. OISL has obtained no information indicating that any specific warnings were issued to the civilian population inside the NFZs informing them that military operations were about to be conducted. This is all the more concerning because the civilians in the NFZs had been encouraged by the Government and the security forces to move into these zones for their own protection.

1157. OISL's investigation did not uncover evidence suggesting that hospitals and other civilian facilities, including those of the UN, were used by the LTTE for military purposes. However, OISL's investigations indicate that there was a presence of LTTE military positions and personnel in the densely populated civilian areas of the NFZs. Credible accounts indicate that there were incidents where LTTE fighters were seen carrying weapons in close proximity to hospitals and food distribution centres, including whilst wearing civilian clothes. There are also reasonable grounds to believe that the LTTE launched attacks from close proximity to these locations.

1158. Furthermore, the LTTE repeatedly constructed military fortifications (mostly earthen bunds and trenches) and positioned artillery and other weaponry in close proximity to and often adjacent to civilian areas, including humanitarian and medical facilities and the surrounding areas of IDP concentration in the NFZs.

1159. This conduct exposed the civilian population to the dangers of the military operations taking place around them, including by placing civilian lives at increased risk from SLA strikes. On this basis, there are reasonable grounds to believe that the LTTE's conduct violated its obligations to take all feasible measures to protect the civilian population and civilian objects against the effects of attacks under international humanitarian law.

1160. Finally, it is important to recall that the obligations of all party to an armed conflict under international humanitarian law do not depend on the conduct of the opposing party, as the duty to respect international humanitarian law is not conditioned on reciprocity. Violations of international humanitarian law attributable to one of the parties to the conflict do not justify lack of compliance in response on the part of the opposing party.

Control of movement

1161. OISL's findings indicate that there are reasonable grounds to believe that the LTTE had a clear high level policy of controlling the movement of civilians in and out of the Vanni for years through a pass system, thereby unlawfully interfering with their liberty of movement. The information also shows that the policy hardened from January 2009, and that noone was to be allowed to leave the LTTE area. Although the specific instructions as to how LTTE cadres should prevent anyone from leaving needs to be clarified, the information gathered indicates that a number of individuals, including several children, were shot dead, injured or beaten by LTTE cadres as they tried to leave, in contravention of

their right to life and physical integrity. These acts may amount to direct attacks on civilians not taking direct part in hostilities, in violation of international humanitarian law. If established before a court of law, and depending on the circumstances, such conduct may amount to a war crime.

1162. Further investigation is required of the nature, scale and frequency of incidents where the LTTE shot directly at civilians as they tried to escape to ascertain if such shootings were part of an official LTTE policy to prevent civilians from leaving. Similarly, further investigation is needed to determine what measures, if any were taken by the LTTE leadership to prevent and/or punish the cadres involved.

1163. By compelling civilians to remain within the area of active hostilities and by threatening and intimidating civilians in an attempt to discourage them from trying to leave, the LTTE violated its obligation under international humanitarian law to take all feasible measures to protect the civilian population under its control against the effects of attacks from the security forces. Information obtained by OISL indicates that there are reasonable grounds to believe that the LTTE, knew or had reasons to know that the security forces would target it, yet, despite this knowledge, it did not take measures to remove civilians from the vicinity of military objectives, nor did it warn the civilians, and in fact did the opposite by constraining the movement of civilians. Civilians were in effect forced to stay in an area that was under almost constant attack by the SLA, where the lack of adequate physical protection structures heightened their vulnerability to attacks. As such, there appears to be reasonable grounds to believe that, in these circumstances, the LTTE exposed the civilian population to military operations, in particular shelling and gunfire from the military.

1164. OISL notes that the constraints on the movement of civilians in the Vanni imposed by the LTTE also had the effect of spreading fear among the population. Witnesses told OISL that they continue to suffer from the psychological trauma of having been restricted in their movement while exposed to artillery strikes and gunfire.

Denial of humanitarian assistance

1165. OISL found that throughout the armed conflict, the Government maintained stringent controls over all goods, including humanitarian relief entering the Vanni. OISL notes that while the Government was entitled to adopt security measures to restrict the transport of goods and materials that could have contributed to the LTTE war efforts, it had the obligation to allow and facilitate the rapid and unimpeded passage of independent and impartial humanitarian relief, conducted in a non-discriminatory manner, rather than impose severe restrictions on food, non-food humanitarian assistance, medicines and medical supplies.

1166. The Government of Sri Lanka placed considerable restrictions on freedom of movement of humanitarian personnel and on humanitarian activities in the Vanni. These restrictions impacted on the capacity of humanitarian organizations and personnel to effectively exercise their functions and ensure access to relief of civilians in need. Such restrictions may only be justified by imperative military necessity. According to information available to OISL, the Government did not provide such justification, and the restrictions appear to constitute a breach of the obligation to allow and facilitate rapid and unimpeded passage of impartial humanitarian relief.

1167. There are reasonable grounds to believe that the LTTE also failed to respect its obligations to respect and protect humanitarian relief personnel and not to restrict their freedom of movement.

1168. With regard to the incidents of shelling near humanitarian convoys, according to information available to OISL, both the SLA and the LTTE failed to respect their obligation to respect and protect humanitarian relief personnel and objects, and to take all feasible measures to avoid incidental loss of civilian life or damage to civilian objects.

1169. The Government had access to multiple sources of information and tools that would have allowed it to determine with relative accuracy the number of civilians in the Vanni area and therefore their humanitarian needs. These include requests from Government health professionals working in the Vanni, humanitarian organisations , drone imagery, and the conditions of persons that were regularly reaching Government-controlled areas. OISL notes the consistent patterns of nutrition levels being significantly below the national average and the deterioration of levels of acute malnutrition between March and May 2009, as well as alleged deaths due to starvation. OISL has reasonable grounds to believe that the Government knew or had reasons to know the real humanitarian needs of the civilian populations in the concerned areas, including from its own Government agents who were organizing assistance in the conflict zone, and yet it imposed severe restrictions on the passage of relief and the freedom of movement of humanitarian personnel. This apparently resulted in depriving the civilian population in the Vanni of adequate basic foodstuffs and medical supplies essential for their survival, which has been well documented. If established by a court of law, these acts and omissions point to violations of international humanitarian law, which, depending on the circumstances, may amount to the use of starvation of the civilian population as a method of warfare, which is prohibited under international humanitarian law.[1210] Such conduct, if proven in a court of law, and depending on the circumstances, may constitute a war crime.

1170. In addition to its obligations under international humanitarian law, OISL finds that the Government authorities failed to fulfil their core obligation to use all the resources at their own disposal in an effort to satisfy at least to a minimum essential level of economic, social and cultural rights[1211], including by providing essential foodstuffs, essential primary health care, basic shelter and housing, as well as the most basic forms of education.

1171. In addition to the obligation to fulfil economic, social and cultural rights, the State must avoid any acts or omission, which would negatively impact its obligation to respect and protect these rights. This failure may impact not only on the enjoyment of the right to an adequate standard of living and to the enjoyment of the highest attainable standard of physical and mental health, guaranteed in Articles 11 and 12 ICESCR, but may also interfere with a number of other rights, including, in most extreme cases, the right to life.

Screening and deprivation of liberty of Internally Displaced Persons

1172. OISL believes that the IDPs held in Manik Farm and other closed camps were deprived of their liberty for periods far beyond what would have been permissible under international law. While it may have been warranted to separate LTTE fighters who had laid down their weapons from other civilians, any such assessments should have been done on an individual basis. In addition, any deprivation of liberty on security grounds must be provided by law, must only be used as a last resort, and must result from an individual determination that each of the detained individual poses a present direct and imperative threat; and this determination must be subject to regular periodic review by a court or other tribunal possessing the same attributes of independence and impartiality. Due to the failure

[1210] *Database on* customary *international humanitarian law*, Rule 53.

[1211] CESCR, General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2 (1) of the Covenant), para.10.

by the Government to respect these criteria and procedures, the subsequent deprivation of liberty amounted to arbitrary detention.

1173. In addition, the severe restrictions on freedom of movement of the thousands of IDPs, through deprivation of their liberty, amounts to a separate violation of international human rights law. Moreover, the material conditions in these closed IDP camps amounted to violations of the right to health and to an adequate standard of living, including food, water, housing and sanitation. In the case of vulnerable individuals, these violations led to a heightened risk of death as documented in the report. Depending on the circumstances, such conditions may also amount to inhumane and degrading treatment as defined in international human rights law.

1174. On the basis of the information in OISL possession, there are reasonable grounds to believe that the IDPs were treated as suspects and detained because of their Tamil ethnicity and because they had come out of LTTE-controlled territory. This may amount to discrimination under international human rights law, and, if established by a court of law, may amount to the crime against humanity of persecution.

XVIII. Justice and accountability

1175. The failure to hold perpetrators accountable for gross human rights violations, serious violations of international humanitarian law and international crimes in Sri Lanka dates well before the mandate period of OISL investigation and has been highlighted repeatedly over the years in reports, observations, and statements by the High Commissioner for Human Rights, United Nations bodies such as the Human Rights Committee, and Special Procedures mandate-holders, and by national and international NGOs. Human Rights Council resolutions have also called on the Government to fulfil its "legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans"[1212].

1176. In its final report, the LLRC itself drew attention to the "failure to give effect to the rule of law" and emphasised that "all allegations should be investigated and wrongdoers prosecuted and punished, irrespective of their political links, so as to inspire confidence among the people in the administration of justice". The LLRC report also underlined the importance of investigations and prosecutions of perpetrators of extrajudicial executions as "such action would send a strong signal in ensuring respect for the rule of law, which in turn tends to contribute to the healing process. "[1213]

1177. In its report to the United Nations Secretary General in March 2011, the Panel of Experts concluded that "the Government's efforts, nearly two years after the end of the conflict "fall dramatically short of international standards on accountability and fail to satisfy Sri Lanka's legal duties". It also concluded that the Government had not conducted a genuine investigation, "nor shown signs of any intention to do so", and that its approach to accountability "does not correspond to basic international standards that emphasize truth, justice and reparations for victims".[1214]

1178. The information gathered in the course of OISL investigation confirms once more that impunity is deeply entrenched in Sri Lanka and that victims of gross human rights violations, serious violations of international humanitarian law and international crimes

[1212] A/HRC/22/ .1/Rev.1: Promoting Reconciliation and Accountability in Sri Lanka, 19 March 2013
[1213] LLRC Report para 9.120 and 9.213
[1214] Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011.

have for too long been denied their rights to remedy and reparations. Instead, they have often faced, and continue to face, threats, intimidation or even physical abuse when seeking to present complaints to the police or courts. As noted in 2005 by the Special Rapporteur on Extrajudicial, summary or arbitrary execution during his mission to Sri Lanka, "the failure to effectively prosecute government violence is a deeply-felt problem. The paucity of cases in which a government official - such as a soldier or police officer - has been convicted for the killing of a Tamil is an example." He highlighted that as a result of the corrosive effect of impunity "many people doubt that their lives will be protected by the rule of law."[1215]

1179. During the period under investigation, the rule of law, already seriously undermined in previous years, became increasingly eroded, particularly with the granting of further powers to the President and immunity to officials. The 2006 Emergency Regulations, for instance, stated that "no action or suit shall lie against any Public Servant or any other person specifically authorised by the Government of Sri Lanka to take action in terms of these Regulations, provided that such person has acted in good faith and in the discharge of his official duties."[1216]

1180. It is essential that absolute priority be given to carrying out deep seated reforms which bring about institutionalised accountability. The need for fundamental change in the institutional set-up was emphasised in a 9 February 2009 statement by 10 United Nations Experts[1217] who stated that: "Notwithstanding the severity of the abuses in areas of conflict, the Experts wish to highlight that the problem is more endemic. The conflict deflects attention from the impunity which has been allowed to go unabated throughout Sri Lanka. The fear of reprisals against victims and witnesses, together with a lack of effective investigations and prosecutions has led to a circle of impunity that must be broken." They stressed that reforms of the general system of governance are needed to prevent the reoccurrence of further serious human rights violations.

