

GOTABAYA  
RAJAPAKSA'S  
WAR TIME ROLE

JAN 2024



INTERNATIONAL  
TRUTH  
AND JUSTICE  
PROJECT

# LT COL (RET) NANDASENA GOTABAYA RAJAPAKSA

“I have only two groups - the people who fight terrorism and the terrorists.”

Gotabaya Rajapaksa<sup>1</sup>

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<sup>1</sup> *Sri Lanka Journalists Risk Death*, BBC, 3 Feb 2009, [http://news.bbc.co.uk/2/hi/south\\_asia/7866253.stm](http://news.bbc.co.uk/2/hi/south_asia/7866253.stm)

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# INTRODUCTION

This report is a sequel to the ITJP report of 2022 which examined Gotabaya Rajapaksa's alleged complicity in mass enforced disappearance in Matale.<sup>2</sup> Following that report, a group of UN experts wrote to the Government of Sri Lanka in 2022 asking what action they had taken and, when there was no response, they made public their communication.<sup>3</sup>

The current Government of Sri Lanka's proposal to establish a Truth Commission is of great concern, since to date the government has not replied to the UN experts' letter. Gotabaya Rajapaksa is arguably the most notorious alleged perpetrator involved in both the violence of the late eighties and the civil war that ended in 2009, destroying the lives of Sinhalese and Tamils.

This second report makes the case that former Sri Lankan President Gotabaya Rajapaksa had command and superior responsibility for multiple violations of international humanitarian law and international criminal law amounting to war crimes and crimes against humanity committed during the final phase of the country's civil war in 2009. These crimes include the deliberate and indiscriminate shelling of hospitals and civilian encampments, resulting in unlawful killings, torture and sexual violence, the planned enforced disappearance of hundreds of suspected combatants at the war-end, the deliberate starvation of civilians and the withholding of medication and objects necessary to their wellbeing, and the failure to investigate allegations of these violations, as well as the

unlawful abductions and detentions of opponents.

This report presents detailed linkage evidence connecting former Defence Secretary Rajapaksa to orders given by him to commanders in the field. It shows he had contemporaneous knowledge of the violations of international humanitarian law and international criminal law that were being committed. He and successive Sri Lankan governments have had countless opportunities since the war-end to initiate credible investigations into allegations of gross human rights violations and to establish prosecutions. Instead of letting the truth to come to light, Gotabaya and his successors have perpetuated denial of the complicity of the security forces in these violations, in effect rewarding and protecting the alleged perpetrators.

There is a direct line of impunity running from 1989 to 2009 and to the present day. As a young army commander in Matale District in 1989, Gotabaya Rajapaksa was in command and control when more than 700 people were disappeared under his watch. Both he and his subordinates from the period were promoted and went on to play pivotal roles in the 2009 conflict, with Shavendra Silva, for example, appointed as the current Chief of Defence Staff of the Sri Lankan Army.<sup>4</sup>

During the period 2015-2019, when the Rajapaksa family lost power, domestic court cases were initiated in Sri Lanka against Gotabaya Rajapaksa in connection mainly with economic crimes and human rights abuses, but these were dropped when he was elected President in 2019. The ITJP with the international law firm

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<sup>2</sup> <https://itjpsl.com/reports/gotabaya-rajapaksa-the-sri-lankan-presidents-role-in-1989-mass-atrocities>

<sup>3</sup> Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

Ref: AL LKA 3/2022 , 8 Nov 2022,

<https://itjpsl.com/assets/DownloadPublicCommunicationFile.pdf>

<sup>4</sup> Shavendra Silva is designated in the United States for his alleged role in gross violations of human rights -

Public Designation, Due to Gross Violations of Human Rights, of Shavendra Silva of Sri Lanka Under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 14 Feb 2020, <https://2017-2021.state.gov/public-designation-due-to-gross-violations-of-human-rights-of-shavendra-silva-of-sri-lanka-under-section-7031c-of-the-department-of-state-foreign-operations-and-related-programs-appropriations-a/>

ITJP Dossier on Shavendra Silva at

<https://itjpsl.com/reports/shavendra-silva>

Hausfeld, in the United States, assisted eleven victims to file a civil claim in California against Gotabaya Rajapaksa for damages for their torture. However, Gotabaya's election victory prevented the case continuing because he acquired head of state immunity. In 2022, Gotabaya Rajapaksa was forced from office by mass protests in Sri Lanka. He fled to the Maldives and then to Singapore, where the ITJP submitted a criminal complaint against him<sup>5</sup>, and finally to Thailand before returning to Sri Lanka.

No attempt has yet been made in Sri Lanka to hold Gotabaya Rajapaksa accountable for alleged

mass atrocities perpetrated by him either in 1989 or during the civil war. This dossier illustrates how strong a case there is to be made against Gotabaya Rajapaksa in his role as Secretary of Defence in 2009 in the commission of serious international crimes.

While Canada has sanctioned Gotabaya Rajapaksa,<sup>6</sup> other countries should follow suit, especially those who voted at the UN Human Rights Council for the establishment of an independent mechanism for accountability for Sri Lanka.

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<sup>5</sup> <https://itjpsl.com/press-releases/itjp-files-criminal-complaint-against-gotabaya-rajapaksa-in-singapore>

<sup>6</sup> <https://www.canada.ca/en/global-affairs/news/2023/01/sanctions-imposed-on-sri-lankan-state-officials.html>

# 1. POWERS

‘When you fight terrorism, you cannot stick to the normal procedure.’

Gotabaya Rajapaksa<sup>7</sup>



President Mahinda Rajapaksa at yesterday's Defence Council meeting with Defence Secretary Gotabhaya Rajapaksa and Army Commander Lt. General Sarath Fonseka

This section details the role of Gotabaya Rajapaksa during the Sri Lankan civil war while holding the post of Secretary to the Ministry of Defence. It examines his position in the *de jure* command structure and the units and issues over which he had control. An argument has been made that Gotabaya Rajapaksa was a far more powerful Secretary of Defence than his predecessors or successors, given his relationship to his brother, the President. As a former military man himself, he played a key role in formulating and implementing military strategy, having access to more resources and the power to appoint whoever he wanted to execute his plans. Indeed, at some point he was so powerful that, despite being a civil servant, he had more control over ministries that were not his own than the ministers in charge of those ministries.

## A. THE SECRETARY OF DEFENCE ROLE

Gotabaya Rajapaksa served as Secretary to the Ministry of Defence from 25 Nov 2005 – 9 Jan 2015<sup>8</sup>. In this role, he commanded all agencies of the Sri Lankan military and intelligence forces from 2005–2015. He also controlled the police forces from 2005–August 2013, until the police were moved to the newly-created Ministry of Law and Order.

As Secretary of Defence, Gotabaya had at his disposal extraordinary emergency powers under two laws<sup>9</sup> which the UN described as ‘sweeping powers to order arrests and detention’. One was the Prevention of Terrorism Act (PTA), which remains in force today despite decades-long promises to repeal it. This law adopts a staggeringly broad definition of ‘terrorism’ and allows the authorities to subject any

<sup>7</sup> *How can there be freedom without discipline? – Gotabaya*, 12 Feb 2019, *Daily Mirror*, <http://www.dailymirror.lk/article/How-can-there-be-freedom-without-discipline-Gotabaya-162220.html>

Picture from *Troops capture Pooneryn*, 16 Nov 2008, *Daily News*, on file

<sup>8</sup> Date from MOD webpage, on file, ref B

<sup>9</sup> §108, OISL, 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 *inter alia* in the interests of national security and, from 2006 onwards, in relation to terrorism.’



person suspected of association with the LTTE (Liberation Tigers of Tamil Eelam) to (arbitrary) arrest and prolonged detention without judicial review and to convict an accused based solely on confessions – usually acquired under torture. The second were the Emergency Regulations, adopted in 2005 and lifted in 2011, which provided another basis for indefinite detention without charge. Contemporaneous versions of the Ministry of Defence website clearly state the Ministry's objective was the 'Implementation and maintenance of the Prevention of Terrorism Act No. 48 of 1979 as amended by the Act No 10 of 1982.'<sup>10</sup>

### Control of The Armed Forces.

The Ministry of Defence administers the Sri Lankan army, navy and air force.<sup>11</sup> As Secretary to the Ministry, Gotabaya Rajapaksa had authority over all appointments, promotions and disciplinary matters, including the power to prosecute offenders in a court martial

established by the President, his brother.<sup>12</sup> He also had command over the most senior officer in the security forces, the Chief of Defence Staff (CDS), a position created post-war.<sup>13</sup> Before the Chief of Defence Staff (CDS) post was created in 2009, this function was carried out by a person with this title but within the **Joint Operations Headquarters (JOH)**. The individual who was the Chief of Defence Staff for the JOH from 2006-9 was Donald Perera<sup>14</sup> who also answered to the Secretary of Defence, Gotabaya Rajapaksa.<sup>15</sup> This was described by the BBC as a less powerful post than the CDS role later created in 2009.<sup>16</sup>

### Control of Intelligence.

The Ministry of Defence also controlled the internal and foreign intelligence services, including the Military Intelligence Corps and State Intelligence Service (SIS).<sup>17</sup> Every Tuesday, regardless of his work load, the intelligence chiefs had a meeting chaired by Secretary of Defence, Gotabaya Rajapaksa.<sup>18</sup>

<sup>10</sup> On file, Ref A.

<sup>11</sup> 'The SLAF which played a key role in defeating the LTTE, by way of supporting the ground troops and conducting independent combat operations against the LTTE targeting their training and military bases, their logistic bases and their leadership yesterday marked the culmination of air operations at the Air Force Base Katunayake under the supervision of Defence Secretary Gotabhaya Rajapaksa.' 12 Jun, *Daily News*.

<sup>12</sup> In an interview posted on the Ministry of Defence website in 2008 Gotabaya Rajapaksa said, 'In our Constitution itself, the Secretary of the Ministry is the chief accounting officer and the one responsible for implementing the policies of the government. My responsibility is exactly that. This is all I've been doing for the last two years. Of course it is also my responsibility to help the Defence Minister to formulate the policy with the assistance of the three service commanders, which I did. The first thing we did when I was appointed was to assess the entire security situation in the country and on that basis formulate the policy. My responsibility was the execution of that policy.'  
[https://web.archive.org/web/20080923065349/http://www.defence.lk/new.asp?fname=20080919\\_05](https://web.archive.org/web/20080923065349/http://www.defence.lk/new.asp?fname=20080919_05)

<sup>13</sup> 'The Chief of Defence Staff shall function under the direction, supervision and control of the Secretary to the Defence Ministry... Subject to the authority, direction, control and supervision, of the Secretary, the CDS will function...' *Daily News*, 12 Jun 2009 - on the new law for the CDS post.

<sup>14</sup> In 2015 he was questioned over the MiG aircraft deal by Sri Lanka's Financial Fraud Investigation Division. 'Former Air Chief Marshal Donald Perera questioned over MiG aircraft transaction', 2 Apr 2015,  
[http://www.ft.lk/article/402905/Former-Air-Chief-](http://www.ft.lk/article/402905/Former-Air-Chief-Marshal-Donald-Perera-questioned-over-MiG-aircraft-transaction)

[Marshal-Donald-Perera-questioned-over-MiG-aircraft-transaction](http://www.ft.lk/article/402905/Former-Air-Chief-Marshal-Donald-Perera-questioned-over-MiG-aircraft-transaction)

<sup>15</sup> The UN (§112) says 'The JoH was commanded by the Chief of Defence Staff, who was responsible to the Secretary of Defence.'

<sup>16</sup> *New military posts created*, 12 Jul 2009,  
[https://www.bbc.com/sinhala/news/story/2009/07/printable/090712\\_military\\_new.shtml](https://www.bbc.com/sinhala/news/story/2009/07/printable/090712_military_new.shtml)

<sup>17</sup> *Administration of the Directorate of Foreign Intelligence & the Directorate of Internal Intelligence* stated on MOD website 2008, accessed at [https://web.archive.org/web/20081218215747/http://www.defence.lk/main\\_abt.asp?fname=resp\\_funcions](https://web.archive.org/web/20081218215747/http://www.defence.lk/main_abt.asp?fname=resp_funcions); also in more detail at [https://web.archive.org/web/20081216074101/http://www.defence.lk/main\\_abt.asp?fname=orgstr](https://web.archive.org/web/20081216074101/http://www.defence.lk/main_abt.asp?fname=orgstr)

*On SIS - Registration Of Suppliers / Contractors For Year 2012*, (on file) cites SIS as coming under the purview of the MOD. Likewise this report in the Media - <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20200913/281522228502926> based on Kamal Gunaratne's book.

<sup>18</sup> Kamal Gunaratne's Sinhala book 'Gota', picked up and translated in 'How Gotabaya directed intelligence', *Sunday Times*, 13 Sep 2020,  
<https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20200913/281522228502926>

In Aug 2009, a media report credited Gotabaya Rajapaksa and Kapila Hendewithrane (his intelligence chief) with the capture of a key LTTE arms dealer, KP. <https://lrrp.wordpress.com/2009/08/09/state-intelligence-wins-at-hide-and-peek-with-kp/> Also ITJP W272, who said: 'The STF Intelligence HQ was the hub of the units intelligence collection and analysis; every week on Tuesday there was a meeting at the Defence Ministry, involving the president, Defence secretary and the three military force commanders,

According to Kamal Gunaratne, one of the divisional commanders of the army at the time, '...this meeting became so important that CDS [Chief of Defence Staff], tri service commanders and the IGP [Inspector General of Police<sup>19</sup>] made it a habit to attend it.'<sup>20</sup> Gotabaya, he added, attended these weekly meetings 'without failure'.<sup>21</sup>

During the end of war period, military intelligence was headed by Major Kapila Hendawitharana, who was alleged by Wikileaks telexes to have run special military intelligence teams under the command of Gotabaya Rajapaksa and the Army Commander<sup>22</sup> and who was later questioned by the Financial Crimes Investigation Division of the Sri Lankan police<sup>23</sup>. Gotabaya 'ordered' that the intelligence units should be united under Hendawitharana.<sup>24</sup> At times Gotabaya is reported by his military colleagues to have also called

additional intelligence meetings, some of which were limited to the inner circle:

*Gotabaya had instructed Kapila Hendawitharana to call the necessary people immediately in a special emergency without waiting for next Tuesday. Therefore, things that required discussing with everybody was discussed with everybody, while highly sensitive intelligence information was discussed only with essential people.*<sup>25</sup>

The State Intelligence Service (SIS) reported to the Ministry of Defence.<sup>26</sup> The SIS was one of a number of intelligence bodies operational during the final phases of the armed conflict and continues to operate today. 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 the weekly

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along with STF, police commanders was an exchange of intelligence, involving mainly army and navy intelligence with some support from STF, airforce, police intelligence and the NIB (National Intelligence Bureau), the civilian intelligence. Each agency would brief and share information from their respective command structures and regional operational zones. Military intelligence was the primary agency and the primary role in the coordination of intelligence. Important information was passed on at regular meetings, but also there was direct requests.'

