INFO NOTE

UNITED NATIONS HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Info Note 7
Report of the OHCHR Investigation on Sri Lanka, September 2015

Last phase and aftermath of the armed conflict

Chapters XIII, XV and XVI of the report examine how civilians were affected by the last phase of the armed conflict between the Sri Lankan Government and the LTTE and its immediate aftermath.

Overview of attacks on civilian objects:

OISL said there are reasonable grounds to believe that many attacks during this period did not comply with the rules on conduct of hostilities, in particular the obligation to distinguish between civilians and civilian objects on the one hand, and lawful military targets on the other (185). Many tens of thousands of civilians were trapped in three successive, increasingly small "No Fire Zones" (NFZs). These zones, declared unilaterally by the Sri Lankan Government, were located inside territory held by the LTTE and coincided with pre-existing LTTE military positions. According to the report, locating a 'safe zone' in an area where there was considerable likelihood that it would become part of the area of hostilities raises questions of intent on the part of the Sri Lankan Army (756). The Government retained its strict controls on food and medical supplies entering these areas. The No Fire Zones were shelled repeatedly, but the LTTE prevented civilians from fleeing, exposing them to danger from attacks. These chapters examine allegations centred around four specific concerns:

- allegations that many attacks in the last phase of the conflict did not comply with international humanitarian law, in particular the principles of distinction, proportionality and precaution
- allegations of attacks impacting humanitarian facilities such as hospitals, UN hubs and food distribution queues, conducted in violation of international humanitarian law
- allegations of restrictions on humanitarian supplies to the civilian population
- the way in which large numbers of civilians were deprived of their liberty in the direct aftermath of the conflict

Alleged violations by the Government:

The report focused on allegations that facilities protected under international humanitarian law, such as hospitals, United Nations hubs and food distribution areas were repeatedly attacked from positions of the Sri Lankan Army (729). It also examined tactics allegedly used by the LTTE in carrying out military activities, including attacks, from areas close to such facilities.

The Government of Sri Lanka repeatedly insisted that it practised a "zero civilian casualty" policy and described its military operation as a "humanitarian operation" to rescue large numbers of civilians trapped by the LTTE. It stressed its use of precision weapons and its extensive use of drones to ensure that only military objectives were directly targeted and to minimise incidental damage to civilians and civilian objects. It also consistently maintained

that it restricted the use of heavy weaponry, and stopped using such weapons altogether during the final weeks of the fighting (733-749).

Paragraphs 792-887 outline a series of attacks against nine Government-run hospitals and makeshift medical facilities, most of them in the three No Fire Zones, between January and May 2009. OISL notes that these incidents occurred despite the fact that the GPS co-ordinates of most hospitals and other humanitarian facilities were given to the Government of Sri Lanka (784).

Some hospitals were repeatedly shelled. Many were forced to relocate, sometimes more than once. OISL says PTK hospital, which was not in an NFZ, was one of the most heavily hit medical facilities. The report describes repeated bombardments in January and February 2009, with patients sometimes fleeing the hospital carrying their intravenous drips in a bid to escape intense shelling. On February 4th, it says, when at least 50 shells landed in the hospital grounds, witnesses described the situation as "carnage". The hospital's infrastructure was in ruins. Staff members struggled to care for increasing numbers of casualties amid continuing shelling (822-832).

By April, a makeshift facility at Mullivaikkal was the only hospital remaining in No Fire Zone Two, caring for large numbers of people wounded by shelling and bombing. There were acute shortages of medical supplies and the operating theatre was nothing more than a "shelter". Overcrowding led to patients being laid outside on the sand and dead bodies left decomposing in the heat (865-872).

The report describes incidents in which civilians queuing at food distribution points were hit by shelling, highlighting three attacks in March and April 2009 (859-864). In one of these, 50 people, mostly women and children, were reportedly killed while queuing for milk powder. In all three cases, witnesses reported spotting military surveillance drones in the area around the time of the attacks. OISL states there were no reports of LTTE activity near any of these food distribution queues. Given that the Sri Lankan armed forces were systematically informed of the location and time of food distributions, it suggests, there are reasonable grounds to believe that they may have been deliberately targeted (864).

OISL concludes that attacks on humanitarian facilities were not isolated incidents. It says they were part of a pattern where the armed forces not only failed to take adequate measures to safeguard protected facilities, "but in some cases, may have deliberately targeted the facilities" (789). It points out that directing attacks against civilian objects or civilians not taking part in hostilities "is a serious violation of international humanitarian law and, depending on the circumstances, may amount to a war crime" (1152).

It adds that the Government systematically used indirect fire weapons, such as Multi-Barrelled Rocket Launchers, in a way that was inappropriate in areas that were densely populated and where the Sri Lankan Army knew protected facilities were located (790). The types of weapons chosen and the manner of their use when fighting in populated areas can significantly affect the likelihood of indiscriminate or disproportionate effects on civilians. Indirect fire is when the person firing the weapon does not have a direct view of the target, which allows for less accurate targeting (745).