1181. The need for a comprehensive transitional justice programme to address the many obstacles identified below is one of the main recommendations of this report. This should include truth-seeking mechanisms, investigations, prosecutions and punishment of alleged perpetrators, reparations and measures to prevent the recurrence of the patterns of violations and abuses.

Obstacles to accountability

1182. The obstacles to accountability are many and have been documented repeatedly: the lack of political will; lack of independent oversight of appointments to the judiciary, as well as to the Human Rights Commisson and other bodies; interference of the Executive in judicial matters; undue delay in cases languishing in the courts for many years without

[1215] Special Rapporteur on extrajudicial, summary or arbitrary executionreport p 19-20.

[1216] Emergency Regulation Act (Public Security Ordinance (Chapter 40)), 6 December, 2006.

[1217] Sri Lanka: United Nations Experts deeply concerned at suppression of criticism and unabated impunity; 9 February 2009, Special Rapporteur on the situation of Human Rights Defenders, Special Rapporteur on promotion and protection of the right to freedom of opinion and expression, Chairperson of Working Group on Enforced or Involuntary Disappearance (WGEID), Chairperson of Working Group on Arbitrary Detention, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on independence of judges and lawyers, Special Rapporteur on right to food, Special Rapporteur on on Extrajudicial, summary or arbitrary execution, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur on adequate housing, Special Rapporteur on right to non-discrimination.

progress; appointment of commissions of inquiry which have often lacked independence, the majority of whose reports have never been made public; the failure to implement recommendations made by national and United Nations bodies regarding accountability; threats and reprisals against those who make complaints against security forces and Government officials, as well as lawyers and judicial officials; and the absence of effective witness protection mechanisms. Another obstacle is the lack of relevant legislation criminalizing international crimes and instituting modes of liability including command or superior responsibility.

Reprisals against victims, witnesses and others/Lack of witness protection

1183. In order for transitional justice mechanisms, including truth-seeking and judicial processes to proceed, an environment of trust and security needs to be established in which victims and other witnesses can participate without fear. Such a climate does not yet exist in Sri Lanka and must be created as a pre-requisite for any progress in accountability and reconciliation. Although the Government passed a Victim and Witness Protection law in February 2015, no mechanisms have been set up yet to provide the necessary security and protection.

1184. In the course of its investigations, OISL received numerous and consistent reports from witnesses about harassment and sometimes physical abuse that they had endured from military and/or police and of their fears to report violations and testify in investigations. OHCHR continued to receive such allegations beyond the change of government in January 2015.

1185. Witnesses have related to OISL how they have received death threats in writing and by phone, frequent visits to their homes by military or police personnel, faced threatening behaviour at checkpoints, forcing them to relocate and eventually, in some cases, to leave the country. The absence of a witness protection programme was cited as one of the International Independent Group of Eminent Persons (IIGEP) principal concerns and reasons for its decision to terminate its mission in April 2008.[1218] The Human Rights Committee complaints procedures have documented a series of individual cases where the complainants have faced repeated reprisals as they tried to seek justice through the courts.

1186. In February 2015, Parliament adopted the Assistance to and Protection of Victims of Crime and Witnesses Act, a draft of which had been first drawn up more than eight years previously. While the Act in principle is a positive step forward and has addressed some of the concerns put forward by the Sri Lankan civil society and international actors regarding the initial drafts, it has yet to be implemented and requires a number of amendments in order to be an effective protection mechanism.

1187. One of the key aspects which requires improvement is a clear definition of the criteria to be considered when determining whether a victim or witness should be given protection. A second constraint is the lack of guarantees of independence of the two mechanisms which form part of the programme. The Act requires the appointment of a National Authority for the Protection of Victims of Crime and Witnesses. Some of the key appointments to the National Authority, however, are to be made at the sole discretion of the President, risking undermining independent appointments based exclusively on expertise. Furthermore, the recommendations of the Authority are not binding. Thus, a

[1218] IIGEP's Final Public Statement, 15 April 2008.

person or agency receiving a protection-related recommendation is not obliged to implement it, only to take note.

1188. A second body established by the Act, the Victims of Crime and Witnesses Assistance and Protection Division, is mandated to draw up and implement a Victims of Crime and Witness Assistance Programme, in accordance with guidelines provided by the Authority. The Division, to be created by the Inspector General of Police, is to provide protection, and also investigate any threats or reprisals. The Act does not, however, establish the Division as an autonomous entity independent of the rest of the police force. Since police personnel are likely to be among those being investigated for human rights related-crimes, the lack of autonomy of the Division risks seriously compromising the effectiveness of the protection mechanism, particularly as there is no obligation on the part of the Division to implement recommendations made by the National Authority.

1189. The Act allows for audio-visual testimony to be taken by a Court or Commission in cases of protection concerns, but the testimony can only be given from a "remote location" inside Sri Lanka rather than abroad, and in the presence of a public official. Furthermore, if the Attorney-General considers that such testimony is "inappropriate", the Court or Commission has to abide by that opinion. OISL notes that several key witnesses provided testimony to the Udalagama Commission by video link from abroad but that such witness testimony was expressly excluded in May 2008.

1190. In addition to the required amendments, implementation of the Act will also require extensive resources, both financial and human resources, and the necessary operating procedures to effectively protect those at risk.

1191. Even if the Witness Protection Act is fully implemented, other measures will also be required to create a safe environment for providing testimony. The Government must take determined steps to end the endemic threats, harassment and intimidation which has not only prevented countless victims and other witnesses coming forward but also prevented diligent judicial and other officials from fulfilling their professional mandates to investigate and prosecute the perpetrators of abuse.

Interference/control of the Executive over institutions key to rule of law and accountability

1192. The 17th Amendment of the Constitution, passed in October 2001, created a Constitutional Council comprising multi-party and independent members which had the power, inter alia, to make recommendations to, or approve appointments to certain commissions including the Election Commission, the Human Rights Commission, the National Police Commission and the Commission to Investigate Allegations of Bribery and Corruption. It also had the power to approve the appointment of senior officials in the public service, including the Attorney General, the Inspector General of Police, the Chief Justice and other Court of Appeal and Supreme Court judges.[1219] The Constitutional Council was intended as a means of ensuring the independence of certain institutions and officers which were key to the rule of law and to accountability by overseeing their appointments.

1193. However, while the Constitutional Council functioned between 2002 and 2005, it ceased to function at the end of its first three-year term of office due to a political impasse over the appointment of new members to the Council. Appointments to commissions and senior public posts from then on were made by the President (as they had been before 2002)

[1219] Op cit p. 23

without external oversight, and contributed to the control of the Executive over rule of law institutions and their politicisation. This practice was further entrenched by the 18th Amendment to the Constitution, which nullified the 17th Amendment, and abolished the Constitutional Council.

1194. The independence of the Attorney General was further compromised with its transfer to the Presidential Secretariat, in 2010. This was rectified on 18 January 2015 when it was officially transferred back to the Ministry of Justice by gazette.

1195. The 19th Constitutional Amendment adopted by Parliament in April 2015, re-establishes a Constitutional Council which, if implemented properly, should help restore the independence of key commissions and institutions. At the time of writing, seven members of the Constitutional Council (Speaker, Prime Minister, Opposition leader and four Parliamentarians) had been confirmed, but the nominations of the three civil society representatives to the council had yet to be approved by Parliament.

The Human Rights Commission

1196. The Human Rights Commission of Sri Lanka was established in 1996 by Act of Parliament (No 21 of 1996). It should have a key role to play in accountability given its powers to investigate complaints of "infringements or imminent infringements" of fundamental rights. These powers of investigation include:

1197. -obtaining and receiving evidence, to summon and examine witnesses to give evidence or produce documents or other items (art 18);

1198. -recommending prosecution or other proceedings to be initiated against the alleged infringer (15.1.a);

1199. -referring the matter to a relevant court;

1200. -make recommendations to the appropriate authority or persons with a view to "preventing or remedying such infringement."

1201. Until 2006, the Commission undertook numerous activities in line with its mandate, for instance intervening in cases of unlawful arrests and detention. In spite of a 2006 directive from President Rajapaksa to security forces to cooperate with the Human Rights Commission, however, there is little information to suggest that these directives were implemented.

1202. Before 2006, the Human Rights Commission also launched special investigations, for example, a special investigation into disappearances in Jaffna in 2003 (see chapter on Enforced Disappearances). The Human Rights Commission also appointed a Special Rapporteur to investigate conflict-related human rights violations in March 2006, who identified likely perpetrators in four murder cases, including the 2006 Trincomalee Five case (see below) and the 2005 Akkaraipattu Mosque attack and recommended further investigations. The report was never officially made public but was leaked to the press in January 2014. To OISL's knowledge, there was no effective action to pursue criminal investigations in the documented cases.

1203. The integrity and independence of the Commission was fatally compromised in 2006, however, when the President appointed new members outside the Constitutional Council procedure. Subsequent commissioners were again appointed on this basis. In 2007, the Sub-Committee of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, which oversees the international accreditation of national institutions, downgraded the Commission to "B-status" partly because of concerns regarding its independence. Among the reasons cited for the

downgrading the Commission was that "it is not clear whether the actual practice of the Commission remains balanced, objective and non-political, particularly with regard to the discontinuation of follow-up to 2000 cases of disappearances in July 2006."[1220]

1204. Complaints continued to be made by the public to the Human Rights Commission and its staff members continued to perform their duties, particular at the District level. However, information from a range of sources, including relatives of the disappeared, suggests that there has been little follow-up other than to refer them to the institutions allegedly involved in violations, which rarely responded. In a few cases of disappearances, the Human Rights Commission reportedly refused to register the complaints (see chapter on Enforced Disappearances).

1205. In November 2013, the Government announced that the Human Rights Commission would conduct a national investigation into allegations of torture committed between 2009 and 2013, with the support of the Commonwealth Secretariat, but it was postponed indefinitely shortly afterwards.[1221]

1206. A further impediment to the work of the Commission is the lack of enabling legislation to set out procedures by which the Commission can refer cases to the courts. Although members of the Commission repeatedly requested such legislation, it has never been drafted. The Commission also has no powers to enforce its orders.

1207. It is essential that the Human Rights Commission be renewed and strengthened in order for it to be able to fulfill its key role as an independent body fulfilling its mandate to protect human rights, in particular in investigating complaints of human rights violations. As of 2015, the current commissioners, appointed by President Rajapaksa in 2012, are coming to the end of their mandate terms. Their replacement should be carried out through a fully functioning Constitutional Council, and in accordance with international standards to guarantee their independence.