There is no precise date for when these Tuesday meetings started but from reading the Kamal Gunaratne book it appears the restructure of the intelligence services occurred once Gotabaya took office in late 2005, and by 2006 he had already appointed Kapila Hendawitharana to coordinate them all (see Kapila referenced here: <https://www.colombotelegraph.com/index.php/exclusive-gotas-intelligence-czar-caught-red-handed-as-chinese-mole/> and in action by 2007 according to this: <https://lrrp.wordpress.com/2007/01/05/athurugiriya-safe-house---unp-explains/>); the restructuring happened in 2006 according to a key police official speaking in April 2009: 'During the year 2006, we were given a large responsibility. At that moment we all became one team. The CID, TID, Military Intelligence units and the Police Intelligence units - all became one. Defence Secretary, Gotabaya Rajapaksa took the initiative... We regularly communicate with them and also have coordination meetings chaired by the Secretary of Defence. At this meeting a good check and balance is done for the entire week', <https://businesstoday.lk/senior-superintendent-of-police-c-n-wakishta/> hence it is reasonable to believe these meetings were well underway as the war intensified in late 2008.

<sup>19</sup> It is worth noting that the post-war Inspector General of Police was an officer who had been posted as police

superintendent in Matale under Gotabaya Rajapaksa's command in 1989, indicating how Gotabaya's comrades from the past rose up to the upper echelons of the security establishment.

<sup>20</sup> Gunaratne, Kamal, p131-2, *Gotabaya* (trans Sinhala).

<sup>21</sup> *ibid*, p131, 'Accordingly, heads of all the intelligence services as the State Intelligence Service (SIS), CID, TID, Special Branch, STF, Western Province Intelligence, Army, Navy and Air Force intelligence had to attend the meeting of intelligence institution heads meeting convened by Gotabaya on every Tuesday morning. Gotabaya Rajapaksa left all other jobs aside and took steps to attend this security services meeting without failure.'

<sup>22</sup> [https://wikileaks.org/plusd/cables/09COLOMBO47\\_a.html](https://wikileaks.org/plusd/cables/09COLOMBO47_a.html)

<sup>23</sup> [https://www.dailymirror.lk/breaking\\_news/Maj-Gen-Hendawitharana-at-FCID/108-130951](https://www.dailymirror.lk/breaking_news/Maj-Gen-Hendawitharana-at-FCID/108-130951)

*Exclusive: Gota's Intelligence Czar Caught Red Handed As Chinese Mole,*

<https://www.colombotelegraph.com/index.php/exclusive-gotas-intelligence-czar-caught-red-handed-as-chinese-mole/>

*Millions Credited To Ex-Intelligence Chief Maj Gen Kapila Hendawitharana's Account,* 25 Feb 2017,

<https://srilankabrief.org/millions-credited-to-ex-intelligence-chief-maj-gen-kapila-hendawitharanas-account/>

<https://economictimes.indiatimes.com/news/defence/sri-lanka-blasts-rajapaksas-close-aide-allegedly-trying-to-hinder-probe/articleshow/69155353.cms?from=mdr>

Ex-Army Intelligence Chief at FCID, 14 June 2017,

<https://www.dailymirror.lk/print/breaking-news/Ex-Army-Intelligence-Chief-at-FCID/108-130869>

<sup>24</sup> *ibid*

<sup>25</sup> Gunaratne, Kamal, p131-2, *Gotabaya* (trans Sinhala).

<sup>26</sup> §127, OISL, 2015.



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.<sup>27</sup>

Furthermore, Gotabaya personally took credit for reorganising the intelligence functions in Sri Lanka, as quoted by his official biographer:<sup>28</sup>

*We united all the intelligence units in our country, the tri forces, police, CID, TID,*

*CCD, also the NIS, and provided a good intelligence coverage to our country.*<sup>29</sup>

When questioned in 2019 about how to stop drugs coming to the island, Gotabaya Rajapaksa said the intelligence services had been under his control and that he personally took credit for stopping smuggling, inwards at least.<sup>30</sup>

### Control of the Police

The Ministry of Defence was also in charge of all wings of the police until 2013, including units the United Nations said were involved in systematic torture such as the Criminal

Investigation Department (CID), the Terrorism Investigation Division (TID), the paramilitary Special Task Force (STF),<sup>31</sup> and the Colombo Crimes Division (CCD). As Secretary of Defence, Gotabaya Rajapaksa exercised operational control over these units through a chain of command that included the Additional Secretaries of Defence, the Inspector General of the Police, and Deputy Inspector General of Police. By 2010, the International Crisis Group expressed concern that the

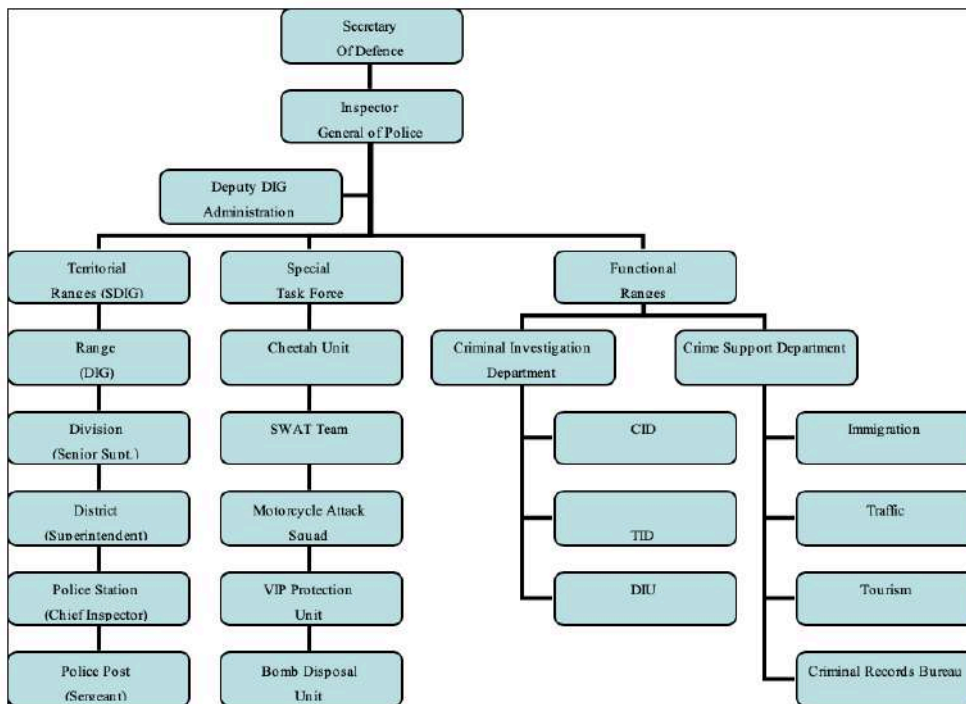


Figure 3: Organisational Structure of the Sri Lanka Police

<sup>27</sup> [www.businessstoday.lk](http://www.businessstoday.lk) archive, April 2009.

<sup>28</sup> 'Bringing different intelligence services under one coordinated command was another important aspect of Gota's tasks.' The author talks about it on page 356 and 357. 'After the war commenced in 2006, Gota brought all the different intelligence services in the country under one coordinated command. Past experience showed that intelligence services tended to work in closed compartments, with little or no sharing of information. And this had a seriously debilitating effect on efforts to combat terrorism. The Terrorism Investigation Department, the TID, Criminal Investigation Department, CID, the Colombo Crimes Division, the CCD, the State Intelligence Services, the SIS, the Police Special Branch, the Western Province Intelligence Division, the WPID, the Director, Army Intelligence, the Director, Naval Intelligence, the Director, Air Intelligence, were working independently. Gota created the position of Chief of National Intelligence to which he appointed Major General Kapila Hendawitharana. This was a Cabinet approved post with direct line authority over all intelligence agencies.' I think this made a tremendous change in the way the intelligence services worked. That is, most people attribute the win over terrorism to the fact that intelligence services were well

coordinated.' Lalith Weeratunga, Secretary to the President, *Speech for the Launch of Gota's War*, June 2012, *Business Today*

<https://businessstoday.lk/category/june-2012/>

<sup>29</sup> 19 October 2019 election campaign rally Divulapitiya, [https://www.youtube.com/watch?v=8NWmtUdee24&t=218s.2'00 - 6'19](https://www.youtube.com/watch?v=8NWmtUdee24&t=218s.2'00%20-6'19).

<sup>30</sup> 'We have the coast guard; we have the navy. We must make use of them to stop them coming by boat. That should start there. Next, we... in my time I did, by using the intelligence services to pursue people who are doing this. To go and catch these people. We controlled this to a large extent. Some fled the country. This must be implemented', interview with popular singer and youtuber Iraj, Youtube 14 Nov 2019, On file 34'03' - 35'48'

<sup>31</sup> 'The Special Task Force has been reassigned under the Ministry of Defence, Public Security, Law & Order with effect from 1<sup>st</sup> August 2006 and all matters of the Special Task Force are now handled by the Police Division, since of then.' On file, MOD webpage, Ref MOD D.

'The STF only operate under orders from Gotabaya.' Witness to ITJP.

police force was under the control of the Rajapaksa brothers with no safeguards:<sup>32</sup>

*With the police coming under the jurisdiction of the ministry of defence, headed by Gotabhaya Rajapaksa, and with senior appointments to the police made the president - not the National Police Commission as required by the constitution - the police is under the direct control of the President and his brother ... and in direct violation of the constitution. It's a directly politicised police.*

The command structure is given below in a diagram from the UN OHCHR Investigation into Sri Lanka report (OISL) that shows the Secretary of Defence in control at the apex:<sup>33</sup>

Significantly, Gotabaya Rajapaksa as Secretary to the Ministry of Defence militarised a key police intelligence position - that of Chief of National Intelligence - according to his subordinate, Kamal Gunaratne.<sup>34</sup>

## **B. GOTABAYA RAJAPAKSA'S SIGNIFICANCE IN THE WAR VICTORY**

### **Planning and Coordinating the Military Operations**

Gotabaya Rajapaksa himself admits he had a key role in leading and planning operations:

*Whilst serving as the Secretary of Defense, I was privileged to give leadership, motivation*

*and logistical support to the victorious Armed Forces of Sri Lanka.*<sup>35</sup>

After the war, Gotabaya testified to a domestic inquiry, the Lessons Learnt and Reconciliation Commission (LLRC), regarding his role in planning and coordinating the military operation of the final phase of the civil war. He took ownership, saying 'When we were planning the military campaign operation' adding that he was, 'especially interested to present the facts to the Commission how we planned the military Operation.'<sup>36</sup> He went on to argue that war was an exceptional situation:

*I was Defence Secretary at a time when everybody wanted to end terrorism. I acted on it. I did not have anything against the Tamil community. Unfortunately, 99 percent of the LTTE happened to be Tamils. There were certain things we had to do to counter terrorism. ...When there is a war situation, there are certain things you must do. When the war ends, you do not repeat the same. You cannot judge a person by what he did during a war situation. I was assigned with certain responsibilities by the Government. I acted accordingly.*<sup>37</sup>

### **Reorganisation**

The war-time 53 Division commander, Major General Kamal Gunaratne, explained to a journalist how Gotabaya Rajapaksa was pivotal in reorganising the security forces, attending weekly meetings and engaging in the detail.<sup>38</sup> This was confirmed by Sri Lankan intelligence expert, Professor Rohan Gunaratne:

<sup>32</sup> *A Bitter Peace*, ICG. January 2010.

<sup>33</sup> OISL

<sup>34</sup> 'He expressed his displeasure to these intelligence organisations having no connection or coordination among them and going their own way...Gotabaya who showed a special interest in these units as they had no connection or coordination, got the approval of the cabinet to appoint Major General Kapila Hendawitharana as the head of State Intelligence as soon as he retired at the age of 55. The approval of the establishment board was also obtained for this and according to that approval it was stated that an army officer should compulsorily be appointed to the post of Chief of National Intelligence (CNI).'

Gunaratne, Kamal, p130, *Gotabaya* (trans Sinhala)

<sup>35</sup>

<https://www.facebook.com/437355006429820/posts/1275498389282140?sfns=mo> His Facebook page.

This is corroborated by *Gota's War*, C A Chandraprema, p291, 'Gota had decided to give the opportunity to Sarath Fonseka.'

<sup>36</sup> Transcript - Gotabaya Rajapaksa, LLRC

<sup>37</sup> *How can there be freedom without discipline?* - Gotabaya, 12 Feb 2019, *Daily Mirror*, <http://www.dailymirror.lk/article/How-can-there-be-freedom-without-discipline-Gotabaya-162220.html>

<sup>38</sup> 'Giant steps were taken by Mr Gotabaya Rajapaksa when he was defence secretary, to reorganize the country's intelligence sector. Then, he set up a good coordination among the intelligence services. While the war was on, he met every section of intelligence every Tuesday despite been very busy. He did not take the information provided by the intelligence sections lightly. He concentrated heavily on them.' On file, interview with Manoj Abeydheera in *Divaina*, pub 1 Dec 2019.