Alleged violations and abuses by the LTTE:

The report indicates that OISL did not uncover evidence suggesting that the LTTE used hospitals and other civilian facilities for military purposes (1157). However, it did conclude that the LTTE sometimes placed military positions near hospitals and United Nations premises and that there were "reasonable grounds" to suspect that it launched attacks from such locations (791, 1157). By doing so, the LTTE violated its obligation to take all feasible measures to protect the civilian population and civilian objects against the effects of attacks. It also constrained their movement, effectively forcing them to stay in an area that was almost under constant attack by the Sri Lankan Army. The report says there are reasonable grounds to believe that "the LTTE exposed the civilian population to military operations, in particular shelling and gunfire from the military" (1163).

With regard to incidents of shelling near humanitarian convoys, OISL states, both the Sri Lankan Army and the LTTE failed to respect their obligations to protect humanitarian relief personnel and objects and to take all feasible measures to avoid incidental loss of civilian life or damage to civilian objects (1168).

Denial of humanitarian assistance:

The Sri Lankan Government had always imposed stringent controls on goods entering LTTE controlled territories. OISL notes that the Government was entitled to adopt security measures to restrict the transport of goods and materials that could have contributed to the LTTE's war effort. However, it adds that the Government had the obligation "to allow and facilitate the rapid and unimpeded passage of independent and impartial humanitarian relief" (1165-6).

Chapter XV describes the increasing obstacles which humanitarian organisations faced in getting supplies into LTTE controlled territory during the last few months of the conflict (937).

It said that the situation became increasingly difficult after September 2008, when the Government forced the UN and other international aid organisations to leave their humanitarian hub in the northern city of Kilinochchi. Food and other supplies entered LTTE controlled areas through a series of road convoys between October and January 2009, but from February only ships were able to deliver supplies. The report notes that "the quantities and nature of the supplies authorized for delivery did not meet even the basic needs of the civilian population" (937). No fuel entered the conflict zone from January until the end of the fighting, restricting the use of ambulances and the supply of electricity for water pumps and operating theatres (1010-11). Life-saving medical supplies were disrupted by government restrictions and constant displacement. One witness told OISL that when they first moved their hospital, in September 2008, they carried their supplies in large trucks. By May 2009, the report notes, medical workers in the area had so few supplies that they were able to move them in shopping bags (1013).

The report outlines the controversy over the number of people needing humanitarian assistance inside the war zone. It pointed out that estimates given by the Government - less than 100,000 - were far lower than those put forward by its own officials working in the affected areas (973-80). However, the Government itself subsequently acknowledged that almost 300,000 people left the conflict area by the end of May 2009 (973).

OISL acknowledges the difficulties in precisely calculating the civilian population at the time, given the intensity of the conflict and multiple displacements. However, it said the

Government had access to sources of information that would enable it to assess, with relative accuracy, the number of civilians in the area (1169). It said there were reasonable grounds to believe that the government knew the real humanitarian needs and yet imposed severe restrictions on the passage of relief and the freedom of movement of humanitarian personnel (1169). The use of such "deflated population figures" to justify the small amounts of food and medical supplies allowed in during the last five months of the conflict, it said, had serious consequences (983).

Witness testimonies refer to people dying of starvation, exhaustion or lack of medical care. People coming out of the conflict zone had visible signs of malnourishment - one senior UN official said they were amongst the worst cases of malnutrition he had ever seen (982-993). If established by a court of law, OISL concludes, this may amount to the use of starvation of the civilian population as a method of warfare, which is prohibited under international humanitarian law and may constitute a war crime (1169).

Screening and deprivation of liberty of IDPs:

Chapter XVI focuses on how civilians were affected by Government screening processes at the end of the war and the subsequent deprivation of liberty.

The report describes the weakened state of the tens of thousands of civilians who struggled out of the war zone at the end of the conflict. Witnesses described having to walk through hundreds of dead bodies towards Government controlled territory before reaching the first of a series of security, screening and registration points (1023-1028).

The report says that it may have been warranted for the Government to screen those coming out of the conflict zone, separating out former LTTE fighters to ensure the safety of civilians. However, it said it believed the way in which the screening processes were carried out "failed to meet international standards and facilitated ill-treatment and abuse" (1037, 1172).

It notes that depriving an individual of their liberty on security grounds should only be done as a last resort, and as a result of an individual assessment which suggests that each such person represents "a present, direct and imperative threat". It points out that there was no independent oversight of the screening processes, which often involved degrading treatment. Many IDPs were subjected to strip searches. Individuals, including children, were arbitrarily identified as being associated with the LTTE, separated from their families and taken off to detention centres (1072, 1045-50).

Others, who were not taken away as LTTE suspects or because they had identified themselves as having links with the LTTE, were transferred to closed military run camps which they were not allowed to leave, in many cases for months

Many were moved to camps like Manik Farm, surrounded by barbed wire, guarded by the military, and with severe restrictions on their movement (1056). They lived in overcrowded conditions, with poor health and sanitation facilities (1086). However, the fact that the UN and NGOs were not allowed to stay in the camps after dark prevented any kind of independent monitoring of the situation there (619).

Many civilians lived in Manik Farm or other closed camps for months. OISL says it believes that such people "were deprived of their liberty for periods far beyond what would have been

permissible under international law" (1172). Restrictions on movement were eventually eased, but some IDPS remained in Manik Farm until it closed in September 2012. The report adds that there are reasonable grounds to assume 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, it concludes, 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 (1172-4).

ENDS

The full report can be found at:
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_CRP_2.docx