Commissions of Inquiry

1208. Largely in response to international and national pressure, successive Sri Lankan Governments have set up a series of commissions of inquiry (CoI) to investigate high profile issues and cases. Between 1948 and 2011, 32 commissions of inquiry were set up to investigate a range of issues. Although early commissions tended to investigate financial, commercial or administrative issues, subsequent commissions were appointed increasingly to investigate human rights-related cases. For example, a series of commissions were appointed in the 1990s to look into cases of enforced disappearance. The chapter on Enforced Disappearances has shown how, in spite of numerous commissions set up since 1991, the fate of the majority of the disappeared remains unclarified, and those responsible continue to enjoy impunity.

1209. Several new commissions were set up during the period covered by OISL investigation, the majority of them to look into cases of extrajudicial killings and/or disappearances:

- August 2006: assassination of Batticaloa MP Joseph Pararajasingham;

[1220] International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Sub-Committee on Accreditation, Geneva ,22 to 26 October 2007; In a note dated 29 June 2006, the Secretary of the Commission said that it had decided to stop inquiring into these complaints "for the time being, unless special directions are received from the Government.

[1221] A/HRC/25/23, Promoting Reconciliation and Accountability in Sri Lanka, 24 February 2014.

- August 2006: Presidential Commission on the Disappeared (known as the Mahanama Tilakaratne Commission): to look into abductions, disappearances, unidentified dead bodies and unexplained killings;

- November 2006: Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights Occurring since 1 August 2005 (known as the Udalagama Commission after its Chair): mandated to investigate 16 cases of killings and enforced disappearances[1222]. The International Independent Group of Eminent Persons (IIGEP) was appointed to observe its work;

- May 2007, a second commission made up of Mahanama Tilakaratne to look into disappearances.

1210. The findings of these Commissions have rarely been published and there appears to have been little effective follow-up through criminal investigations. In the course of its investigations, OISL obtained copies of several unpublished CoI reports which have been examined where relevant in the preceding chapters.

1211. As indicated above, in November 2006, President Rajapaksa appointed the Udalagama Commission, and IIGEP was appointed to observe the work of the Commission. The COI was tasked with conducting investigations into 16 cases, but only completed investigations into seven, including that of the ACF and the Trincomalee 5 case (detailed in OISL's report) which it said absorbed most of its resources.

1212. IIGEP was present during the hearings and repeatedly expressed concern over the lack of impartiality in the proceedings. IIGEP decided to terminate its mission in April 2008 because it considered that credible investigations into the cases assigned to the Commission were impossible, citing as reasons: the conflict of interest of the Attorney General's role; lack of effective victim and witness protection; lack of transparency and timeliness of the proceedings; lack of full co-operation of State bodies; and lack of financial independence of the Commission.

1213. The Attorney-General played a prominent role in leading proceedings of the Commission of Inquiry into cases against the security forces, while also instructing police investigations and representing state officials. It is also the Attorney-General who

[1222] Gazette 1471/6 of 2006 created the Presidential Commission of Inquiry Appointed to Investigate and Inquire into Alleged Serious Violations of Human Rights Arising Since August 2005 to investigate the following cases:
1. The assassination of the Minister of Foreign Affairs of Sri Lanka Hon. Lakshman Kadirgamar, PC.
2. The killing of 17 aid workers of the international non-Governmental organization *Action Contre La Faim,* in early August 2006.
3. The alleged execution of Muslim villagers in Muttur in early August 2006 and the execution at Welikanda of 14 persons from Muttur who were being transported in ambulances.
4. The assassination of Mr. Joseph Pararajasingham, Member of Parliament on 25 December 2005.
5. The killing of five youths in Trincomalee on or about 2January 2006.
6. The assassination of the Deputy Director General of the Sri Lanka Peace Secretariat Mr. Ketheesh Loganathan on 12 August 2006.
7. The death of 51 persons in Naddalamottankulam (Sencholai) in August 2006.
8. The disappearance of Rev. Nihal Jim Brown of Philip Neri's Church at Allaipidi on 28August 2006.
9. The killing of five fishermen and another at Pesalai beach and at the Pesalai Church on 17June 2006.
10. The killing of 13 persons in Kayts Police area on 13 May 2006.
11. The killing of ten Muslim villagers at Radella in Pottuvil Police area on 17 September 2006.
12. The killing of 68 persons at Kebithigollewa on 15 June 2006.
13. An incident relating to the finding of five headless bodies in Avissawella on 29 April 2006.
14. The killing of thirteen persons at Welikanda on 29May 2005.
15. The killing of 98 members of the security forces in Digampathana, Sigiriya, on 16 October 2006
A 16th case was added at a later date, the killing on 10 November 2006 of Nadarajah Raviraj.

ultimately determines which cases from COI proceed for further criminal investigation in the court. This conflict of interest was raised by IIGEP as a major concern and deemed incompatible with international standards on the independence and impartiality of investigations.[1223]

1214. This IIGEP experience illustrates the importance of ensuring that any international involvement in investigative mechanisms must be given a clearly defined and empowered role, and that they are integrated into the proceedings in order to ensure their independence and effectiveness.

1215. The Udalagama Commission handed its final report to the President in May 2009. However, this has never been made public, despite the fact that the Presidential decree which created the COI stated that its report should be published, submitted to Parliament and provided to the Attorney-General to initiate prosecutions.

1216. OISL has received copies of the unpublished report of the Udalagama Commission which it believes to be authentic. According to the report, despite being mandated to investigate 16 cases and being operational for two and a half years, the Commission only managed to conclude investigations into seven of the 16 cases.[1224] The report stated that 'with regard to the balance of nine cases the Commission is not in a position to conduct the inquiries during the mandated period', citing non-availability of witnesses and lack of time among the reasons for its inability to conclude its task. The Commission challenged some of the allegations made by the IIGEP, including with regard to the role of the Attorney General. Its report ended with several recommendations, including the strengthening of witness protection mechanisms, the amendment of regulations to invoke "command responsibilities" in future cases, and a proposal to establish a "permanent independent commission on serious violations of human rights as a deterrent to such acts."

Lessons Learnt and Reconciliation Commission (LLRC)

1217. The Lesson Learnt and Reconciliation Commission (LLRC) appointed by President Rajapaksa in 2010, was not established as an investigative commission but had a mandate to examine the facts and circumstances which led the 2002 ceasefire to fail. The LLRC submitted its final report to the President on 15 November 2011, and spanned the period of 2002 to 2011. The LLRC made far-reaching recommendations for constitutional reforms, as well as steps towards reconciliation and reparation for victims.

1218. Despite the high number of alleged extrajudicial killings and other violations and abuses throughout the LLRC's mandate period, it makes only limited reference to such acts prior to the final stages of the war. It nevertheless "strongly recommended the implementation of the recommendations of the Udalagama Commission, particularly those relating to further investigation and prosecution of offenders involved in the incidents of the death of five students in Trincomalee in January 2006, and 17 aid workers of the ACF in August 2006" (para 5.163). In its final report, the LLRC regretted that its recommendations to disarm "illegal armed groups" had not been acted upon and reiterated that "proper investigation should be conducted in respect of the allegations against armed groups" (para 9.73). The LLRC warned that " delay in taking effective remedial action would only result

[1223] Centre for Policy Alternatives: A List of Commissions of Inquiry and Committees Appointed by the Government of Sri Lanka (2006 – November 2013), December 2013; Authority without accountability: The Crisis of impunity in Sri Lanka, ICJ, November 2012discusses the impact the Amending Act 16 of 2008 has had on the role the Attorney General plays in COI.

[1224] The seven cases investigated were, in the following order; 5, 2, 12, 15, 11, 7, 3 (see details ibid).

in the breakdown of law and order and the consequent erosion of the rule of law and the confidence of the people in the reconciliation process" (para 8.190).

Army Court of Inquiry related to civilian casualties

1219. On 2 January 2012, the Commander of the Army, General Jagath Jayasuriya signed a convening order setting up an Army Court of Inquiry to look into questions raised by the LLRC related to civilian casualties, including whether any attacks were carried out by the Army and or its members on civilians with a view to "cause them harm and or damage in a deliberate and intentional manner in areas populated with civilians or in or at hospitals or in the NFZs during the period 01.01.09 to 19.05.09." The second part of the army court's mandate was to look at the Channel Four documentary and assess whether the SLA members could be identified as committing the acts shown, whether there was evidence of rape or sexual violence on the female bodies shown, or disrespect to the bodies of the deceased females. The full findings of the Army Court of Inquiry have never been made public or available to OISL.

1220. From the outset, the independence and impartiality of the Army Court of Inquiry was called into question. General Jayasuriya had been head of the Security Sector HQ in the Vanni during the months of the conflict under investigation and therefore responsible for the military operations on the ground. In his report on the findings of the first part of the investigations entitled 'Opinion of the Commander of the Army', which has been obtained by OISL[1225], he concluded: "Considering the evidence presented before the Court of Inquiry, I am of the opinion that the instances of alleged shelling referred to in the LLRC report were not caused by the Sri Lanka Army and such shelling were caused by the LTTE, either intentionally as a deterrent to prevent the escape of civilians or by accident due to substandard LTTE artillery guns fired by ill-trained gun operators using incompatible and sub-standard artillery rounds."

1221. He stated that the "Artillery Regiments keep very accurate log books giving precise information as to the date/time of firing, location of target, etc. Evidence before the Army Court of Inquiry have also revealed that prior to engagements all targets were fully verified by UAVs, aerial reconnaissance, Long Range Reconnaissance Patrols, human intelligence etc to ensure that no civilians were present."

1222. "From the evidence of artillery and infantry commanders, it is evident that they---did not fire at NFZs despite firing of heavy artillery by LTTE terrorists from areas adjacent to such NFZs and at times due to this self-imposed moratorium heavy Army casualties resulted." The report continued: "…at all stages of the Humanitarian Operation, the Sri Lanka Army had acted in a very professional manner taking very elaborate measures to avoid civilian casualties and all persons, including captured/surrendered LTTE cadres, who came into the hands of the Sri Lanka Army were well treated as laid down by the international instruments."

1223. OISL questions the independence and impartiality of the Court of Inquiry, as it does not appear to have met the minimum standards of independence and impartiality required of a credible investigation into violations of international law. Instead, it appears to have been part of an attempt by the SL Armed Forces to cover up the alleged gross human rights violations, serious violations of international humanitarian law, and international crimes, including those documented in this report, and to shift the blame onto the LTTE.

[1225] A brief summary of the findings exonerating the SLA was also included in the Government's 2013 report to the Human Rights Committee.

Judicial proceedings[1226]

1224. In July 2015, the Colombo High Court[1227] sentenced an army sergeant to death for a massacre which had occurred in December 2000, in Mirusuvil, near Jaffna, of nine IDPs, including a five-year-old boy. Four other accused were acquitted. It was a very rare case in which a member of the security forces was convicted for a grave human rights violation, and showed that it is possible for the courts to undertake such investigations.

1225. In a second case, in August 2015, four individuals linked to the security forces (an SLA sergeant and two former LTTE cadres thought to be part of the Karuna Group) were arrested in connection with the disappearance of Prageeth Eknaligoda. Progress in these cases needs to be monitored to ensure that those responsible for the crimes, including under command or superior responsibility, are identified and tried.

1226. These cases are emblematic of many others from previous periods of conflict which have continued to languish in the court system, routinely postponed and transferred from one court or judge to another: in the case of the above massacre for 15 years, and in the case of Eknaligoda case for five years. In another case described in the present report, in the chapter on sexual and gender-based violence, the case is still awaiting trial five years after the incident occurred.