*Unlike previous defense secretaries Gotabhaya Rajapaksa understood the importance of working with everyone. He built a first rate team drawing the leaders within the army, navy, airforce, intelligence, police, foreign ministry, and other government agencies and got them to work together.*<sup>39</sup>

After the war, and at the height of the friction between General Sarath Fonseka and Gotabaya Rajapaksa, Fonseka thanked Gotabaya Rajapaksa 'for the necessary support provided to end the war', which a Sri Lankan newspaper commentator found 'grossly unfair' because it failed to honour the pivotal role of Gotabaya Rajapaksa in conducting the final phase of the war.<sup>40</sup>

### Re-arming

Gotabaya played a key role in re-arming the military to win, despite the enormous cost to the country. When the Army Commander requested missiles to attack the LTTE from a range that

could not be reached by their weapons, Gotabaya reportedly provided them.<sup>41</sup> Gotabaya also dealt with a request to provide more funds to purchase body armour. In addition, Kamal Gunaratne writes that Gotabaya Rajapaksa bought laser guided munitions for the military to 'flatten enemy targets' because he 'did not waste time debating the prices of laser guided bombs and got them at the appropriate time'. Gunaratne says Gotabaya's motto was '*Spend an extra amount of money to end the war in a short time and save a vast amount of money for the future.*'<sup>42</sup> In this respect Gotabaya had access to override the Treasury because the Finance Minister was his brother Mahinda and the Finance Ministry and Treasury Secretary from 2004-8 and 2009-15 was a Rajapaksa loyalist, PB Jayasundera, whom Gotabaya appointed as his Secretary when he became President.<sup>43</sup>

<sup>39</sup> <https://lrrp.wordpress.com/2009/03/08/gotabhaya-rajapakse-is-the-key-behind-current-military-success-says-global-terror-expert/>

<sup>40</sup> 'Quite clearly, what he said about Lt. Col. (retd.) Rajapaksa was far from commensurate with what he (the Defence Secretary) had done. Some facts are well known whilst the others are less. In his first year in office, President Rajapaksa, had wanted to replace Gen. Fonseka. It was the Defence Secretary who fought tooth and nail to obtain for him an extension amidst severe pressure not to do so. It was the defence Secretary who was instrumental in putting together a team, with the support of his brother Basil Rajapaksa, that 'worked on' India and managed to turn them around. He was the one who was able to have a direct link with the Commander-in-chief and make requests on behalf of the Armed Forces, including the raising of the numbers almost by two-fold, and it was he who stood firm in the face of external pressures holding the President's not to yield. It would be grossly unfair to say the Defence Secretary just provided 'necessary support' to end the war. It is well known he did much more. The entire wherewithal needed for the war effort- both men and material - was provided by the Defence Secretary. His influence as the President's brother opened doors for him both in Sri Lanka and abroad. He made several secret missions abroad to ensure that the supply lines for the war effort continued without disruption. Without this, leave alone winning, but fighting a separatist war would not have been possible. He was also instrumental in having the armed forces commanders rewarded for their role in militarily defeating the guerrillas.' 'From Hero to Zero: The Fonseka fallout', 18 Oct 2009, *Sunday Times Lanka*, <http://www.sundaytimes.lk/091018/Columns/political.html>

<sup>41</sup> 'Although the missiles were so costly according to market prices, Gotabaya who prioritized the need of the warfront provided the military with Bhakthar Shikan

missiles from Pakistan and Green Arrow missiles from China without the involvement of intermediaries.' Gunaratne, Kamal, p83, *Gotabaya* (trans Sinhala)

<sup>42</sup> *ibid*, p110

<sup>43</sup> In 2008, he was found guilty by the Supreme Court of Sri Lanka of a violation of procedure in the awarding of a large contract for the expansion of the Port of Colombo. The court barred him from holding any public office. In 2009, on invitation by then President Mahinda Rajapaksa to P B Jayasundera to once again take up the post of treasury secretary, he submitted a fundamental rights petition protesting the original decision to the Supreme Court, which was heard by the newly appointed Chief Judge who overturned the previous decision and allowed Jayasundera to be reinstated as secretary of the treasury. On the day before the 2015 presidential election, at which Mahinda Rajapaksa was defeated, Jayasundera left the country for Singapore. Sumith Abyesinghe, the man who replaced PB Jayasundera from 2008-9, now ironically chairs a newly appointed committee to recommend the appointment of persons with qualifications for public enterprises, state institutions, and state-owned commercial enterprises.

<https://www.newsfirst.lk/2019/11/28/committee-appointed-to-recommend-names-for-state-bodies/>

[https://en.wikipedia.org/wiki/P.\\_B.\\_Jayasundera#cite\\_note-5](https://en.wikipedia.org/wiki/P._B._Jayasundera#cite_note-5) and

[https://books.google.co.uk/books?id=TJ1mpwPqZmcC&pg=PA562&lpg=PA562&dq=P.B.+Jayasundera+Supreme+Court+of+Sri+Lanka&source=bl&ots=zH6m9HeK4-&sig=FhMQqvfkU13RpfyMnu0xByqV1kU&hl=en&sa=X&ei=02G3VOC-F4mluAT5z4LABg&redir\\_esc=y#v=onepage&q=P.B.%20Jayasundera%20Supreme%20Court%20of%20Sri%20Lanka&f=false](https://books.google.co.uk/books?id=TJ1mpwPqZmcC&pg=PA562&lpg=PA562&dq=P.B.+Jayasundera+Supreme+Court+of+Sri+Lanka&source=bl&ots=zH6m9HeK4-&sig=FhMQqvfkU13RpfyMnu0xByqV1kU&hl=en&sa=X&ei=02G3VOC-F4mluAT5z4LABg&redir_esc=y#v=onepage&q=P.B.%20Jayasundera%20Supreme%20Court%20of%20Sri%20Lanka&f=false)

'Reports of corruption, mismanagement, errors of omission and commission are currently erupting like mushrooms', <https://www.nation.lk/2006/12/31/busi6.htm> ON file.

## Acted as interface between political authority and the military

As an ex-military man himself, Gotabaya was a hands-on leader of the military and police forces. Gotabaya Rajapaksa was in a unique position to coordinate between the political and military leadership, given his relationship to his brother, the President.<sup>44</sup> His critical role in this respect was highlighted by his official biographer, C A Chandraprema,<sup>45</sup> who compared him to Ranjan Wikeratne – a figure also allegedly responsible for the killing of tens of thousands of his opponents:

*You take the second JVP insurrection, without Ranjan Wijeratne, nothing would have happened. Same here. Without Gotabhaya Rajapaksa, nothing would have happened. That is because, you know, the political authority can make a decision, but it has to be translated into action on the ground, and that whole process has to be co-ordinated. For example, it was Ranjan Wijeratne who acted as the interface between the military and the political authority. Here also, it is Gotabhaya Rajapaksa who acted as the 'interface between the military and the political authority. Of course, he had the advantage of being the President's brother, so that puts him in proximity to the political authority and that certainly helped and facilitated the whole thing as well.'*<sup>46</sup>

Dr Rohan Guneratne also regarded the appointment of Gotabaya Rajapaksa as key to the war victory, describing him as 'a highly determined and committed professional fighter'. He added that this former military experience had helped Gotabaya coordinate the army and police and intelligence wings.<sup>47</sup> Notably, Gotabaya Rajapaksa knew the north of Sri Lanka well from having fought there himself

in the eighties. The 2009 Army Commander under Gotabaya Rajapaksa, Sarath Fonseka, also emphasised his commitment and knowledge as key.<sup>48</sup>

Part of his success is attributed to boosting the morale of the security forces who had for many years believed this was an unwinnable war. In 2007, the Ministry of Defence honoured Gotabaya's role in reviving the armed forces:

*Gotabaya Rajapakse has become the most feared enemy of the LTTE since his presence in the office has created a huge morale boost in Sri Lankan Armed forces, during the past few months. ... The percent [sic - present] Defence Secretary undertook bold counter terrorist action and revived the Security Forces. Many military analysts attribute the recent military success to the honour and the pride regained by the soldiers as the true heroes of the nation.'*<sup>49</sup>

## Re-equipping to have better intelligence, surveillance and images of the conflict

Gotabaya Rajapaksa is also credited with improving surveillance and organising real-time drone footage, making it available to ground operation commanders in the war. ANNEX 2 of the Lessons Learnt and Reconciliation Commission (LLRC) has a letter from the Sri Lanka Air Force listing the number of hours of surveillance footage taken between 1 Jan and 27 May 2009 – this comes to 2334 hours over 147 days, or almost 16 hours on average a day.

Type of Aircraft	Operational Hours
Searcher MK II UAV	681.55 Hrs
Blue Horizon II UAV	525.00 Hrs
B 200 Beechcraft	1128.53 Hrs

<sup>44</sup> 'The President's position was strengthened by Defence Secretary Gotabhaya Rajapaksa, who worked overtime to ensure that combined security forces action remained on track. The Gajaba Regiment veteran had the difficult task of maintaining a strong link between the military leadership and the President.'

<http://slwaronterror.blogspot.com/2012/11/tigers-lose-balraj-as-army-makes.html>, *The Island*, 17 Nov 2012.

<sup>45</sup> <https://itjpsl.com/assets/press/Chandraprema-PRESS-RELEASE-english.pdf>

<sup>46</sup> <https://www.colombotelegraph.com/index.php/the-author-on-gotas-war/>

<sup>47</sup> '...Another element is Gotabhaya Rajapaksa (Defence Secretary) who himself was a senior Army officer who

has taken part and commanded previous battles. They make a unique combination and may prove difficult to dislodge.'

<https://lrrp.wordpress.com/2009/08/>

<sup>48</sup> '...no Defence Secretary was there like the present Secretary Gotabaya Rajapaksa who had the same commitment and knowledge on how to crush the LTTE', <http://www.indiandefencereview.com/spotlights/lessons-from-the-war-in-sri-lanka/2/>

<sup>49</sup> MOD site, 7 Jan 2007, *War veteran survives the suicide attack: The Army Commandos foil LTTE's cowardly attempt on the Secretary Defence.*





Defence Secretary Gotabhaya Rajapaksa, Chief of Defence Staff Air Chief Marshall Donald Perera, Army Commander General Sarath Fonseka, Navy Commander Admiral Wasantha Karannagoda, Air Force Commander Air Chief Marshall Roshan Gunatillaka, Inspector General of Police Jayantha Wickremaratne and Director General Civil Security Department Rear Admiral Sarath Weerasekera reported to Commander-in-Chief President Mahinda Rajapaksa that the mission of wiping out terrorism was successfully accomplished. Pictures by Sudath Silva and AFP

Commenting on the availability of real-time intelligence, the war-time Air Force Commander, Air Chief Marshall Goonetilleke said:

*... during Eelam War IV, on the instructions of the Defence Secretary, Gotabhaya Rajapaksa, we set up a mechanism to provide 'real time' intelligence to field commanders. Our ground commanders had the advantage of 'real time' intelligence to call on air and artillery strikes as and when required.*<sup>50</sup>

A top military commander also said Gotabaya ensured divisional commanders like himself had access to the footage:

*Gotabaya provided the facilities that would enable army commander and division commanders conducting the war to have live access to UAV footage. The facility already used by the airforce Battle Command Centre was shown to Gotabaya by SLAF Commander Air Marshal Roshan Gunatillake. Gotabaya organized the supply of the necessary hi tech equipment.*<sup>51</sup>

According to Kamal Gunaratne, during the final war the airforce asked for surveillance planes and Gotabaya ensured they received them.<sup>52</sup> It is clear that divisional commanders and the Army Commander himself, Sarath Fonseka, viewed the surveillance footage:

*Lt General Sarath Fonseka got the opportunity to monitor from his office in the army HQ,*

*what was happening in the frontline and to discuss matters as they arise with division commanders. After that, the facility was provided to division commanders commanding the battle, enabling them to monitor everything happening in the area where the battle was taking place and to take timely measures when a problem arose or was about to arise. In addition, the unique benefit of this was the ability to exactly monitor the areas in which civilians were.*<sup>53</sup>

The real-time footage that had been secured by Gotabaya ensured that all times the commanders had knowledge of the presence of civilians in the terrain they were bombing and shelling.

### C. DE FACTO COMMAND STRUCTURE

Gotabaya Rajapaksa effectively exercised power and control, personally involving himself in assigning and overseeing military operations and police investigations. He oversaw hiring and recruitment and purged – and prosecuted – officers suspected of disloyalty. He maintained direct lines of authority to loyalists, often bypassing bureaucratic intermediaries to work closely with his inner circle.

#### More powerful than other secretaries

Gotabaya Rajapaksa wielded much more power than previous or subsequent defence secretaries.

<sup>50</sup> *The Island*, 18 Sep 2012, RG on SLAF's pivotal role in Eelam War IV with strap line SLAF Chief steps down after illustrious career, Feb 25, 2011, <http://slwaronterror.blogspot.com/2012/09/a-delayed-build-up-of-lethal-offensive.html>

<sup>51</sup> Gunaratne, Kamal, p110, *Gotabaya* (trans Sinhala)

<sup>52</sup> 'Gotabaya who paid attention to this issue, took steps to fulfil the requirement of the airforce by assisting to deploy Beechcraft aircrafts that could continuously stay in air for more than five hours. Two Beechcraft

aircrafts owned by the airforce were repaired and brought back to service and another one was purchased anew. Therefore, the airforce was able to provide real time intelligence to the army by flying these aircrafts mounted with a high-powered camera that can film from 25,000 feet away when the situation on the battlefield was not that satisfactory or before fighting broke out. The ability for these aircraft to fly continuously for five hours was immensely helpful', *ibid*, p110.

<sup>53</sup> *ibid*, p110

This is remarked upon by Kamal Gunaratne in his biography 'Gotabaya' where he writes that the security forces were downgraded during the Norwegian mediated peace talks from 2002 onwards (when the Secretary of Defence, Austin Fernando, was a civilian career civil servant):

*It should be especially mentioned here that none of the defence secretaries who held office so far had spoken on behalf of military members. Nevertheless, they cannot be blamed as they did neither wield any authority to employ the powers of the post nor had any recognition although they held that office. Every member of the military was happy because he wielded a power that previous defence secretaries did not have and that he will make use of the powers belonging to the post to create an environment to lead troops.<sup>54</sup>*

### **Recognised publicly for his key role**

Gotabaya Rajapaksa's importance in achieving the war victory is revealed by the protocol that operated in May 2009 when, in advance of the service commanders, he led in formally informing the President, his brother, of the war victory.<sup>55</sup> This publicly recognises him as the most important military figure in the country, putting him in a totally different position from previous career civil servants who held the post of Secretary of Defence.<sup>56</sup>

A Sri Lankan newspaper article in 2018 examined the command responsibility of the Secretary of Defence versus the Army Commander during the final phase of the war, interviewing them both (bold added):

*Fonseka specifically charged that the weekly intelligence meeting referenced by Rajapaksa was used to supervise all intelligence*

*operations in and around Colombo from the Ministry of Defence, through a separate chain of command packed with loyalists, bypassing the normal organizational structures of the three armed forces and the police. According to the former army commander, it is through this group and even with former LTTE cadres that the Rajapaksas formed a faction to plan high profile assaults, abductions and murders of media personalities and others under the auspices of the targets being a threat to national security. 'Although military intelligence came directly under the army commander, the Defence Secretary handled the Colombo intelligence operations unofficially from the Defence Ministry. They were involved in various unscrupulous activities including the white van culture,' Fonseka said... Several current and former defence officials do corroborate the assertion that there was a 'grey area' where defence officials including Rajapaksa and Hendawitharana could issue orders to intelligence units, especially in Colombo.<sup>57</sup>*

Military intelligence came directly under the Army Commander, Sarath Fonseka, but Fonseka alleged that Gotabaya Rajapaksa commanded 'Colombo intelligence operations unofficially from the Defence Ministry' and alleged Gotabaya was involved in abductions, something Gotabaya has denied.<sup>58</sup>

### **Power over appointments**

Gotabaya Rajapaksa himself outlined how he told his brother Mahinda, the President, to appoint his former comrade in arms from the eighties in Jaffna, Sarath Fonseka, as Army Commander after the 2005 elections, demonstrating his influence over appointments.<sup>59</sup> He was also careful to promote officers with whom he had

<sup>54</sup> *ibid*, p69

<sup>55</sup> 'At 6.35 in the evening Defence Secretary Gotabhaya Rajapaksa who led the commanders of the three forces informed President Mahinda Rajapaksa that the final military operation against the LTTE terrorist group had reached its conclusion with the defeat of the LTTE', *Daily News*, 'Mission accomplished', 19 May 2009, on file.

<sup>56</sup> *ibid*

<sup>57</sup> <http://www.dailymirror.lk/expose/Gota-and-Fonseka-trade-charges-on-who-attacked-Lasantha-and-Keith/333-149720>

<sup>58</sup> <http://www.dailymirror.lk/expose/Gota-and-Fonseka-trade-charges-on-who-attacked-Lasantha-and-Keith/333-149720>

<sup>59</sup> *Ceylon Week* interview: 'While the presidential campaign was on, Sarath was asking me for information about it. Sarath had only two weeks to retire after we won [the elections] and I became the Defence Secretary. Sarath was troubling me constantly saying, 'Gota, transfer Shantha and give me the job soon'. I met elder brother Mahinda and said, 'now we have to go for war. Sarath Fonseka is the best person for it. Let's make him the commander. Then elder brother Mahinda said Shantha Kottegoda has one and a half years more to serve. How are we going to remove him with no reason?'. As the President, brother Mahinda was facing a serious challenge. I consistently put pressure that this should be done.'



fought in the past and who were intensely loyal to him, like Jagath Dias<sup>60</sup> (57 Division) and Shavendra Silva<sup>61</sup> (58 Division). Many of these officers had been with Gotabaya during the JVP uprising when they conducted a ruthless campaign in Matale in which killings and mass enforced disappearance occurred,<sup>62</sup> and it was no accident that they were chosen by him for pivotal roles in the ground offensive into the Vanni. A military officer explained to the ITJP that this meant these officers would not question orders from Gotabaya even where they were unlawful:

*Gotabaya and Dias and Silva were close in his army days. Gotabaya could decide the future of officers and Dias and Siva would not argue if Gotabaya gave orders that amounted to war crimes.*<sup>63</sup>

### Involved in Recruitment

Gotabaya Rajapaksa himself took credit for the mass recruitment of 300,000 men to the military to fight the final phase of the civil war.<sup>64</sup> This tripled the size of the army in just three years.<sup>65</sup> In an interview published in April 2010, Defence Secretary Gotabaya Rajapaksa said that the combined strength of the army, navy and air force grew from 125,000 in 2005 to a staggering 450,000 in 2009, with the army at a strength of 300,000.<sup>66</sup> In addition, army salaries were increased under his watch.<sup>67</sup> The

media was clear that the expansion of troop numbers was Gotabaya's idea.<sup>68</sup>

Kamal Gunaratne writes in his book 'Gotabaya' that the Secretary of Defence's plan was that ten thousand new men were to be recruited to the navy to free up more experienced naval officers to fight, and that Gotabaya ordered the Navy Commander to comply, involving himself in the details of deployments.<sup>69</sup> In the enlargement of the army, Gunaratne says Gotabaya's unique sources of power made it possible for him to push through changes:

*Troops had to be organized as new battalions, brigades and divisions. At the time, even forming one battalion was a massively time-consuming task. Gotabaya who clearly understood the huge delay for this process that needed authorization from various quarters, directed the army commander to establish new battalions and to inform him later to get the necessary approval. This helped the military to establish over 70 battalions.*<sup>70</sup>

### Controlling Secondment of Individual Officers

When Gotabaya decided to overhaul the Civil Defence Force (Home Guards), he was the one who decided it should be Navy Chief of Staff,

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<sup>60</sup> <https://itjpsl.com/reports/jagath-dias>

<sup>61</sup> <https://itjpsl.com/reports/shavendra-silva>

<sup>62</sup> *Gotabaya Rajapaksa's Role In 1989 Mass Atrocities*, ITJP, 10 May 2022, <https://itjpsl.com/reports/gotabaya-rajapaksa-the-sri-lankan-presidents-role-in-1989-mass-atrocities>

Also UN Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Ref: AL LKA 3/2022

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27621>

<sup>63</sup> Testimony on file

<sup>64</sup> 'President (Mahinda) gave me powers to raise the number of troops by 300,000. We showed to the President that troop numbers should be raised to win the war. The President told at once that the numbers should be raised.' On file,

<sup>65</sup> §170 Paranagama Report

<sup>66</sup> V K Shashikumar, 'Winning wars: political will is the key', *Indian Defence Review* 25, No 2 (Apr-Jun 2010), ICG.

<sup>67</sup> 'The Defence Ministry ensured that military salaries were increased upward and these were doubled for the rank and file as well as new resources of equipment being made available.' §171, Paranagama Report

<sup>68</sup> *The Island*, 28 Aug 2012, 'Defence Secretary Gotabhaya Rajapaksa told The Island that expansion of the military was a political decision. The President authorised the expansion of the army by 100,000 officers and men and that was the key to our success, the Gajaba Regiment veteran said...The absence of Gotabhaya Rajapaksa would have derailed the offensive.'

<sup>69</sup> 'Navy commander Vice Admiral Karannagoda opposed the move saying that the navy had no vacancies for 10,000 and that he had filled all the vacancies, therefore, it was not practical to get apprentices to the navy. Gotabaya who swiftly took action and told Navy Commander Wasantha Karannagoda to recruit 10,000, retain the number necessary for the navy and hand over the rest to himself for further activities. He wanted him to hand them over to the military to be deployed to provide security in the north and east so that experienced army soldiers who were providing security could be released for the battle.'

<sup>70</sup> Gunaratne, Kamal, p75, *Gotabaya* (trans Sinhala)

Sarath Weerasekera,<sup>71</sup> who was appointed to the post, convincing him to accept the job.<sup>72</sup> Civil Defence Force former Director General, Rear Admiral Ananda Peiris, described how Gotabaya later took over the Civil Defence department in 2012. He said Gotabaya instructed him to provide infrastructure to the north of the island and rehabilitate ex-LTTE cadres.<sup>73</sup> When Peiris faced problems recruiting Tamils to assist the military, he asked Gotabaya Rajapaksa to assign a specific officer to help him out.<sup>74</sup> This illustrates the power Gotabaya Rajapaksa held and which he exercised at a granular level.

Gotabaya was also reported by an Indian military analyst to have described to him hand picking the regimental officers to fight the 2009 battles, showing he had operational control way beyond his function as a civil servant:

*I did not select these officers because they are young. But they were appointed as I thought they were the best to command the battle. I went to the lines and picked up the capable people. I had to drop those who had less capacity to lead the battle. Some of them are good for other work like administration activities. Therefore, the good commanders were chosen to command this battle. I thought*

*seniority was immaterial if they could not command the soldiers properly.<sup>75</sup>*

Kamal Gunaratne confirms in his book 'Gotabaya' that the Secretary of Defence selected the officers to run the war, ignoring at times officers' seniority.<sup>76</sup>

### **Influence Beyond his Ministry - Diplomatic Postings**

Although not Foreign Minister, Gotabaya Rajapaksa also had *de facto* control over postings abroad of diplomats, including a military intelligence officer, Major Prabath Bulathwatte, who was previously an accused in the killing of a prominent journalist, Lasantha Wickrematunge. In a US court case filed in April 2019, Gotabaya Rajapaksa was himself accused in this incident.

In December 2010, police narrowed in on suspects for journalist Lasantha Wickrematunge's murder. Soon afterwards, the case was handed over to another police unit and then, fearing elections could bring a change of government, Gotabaya Rajapaksa ordered the Ministry of Foreign Affairs to grant the suspect Major Bulathwatte a diplomatic assignment in Bangkok, Thailand.<sup>77</sup> The posting was cancelled after Mahinda Rajapaksa won the

<sup>71</sup> Dossier on him at <https://sangam.org/wp-content/uploads/2020/12/rear-admiral-sarath-weerasekera.pdf>

<sup>72</sup> 'Gotabaya who selected Rear Admiral Sarath Weerasekera as the most suitable person to fulfil this task, invited him to accept this post. But, initially Sarath Weerasekera thought of it as a scheme by Gotabaya to remove him from the regular navy path. Therefore, he expressed his disapproval. Nevertheless, when Gotabaya explained the need of the hour to reorganize the CDF that existed as a useless organization to actively contribute to the war, he (Sarath Weerasekera) recognized it and agreed. Even though the defence secretary had the powers to appoint any senior officer from the tri forces to such a post, Gotabaya was aware that his objective would not be fulfilled by appointing someone to that post without their consent.' Gotabaya, Kamal Gunaratne, p130

<sup>73</sup> 'Gotabaya Sir instructed us to do it in a manner that would not create problems in future, by using those rehabilitated and who have not in northern development work.' Mawbima interview with Prageeth Sampath Karunathilaka, pub on a pro-Gotabaya Facebook site on 24 Jun 2018.

<sup>74</sup> 'Because the programme was a failure, I requested a clever officer from Gotabaya Sir. The clever officer I got was Lt Col Ratnapriya'. He was in a camp around

Ampara as the training officer in the CDF Galkiriyawa Training college. He is smart. But has not done work like this. [Interview Question: How was Lt Col Ratnapriya used for this job; was he given a plan or allowed to work independently?] No. At first, the army did not like to release him to the CDF. Then, I spoke to Gotabaya Sir and requested this clever officer. Gotabaya Sir gave that officer to me... That is Gotabaya Sir's success. He selected those to be appointed to positions... Gotabaya Sir can see the inside of a person. Gotabaya Sir knows that if this man was given this job he would do the job properly.'

\*Later credited with allegedly building a good relationship with Tamils, <http://www.sundayobserver.lk/2018/06/17/news-features/behind-fond-farewell-vishwamadu>

<sup>75</sup> <http://www.indiandefencereview.com/spotlights/lessons-from-the-war-in-sri-lanka/2/>

<sup>76</sup> 'The defence secretary and the army commander who decided that there needs to be a proper leadership at every level to carry out the war, initiated a process of selecting capable officers disregarding the seniority list.' Gunaratne, Kamal, p78, *Gotabaya* (trans Sinhala).

<sup>77</sup> Referenced in complaint by Ahimsa Wickremetunge in US case.

26 January 2010 presidential poll,<sup>78</sup> and Bulathwatte was reinstated in 2019.<sup>79</sup>

In a 2018 interview Gotabaya reportedly said he *'could not recall whether the evidence gathered during his term in office directly implicated Major Bulathwatte's team.'*

<sup>80</sup> However, one month after Gotabaya Rajapaksa won the 2019 presidential election, he promoted Bulathwatte to Lieutenant Colonel rank with effect from 15 July 2014, making him eligible for five years' back-pay<sup>81</sup>. This was despite the fact that on 18 February 2017, Bulathwatte had been arrested as a suspect in the case of the assault of another journalist, Keith Noyahar, in 2008.<sup>82</sup> It is noteworthy that the US Government designated Major Bulathwatte in 2022 for gross violations of human rights namely torture and/or cruel, inhuman, or degrading treatment or punishment of Keith Noyahar.<sup>83</sup>

Gotabaya was also considered powerful enough to be able to purge the army of his opponents. A US Embassy telex from Wikileaks described

fears that Gotabaya would initiate a purge of the army following the 2010 split of General Sarath Fonseka – and there were concerns he would also purge the Foreign Ministry, though it wasn't under his *de jure* control.<sup>84</sup>

In addition, because of their relationship to the President, Gotabaya and his brother Basil undertook sensitive foreign diplomacy trips that would have normally fallen to the Foreign Minister, affording them even more additional political power.<sup>85</sup> Media reports also suggest Gotabaya was the one pushing for his decades-long comrade in arms, Shavendra Silva, to be appointed by the Ministry of Foreign Affairs as deputy representative to the UN in New York.<sup>86</sup>

Wikileaks US Government telexes make it clear that as Secretary of Defence, Gotabaya Rajapaksa was actually so powerful he was issuing instructions to the Human Rights Minister, Mahinda Samarasinghe.<sup>87</sup>

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<sup>78</sup> <http://www.ft.lk/news/Alleged-death-squad-leader-reinstated-in-special-team-under-Army-Chief/56-678065>

<sup>79</sup> *Sri Lankan army defends rehiring major amid outcry from rights groups*, 16 May 2019, <https://www.reuters.com/article/us-sri-lanka-blasts-army/sri-lankan-army-defends-rehiring-major-amid-outcry-from-rights-groups-idUSKCN1SM1UY>

<sup>80</sup> *Gota and Fonseka trade charges on who attacked Lasantha and Keith*, 10 May 2018, <http://www.dailymirror.lk/expose/Gota-and-Fonseka-trade-charges-on-who-attacked-Lasantha-and-Keith/333-149720>

<sup>81</sup> <http://www.dailynews.lk/2019/12/17/local/205909/promotions-63-army-officers>, BWMRPSSBD Bulathwaththa RSP Isc MI (064206).

<sup>82</sup> <https://www.colombotelegraph.com/index.php/sri-lankan-army-reinstates-official-suspected-in-lasantha-murder-and-other-attacks-rights-groups-condemn/>  
[https://reliefweb.int/sites/reliefweb.int/files/resources/CPA\\_Criminal-Justice.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/CPA_Criminal-Justice.pdf)

<sup>83</sup> *Combating Global Corruption and Human Rights Abuses*, US State Department, 9 Dec 2022, <https://www.state.gov/combating-global-corruption-and-human-rights-abuses/>

<sup>84</sup> 'In the wake of the January 26 Presidential election, incumbent President Mahinda Rajapaksa, Defense Secretary Gotabhaya Rajapaksa (the President's brother) and the Army commander moved quickly to replace senior Army officers seen as loyal to General Fonseka...The government also moved to force 14 senior military officers into retirement since the election. This purge was said to be headed by the Senior Deputy Inspector General (DIG) of Police who heads the State Intelligence Service and the Chief of National Intelligence. Media has also reported that 150-plus police personnel have been transferred, and Post's

local security investigator has confirmed the transfer or sidelining of senior police officials seen as loyal to Fonseka or a little too eager to enforce elections laws that inhibited the Rajapaksa campaign operation. There were indications by February 2 that the removal of allegedly disloyal government officials might extend beyond the security forces, as a senior MFA official expressed concern for his position, and an official of the Tourism Board resigned abruptly under unclear circumstances.'