1227. To OISL's knowledge, the majority of the cases of violations and abuse referred to in this report have not resulted in convictions by the judiciary. Cases of killings, for example, are referred initially to Magistrate's courts by police, where non-summary proceedings are initiated. At the end of these, if the Magistrate considers there is sufficient evidence to proceed, the case is sent to the Attorney General to prepare the indictment and trial by the High Court.

1228. Such cases rarely get beyond the initial phases of opening a case at the level of the Magistrate's court, and limited police investigations, such as a visit to the crime scene and sometimes recording evidence. At these early stages, Judicial Medical Officers also might intervene, including carrying out autopsies and assessing forensic evidence in relation to torture and other non-fatal incidents. Witnesses told OISL that magistrates are very reluctant to investigate crimes involving security forces beyond these steps, and rarely proceed any further. Even in the few cases where members of security forces may have been arrested initially, they have mostly been released without conviction as shown in the chapter on unlawful killings.

1229. Reprisals against judicial and other professionals who try to prosecute human rights-related cases involving State officials are also an impediment to progress in such cases. The case of the magistrate who tried to investigate the disappearance of Father Brown and other cases, and of magistrate threatened in the context of investigations into the killing of five ACF workers illustrate this pattern.

1230. Chapter VIII on Enforced Disappearances has demonstrated the failure of the courts to pursue the many cases which had been passed to the Disappearance Investigation Unit

[1226] For further analysis of judicial investigations, see ICJ report: Justice in Retreat: A report on the independence of the legal profession and the rule of law in Sri Lanka; the International Bar Association Human Rights Institute, May 2009; also Authority without accountability: The Crisis of impunity in Sri Lanka, ICJ, November 2012; Twelve years of Make-believe: Sri Lanka,s Commissions of Inquiry, Amnesty International, June 2009.

[1227] Under Sri Lankan legislation, the Chief Justice can order a case to be tried by a Trial at Bar Court, made up of three High Court judges and without a jury in cases where the Chief Justice believes that the interests of justice require it because of the nature of the offence.

and the Missing Persons Unit within the Attorney General's Office which were created especially to deal with prosecutions of alleged perpetrators identified by the three Zonal Commissions and the All Island Commission in the 1990s. One of the obstacles identified was the fact that police involved in the investigations were reluctant to pursue investigations against their colleagues, particularly against senior police and military who might have been involved.

1231. Even when fundamental rights petitions were submitted to the Supreme Court, repeated delays either in hearings or judgements or both mean that cases involving Government or security forces personnel have rarely been resolved. As was highlighted earlier, a fundamental rights petition submitted to the Supreme Court regarding the internment of IDPs in June 2009, has never been ruled on.

1232. The United Nations Human Rights Committee has issued a number of decisions on individual complaints related to Sri Lanka, including a case of torture, where a Supreme Court judgement on a petition was given in 2006, six years after the fundamental rights petition was filed. While the ruling by the Supreme Court named a group of police allegedly responsible, the Court exonerated a senior police officer in spite of strong evidence of his involvement. Two years later, despite the Government's assurances that indictments were being prepared, the group of police who were named as the alleged perpetrators of the crimes of illegal detention and torture in the Supreme Court judgement had still not been indicted.[1228]

1233. Challenges in the delivery of judicial accountability appear to be exacerbated when the suspects belong to the security forces. The LLRC stressed the need for a de-politicised judiciary and police investigations. In several of the cases documented by OISL, members of the security forces obstructed and/or interfered with investigations. Security forces have sought to pressurise relatives of victims into signing documents admitting that the victims were terrorists, or pressured the authorities to replace Judicial Medical Officers responsible for conducting autopsies (see the case of the Trincomalee Five outlined below).

1234. Investigations into cases of unlawful killings and enforced disappearance have been marred by interventions of the Executive whereby cases have been shifted to different jurisdictions or judges have been substituted. The practice by the Ministry of Defence of issuing public statements which assign responsibility away from the security forces, has effectively sought to preclude impartial criminal investigations.[1229]

1235. In its report, Humanitarian Operation Factual Analysis July 2006 to May 2009[1230], the Ministry of Defence claimed that there had been eight cases of murder committed by the SLA between 2005 and 2010 brought before the courts. Details of the cases were not provided. However, out of the eight cases, there have reportedly been three acquittals by courts while other cases were pending at the time it was published. In the case of the Army, the report stated that one was acquitted, one subjected to "other punishment", and in six cases, a court of inquiry was recording evidence. According to the report, six of the eight cases occurred between 2005 and 2007, several years earlier. The information provided by the Government to the Human Rights Committee in September 2014 is equally vague and

[1228] CCPR/C/95/D/1432/2005 : Communication 1432/2005 ; 23 April 2009 : (See also Communication 1862/2009 for a detailed account of the obstacles faced by an individual complainant in pursuing justice through the courts.

[1229] See for example Action contre la Faim (ACF), Their role in the death of their 17 Local Aid Workers, June 2014, Group of experts commissioned by the Ministry of Defence, Sri Lanka.

[1230] Humanitarian Operation Factual Analysis, MOD, Op.cit. p. 78

only refers to a single case where a police officer has been successfully convicted of murder. [1231]

1236. OISL has reviewed multiple CID investigation reports and police testimony given to the Commissions of Inquiry and notes that they contain inconsistent and unreliable accounts of events given in police reports and in statements by security forces present during several key incidents. Criminal investigations have been further undermined by the failure of the police to properly document crime scenes and record evidence. OISL has documented instances whereby crucial evidence had been lost or tampered with. In some cases, key evidence has not been sought, for example bullets and casings were not collected and phone records not requested. As noted in the unpublished 2009 report of the Udalagama Commission which OISL has reviewed: "investigations conducted by the local police as well as the Criminal Investigation Department were incomplete and superficial… the way the Police have conducted the initial investigations lacks professionalism."[1232]

Judicial investigations into the unlawful killings of five students (the Trincomalee Five): an example of impunity

1237. The Trincomalee Five case from January 2006, which is detailed in the chapter on unlawful killings, highlights the systematic failure of the criminal justice system to conclude such cases. There was an initial failure to secure the crime scene and collect relevant evidence. Several security force members later gave statements which denied witnessing or hearing any gunshots. The firearms used by the Security Forces were not promptly seized and subjected to forensic review. On the night of the incident, the security forces issued a press release saying that five terrorists had been killed in a grenade attack. According to a contemporary Police report a police officer at the scene who brought the bodies to the hospital made a declaration that the injuries on the victims were due to grenade explosions. This appears in stark contrast with the autopsy reports, also studied by OISL, which unequivocally document that all five students died due to multiple gunshot wounds and that three of them had been shot in the head from close range, leaving large exit wounds. Unsuccessful attempts were made to replace the Judicial Medical Officer (JMO) responsible for conducting the autopsies.

1238. At the hospital, relatives were intimidated by the police who claimed that the bodies could only be released if they signed a document stating that the dead were LTTE. All relatives refused to sign such a document. Shortly after the events, the families of the killed students started receiving threats including in writing; stones were thrown at their house; electricity was turned off in their home at night-time and they were harassed by security forces at checkpoints and other public locations. Only some relatives testified at the inquest into the cause of death. One family member who refused to be silenced received a call from a Government Minister who offered him financial rewards if he stopped talking about the case. Families of the killed students were forced to relocate and eventually left the country. The Commission of Inquiry and IIGEP arranged for videoconferencing with key witnesses overseas. However after a few testimonies, the Presidential Secretariat, acting on behalf of the President, intervened upon advice from the Attorney-General and excluded the evidence they had given, according to IIGEP's final report.

1239. Thirteen STF Officers were arrested in 2006 but released shortly afterwards. They were then re-arrested in July 2013, only to be (re)released again in October 2013. The STF

[1231] SP Reply to the CCPR LOIs Qs 9 and 11, September 2014.

[1232] Report of the Presidential Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights Occurring since 1 August 2005, May 2009

commander at the time was identified at the crime scene; he was not, however, among the STF officers arrested. On the contrary, he remains in the area and has since been promoted. In October 2014, the Government stated that the trial had been suspended in order to locate witnesses abroad.

1240. The Trincomalee Five case was also investigated by the Udalagama Commission, observed by IIGEP. The report of the Udalagama Commission states that 'there are strong grounds to surmise the involvement of uniformed personnel in the commission of the crime.' In 2011, the LLRC also urged implementation of recommendations of past Commissions of Inquiry, notably investigations and the prosecution of offenders in the Trincomalee Five case (9.120).

Prosecuting war crimes and crimes against humanity in Sri Lanka

1241. Decisions about how to prosecute gross human rights violations, serious violations of international humanitarian law, and international crimes, particularly in post-conflict situations, are critical to realizing victims' rights to truth, justice and reparations, and need to be conducted in tandem with efforts to foster reconciliation and constitutional reform, so as to take the country forward in protecting and promoting human rights.

1242. Given the nature and magnitude of the crimes, carrying out investigations and trying those responsible pose many challenges. The first concerns the legal qualifications: acts amounting to international crimes should be tried as such, and not merely as ordinary crimes, so as to adequately meet the objectives of combating impunity, realizing the rights of victims to a remedy and reparations, and guaranteeing non-repetition. Sri Lankan lawyers have noted that "Prosecuting international crimes as regular Penal Code offences ignores the widespread, systematic and structural elements that inhere in the definitions of international crimes."[1233]

1243. Some international crimes are already incorporated into Sri Lankan legislation, for instance the Convention against Torture was incorporated into domestic legislation through the 1994 Convention Against Torture Act.[1234] Similarly, the recruitment of the children and their use in hostilities was criminalised in 2006. However, other international crimes, notably war crimes, crimes against humanity, and the crime of enforced disappearance, have yet to be defined under domestic law. A legal framework suited to fostering accountability for international crimes must also include an array of modes of liability, and in particular the command or superior responsibility. In terms of investigations, effective prosecution strategies for large-scale crimes must focus on the planners and organizers of crimes, rather than those of lower rank or responsibility. International crimes are usually of such a scale that they require a degree of organization to perpetrate.

1244. Effective prosecution strategies for large-scale crimes focus on their systemic nature and their planners and organizers, formal and informal/shadow chain of command, rather than those of lower rank or responsibility. Such investigations require not only crime-base reconstruction, but also analysis of the practices of military or paramilitary organizations and of their organizational structures (formal and informal); the general socio-historical context of the events; the local context and dynamics of violence; of public and classified evidence. They seek to identify patterns that, by their frequency, location and nature, imply

[1233] "A Hybrid Court, Ideas for Sri Lanka", Rhadeena de Alwis and Niran Ankatell, South Asia Centre for Legal Studies.

[1234] The CAT Committee has recommended that the definition of torture as provided in the Act be amended to fully meet the agreed international definition. The definition only refers to any act "which causes severe pain." and omits the word "suffering": CAT/C/LKA/CO/3-4, 8 December 2011.

some degree of planning and centralized control and can be crucial in determining individual criminal responsibility at multiple levels, beyond those who executed the crimes.

1245. Even sophisticated legal systems like Sri Lanka's – that may be well suited to deal with ordinary crimes – may lack the capacity to effectively address international crimes. Most domestic investigators are not trained in using the different skills and forms of analysis required. Most domestic courts are not familiar with the international criminal jurisprudence that has evolved, and may have no experience of dealing with complex criminal trials involving crimes under international law. This challenge is even greater in a fragile, post-armed conflict environment where the criminal justice system remains vulnerable to interference and influence by powerful political, security and military actors. Other countries have shown the constraints of prosecutions which take place in a highly politicised environment, the most common complaint being that they are driven by political considerations, revenge or victors justice. OISL believes that it is the responsibility of the Sri Lankan leadership to create a positive, inclusive environment that is conducive to bringing about accountability for crimes committed against victims, whatever their ethnicity, political allegiance or other affiliation and for a timeframe which effectively includes those most affected by the crimes.

1246. In these circumstances, OISL believes that for an accountability mechanism to succeed in Sri Lanka, it will require more than a domestic mechanism. Sri Lanka should draw on the lessons learnt and good practices of other countries that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators, that will be essential to give confidence to all Sri Lankans, in particular the victims, in the independence and impartiality of the process, particularly given the politicisation and highly polarised environment in Sri Lanka.

1247. Much of the debate around accountability within Sri Lanka has centred around tribunals for prosecuting crimes committed at the end of the conflict. However, as this report has shown, the scale and timeframe of the alleged crimes spans a much wider period which needs to be addressed, particularly on account of the systemic nature of many of the crimes. Limiting prosecutions or other transitional justice mechanisms to a small period – for example the end of conflict, or the period covered by the LLRC's mandate – risks presenting an incomplete picture of the patterns, perpetrators and institutions involved in the abuse. It would thus fail to comprehensively address patterns of impunity and this could have a negative impact on reconciliation.

1248. Therefore, combining criminal justice with other transitional justice processes - such as truth-seeking, reparations programs, and institutional reforms - is essential to fill the "impunity gap" by addressing crimes with large numbers of victims, perpetrators and initiating deeper systematic change.

Reparations

1249. Reparations form an integral part of transitional justice packages and require a broad range of measures as part of the accountability and healing process in a post-conflict situation, including:

1250. -*restitution* - measures which "restore the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law occurred," for example, restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property;

1251. -*compensation* – "for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting

from gross violations of international human rights law and serious violations of international humanitarian law," such as lost opportunities, loss of earnings and moral damage;

1252. -*rehabilitation* - including medical and psychological support.

1253. Over the years, various ad-hoc measures have been taken by different Governments in Sri Lanka to address primarily the issue of compensation. A national policy on reparations is therefore needed to ensure that a full range of measures are developed and implement taking into account the needs of all affected communities and individuals.

1254. In its report, the LLRC noted the role of "compensatory relief in facilitating resettlement and reconciliation" but that bodies, such as the Rehabilitation of Persons, Properties and industries Authority (REPPIA) were not able to fully address the compensatory needs of those it was mandated to help – those who suffered loss or damage as a result of "terrorist violence and operations of the Government Security Forces". Some compensation was paid to relatives of the disappeared following the Zonal and All Island Commission recommendations of the late 1990's but such relief has not been systematic. Furthermore, some relatives of the disappeared have been obliged to accept death certificates in order to access certain economic benefits and legal documents.

1255. The LLRC recognised in their report that it became evident during their field visits that women, children and elderly were the categories of the population that had "taken the brunt of the conflict, seriously disrupting their lives. Many women have either lost their husbands or their whereabouts are unknown. Despite such trauma and hardship, they continue to support their families with young children and aging parents" (para 9.85).

1256. The LLRC stressed in particular that the "immediate needs of women, especially widows who most often have become heads of their households, must be met. These immediate needs include economic assistance by way of providing them with means of livelihood and other income generating means so that they could reduce the immense economic hardships and poverty under which they and their families are living at present" (paras 9.86, 9.87).

1257. Land restitution and resettlement was also highlighted by the LLRC as one of the most immediate, pressing issues following the end of the conflict, the military having occupied much privately owned land in the Northern Province in particular. Land restitution is also important in relation to the displacement of thousands of Muslims by the LTTE from the Northern Province from 1990. The LLRC called for a "bipartisan understanding" to recognise land restitution both to "old and new" displaced populations as a national issue. Since January 2015, the new Government has begun a process of returning some of the land to the previous owners but there has been reported resistance from some sectors of the military.

1258. A further area of major need is medical and psychosocial support to victims. In his observations following his first visit to Sri Lanka in April 2015, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff noted that one of the most immediate needs was psychosocial support to victims in Sri Lanka. He called on the Government to take determined and immediate action in this area. As described in the report that despite the huge trauma suffered by the civilians who were detained in IDP camps at the end of the conflict, little psychosocial support was available at the time. Such support should be made available to all those who suffered violence during the conflict, whether by the LTTE or Government forces. OISL investigators also noted that some of the victims and survivors they interviewed had not had access to such support, even though they were clearly still deeply disturbed by their experiences.

1259. Finally, part of the healing and restitution process requires acknowledgement of wrongs by both parties. In February 2015, the Government made an initial tentative step towards acknowledging the suffering of all sides in a special Peace Pledge issued for Independence Day and proposing to celebrate a 'Remembrance Day' in future years. But the continuing narrative of the military in particular that it protected civilians and rescued them from the conflict zone needs to change. At the same time the Tamil communities and organizations both inside Sri Lanka and the diaspora need to acknowledge the atrocities committed by the LTTE. Without these acknowledgements, reconciliation will be difficult.

1260. The obligation to ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes the duty to provide redress for the victims. These obligations include:

(a) Taking appropriate legislative and administrative and other appropriate measures to prevent violations;

(b) Investigating violations effectively, promptly, thoroughly and impartially and, where appropriate, taking action against those allegedly responsible in accordance with domestic and international law;

(c) Providing those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(d) Providing effective remedies to victims, including reparation.[1235]

1261. A common thread throughout this report, including this chapter, has been the persistent failings of the successive governments in Sri Lanka to fulfil these obligations. The past years have seen the almost total failure of domestic mechanisms to credibly investigate allegations of serious human rights violations and abuses committed by Government forces, associated paramilitary groups and the LTTE, establish the truth, identify those responsible, ensure accountability and provide redress to victims of. Where some action has been taken, this has often been because of the high profile of the victim. Cases where alleged perpetrators were LTTE cadres were more likely to proceed through the courts. It is noteworthy how many reported cases, even if they may have resulted in the arrest of one or more alleged perpetrators linked to the security forces, almost always resulted in those arrested being released.

1262. Since January 2015, the new Government has taken a number of promising steps towards accountability in a few cases, but these need to be examined critically against the entrenched legacy of impunity that has accrued over many years, the systemic problems of the Sri Lankan judicial system in relation to such cases, and the need for far-reaching institutional and security sector reform. The failures of so many mechanisms established over the years which are documented in this report require a courageous, far-sighted and participatory approach to design "a long-term comprehensive policy to redress past violations to allow the entire society to move forward".[1236]

1263. In its March 2014 Resolution 25/1, the Human Rights Council emphasised the importance of a comprehensive approach to transitional justice "incorporating the full range

[1235] United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147.

[1236] Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr Pablo de Greiff, on the conclusion of his first visit to Sri Lanka, 6 April 2014.

of judicial and non-judicial measures, including, inter-alia, individual prosecutions, reparations, truth-seeking, institutional reforms, vetting of public employees and officials".

1264. The recommendations below detail a series of measures addressed to the Government of Sri Lanka and the international community which it believes are necessary to end the impunity enjoyed by alleged perpetrators for many years, including those responsible for any orders, acts or omissions. The scale of the challenges to be addressed demand courage and strong political will, legal and institutional reform, extensive financial and human resources, and a robust programme for the protection of victims and witnesses, which would benefit from international support and assistance.

XIX. Conclusions and recommendations

1265. OISL was tasked with carrying out a comprehensive investigation into human rights violations and related crimes that occurred between 2002 and 2011. To do so in such a short time, given the extent of the violations, the amount of available information, as well as the constraints to the investigation, posed enormous challenges. Nevertheless, this report has attempted to shed further light on the persistence, scale and gravity of the violations of international human rights and humanitarian law that have occurred, not only during the last phases of the armed conflict, but during the whole period covered by OISL's mandate, and also prior to it.

1266. The report has shown that during the last phases of the armed conflict, the intense shelling by the armed forces caused great suffering and loss of life among the civilian population in the Vanni. Witnesses gave harrowing descriptions to OISL of the carnage, bloodshed and psychological trauma of bombardments in which entire families were killed. Lack of food, water and medical treatment because of strict controls of supplies allowed into the Vanni by the Government further impacted on their well-being and undoubtedly caused additional deaths. The LTTE caused further distress by forcing adults and children to join their ranks and fight on the front lines. The fact that the civilians were forced to remain in the conflict area by the LTTE and suffered reprisals if they tried to leave added to the trauma that they lived through.

1267. Counting or estimating the exact number of civilian casualties during the different stages of the armed conflict is impossible without full access to the areas and communities affected, in particular in Sri Lanka. Yet, on the basis of the information compiled by OISL, there is no doubt that thousands, and likely tens of thousands, lost their lives, indicating the widespread scale of the attacks. The patterns of commission of gross human rights violations and serious violations of international humanitarian law, the indications of their systematic nature, combined with the widespread character of the attacks all point to the possible perpetration of international crimes. These allegations must be promptly, thoroughly and independently investigated and those responsible should be brought to justice.

1268. Though the conflict ended on 18 May 2009, the plight of the civilians did not end once the war was over. More than 250,000 found themselves deprived of liberty in military-run closed IDP camps for months while the security forces carried out operations in the camps to filter out former LTTE cadres. Once released from the IDP internment camps (described as 'welfare villages' by the Government), they still risked further abuses, such as surveillance, detention, torture and ill-treatment and sexual violence. Former LTTE cadres and others are believed to have been secretly executed after handing themselves over to the SLA.

1269. While egregious violations occurred on a large scale during the last phase of the armed conflict, this report has also described the persistence of serious human rights

violations, abuses and related crimes that have impacted tens of thousands of individuals as well as whole communities – Sinhalese, Tamil and Muslim - not only during the period covered by the OISL's mandate, but also over past decades. These include extensive and endemic patterns of extrajudicial killings, enforced disappearances, abductions, unlawful arrests and arbitrary detention, torture and sexual violence committed with impunity by the Government forces over many years, as well as by paramilitary organisations linked to them. They also include the multiple unlawful killings, indiscriminate suicide bombings and claymore mine attacks by the LTTE which killed and maimed many civilians, and the recruitment of children and their use in hostilties by the LTTE and paramilitary groups.

1270. Most importantly, many of the structures responsible for the violations and crimes remain in place, ready to be reactivated when necessary as well as to prevent any progress in terms of addressing accountability. Indeed, OISL believes that there must be profound institutional changes to end the decades of repressive and persecutory attitudes, practices and structures to prevent their recurrence. Some of these will take time, but immediate steps can be taken to issue strict instructions to public officials and security forces indicating that violations will not be tolerated, and to send a message that the Government is determined to bring about change. Vetting to remove alleged perpetrators from the security forces should also be part of the process. Paramilitary groups must be disarmed, and their activities, including the extent, nature and identity of the support given to these groups by government officials and members of the security forces must be fully and independently investigated.

1271. The need for strengthening rule of law institutions, including by ending the political interference in the justice sector was highlighted by the LLRC. The restoration of the Constitutional Council offers hope of the appointment more independent members to the Human Rights Commission of Sri Lanka and other senior public posts. In this regard, OISL hopes the new Government will take urgent measures to restore the independence of the Human Rights Commission of Sri Lanka, and to reinforce its mandate by legislating on its powers to refer cases to the courts. The effectiveness of the Commission has been seriously eroded since 2006, yet it is a key institution regarding the protection of human rights and contributing to accountability.