[https://wikileaks.org/plusd/cables/10COLOMB081\\_a.html](https://wikileaks.org/plusd/cables/10COLOMB081_a.html)

<sup>85</sup> 'The Sri Lankan delegation comprising Senior Presidential Advisor Basil Rajapaksa MP, Presidential Secretary Lalith Weerathunga and Defence Secretary Gotabhaya Rajapaksa who are now on an official visit to India are reportedly had discussions with Indian External Affairs Minister S M Krishna, National Security Advisor M K Narayanan, Foreign Secretary Shivshankar Menon and Defence Secretary Vijay Singh.'

27 Jun 2009, <https://lrrp.wordpress.com/2009/06/27/many-want-to-emulate-lanka's-success-story-against-terrorism/>

<sup>86</sup> <http://www.salem-news.com/articles/january302012/lanka-war-crim.php>, 'Alleged War Criminal Appointment - a Ministerial Power Struggle', 30 Jan 2012.

<sup>87</sup> 'During the morning of May 13 [2009], Charge called Minister of Disaster Management and Human Rights Samarasinghe to express grave concern about the humanitarian consequences of another day's delay in the Green Ocean's operations. Samarasinghe said he was instructed this morning by Defense Secretary Gotabaya Rajapaksa (who was in a meeting of the Security Council) to provide ICRC Head of Delegation Paul Castella the military's full assurance that there would be no shelling by the Army and food could be off-loaded from the boat and passengers taken aboard...Samarasinghe

Though a civil servant, Gotabaya also enjoyed a power over the military that even government ministers didn't enjoy, according to the military officers he commanded:

*When Gotabaya Rajapaksa was the Secretary of Defence, he didn't allow anyone to interfere with the security forces. Even powerful ministers in the government could neither give advice to the security forces nor employ them in any other task. Although some powerful ministers were cross with him for this reason that could not bring any changes in Gotabaya.<sup>88</sup>*

According to an Indian military commentator, Gotabaya became the link between the government and the military, and was accepted because unlike many other civil servants who held the post of Secretary of Defence, he could deliver logistics:

*...even though Gotabhaya came into the political set up virtually out of nowhere, he quickly became the bridge-head between the President Rajapakse's government and the military. The Rajapakse brothers fused political commitment to a pre-set military goal. 'He (Gotabhaya) was embraced and accepted by the military and his was a legitimate voice in the Army,' said a senior official in the President Office. Gotabaya communicated the military requirements to the government - men, material and weapons.<sup>89</sup>*

#### D. EXERCISING HIS POWER

Gotabaya Rajapaksa could issue orders directly to brigadiers in the war zone in 2009 because of a unique combination of factors:

- (a) he was the brother of the President who was ultimately commander in chief of the military<sup>90</sup>;
- (b) according to General Kamal Gunaratne, President Mahinda Rajapaksa delegated his power over defence matters to Gotabaya: 'After Gotabaya accepted the post of defence secretary, President Mahinda Rajapaksa handed over the right of executing his powers as the defence minister and the right to take decisions to Gotabaya.'<sup>91</sup>
- (c) he was himself an ex-military commander with 20 years' experience<sup>92</sup> and 'a first-hand knowledge of the terrain',<sup>93</sup> he was the architect of the renewed offensive, the man who had reorganised the security forces for victory (see above), and he himself was constantly monitoring and coordinating developments in the operations room in Colombo;
- (d) he had a personal relationship with the top commanders like Kamal Gunaratne, Shavendra Silva, Jagath Dias and Sarath Fonseka because they had fought alongside him in the eighties. Silva, Dias and Gunaraatne had been his junior officers - he was on first-name terms with them when calling to give orders;<sup>94</sup>
- (e) he was Secretary of Defence with control over military appointments (see above), including transfers, promotions, and disciplining of officers;
- (f) by his own account he arranged the promotion of the war-time Army Commander Sarath Fonseka, making him seriously

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suggested to Charge that it would be helpful for Rajapaksa and Castella to meet tomorrow, May 14.'  
[https://wikileaks.org/plusd/cables/O9COLOMBO522\\_a.html](https://wikileaks.org/plusd/cables/O9COLOMBO522_a.html)  
O9COLOMBO522\_a

<sup>88</sup> Gunaratne, Kamal, p243, *Gotabaya*

<sup>89</sup> <http://www.indiandefencereview.com/spotlights/lessons-from-the-war-in-sri-lanka/2/>

<sup>90</sup> 'In last Sunday's interview he calls himself a superior and super secretary arguing that only he as a sibling had access to the President at any given hour. Only he, he said was able to call the President at 12 midnight or discuss with him the true position with regard to casualties or other defence matters.' On file.

<sup>91</sup> Gunaratne, Kamal, p66, *Gotabaya*

<sup>92</sup> As an Indian commentator put it, 'Gotabaya met Fonseka and asked him, 'can you go for a win'? The battle-hardened veteran said 'yes, but you will have to permit me to pick my own team.' Gotabaya and Mahinda agreed. 'We will let the military do its job, while we hold the fort, politically,' they told Fonseka. This deft political arrangement worked because both, Gotabhaya and Fonseka, were recruited and commissioned into the army at the same time. '  
<http://www.indiandefencereview.com/spotlights/lessons-from-the-war-in-sri-lanka/2/>

<sup>93</sup> Lalith Weeratunga, Secretary to the President, On file.

<sup>94</sup> He acknowledged he spoke to ground commanders in this *Business Weekly* interview in June 2009: 'I spoke to the ground Commanders...'

indebted to him personally (even though they fell out later after the war);

(g) multiple other members of the Rajapaksa family held key positions within government, making it a virtual family business:<sup>95</sup>- the BBC alleged the Rajapaksa family was responsible at this time for 75% of the Sri Lankan Government budget;<sup>96</sup>

(h) Gotabaya had proven ability to send commanders the resources they needed, including reinforcements, drones, air support and equipment;<sup>97</sup>

(i) he had complete control over the finances of the various security units; he had/has leverage over his ministry staff, some of whom have subsequently been accused of corruption;

(j) he was feared because he was alleged to have operated death squads<sup>98</sup>;

(k) he controlled the intelligence services, who allegedly kept files on opponents and insiders in order to be able to blackmail them.<sup>99</sup>

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<sup>95</sup> See infographic *The Rajapaksas: keeping it in the family*  
<https://www.colombotelegraph.com/index.php/infographic-rajapaksa-family-and-nepotism/>

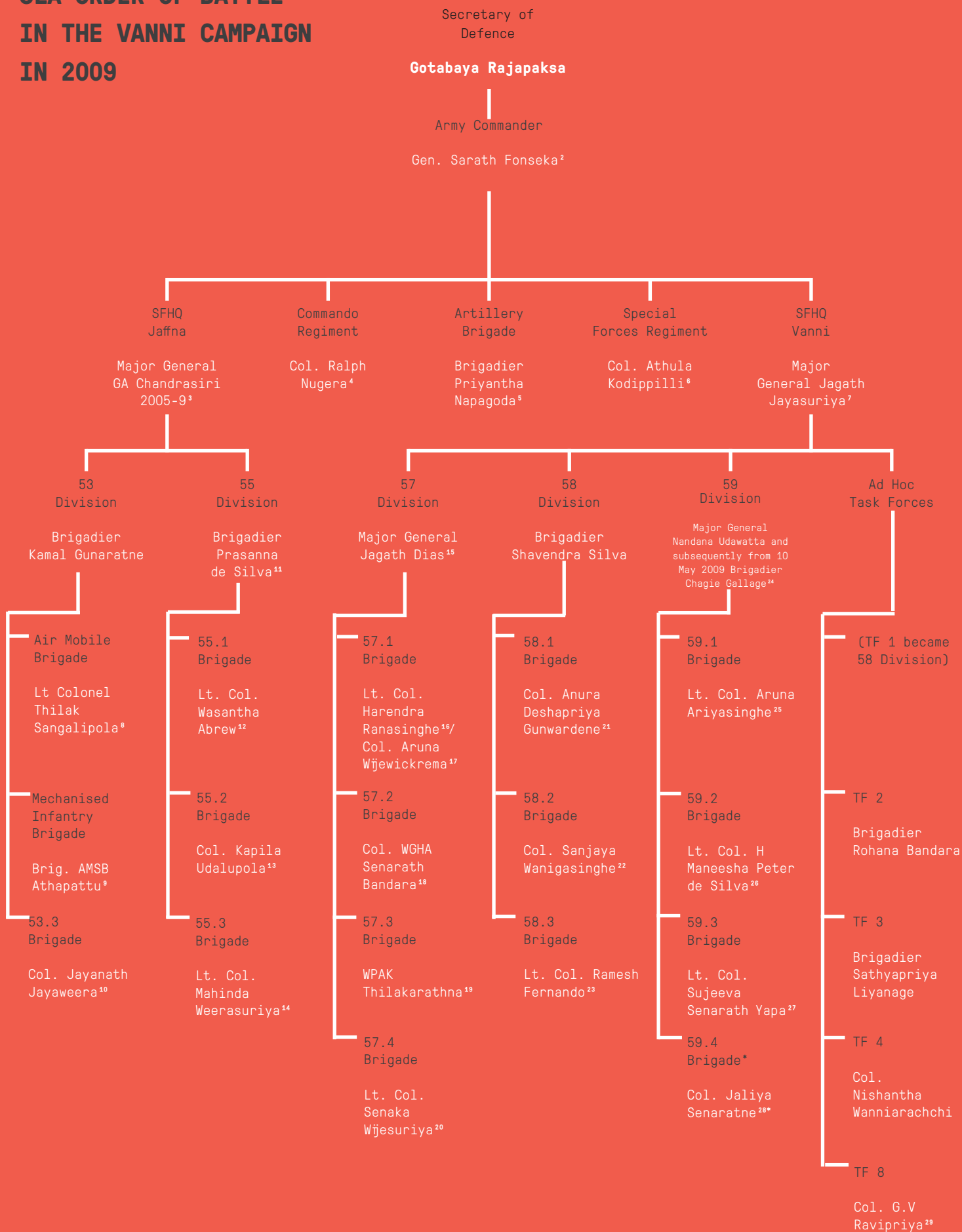
Also '...four brothers in top positions in government controlling 80 per cent of the country's economy, and over 128 relatives appointed to various key positions in the Presidential Secretariat and other vital departments, and paid for by public funds,' deleted  
<sup>96</sup> <https://www.youtube.com/watch?v=rouIimgl-Wc>, BBC  
<sup>97</sup> 'Gotabaya took steps to fulfil every need of the soldiers who were fighting in the war front. The biggest problem was allocating money from the treasury to buy weapons and equipment. Gotabaya had taken steps for the participation of Treasury secretary Dr P B Jayasundera, which was massively helpful. PB Jayasundera who was well aware of various issues discussed in the security council and the grave situation the military faces when confronted with these issues, was fully committed to arrange for the money to be available to fulfil the requirements of the defence secretary. In addition, President Mahinda Rajapaksa directing P B Jayasundera to provide all the requirements as soon as the grave issues were raised was a blessing. In addition, when Gotabaya went with commanders to meet P B Jayasundera, never came back empty handed. Even today, Gotabaya speaks of P B

Jayasundera with much respect and appreciation for the assistance given to fulfil this gigantic task... The purchase of equipment and weapons to fulfil this task happened speedily and Gotabaya wanted to remove the 'middlemen' who always got into these deals. By establishing the 'Lanka Logistics and Technologies' institution with the approval of the president and the cabinet of ministers, Gotabaya was able to save a massive amount of government funds that would have gone to the hands of middlemen and purchase more and more weapons and equipment for the war.' *Gotabaya*, Kamal Gunaratne, p80-81.

<sup>98</sup> <https://www.aljazeera.com/news/2017/3/20/ex-leaders-brother-led-death-squad-in-sri-lanka>

<sup>99</sup> 'One of the roles of the STF was intelligence gathering and they conducted this as directed by Gotabaya. The STF and other groups such as the NIB would gather information about persons, both members of the parliament and internationals, which could be used as leverage against them in the event that they caused problems for the Government. I know XXX [redacted] has been threatened by the government as he is alleged to have had problems with women such as prostitutes and, if he did not comply with the government's wishes, he was threatened that they would reveal the information.' ITJP witness.

# SLA ORDER OF BATTLE IN THE VANNI CAMPAIGN IN 2009



(Based on the diagram in OISL)

\*missing on UN diagram



- 1** OISL .
- 2** The JoH was commanded by the Chief of Defence Staff, who was responsible to the Secretary of Defence. (OISL §111-112)
- 3** <https://alt.army.lk/sfhqj/past-commanders-and-unprecedented-glorious-victory>, Daily News, 3 June 2009, <http://archives.dailynews.lk/2009/06/03/supstory.asp?id=s01>; The valiant men who led ground troops, 15 May 2009, Sunday Observer, <http://archives.sundayobserver.lk/2011/05/15/victory.asp?id=s06>
- 4** Ibid
- 5** Ibid
- 6** Ibid
- 7** OISL § 115
- 8** [https://web.archive.org/web/20090516024456/http://www.thebottomline.lk/2009/05/13/defence\\_col.htm](https://web.archive.org/web/20090516024456/http://www.thebottomline.lk/2009/05/13/defence_col.htm) The Nation, 16 May 2009, Army at doorstep of last Tiger stronghold, reported [https://web.archive.org/web/20090516024456/http://www.thebottomline.lk/2009/05/13/defence\\_col.htm](https://web.archive.org/web/20090516024456/http://www.thebottomline.lk/2009/05/13/defence_col.htm) Miracle workers graphic from state run paper.
- 9** <https://alt.army.lk/mech/former-brigade-commander> (from Feb 2009)
- 10** MOD Situation Report on 16 February 2009, Situation Reports on 17th Feb, 2009; <https://blacklightarrow.wordpress.com/2009/01/14/an-incomplete-sl-army-order-of-battle-for-mullaitivu/>
- 11** <https://alt.army.lk/sfhqj/55-division>; The valiant men who led ground troops, 15 May 2009, Sunday Observer, <http://archives.sundayobserver.lk/2011/05/15/victory.asp?id=s06> Also <http://archives.dailynews.lk/2009/01/17/fea04.asp> "The 53 Division was comprised of three Brigades under the command of General Officer Commanding Brigadier Kamal Gunarathne - i.e. the 533 Brigade commanded by Lieutenant Colonel Jayanath Jayaweera, the Air Mobile Brigade commanded by Shantha Dissanayake and the recently formed Mechanized Infantry Brigade commanded by Lieutenant Colonel Lalantha Gamage."
- 12** Miracle workers graphic from state run paper.
- Jan 2009 Daily News  
"With the support of a 8 man team of the Special Forces (SF) Divers&#39; team of SF 2nd Battalion, a team of 1st Battalion of the Commandos landed at Mamunai which was South of Nagar Kovil while the 1st battalion of the Sri Lanka Light Infantry attached to the 551 Brigade commanded by Lieutenant Colonel Wasantha Abrew launched their operation parallel to the Pallai - Soranpaththu capture. - in state run newspaper <http://archives.dailynews.lk/2009/01/17/fea04.asp>
- 13** Miracle workers graphic from state run paper. "552 Brigade led by Col. Kapila Udalupola, captured the last remaining stretch of the Jaffna district border.." <https://prasannadesilva.wordpress.com/2009/06/21/ltte-plays-its-final-trump/>
- 14** <http://archives.sundayobserver.lk/2009/02/08/sec04.asp>  
"553 Brigade under Col. Mahinda Weerasuriya.." <https://prasannadesilva.wordpress.com/2009/06/21/ltte-plays-its-final-trump/>
- 15** Unprecedented Glorious Victory, Daily News, 3 June 2009, <http://archives.dailynews.lk/2009/06/03/supstory.asp?id=s01>; The valiant men who led ground troops, 15 May 2009, Sunday Observer, <http://archives.sundayobserver.lk/2011/05/15/victory.asp?id=s06>
- 16** Miracle workers graphic from state run paper. And <https://alt.army.lk/sfhqmlt/571-brigade> ; Photo in Daily News 5 January 2009, He says he was abroad from 10 of April to 18 May 2009. There is no information on who took his place during this crucial period in the war. <https://www.youtube.com/watch?v=W6kJGP-wZOKU> ; After the war Aruna S. Wijewickrema (Armoured Corp) was appointed to an Army Court of Inquiry to investigate Channel 4 allegations about the war - <https://www.army.lk/news/army-court-inquiry-channel-4-allegations-referred-llrc-report-submits-its-findings-commander>.
- 17** Miracle workers graphic from state run paper. And <https://alt.army.lk/sfhqmlt/571-brigade> ; Photo in Daily News 5 January 2009, He says he was abroad from 10 of April to 18 May 2009. There is no information on who took his place during this crucial period in the war. <https://www.youtube.com/watch?v=W6kJGP-wZOKU> ; After the war Aruna S. Wijewickrema (Armoured Corp) was appointed to an Army Court of Inquiry to investigate Channel 4 allegations about the war - <https://www.army.lk/news/army-court-inquiry-channel-4-allegations-referred-llrc-report-submits-its-findings-commander>.
- wZOKU ; After the war Aruna S. Wijewickrema (Armoured Corp) was appointed to an Army Court of Inquiry to investigate Channel 4 allegations about the war - <https://www.army.lk/news/army-court-inquiry-channel-4-allegations-referred-llrc-report-submits-its-findings-commander>.
- 18** Miracle workers graphic from state run paper. <https://archives.sundayobserver.lk/2008/09/21/sec01.asp>; VIPs advised to strictly adhere to security measures <https://web.archive.org/web/20090210090937/http://www.sundayobserver.lk/2008/10/12/sec03.asp> <https://prasannadesilva.wordpress.com/2009/06/21/ltte-plays-its-final-trump/> Also <https://alt.army.lk/sfhqmlt/572-brigade> from 22 Feb 2009. Before that Lieutenant Colonel APGN JAYASUNDARA RWP RSP MIR
- 19** Miracle workers graphic from state run paper. Also <https://prasannadesilva.wordpress.com/2009/06/>
- 20** Miracle workers graphic from state run paper. <https://archives.sundayobserver.lk/2008/09/21/sec01.asp>; <http://archives.dailynews.lk/2009/06/19/sec03.asp> <http://www.srilankaguardian.org/2008/12/wanni-army-graveyard.html> The 574 Infantry Brigade was initially established on 13th March 2009 as 633 Brigade at Kokavil area under the Task Force 3. On 12th Aug 2009 it name has re designated as 632 Brigade. <http://archives.dailynews.lk/2008/12/02/sec01.asp> The newly formed 574 Brigade under the command of Lt. Colonel Senaka Wijesuriya and 573 Brigade under the command of Lt. Colonel Prathap Thillekeratne are holding the ground parallel to the Jaffna - Kandy A-9 road from Mankulam to Murikandy in the south of Iranamadu. <https://web.archive.org/web/20081013203125/http://www.dailynews.lk/2008/10/10/fea03.asp> By May 2009 he is described as 592. <http://archives.sundayobserver.lk/2009/05/24/imp10.asp> <https://archives.sundayobserver.lk/2011/06/12/fea02.asp>
- 21** [https://web.archive.org/web/20090516024456/http://www.thebottomline.lk/2009/05/13/defence\\_col.htm](https://web.archive.org/web/20090516024456/http://www.thebottomline.lk/2009/05/13/defence_col.htm); Miracle workers graphic from state run paper. Kamal Gunaratne's book; also named in The Nation on 26 April 2009.

**22** L A N S Wanigasinghe named in <http://archives.sundayobserver.lk/2009/03/08/sec03.asp>  
[https://web.archive.org/web/20090516024456/http://www.thebot-tomline.lk/2009/05/13/defence\\_col.htm](https://web.archive.org/web/20090516024456/http://www.thebot-tomline.lk/2009/05/13/defence_col.htm) and in Kamal Gunaratne's book.

**23** Miracle workers graphic from state run paper.  
<http://twonationsoneisland.blogspot.com/2012/02/extermination-of-eelam-tamil-of-vanni.html>  
SECURITY FORCES POISED FOR VICTORY By Tissa Ravindra Perera , The Nation, [https://atrocitiesarchives.weebly.com/uploads/1/2/0/7/120745407/nation-2009-05-17-security\\_forces\\_poised\\_for\\_victory.pdf](https://atrocitiesarchives.weebly.com/uploads/1/2/0/7/120745407/nation-2009-05-17-security_forces_poised_for_victory.pdf)  
<http://www.warwithoutwitness.com/journalist-name-command-officers-involved-in-killing-surrendering-combatants-in-sri-lanka/>  
Photo at <http://archives.dailynews.lk/2009/05/01/sec03.asp>

**24** OISL § 116; The valiant men who led ground troops, 15 May 2009, Sunday Observer,  
<http://archives.sundayobserver.lk/2011/05/15/victory.asp?id=s06> , 7 May-20 July 2009 according to <http://slwaronterror.blogspot.com/2018/09/chagie-im-designated-as-war-criminal.html>

**25** Miracle workers graphic from state run paper. Also TENURES OF BRIGADE COMMANDERS says from 24 Nov 2007 until 26 Oct 2010 in charge,  
<http://archives.dailynews.lk/2008/06/13/fea03.asp>  
[https://alt.army.lk/sfhqmlt/591-brigade Retired 2020, Sri Lanka Artillery Regiment](https://alt.army.lk/sfhqmlt/591-brigade-Retired-2020,Sri-Lanka-Artillery-Regiment)  
<https://www.army.lk/news/artillery-regiment-bids-farewell-major-general-aruna-ariyasingha>  
<http://archives.dailynews.lk/2009/06/19/sec03.asp>

**26** Miracle workers graphic from state run paper. Also, TENURES OF GENERAL OFFICERS COMMANDING on file.  
O/ 60633 Col HMP De Silva was appointed as the first brigade commander from 29 Dec 2007 till 28 Feb 2010.  
<https://alt.army.lk/sfhqmlt/592-brigade>

**27** 592 Brigade Commander army website page says Lt Col. DGS Senarath Yapa was in command from 15 Feb 2009 till 15 Oct. 2010.  
Army at doorstep of last Tiger stronghold, The Nation,  
[https://web.archive.org/web/20090516024456/http://www.thebot-](https://web.archive.org/web/20090516024456/http://www.thebot-tomline.lk/2009/05/13/defence_col.htm)

[tomline.lk/2009/05/13/defence\\_col.htm](http://www.thebot-tomline.lk/2009/05/13/defence_col.htm) which says he had with three battalions under his command, 11 (GR) commanded by Major W.M.D.S.

Gunawardane, 4 (SR) Sinha Regiment commanded by Major I.K. Lokukatagoda, 16 (SLLI) commanded by Major B.J. Lekamge.

Miracle workers graphic from state run paper.

He is in video from May 2009 [https://www.youtube.com/watch?v=z03G7\\_\\_fV8k](https://www.youtube.com/watch?v=z03G7__fV8k)  
2022 appointed Deputy Chief of Staff, Gajaba Regiment, <https://www.army.lk/news/major-general-sujeewa-senarath-yapa-new-deputy-chief-staff-takes-over-duties>

**28** \*Not in UN diagram  
Miracle workers graphic from state run paper. Acting commander in 2008 according to <http://archives.dailynews.lk/2008/06/13/fea03.asp>; Gajaba Regiment  
<https://alt.army.lk/gajabaregiment/content/brigadier-wmjrk-senaratne-appointed-new-centre-commandant-gajaba-regimental-centre>

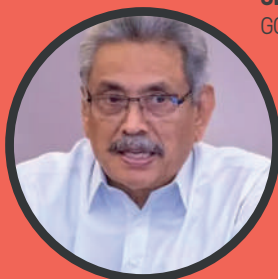
**29** OISL § 119, The valiant men who led ground troops, 15 May 2009, Sunday Observer,  
<http://archives.sundayobserver.lk/2011/05/15/victory.asp?id=s06>

# 2009

**SECRETARY OF DEFENCE**  
GOTABAYA RAJAPAKSA



**58 DIVISION COMMANDER**  
GEN. SHAVENDRA SILVA



**COMMANDOS**  
MAJ. GEN. RALPH NUGERA



**53 DIVISION COMMANDER**  
GEN. KAMAL GUNARATNE

**59 DIVISION COMMANDER**  
MAJ. GEN. CHAGIE PAMODA GALLAGE

**ARMY COMMANDER**  
FM. SARATH FONSEKA



**57 DIVISION COMMANDER**  
MAJ. GEN. N A JAGATH C. DIAS



**2004 SUSPENDED FROM ARMY**  
MAJ. GEN. A. K. SUMEDHA PERERA



**DIRECTOR OF OPERATIONS**  
MAJ. GEN. UDAYA (GVDUA) PERERA



**DIRECTOR GENERAL OF THE CIVIL DEFENCE FORCE**  
RAADM. SARATH WEERASEKERA

**JVP ERA OPERATIONS**

**FOUGHT IN JAFFNA IN 80'S**

**GAJABA REGIMENT**

**ANANDA COLLEGE**

**RAJARATA RIFLES**



X

X

X

X

X<sup>1</sup>



X

X

X

X

X



\*

X

X

X

X



X

X<sup>2</sup>

X

X



X

X

X

X<sup>3</sup>



X<sup>6</sup>

X<sup>7</sup>

X

5



X

X

8

X



X

X

X



X

X<sup>9</sup>

X

X



X<sup>12</sup>

X<sup>13</sup>

11

\* INSUFFICIENT INFORMATION TO CONFIRM HIS INVOLVEMENT

## TODAY

**EX PRESIDENT**  
GOTABAYA RAJAPAKSA

**CHIEF OF DEFENCE STAFF**  
GEN. SHAVENDRA SILVA

**SECRETARY OF DEFENCE**  
GEN. KAMAL GUNARATNE

**RETIRED;VIYATHMAGA MOVEMENT OF THE EX PRESIDENT**  
MAJ. GEN. CHAGIE PAMODA GALLAGE

**2019-21 AGRICULTURE SECRETARY**  
MAJ. GEN. A. K. SUMEDHA PERERA

**RETIRED**  
MAJ. GEN. UDAYA (GVDUA) PERERA

**AFTER RETIREMENT IN POLITICS**  
FIE. MAR. SARATH FONSEKA

**AFTER RETIREMENT IN POLITICS**  
REA. ADM. SARATH WEERASEKERA

**AFTER RETIREMENT IN POLITICS**  
MAJ. GEN. N A JAGATH C. DIAS

**RETIRED**  
MAJ. GEN. RALPH NUGERA

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- 1** <https://slasc.blog/uniforms-and-equipment-throughout-the-ages/>
- 2** <https://www.ft.lk/Opinion-and-Issues/Tribute-to-a-legendary-comrade-in-arms/14-662363>  
<https://www.sundaytimes.lk/180902/sunday-times-2/tribute-to-a-legendary-comrade-in-arms-309551.html>  
<https://island.lk/chagie-is-issues-dire-warning-as-country-celebrates-independence/>
- 3** <https://slasc.blog/uniforms-and-equipment-throughout-the-ages/>
- 4** Ganagama Vithanage Don Udaya Annesly Perera
- 5** <https://alt.army.lk/gajabaregiment/content/major-general-gvdua-perera-rwp-rsp-vsv-usp-usawc-psc-accorded-military-salute>
- 6** Ibid
- 7** "He was a veteran Infantryman, who pioneered the 3rd Battalion the Gajaba Regiment from 1996 to 1998." <https://alt.army.lk/gajabaregiment/content/major-general-gvdua-perera-rwp-rsp-vsv-usp-usawc-psc-accorded-military-salute>
- 8** Sinha Regiment.
- 9** Commando Regiment <https://www.army.lk/news/army-chief-hails-commandos-unmatched-sacrifices-cr-headquarters>
- 10** <https://alt.army.lk/gajabaregiment/10-gajaba-regiment>
- 11** <https://www.sundaytimes.lk/200705/sunday-times-2/tribute-to-intake-21-of-sri-lanka-army-as-they-cherish-35-years-of-service-to-the-nation-408217.html> St Peter's college/SL Light Infantry - Retired April 2019
- 12** SLLI <https://www.army.lk/news/major-general-ralf-nugera-relinquishes-duties-sfhq-klm>
- 13** Disappeared: SPA Priyantha (9458) M/C Matara B823/99  
Disappeared: Sunil Santha AAH (file number 9555) MC Matara Case 109/98  
Disappeared: AP Jagath Chaminda (2304) Matara High Court 171/98
- Disappeared Sepala SH (8050) HC Matara - no ref..
- 14** Operation Balavegaya I
- 15** Joined MI as a captain in 1993 and worked there all along. (witness statement to Easter PCoI <http://archives1.dinamina.lk/2020/07/09/%E0%B6%B4%E0%B7%94%E0%B7%80%E0%B6%AD%E0%B7%8A/98956/%E0%B6%A2%E0%B7%8F%E0%B6%AD%E0%B7%92%E0%B6%9A-%E0%B6%86%E0%B6%BB%E0%B6%9A%E0%B7%8A%E0%B7%82%E0%B7%8F%E0%B7%80%E0%B6%A7-%E0%B7%80%E0%B6%9C%E0%B6%9A%E0%B7%92%E0%B7%80-%E0%B6%BA%E0%B7%94%E0%B6%AD%E0%B7%94-%E0%B6%B4%E0%B7%8A%E2%80%8D-%E0%B6%BB%E0%B6%B0%E0%B7%8F%E0%B6%B1%E0%B7%92%E0%B6%BA%E0%B7%8F-%E0%B6%A2%E0%B6%B1%E0%B6%B4%E0%B6%AD%E0%B7%92%E0%B6%BA%E0%B7%92-%E0%B6%92-%E0%B7%83%E0%B6%B8%E0%B7%8A%E0%B6%B6%E0%B6%B1%E0%B7%8A%E0%B6%B0%E0%B7%80-%E0%B7%80%E0%B6%9C%E0%B7%80%E0%B7%93%E0%B6%B8%E0%B6%9A%E0%B7%8A-%E0%B6%86%E0%B6%BB%E0%B6%9A%E0%B7%8A%E0%B7%82%E0%B6%9A>)
- 16** He had been transferred in 1986 from Jaffna to Colombo.