1272. Reconciliation and addressing root causes of systematic human rights abuses and entrenched impunity are critical to securing the new Government's vision for Sri Lanka. Accountability must be part of that vision, including processes of truth-telling, justice and reparations. The previous Government's unbending narrative that it protected civilians, provided adequate humanitarian assistance in the conflict zone and for the basic needs of IDPs – is in stark contrast with the countless detailed descriptions of witnesses who lived through these events and therefore must change.

1273. Likewise, there must be recognition within the Tamil community, for example, of the destruction and harm inflicted on civilians and communities by the LTTE. While the LTTE no longer exists nor controls territory, the legacy of the abuses, committed by and large with total impunity, remains and must be addressed. Even now, in some parts of Sri Lanka, those who were the victims of abuses by the LTTE are still afraid to talk about what happened in the presence of former LTTE cadres.

1274. The design of any mechanisms, such as a truth-seeking mechanism or future institution to deal with disappearances, must be through a process of genuine, informed and participatory consultation, especially with victims and their families. A vital initial step towards progress in addressing the past and allowing accountability for future violations must also be the creation of an environment where victims and other witnesses can provide testimony without fear of persecution. Fear of reprisals has prevented many from coming forward to seek truth, justice and reparations. Relatives of the disappeared have, nevertheless, courageously continued their search for the truth about their missing loved

ones in spite of the many and repeated attempts by governments to deny and obfuscate responsibility.

1275. Creating an environment conducive to open testimony and dialogue requires putting in place an independent, effective witness protection system. While the Witness Protection Act of 2015 marks a start, it requires amendment to bring it into line with international standards and best practices. This should be a priority for the new Government. At the same time, creating such an environment requires measures to prevent security forces and others from threatening and abusing victims or their families.

1276. OISL's report has shown how impunity is deeply entrenched throughout Sri Lankan institutions, in spite of the professionalism and expertise of many individual officials. The majority of the many commissions of inquiry appear to have been designed to deflect criticism in high profile cases rather than as effective mechanisms to enable accountability, the exceptions being the commissions of inquiry into disappearances set up in 1994 and 1998. Despite their flaws, they did nevertheless document many cases, including alleged perpetrators. However, the majority of the alleged perpetrators were never prosecuted and some have since been promoted within the security forces.

1277. There has been intense debate nationally and internationally about the mechanisms needed to prosecute the alleged violations and crimes committed in Sri Lanka. Much of the debate has focussed on what type of mechanisms would best achieve accountability, and the form they should take. The contribution of the Human Rights Council, though resolution 25/1, stressed the need for a "comprehensive approach to transitional justice incorporating the full range of judicial and non-judicial measures", including individual prosecutions, reparations, truth-seeking, institutional reform and vetting of public employees and officials.[1237]

1278. The commitment by the new Government to pursue accountability through a domestic process is commendable, particularly in a context where some political parties and sections of the military and society remain deeply opposed. OISL believes, however, that Sri Lanka's criminal justice system is not yet ready or fully equipped to promptly conduct the "independent and credible investigation" into the allegations contained in this report, or "to hold accountable those responsible for such violations", as requested by the Human Rights Council.[1238] The chapter on Justice and Accountability in this report explains the complex reasons for this, and why the High Commissioner believes that for an accountability mechanism to succeed in Sri Lanka, it will require more than a domestic mechanism. Sri Lanka should draw on the lessons learnt and good practices of other countries that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators. Such a mechanism will be essential to give confidence to all Sri Lankans, in particular the victims, in the independence and impartiality of the process, particularly given the politicization and highly polarized environment in Sri Lanka. It will be important that the international community supports these initiatives and that they also continue to monitor these developments, to take further actions that may be required at the international level should there not be concrete results.

1279. Although OISL's findings regarding issues on attacks on civilians and humanitarian assistance differ at times from those of the LLRC in its report, OISL believes that many of the LLRC's findings and recommendations remain pertinent today and should be considered as part of the follow-up to this report, particularly regarding detention and disappearances, long-term grievances of the many different communities and proposals for

[1237] A/HRC/RES/25/1, preamble.
[1238] Ibid.

reconciliation. It is regrettable that many key recommendations which they made almost five years ago and which could help to safeguard human rights have yet to be implemented.

1280. OISL recognises the measures to improve human rights have been taken by the Government which took office in January and that the new Government that took office in August 2015 has committed to bringing about change. The High Commissioner sincerely hope that the new Government will seize this unique opportunity to articulate the "common vision of an interdependent, just, equitable, open and diverse society" as highlighted by the LLRC. It will require courage and political will to challenge the status quo and address the many long-standing grievances in order to restore the full protection of human rights for all its citizens.

1281. OHCHR hopes that this report will contribute to the development of that vision, and that it will be embraced as a means to move forward constructively rather than lapse into defensive, recriminatory discourses. Below are a set of recommendations which it believes should be implemented as part of the process of creating a vision and programme of change which does full justice to the positive resources and diversity of its people. The international community also has an important role to play in supporting change and advance accountability for past violations and abuses and longer term reconciliation.

Recommendations

General

1. Develop a comprehensive transitional justice policy for addressing the human rights violations of the past 30 years and preventing their recurrence;
2. Set up a high-level executive group to develop a coordinated, time-bound plan and oversee progress in implementing the recommendations contained in this report and previous reports by the High Commissioner to the Human Rights Council, as well as relevant outstanding recommendations of the LLRC and past commissions of inquiry;
3. Invite OHCHR to establish a full-fledged country presence to monitor the human rights situation, advise on implementation of the High Commissioner's recommendations and of all HRC resolutions, and provide technical assistance;
4. Initiate genuine consultations on transitional justice, in particular on truth-seeking, reparations and memorialization, with the public, victims and witness groups, civil society and other stakeholders. These should be accompanied by public education programmes that ensure informed participation in the process; Invite the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence to continue his engagement so that he accompanies and advises in this process;
5. Ensure full cooperation with the Special Procedures of the Human Rights Council. Invite the Special Representative of the Secretary-General on conflict-related sexual violence and the Special Representative of the Secretary-General on Children and Armed Conflict, the Special Rapporteurs on extrajudicial killings and torture, the Working Group on Arbitrary Detention and other relevant Special Procedures mandate holders to make early country visits.

Institutional reforms

6. Ensure that the Constitutional Council is fully operational as soon as possible, so that it can appoint qualified new members of the utmost independence and integrity to key institutions such as the Human Rights Commission of Sri Lanka;

7. Review legislation to strengthen the Human Rights Commission's independence and its capacity to refer cases to the courts;

8. Initiate action to seek Supreme Court review of its decision in the Singarasa case[1239] to affirm the applicability of international human rights treaties in domestic law and reinstate the competence of the UN Human Rights Committee to consider individual complaints;

9. Issue clear, public and unequivocal instructions to all branches of the military and security forces that torture, rape, sexual violence and other human rights violations are prohibited and that those responsible, either directly or as commander or superior, will be investigated and punished. Subject to due process, anyone suspected of being involved in such acts should be immediately suspended until an effective investigation has been completed. Order and end to all surveillance, harassment and reprisals against civil society actors, human rights defenders and journalists; ;

10. Prepare an overall plan for security sector reform to ensure the civilian nature, independence and professionalism of the law and order forces, and reducing the role of the military in internal security matters;

11. Clarify the roles and chain of command for all branches of the security forces, including the different intelligence services, the CID and the TID.

12. Develop a fully-fledged vetting process respecting due process to remove from office military and security force personnel and any other public official where there are reasonable grounds to believe that they were involved in human rights violations;

13. Ensure that no member of the Sri Lankan security forces is sent on a UN peacekeeping without vetting to establish that the individual, including commanders, have not in any way been involved in human rights violations or criminal acts. Any allegations of abuses by Sri Lankan peacekeepers while on peacekeeping duties must be fully investigated by the authorities;

14. Prioritize the return of private land which has been occupied by the military and end military involvement in civilian activities;

15. Take immediate steps to identify and disarm groups affiliated with political parties and sever their linkages with security forces, intelligence services and other Government authorities;

16. Initiate a high-level review of the Prevention of Terrorism Act (PTA) and its regulations and the Public Security Ordinance Act with a view to their repeal and the formulation of a new national security framework fully complying with international law;

Justice

17. Review the Victim and Witness Protection Act with a view to incorporating better safeguards for the independence and effectiveness of the witness protection programme. Ensure the independence and integrity of those appointed to the Witness Protection Authority and that the police personnel assigned to this program are fully vetted. Ensure adequate resources for the witness protection

[1239] Nallaratnam Singarasa v Attorney General, SC Special App. (LA) No.182/99, decided on Sept. 15, 2006.

system, including with international assistance; Ensure special protection mechanisms for children and victims of sexual violence.

18. Enact legislation to criminalize war crimes, crimes against humanity, genocide and enforced disappearances, without statute of limitation. Enact various modes of criminal liability, notably command or superior responsibility;

19. Ratify the International Convention on the Protection of All Persons from Enforced Disappearances, the Additional Protocols to the Geneva Conventions and the Rome Statute of the International Criminal Court;

20. Adopt specific legislation establishing an *ad hoc* hybrid special court, integrating international judges, prosecutors, lawyers and investigators, mandated to try war crimes and crimes against humanity, including sexual crimes and crimes committed against children, with its own independent investigative and prosecuting organ, defence office, and witness and victims protection programme. Resource the court so that it can effectively try those responsible;

21. Carry out a comprehensive mapping of all pending criminal investigations, habeas corpus, and fundamental rights petitions related to serious human rights violations, as well as the findings of all Commissions of Inquiries where they have identified specific cases, and refer these cases to the special court upon its establishment; Initiate prosecutions in all cases in which the Presidential Commission to Investigate Complaints Regarding Missing Persons has identified perpetrators and *prima facie* evidence;

22. Review all of the cases submitted to the Disappearance Investigation Unit and the Missing Persons Unit by the Zonal and All Island Commissions, including in cases where the courts subsequently acquitted the accused, to identify those which require further investigation, including chain of command responsibilities;

23. Review all the cases of the more than 11,000 individuals perceived or known to be linked to the LTTE reported to have been registered and rehabilitated to account for their current whereabouts to ensure that none subsequently disappeared.