## Issued direct orders that were obeyed

Military commentators such as *The Island's* military correspondent, Shaminda Fernando, confirm that Gotabaya communicated directly with his field commanders in the Vanni, issuing commands to them and bypassing the normal channels.<sup>100</sup> Gotabaya himself is also clear that he was in command and control directing the military and giving orders on how to conduct the war.<sup>101</sup> He stated that the war-time army commander and the air and naval commanders did what he asked.<sup>102</sup>

Lt General Jagath Jayasuriya,<sup>103</sup> who in 2009 was the Wannai Operations Commander, also described Gotabaya issuing commands that were obeyed by field officers:

*We salute the Defence Secretary Gotabhaya Rajapaksa who has the experience in the battlefield for the guidance provided. We cannot forget the commands given by him which were implemented through the efficient officers on the field.*<sup>104</sup>

## Daily, hands-on approach – he had detailed knowledge of ground operations

Speaking of the assassination attempt on him in 2006, Gotabaya confirms that commanders reported to him directly since the early days of the war, calling him on a daily basis about

problems in the field, circumventing the conventional hierarchy.<sup>105</sup> According to Gotabaya himself, this hands-on approach continued after the war:

*Nobody had conferences like me. In weekly meetings on urban development I spoke to architects, engineers, directors and even lower ranking officials. I was not giving my orders but listening to their views and progress reports to have a collective approach. During the war, no one coordinated with the security forces like me, especially with the intelligence agencies. For the first time, I got all the intelligence units of the security forces together. I was listening to them all the time and getting their views on ground realities before taking action. Take Colombo security as an example. I coordinated with the Police, Army, Navy, Air Force and Civil Defence force and had regular meetings with them. I always listened to them and discussed with them before giving my orders. .. I don't think that any other Government servant handled it like me.*<sup>106</sup>

Gotabaya's colleagues confirmed he held regular meetings with his subordinates to coordinate strategies, plan operations and receive reports.<sup>107</sup> In an interview on 6 May 2009, a senior police official in Colombo explained Gotabaya's pivotal role in overseeing the security forces.<sup>108</sup> An Indian commentator

<sup>100</sup> 'Perhaps, the most important factor was the role played by tough-talking Defence Secretary Gotabhaya Rajapaksa throughout the campaign. Unlike his predecessors, the Gajaba Regiment veteran acted swiftly and decisively in facilitating the three services to help each other at crucial moments. A case in point was a particular service, seeking the Defence Secretary's intervention when wanting assistance from a sister service. The Defence Secretary went to the extent of allowing field commanders on the Vanni front to speak with him direct, bypassing normal channels.'

<http://slwaronterror.blogspot.com/2012/09/fac-role-in-battle-off-mullaitivu.html>

<sup>101</sup> 'Back in the day, I fulfilled every responsibility to 100% for my country that was entrusted upon me by President Mahinda Rajapaksa. You know that as the defence secretary, first I was able to direct the tri forces and the intelligence services to end terrorism within two and a half years.' 19 Oct 2019, Beliatta election campaign rally, <https://www.youtube.com/watch?v=BdtQ-E5sBPw>, 10'47'-11'37

<sup>102</sup> 'He (Sarath Fonseka) performed what I expected of him. Not only him, I was given the assistance from Wasantha Karanagoda<sup>102</sup> and Roshan Gunatilleke (Navy and Air

Force commanders in the 2009 war). That is why we could attain such a victory.' *Ceylon Week* interview.

<sup>103</sup> In 2017, the ITJP filed cases against him in Latin America. <https://itjpsl.com/reports/the-case-against-jagath-jayasuriya>

<sup>104</sup> <https://lrrp.wordpress.com/2009/10/>

<sup>105</sup> 'This attack was launched on 1 December 2006. Because was not well the earlier day. Therefore, I didn't go to work on that day. But, on the first I got ready to go to work as usual. Even if I get ready early in the morning, it takes until about 10.30 before I leave. I remember that day very well. I received many calls because the war had already started. Commanders called and told about several problems.' Lankadeepa interview, 16 Dec 2012.

<sup>106</sup> 21 May 2015 Interview with Shanika Sriyananda, <http://www.ft.lk/article/423001/FT-EXCLUSIVE--%E2%80%9CI-am-a-very-religious-person--the-truth-will-prevail%E2%80%9D--Gotabaya>

<sup>107</sup> See *Deputy Inspector General of Police – Sisira Mendi*, interview *Business Today*, 28 Apr 2009, <http://www.businesstoday.lk/printarticle.php?articleid=23>

<sup>108</sup> 'Actually, the main person responsible for ensuring good security in Colombo is Secretary of Defence Gotabaya Rajapaksa. We have to update him on our



described how Gotabaya monitored all the information from the battlefield on an hourly basis:

*Gotabaya says that he along with [Sri Lankan Armed Forces – army, navy and air force] top brass ‘read’ and analysed the war operations every hour, every day. ‘I could understand and gauge the need and requirements. Any military commander will ask for everything, every possible weapon, every possible inventory. My job was to understand the priorities, rationally organize those priorities in terms of what was really required for victory and flush out needs and requirements that had zero relevance to our objectives.’<sup>109</sup>*

This is also confirmed by Sri Lankan military officers present on the ground at the time who say Gotabaya ‘was active in the battle plans’ and ‘Gotabaya was actively involved in the advancement of the war.’<sup>110</sup>

A witness said he was present in the field during an argument between two superior officers over whether to conduct a mission during the war. One officer, known to be close to Gotabaya, ‘insisted he had an order from Gotabaya and they all served the same government. He made a big show of calling Gotabaya in front of everyone and said the unit in question was ‘refusing to do it.’’ This indicates that field commanders reported directly to the Secretary of Defence, bypassing

the conventional command structure. According to his colleagues’ public statements, Gotabaya held regular meetings with his subordinates to coordinate strategies, plan operations and receive reports.<sup>111</sup> In an interview on 6 May 2009, a senior police official in Colombo explained Gotabaya’s role in overseeing the security forces.<sup>112</sup>

### **Granular Operational Control**

Media reports say Gotabaya Rajapaksa didn’t just coordinate attacks but issued specific orders which affected the outcome of specific battles or operations.

In one reported instance indicative of his involvement in the finer details of ground operations, Gotabaya ordered the air force to continue operating a drone even after its operating hours were over:

*At one point Defence Secretary Gotabhaya Rajapaksa directed the SLAF to operate an Unmanned Aerial Vehicle (UAV) in support of ground forces even after its operating hours,. He emphasized that all support should be given to ground forces to achieve their goal even at the risk of losing the precious UAV.<sup>113</sup>*

Gotabaya Rajapaksa’s immediate subordinate, Army Commander Sarath Fonseka also told Parliament that Gotabaya had within two minutes

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progress weekly, furthermore, the Inspector General of Police also keep on the constant go by inquiring about investigation on a daily basis. Senior DIG Nimal Mediawake gives us his utmost support as well. The Secretary of Defence is our strength; he has succeeded in bringing all of us together as one team, which has resulted in the success of our investigations.’

*Business Today*, Senior Superintendent Of Police - Anura Senanayake, interview, 6 May 2009,

<https://businesstoday.lk/senior-superintendent-of-police-anura-senanayake/> Defense Secretary Gotabaya Rajapaksa: The Will [Interview], 2 May 2010, <http://www.businesstoday.lk/printarticle.php?articleid=2434>.

<sup>109</sup> *Winning wars: political will is the key*, op cit, V K Shashikumar, ‘Lessons from the War in Sri Lanka’, *Indian Defence Review* 24, No 3, July-Sep 2009

<sup>110</sup> Statement on file.

<sup>111</sup> See *Business Today*, 28 Apr 2009, <https://businesstoday.lk/the-eye-on-colombo-inspector-general-of-police-jayantha-wickramaratna/>

<sup>112</sup> ‘Actually, the main person responsible for ensuring good security in Colombo is Secretary of Defence Gotabaya Rajapaksa. We have to update him on our progress weekly, furthermore, the Inspector General of Police also keep on the constant go by inquiring about investigation on a daily basis. Senior DIG Nimal Mediawake gives us his utmost support as well. The Secretary of Defence is our strength; he has succeeded in bringing all of us together as one team, which has resulted in the success of our investigations.’ *Business Today*, Senior Superintendent Of Police - Anura Senanayake [Interview], 6 May 2009, <https://businesstoday.lk/senior-superintendent-of-police-anura-senanayake/> *Business Today: Defense Secretary Gotabaya Rajapaksa: The Will* [Interview], 2 May 2010, <http://www.businesstoday.lk/printarticle.php?articleid=2434>.

<sup>113</sup> *The Island*, 24 Dec 2012, <http://slwaronterror.blogspot.com/2012/12/ltte-checkmated.html>



approved the attack on Mavil Aru in 2006 in the east of Sri Lanka:<sup>114</sup>

*I called Gotabaya and asked about it (Mavilaru) and he said that Mavilaru is blocked (by the LTTE) ... I said we are prepared to attack. He said that he will call back in 2 minutes. He spoke to Mahinda Rajapaksa and told me to go ahead.<sup>115</sup>*

In addition, as early as 2007, while commenting on the air strike that killed LTTE political wing leader, S P Thamilselvan, and his bodyguards in Kilinochchi, Gotabaya Rajapaksa claimed to have detailed knowledge of the locations of other LTTE leaders:

*This is just a message, that we know where their leaders are. I know the locations of all the leaders, that if we want we can take them one by one, so they must change their hideouts,' he told Reuters. 'When the time comes only, we take them one by one.'<sup>116</sup>*

Gotabaya's official biographer, C A Chandraprema, writes that he was even across the stocks of ammunition:

*[d]uring the war, Udaya Perera director of operations of the army maintained constant contact with Gōta [Gotabaya Rajapaksa] and kept him updated about the ammunition stocks.<sup>117</sup>*

## E. CONTROLLING THE PROPAGANDA WAR TOO

Analysts believe Gotabaya's strategy was to give the army free reign, resist pressure from the international community, refuse to stop the war or negotiate,<sup>118</sup> and control the media (or, as he put it, ensure 'an uni-directional flow of conflict information'). Gotabaya took on a propaganda or publicity role regarding the war, which was essential for Sri Lanka to resist international pressure to stop the offensive. Lalith Weerasinghe, who was Presidential Secretary at the time, said:

*Gota took on the job of the publicity expert of the Government. I cannot ever imagine a public servant and a military man at that doing it so well.<sup>119</sup>*

Gotabaya Rajapaksa was adept at resisting calls for a ceasefire with the LTTE, fearing that would give them a fresh lease of life and prolong or defray their defeat.

In February 2009, he warned ambassadors in Colombo especially the German and Swiss, and major news companies if they acted irresponsibly in their reporting, of dire consequences.<sup>120</sup> In late April he called the idea of a ceasefire a joke<sup>121</sup> and claimed humanitarian concerns were just a trick to save the LTTE leaders.<sup>122</sup> By May 2009, Gotabaya Rajapaksa rejected the idea of a ceasefire and

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<sup>114</sup> '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.' This marked the start of the final war in the east, §66, OISL, 2015.

<sup>115</sup> pub 5 Apr 2019 (Date that he spoke in parliament to be checked) <https://newstube.lk/news/6001-2019-04-05-08-29-12>

<sup>116</sup> <https://jp.reuters.com/article/us-srilanka-rebel/tamil-tiger-political-head-killed-in-sri-lanka-raid-idUSCOL24651220071102>

<sup>117</sup> p219, *Gota's War*

<sup>118</sup> 'LTTE. But when success was near, they reversed the orders and instructed the military to pull back, to withdraw from operations because of international concerns about the humanitarian crisis and civilian casualties. So we had to ensure that we regulated the media. We didn't want the international community to force peace negotiations on us,' says a senior official in the President's office who wishes to remain anonymous. <http://www.indiandefencereview.com/spotlights/lessons-from-the-war-in-sri-lanka/2/>

<sup>119</sup> On file.