24. Review all cases of detainees held under the PTA and either release them or immediately bring them to trial. Review the cases of those convicted under the PTA and serving long sentences, particularly where convictions were based on confessions extracted under torture;

Truth/right to know

25. Dispense with the current Presidential Commission on Missing Persons and transfer its cases to a credible and independent institution developed in consultation with families of the disappeared;

26. Develop a central database of all detainees, with independent verification, where relatives can obtain information of the whereabouts of family members detained;

27. Publish a full gazetted list of all detention centres, and close down any unofficial ones still in existence;

28. Publish all unpublished reports of the many human rights-related commissions of inquiry, the Presidential Commission on the Missing, and the Army Court of Inquiry into civilian casualties;

29. Develop a comprehensive plan/mechanism for preserving all existing records and documentation relating to human rights violations, whether held by public or private institutions;

Reparations

30. Develop a national reparations policy in consultation with victims and their families, considering the specific needs of each victims, including women and children and finance appropriately from the state budget;

31. Develop and strengthen programmes of psychosocial support for all victims of the conflict;

32. Amend legislation to ensure that those who have received death certificates for the missing are not prevented from pursuing judicial cases to determine what happened to their loved ones;

33. Ensure durable solutions for old and new displaced populations through land restitution, resettlement and livelihood support;

To the United Nations system and Member States

34. Provide technical and financial support for the development of transitional justice mechanisms provided that they meet international standards. Set up a coordination mechanism among donors in Sri Lanka to ensure focussed and concerted efforts to support the transitional justice process;

35. Apply stringent vetting procedures to Sri Lankan police and military personnel identified for peacekeeping, military exchanges and training programmes;

36. Whenever possible, notably under universal jurisdiction, investigate and prosecute those allegedly responsible for violations, such as torture, war crimes or crimes against humanity ;

37. Ensure a policy of non-refoulement of Tamils who have suffered torture and other human rights violations until guarantees of non-recurrence are sufficient to ensure that they will not be subject to further abuse, in particular torture and sexual violence;

38. In countries where there is a significant Tamil population, carry out an assessment of needs for psychosocial support for those who have been victims of violations and as necessary fund the development of such services;

39. Continue to monitor human rights developments and progress towards accountability and reconciliation through the Human Rights Council. Should there be insufficient progress, the Human Rights Council should consider further international action to ensure accountability for international crimes.

Annexes

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OHCHR Investigation on Sri Lanka
Terms of Reference

1. Mandate and reporting obligations

In its resolution A/HRC/25/1 adopted in March 2014 on "Promoting reconciliation, accountability and human rights in Sri Lanka", the United Nations Human Rights Council requested the UN High Commissioner for Human Rights to "undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission (LLRC), and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders".

The Council requested the High Commissioner to present an oral update at its twenty-seventh session and a comprehensive report on the investigations at its twenty-eighth session.

In accordance with this mandate, the UN High Commissioner for Human Rights established the OHCHR Investigation on Sri Lanka (OISL), based in Geneva.

2. Timeframe

The period under investigation is that covered by the LLRC, that is, from 21 February 2002 until 15 November 2011, when it presented its report to the President of Sri Lanka. The OISL will also take into consideration any contextual and other relevant information that may fall outside this timeframe which may provide a better understanding of events or which may be pertinent regarding continuing human rights violations.

3. Legal framework

The mandate of the OISL requires it to undertake investigations into alleged serious violations and abuses of human rights and related crimes by both parties to the conflict. The legal framework that underlies the investigation will comprise of all obligations assumed by Sri Lanka under international human rights treaties and those applicable under customary international law. Although a non-state actor cannot formally become party to human rights treaties, it is now increasingly accepted that non-state groups exercising *de facto* control over a part of the State's territory must respect certain human rights obligations of persons in that territory.

During the period covered by the investigations, there existed an internal armed conflict, making necessary the application of international humanitarian law, in particular provisions of the Geneva Convention relevant to non-international armed conflicts, to

measure the conduct in the conflict of both the Government and non-state armed groups. Thus, the legal framework is the same as applied by the Lessons Learnt and Reconciliation Commission. Its mandate also requires the OISL to apply international criminal law to the incidents and events under investigation in determining whether crimes have been perpetrated.

4. Experts

In June 2014, the High Commissioner appointed three distinguished experts, **Mr. Martti Ahtisaari**, former President of Finland, **Ms. Silvia Cartwright**, former High Court judge of New Zealand, and **Ms. Asma Jahangir**, former President of the Human Rights Commission of Pakistan, to play a supportive and advisory role, as well as independent verification throughout the investigation.

As required by the Council resolution, the OISL will also obtain the assistance of specific special procedures mandate holders including on extrajudicial executions, disappearances, internally displaced persons, arbitrary detentions, violence against women and torture.

5. Methods of work

In order to establish the facts and circumstances of alleged violations, abuses and crimes by both parties, the OISL will conduct a desk review of existing documents and information, including government and civil society reports, collect and document victims' testimonies and the accounts of survivors, witnesses and alleged perpetrators, as well as seeking information from other relevant sources such as satellite images, authenticated video and photographic material and official documents. In analysing the information collected, it will seek to corroborate facts and accounts to meet the agreed standard of proof (see below).

It will continue to seek to engage with the Government of Sri Lanka, as envisioned in the Council resolution. The High Commissioner will continue to request for the OISL to have access to the country to meet with Government officials and others, as well as to have access to all relevant documentation.

The OISL will seek to develop regular dialogue and cooperation with other United Nations entities, including its specialized agencies, interested institutions and academics and non-governmental and community organizations.

Any state, individual or organisation may submit information in writing to the OISL. Submissions to the OISL may be sent to: oisl_submissions@ohchr.org
In carrying out its work, the OISL will be guided at all times by the principles of independence, impartiality, objectivity, transparency, integrity and "do no harm".

6. Witness protection

The OISL will take appropriate steps to address witness and victim protection concerns and shall adopt procedures and methods of work aimed at protecting such persons during all stages of its work.

The Government of Sri Lanka also has an obligation to protect victims and witnesses and others in Sri Lanka who make contact with the OISL, and it will be requested to make an undertaking that no such person shall, as a result of such contact, suffer harassment, threats, acts of intimidation, ill-treatment or reprisals.

7. Confidentiality of information

The OISL will take all necessary measures and precautions to protect the confidentiality of information, including by not disclosing the names of individuals in its public reports as appropriate. At the end of its work, the OISL will archive all its confidential material in accordance with standard UN procedures for strictly confidential material.

8. Standard of proof

Consistent with the practice of other United Nations fact-finding bodies, the OISL will base its findings on a "reasonable grounds to believe" standard of proof. There are reasonable grounds to believe that an incident or pattern of violations or crimes occurred if the OISL has obtained a reliable body of information, consistent with other information, indicating their occurrence. This standard of proof may be sufficiently high to call for judicial investigations into violations of international humanitarian and human rights law and international crimes.

With regard to assessing information that identifies alleged individuals to have been involved in the violations, the OISL will comply with the standards that require a reliable body of material consistent with other verified circumstances, which tends to show that a person may reasonably be suspected of being involved in the commission of a crime. The OISL will not make final judgments as to criminal guilt; rather, it would make an assessment of possible suspects that may pave the way for future criminal investigations.

9. Cooperation with the Government of Sri Lanka

The Council in its resolution called upon the Government of Sri Lanka to cooperate with the Office of the High Commissioner for Human Rights in the implementation of the resolution. Such cooperation entails freedom of movement throughout the territory; unhindered access to all places and establishments; freedom to meet and interview representatives of national, local and military authorities, community leaders, non-governmental organizations and other institutions, and any such person whose testimony is considered necessary for the fulfilment of its mandate; and free access to all sources of information, including documentary material and physical evidence. Other Governments in whose territory the OISL may interview victims, witnesses and sources and gather information are also invited to cooperate with the investigation under the same conditions.

10. Privileges, immunities and facilities

The experts of the OISL shall enjoy the privileges and immunities accorded to experts on mission under Article IV of the 1948 Convention on Privileges and Immunities of the UN, and the OHCHR staff of the OISL shall enjoy the privileges and immunities of officials under Article V and VII of the Convention in the conduct of the investigation.

All Governments are reminded of this obligation and invited to ensure that facilities necessary for the independent conduct of the investigation are provided.

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OHCHR Investigation on Sri Lanka
Mandated by Human Rights Council Resolution A/HRC/25/1
Call for submissions
1 August 2014

Background

The United Nations Human Rights Council (HRC) is the highest inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the world.

In March 2014, the HRC adopted resolution A/HRC/25/1, requesting the United Nations High Commissioner for Human rights to "undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission, and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability". The mandate of the OHCHR Investigation on Sri Lanka includes violations and abuses of international human rights law and breaches of international humanitarian law as well as related crimes.

In accordance with this resolution, the United Nations High Commissioner for Human Rights has established the **OHCHR Investigation on Sri Lanka (OISL)**. The OISL will be supported and advised throughout by three independent, distinguished experts, appointed by the High Commissioner in accordance with Resolution A/HRC/25/1: Mr. Martti Ahtisaari, Ms. Silvia Cartwright and Ms. Asma Jahangir.

The United Nations High Commissioner for Human Rights will present a comprehensive written report on the outcome of the investigation to the HRC in March 2015, as per resolution A/HRC/25/1.

Submissions to the OISL

Individuals, organisations and governments are invited to submit information and/or documentation on alleged serious violations and abuses of human rights and related crimes allegedly perpetrated from 21 February 2002 until 15 November 2011 in Sri Lanka by either of the parties to the armed conflict.

Submissions must be made by midnight, Geneva time, on **30 October 2014**. This is to allow the investigation team time to analyse all the information gathered before drafting its report. Drafting needs to be completed at least two months before the report is presented to the HRC in March.

Procedure for submissions

Submissions should be sent in written form and must include the contact details of the author(s). Submitting entities/individuals should specify if the submissions – or parts of them - should be treated confidentially. Upon receipt of the submission, OHCHR will take all necessary measures to protect the confidentiality of the personal details of the authors or any other persons named in the submissions.

Submissions may be in English, Sinhala and Tamil. They must not exceed 10 pages. Should the OISL require additional information, it will contact the author(s) of the submission.

Any video, audio or photographic material related to the submissions should not be submitted via email. Contact the OISL to make arrangements to send it by alternative means.

Email and postal addresses for submissions

By email to: OISL_submissions@ohchr.org

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10 December 2014

Excellency,

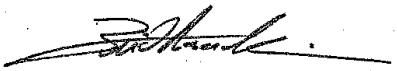
Further to my meeting with you on 22 September 2015, I write to request information on issues pertaining to the OHCHR Investigation on Sri Lanka (OISL) mandated by Human Rights Council resolution 25/1.

I note the position of non-cooperation the Government of Sri Lanka has taken with respect to this Human Rights Council mandate. Nevertheless, I would like to again afford the Government an opportunity to share relevant information and perspectives that can be taken into consideration in analysing the facts related to allegations of serious human rights violations and related crimes during the mandated period of the OISL.

In line with international standards and practices, my Office seeks to corroborate information in order to establish an objective account regarding the allegations. We have reviewed publicly available information issued by the Government of Sri Lanka, including the Ministry of Defence report *Humanitarian Operation Factual analysis July 2006-May 2009* and the Government's *Fifth periodic report to the Human Rights Committee*, together with the related *Replies of Sri Lanka to the list of issues,* as well as that contained in the report by the LLRC. By submitting this request, I wish to reiterate my invitation to the Government of Sri Lanka to provide further relevant information or documentation.

A list of requested information is attached. I would highly appreciate your Government's positive consideration and receiving the requested as well as any other pertinent information by 10 January 2015.

Please accept, Excellency, the assurances of my highest consideration.



Zeid Ra'ad Al Husssein
High Commissioner for Human Rights

His Excellency Prof. G.L. Peiris
Minister of External Affairs
Republic Building, Colombo 1
Sri Lanka

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Attachment - OHCHR Investigation on Sri Lanka (OISL) Request for Information to the Government of Sri Lanka December 2014

LTTE

1. Please provide information, including details of investigations on which the conclusions are based and any prosecutions, on each of the cases of killings and other abuses attributed to the LTTE listed in Annexes A-E of the report *Humanitarian Operation Factual Analysis July 2006-May 2009* which relate to the mandate period of the investigation (as below).
Annex A: Cases 59-82; 114-136; 147-148; 157-160; *Annex B*: Cases 104-137;
Annex C: Cases 102-109; *Annex D*: Cases 20-21; *Annex E*: Cases 34-49

2. Please provide any information your Government may have about both individual cases of child recruitment by the LTTE, and about the structures within the LTTE which were responsible for recruiting children; information about the Government process of separating and reintegrating children from the LTTE. With reference to the recommendation of the LLRC report to *'investigate any instances where there is prima facie evidence of conscription of children as combatants and ensure that offenders are brought to justice'* (9.79), and in view of the State party's ratification of the CRC-OPAC and the criminalisation of the engagement and recruitment of children for use in armed conflict in the Penal Code (Amendment) Act No. 16 of 1 January 2006, please provide information on criminal investigations undertaken with regard to child recruitment by the LTTE, as well as by paramilitary groups. Please also provide any available information your Government may have on forced recruitment of adults for military purposes between 2002 and 2009.

3. In relation to *paras* 191 and 195 of *Humanitarian Operation Factual Analysis July 2006-May 2009*, please provide intelligence assessments, UAV imagery, intercepts, or any other information regarding allegations that the LTTE shot at civilians trying to leave the areas under their control, that the LTTE used civilians as shields or hostages;

4. Please provide any additional documentation that your Government may have that describes the structure of the LTTE political and military wings, their operational planning process, command and control applicable to the use of heavy weapons and use of suicide tactics.

5. Please provide any available information, including UAV imagery, indicating the placement of LTTE weapons and military positions in or near protected facilities especially between January and May 2009.

Security forces/conduct of hostilities

6 In addition to the information available in *Humanitarian Operation Factual Analysis July 2006-2009*, please provide any further documentation – including on planning, policy, rules of engagement, *directives*, after-action assessments, UAV footage - regarding military operations, use of weaponry and protection of civilians for the period covered by the report. Also please provide copies of/documentation on the nature, dates and exact locations of the "announcements on radio and through loudspeakers, copies of airdropped leaflets and requests conveyed through international agencies" informing civilians of "safe locations" as referred to in the Fifth periodic report of Sri Lanka to the Human Rights Committee.

7. Please provide information on the organisational and command and control structures both at the level of the Ministry of Defence and National Security Council, and for the Army, Navy and Air Force during the period 2002-2011, including the following:

- 22 and 23 Division and subordinate units, including independent battalion
- 53, 55, 56, 57, 58 and 59 Division and subordinate units, including independent battalions
- Task Forces 1, 2 3 and 4 and subordinate units, including independent battalions
- Commando Brigade
- Special Forces Brigade
- Long Range Reconnaissance Patrols

8. Please provide information about the organisational, chain of command structure, directives and operational guidelines and mandates of the police forces, including the Criminal Investigation Department, the Terrorist Investigation Division and the Special Task Force; as well as the relationship between police and military during the conflict.

Detention

9. Please provide information on detention and interrogation procedures, both under emergency regulations, under the Prevention of Terrorism Act as well as other legislation.

Please also provide information about the screening, separation, detention and interrogation processes in the north during the final weeks of the conflict and until 2011, as well as the places to which detainees were taken. Please also provide information about any investigations that have been carried out into allegations of torture and their outcome.

Investigations

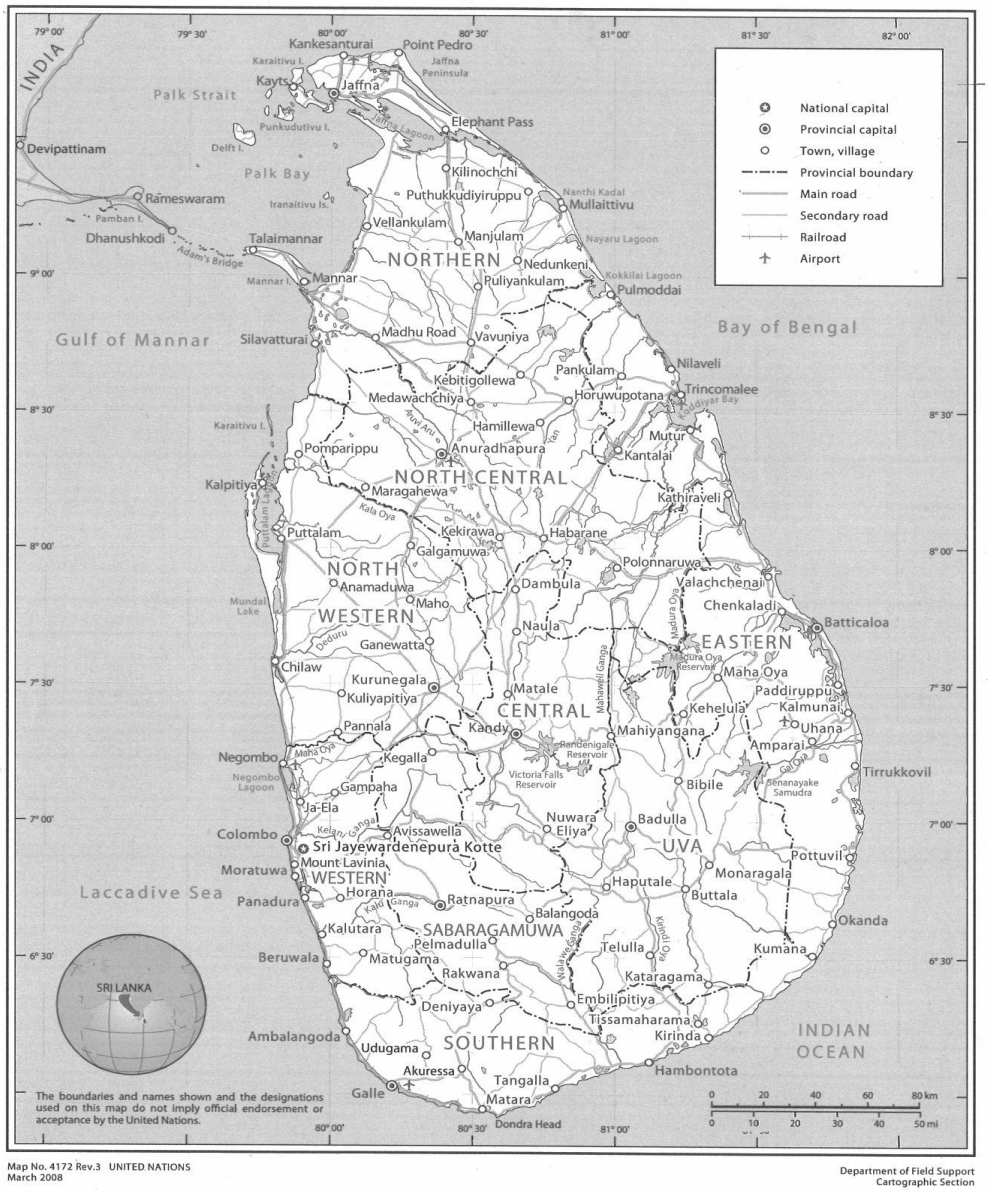
10. Please provide further information on the evidence used by the Army Court of Inquiry to conclude that "instances of shelling referred to in the LLRC Report were not caused by the Sri Lanka Army and that civilian casualties may have occurred due to the unlawful acts by the LTTE..." as reported in *Replies of Sri Lanka to the list of issues* presented to the Human Rights Committee in October 2014.

11. Please provide any other information on investigations and their outcome which have been initiated into allegations of extrajudicial executions, enforced disappearances, rape, torture and other violations reported to have occurred during the period under review by the OISL, including in the context of recommendations made by the LLRC (recommendations 9.120, 9.9, 9.37a, and 9.41).

12. Related to para.11 above, please provide details of the final report and follow-up in relation to the Presidential Commission of Inquiry appointed to Investigate and Inquire into Serious Violations of Human Rights which are alleged to have arisen in Sri Lanka since 1 August 2005 (the Udalagama Commission report).

13. Also related to para.11 above, please provide further information on the 39 cases of violence against women involving security forces personnel which are mentioned in para. 46 of the Replies of Sri Lanka to the List of Issues related to the Fifth periodic report to the Human Rights Committee.

14. Regarding enforced disappearances, please provide information about the Presidential Commission to investigate into complaints of Missing Persons in the Northern and Eastern Provinces, including methodology, details of any initial findings, cases which have been handed over to the Attorney General's Office for investigation, protection measures for witnesses, the nature of any relief and reparation measures that have been instituted. Also, please provide information on steps taken to establish enforced disappearances as a criminal offence under domestic law as recommended by the LLRC.


INDIA
Palk Strait
Palk Bay
Gulf of Mannar
Laccadive Sea
Bay of Bengal
INDIAN OCEAN
Kankesanturai
Point Pedro
Jaffna Peninsula
Karaitivu I.
Kayts
Jaffna
Punkudutivu I.
Elephant Pass
Devipattinam
Delft I.
Kilinochchi
Puthukkudiyiruppu
Nanthi Kadal
Mullaittivu
Rameswaram
Iranaitivu Is.
Pamban I.
Vellankulam
Manjulam
Dhanushkodi
Talaimannar
Adam's Bridge
Nayaru Lagoon
NORTHERN
Nedunkeni
Mannar I.
Mannar
Puliyankulam
Kokkilai Lagoon
Pulmoddai
Silavatturai
Madhu Road
Vavuniya
Nilaveli
Pankulam
Kebitigollewa
Trincomalee
Medawachchiya
Horuwupotana
Koddiyar Bay
Karaitivu I.
Hamillewa
Mutur
Pomparippu
Anuradhapura
Kantalai
NORTH CENTRAL
Kalpitiya
Maragahewa
Kathiraveli
Puttalam Lagoon
Kala Oya
Puttalam
Kekirawa
Habarane
Galgamuwa
Polonnaruwa
NORTH
WESTERN
Anamaduwa
Dambula
Valachchenai
Maho
Mundal Lake
Deduru
Naula
Chenkaladi
Batticaloa
Ganewatta
Madura Oya
EASTERN
Madura Oya Reservoir
Chilaw
Kurunegala
Matale
Maha Oya
Paddiruppu
Kuliyapitiya
CENTRAL
Mahaweli Ganga
Kehelula
Kalmunai
Pannala
Kandy
Mahiyangana
Uhana
Maha Oya
Randenigala Reservoir
Amparai
Negombo
Kegalla
Tirrukkovil
Negombo Lagoon
Victoria Falls Reservoir
Bibile
Gal Oya
Gampaha
Senanayake Samudra
Ja-Ela
Nuwara Eliya
Badulla
Kelani Ganga
Colombo
Avissawella
UVA
Sri Jayewardenepura Kotte
Pottuvil
Mount Lavinia
Moratuwa
Monaragala
WESTERN
Haputale
Horana
Buttala
Panadura
Kalu Ganga
Ratnapura
Balangoda
Okanda
Kalutara
SABARAGAMUWA
Pelmadulla
Telulla
Kumana
Kirindi Oya
Beruwala
Matugama
Rakwana
Kataragama
Wallawaya Ganga
Embilipitiya
Deniyaya
Tissamaharama
Ambalangoda
Udugama
SOUTHERN
Kirinda
Akuressa
Hambontota
Galle
Tangalla
Matara
Dondra Head
SRI LANKA
National capital
Provincial capital
Town, village
Provincial boundary
Main road
Secondary road
Railroad
Airport
0 20 40 60 80 km
0 10 20 30 40 50 mi
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Map No. 4172 Rev.3 UNITED NATIONS
March 2008
Department of Field Support
Cartographic Section