<sup>120</sup> On 1 Feb 2009 Gotabaya Rajapaksa 'warned ambassadors, news agencies and INGOs acting irresponsibly of "dire consequences": 'They will be chased away (if they try) to give a second wind to the LTTE terrorists at a time the security forces, at heavy cost, are dealing them the final death blow," he said. Gotabaya added that some ambassadors, especially the German and Swiss ambassadors, and some news agencies were behaving irresponsibly. He named CNN, Al-Jazeera and the BBC. 'Act responsibly or be chased out,' Gota tells BBC & envoys, *The Island*, 1 Feb 2009, [On File](https://www.reuters.com/article/us-srilanka-war/sri-lanka-rejects-tamil-tiger-ceasefire-idUJSTRE53PQRV20090426)

<sup>121</sup> 26 April 2009: speaking to Reuters, Gotabaya Rajapaksa laughed at the idea of a ceasefire: 'That is a joke. They were not fighting with us, they were running from us. There is no need of a ceasefire. They must surrender.' <https://www.reuters.com/article/us-srilanka-war/sri-lanka-rejects-tamil-tiger-ceasefire-idUJSTRE53PQRV20090426>

<sup>122</sup> While speaking to a local newspaper... 'The Defence Secretary did not mince his words, when he said it was Sri Lankan troops and civilians who had perished in the conflict and therefore the government was determined to finish off the LTTE. He said humanitarian concerns were

talked only of surrender and that too without any third party present – something which arguably laid the way for the end of war violations, including the extra-judicial killings of the political wing of the LTTE.<sup>123</sup> Gotabaya Rajapaksa went as far as to allege that the LTTE had infiltrated international organisations including the foreign media in order to fabricate stories and ‘invent a scenario of a human catastrophe’.<sup>124</sup>

### **Denial: Zero Civilian Casualties**

Maintaining the implausible assertion that the Government of Sri Lanka intended to and was actually able to maintain a ‘zero civilian casualty’ policy, including conducting a humanitarian rescue mission in one of the most brutal wars on civilians<sup>125</sup> of recent years, was a surprisingly successful component of the Rajapaksa propaganda strategy. Defence Secretary Gotabaya Rajapaksa told a press conference ‘zero civilian casualties’ was the objective.<sup>126</sup> In reality it was the exact opposite, according to this Indian military analyst:

*That there will be civilian casualties was a given and Rajapakse was ready to take the blame. This gave the Army tremendous confidence. It was the best morale booster the forces could have got,’ says a Sri Lankan*

*minister who wishes to let this quote remain unattributed.*<sup>127</sup>

The international community appeared to find it hard to challenge such blatant denial. As the Charles Petrie UN Internal Review report explained:

*The Government’s responses to UN letters were few and often focused on rebutting any reference to the killing of civilians. On 13 March, in response to a 10 March letter from the USG-OCHA to President Rajapaksa, the Minister for Disaster Management and Human Rights wrote stating: ‘...I would like to reiterate the policy that the Secretary to the Ministry of Defence articulated to you, that our security forces do not fire into the safe-zone and are not using heavy weapons in civilian areas.’<sup>128</sup>*

Journalists and medical professionals who reported on casualties came under attack. In March 2009, to cite just one example, the office of *Uthayan* newspaper in Jaffna came under grenade attack reportedly after receiving orders from the Government not to publish casualty details.<sup>129</sup>

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only a ploy employed by some people to extricate Prabhakaran and his top leaders from the mess they had got into’, *War won’t stop until Prabhakaran is taken, dead or alive, Gota tells Miliband and Kouchner*, <https://www.army.lk/news/war-wont-stop-until-prabhakaran-taken-dead-or-alive-gota-tells-miliband-and-kouchner>

<sup>123</sup> 1 May 2009: ‘...Defence Secretary Gotabhaya Rajapaksa has stated that there is no need to go for Ceasefire at this juncture to liberate the civilians... That suggestion made by United States was totally rejected by Defence Secretary Gotabhaya Rajapaksa saying that any surrendering by the LTTE, should be done to the Security Forces but not to any third party’, *LTTE divided, Majority for Surrender, Minority for Battle*, 1 May 2009, *Daily News*.

<sup>124</sup> ‘There is a well-orchestrated campaign to discredit the Government and the Security Forces and bring pressure on it to declare a ceasefire by LTTE agents who have infiltrated international organizations and media institutions over a period of time... Those who are in the pay books of the LTTE are fabricating stories to invent a scenario of a human catastrophe and are disseminating false information,’ said the defence secretary,’ in *Plight of civilians: Tell the whole truth - Defence Secretary INGOs, international media*

*should not hide main fact - LTTE keeping civilians hostage*, 7 Feb 2009, *Daily News*, <http://archives.dailynews.lk/2009/02/07/sec01.asp>

<sup>125</sup> <https://itjpsl.com/reports/war-on-civilians-exhibition>, exhibition of photos of 2009 war by ITJP entitled *War on Civilians*.

<sup>126</sup> <https://lrrp2.wordpress.com/2008/08/31/human-suffering-looms-large-in-the-wanni/>

<sup>127</sup> <http://www.indiandefencereview.com/spotlights/lessons-from-the-war-in-sri-lanka/2/>

<sup>128</sup> Petrie p34, <https://digitallibrary.un.org/record/737299?ln=en>

<sup>129</sup> <https://www.tamilnet.com/art.html?catid=13&artid=28822>, TamilNet, 24 Mar 2009, ‘The main office of *Uthayan* Tamil daily in Jaffna came under grenade attack Tuesday night around 11:10 p.m., the administration of the paper told media in Colombo. Tamil media circles added that the attack had come after verbal instructions by the top officials of Rajapaksa government not to publish stories related to civilian casualties in Vanni or reproduce the contents of interviews given by the LTTE officials to news agencies and media. *Uthayan* and *Valampuri* newspapers have recently printed photos of children being killed in the Sri Lankan attacks inside ‘safety zone’ in Vanni.’

## Denial of the Use of Heavy Weapons

Propaganda asserting a zero civilian casualty policy became increasingly difficult for the Government to maintain, when it was apparent the army was still using heavy weapons in densely populated areas. Gotabaya Rajapaksa played a central role in propaganda denying that the security forces were using heavy weapons, later testifying to the domestic Lessons Learnt and Reconciliation Commission (LLRC) that:

*The next important thing I think is the restriction of the use of heavy weapons. During the latter stages because of the civilians and the restrictions of the area which was very small area the President decided that we restrict the use of indirect fire, artillery, mortar and air strikes and troops had to identify the target and shoot, also to use personal weapons only. By doing that I would say we suffered more casualties...*

He added that the military was taking casualties as a result of their efforts to prevent Tamil civilians getting hurt.<sup>130</sup>

However, the UN Panel of Experts report cited two occasions when the Government claimed it was not using heavy weapons but was in fact frequently using them.<sup>131</sup> The 2015 UN report also said in late April 2009 that heavy weapons were still being used.<sup>132</sup> Human Rights Watch (HRW) reported in May 2009 on the continued use of heavy weapons<sup>133</sup> and this was raised with the Sri Lankan Government in March<sup>134</sup>, April and May<sup>135</sup> 2009 by the US Government according to telexes found on Wikileaks<sup>136</sup>, not to mention an enormous amount of witness testimony collected by the ITJP from survivors who were under heavy weapons fire for months and from as late as the last few days of the war when the army knew civilians were densely packed into a very small space and the use of multi barreled rocket launchers against them would guarantee mass casualties .

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<sup>130</sup> UNPOE, para 101, quoting PRIU.

<sup>131</sup> para 101 regarding 25 Feb and 27 Apr 2009.

<sup>132</sup> '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.' However, the shelling did not stop, and may even have intensified according to some sources.' para 91

<sup>133</sup> <https://www.hrw.org/news/2009/05/12/sri-lanka-satellite-images-witnesses-show-shelling-continues>

<sup>134</sup> 'Ambassador is scheduled to meet with Defense Secretary Gotabaya Rajapaksa March 12 to protest government shelling into the safe zone.'  
[https://wikileaks.org/plusd/cables/09COLOMBO277\\_a.html](https://wikileaks.org/plusd/cables/09COLOMBO277_a.html)

<sup>135</sup> 'Heavy shelling in the conflict zone on May 9 and 10 resulted in the deaths of at least several hundred civilians... Earlier in the day, at a meeting of the Consultative Committee on Humanitarian Assistance (CCHA) chaired by Minister of Disaster Management and Human Rights Mahinda Samarasinghe and attended by Defense Secretary Gotabaya Rajapaksa and Senior

Presidential Advisor Basil Rajapaksa, Charge emphasized serious U.S. concern over the humanitarian consequences of fighting and reports of large civilian casualties in the safe zone. He noted that, if true, the alleged use of heavy artillery violated the President's commitments, most recently to the diplomatic community on May 7. Samarasinghe categorically denied the government's use of heavy weapons in the safe zone.'  
[https://wikileaks.org/plusd/cables/09COLOMBO514\\_a.html](https://wikileaks.org/plusd/cables/09COLOMBO514_a.html)

<sup>136</sup> [https://wikileaks.org/plusd/cables/09USUNNEWYORK494\\_a.html](https://wikileaks.org/plusd/cables/09USUNNEWYORK494_a.html)

Also in April: 'Ambassador added that the embassy continued to receive disturbing reports of heavy weapons use by both sides in the safe zone.' And 'heavy shelling in the upper portion of the southern half of the NFZ was reported early in the morning of April 22.'

[https://search.wikileaks.org/plusd/cables/09COLOMBO454\\_a.html](https://search.wikileaks.org/plusd/cables/09COLOMBO454_a.html) and  
[https://wikileaks.org/plusd/cables/09COLOMBO479\\_a.html](https://wikileaks.org/plusd/cables/09COLOMBO479_a.html)

## 2. SPECIFIC INCIDENTS IN THE FINAL WAR

This section focuses on the role Gotabaya Rajapaksa played in specific incidents at the end of the war and his knowledge of the violations of international humanitarian law and international criminal law committed by the security forces commanded by him. As outlined above, it emerges that Rajapaksa was instrumental in issuing direct orders to commanders in the field, flouting the conventional hierarchy. He was also well-informed of the humanitarian crisis – lack of food and medicine for civilians in the Wanni including starvation and the denial of objects indispensable to their survival and which resulted in hundreds of deaths. Reports say the blockage for sending in more supplies was the need for MOD approval – which was within Gotabaya Rajapaksa's power to grant. The controversial decision to order UN agencies and aid workers out of the war zone in September 2008 was not just taken by Gotabaya Rajapaksa but communicated by him in writing and orally to NGOs and the UN. The removal of the UN and aid workers was the

precursor to the mass atrocities, eliminating independent international oversight and possible leads for investigation.

### THE EAST

The war resumed first in the east of Sri Lanka, while Gotabaya Rajapaksa was Secretary of Defence. The Norwegian ceasefire mediators met Gotabaya in 2006, shortly after he had assumed office, and reports of the encounter indicate he was already preparing for a military solution.<sup>137</sup> The fighting in the east was a test run for the offensive in the north in 2008-9<sup>138</sup> and the fact that the Government of Sri Lanka didn't face huge international criticism emboldened them. Civilians in camps and hospitals<sup>139</sup> in the east were shelled by the army<sup>140</sup> in a precursor for the attacks in 2009 in the north. Journalists such as J S Tissainayagam who reported on the Vaharai war, were later detained and charged for what they wrote.<sup>141</sup> Interestingly the slogan 'zero

<sup>137</sup> 'On 6 April, 2006 Hanssen-Bauer and Brattskar have a tense meeting with Defence Secretary Gotabaya Rajapaksa. In response to a question about whether the ethnic and political problems in Sri Lanka could be solved by military means Gotabaya answers, 'yes.''  
<https://www.oecd.org/countries/srilanka/49035074.pdf>

<sup>138</sup> 'The lessons that were learned capturing the East subsequently appear to have shaped the conduct of the later Northern campaign and gave 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.' §69 OISL

However, the US Government praised the Army for keeping casualties low, which arguably set the stage for the repeat of the same tactics writ on a larger scale in the North. 'Ambassador commended the Secretary for conducting a successful battle with such low civilian casualties, after the initial shelling incident.'  
[https://wikileaks.org/plusd/cables/07COLOMBO214\\_a.html](https://wikileaks.org/plusd/cables/07COLOMBO214_a.html)

<sup>139</sup> <https://reliefweb.int/report/sri-lanka/over-100-civilians-dead-and-injured-school-and-hospital-hit-sri-lankan-army-attack>

<sup>140</sup> 'Human Rights Watch conducted interviews with 12 witnesses to the attack. All said that the shells landed without warning and that, while the LTTE was frequently milling about the area, no LTTE fighters were located in or adjacent to the IDP camp at the time of the attack or directly before. The LTTE had sentries in the area of the camp, ostensibly to monitor the movement of displaced persons, they said, but the nearest LTTE military base was the Sinnakangai camp on the coast about two kilometers away. None of the interviewees had seen or heard outgoing shelling earlier that day.'  
<https://www.hrw.org/reports/2007/srilanka0807/4.htm>

<sup>141</sup> 'The charges against Tissainayagam also include part of a November 2006 article on the military offensive in Vaharai, in the east, which said, 'Such offensives against the civilians are accompanied by attempts to starve the population by refusing them food as well as medicines and fuel, with the hope of driving out the people of Vaharai and depopulating it. As this story is being written, Vaharai is being subject to intense shelling and aerial bombardment.'  
<https://www.hrw.org/news/2009/01/22/letter-president-mahinda-rajapakse-sri-lanka-free-journalists-unfairly-held>

civilian casualties' was first coined by the army in the east<sup>142</sup> and went unchallenged.

According to a book by Wasantha Karannagoda, then Navy Commander, Gotabaya Rajapaksa was the person who gave the order for the attack on Sampur in the east of Sri Lanka in August-September 2006 (in flagrant disregard of the ceasefire).<sup>143</sup> The Government's belief was the LTTE's control of Sampur endangered the country's most important navy base at Trincomalee. Wasantha Karannagoda reminisced about receiving the order from Gotabaya Rajapaksa to use breakaway LTTE paramilitaries under Karuna to attack Sampur in 2006, with,

he says, Gotabaya also issuing direct orders to the 22 Division Commander of the Army.<sup>144</sup>

## THE NORTH

### Madhu In Mannar District

In May 2006, the Catholic Church wrote to Gotabaya Rajapaksa putting him on notice regarding attacks by 'deep penetration units' of the military on civilians in the Madhu area on the western coast using claymore mines, where the country's most important Catholic shrine is situated.<sup>145</sup> Despite these warnings, regular attacks against both civilian and LTTE targets in Mannar District continued.<sup>146</sup> None have been investigated as they occurred at the

<sup>142</sup> 'Our briefer, Brigadier General R M D Ratnayake, Commander of the 23rd Army Division, emphasized that the military's goal in Vakarai was "zero civilian casualties".' (Note: The Ambassador weighed in on three separate occasions with Defense Secretary Gotabaya Rajapaksa during the Vakarai campaign to urge that exceptional measures be taken to avoid civilian casualties, which had marred other recent military operations by the GSL.)

[https://wikileaks.org/plusd/cables/07COLOMBO302\\_a.html](https://wikileaks.org/plusd/cables/07COLOMBO302_a.html)

<sup>143</sup> *Sri Lanka: LTTE's moment of truth at Sampur* Update 101, South Asia Analysis Group, Col R Hariharan (ret'd) who was Head of Intelligence of the Indian Peace Keeping Force in Sri Lanka, 1987-90, <https://web.archive.org/web/20070706090043/http://www.s.aag.org//notes4/note331.html>

<sup>144</sup> 'The next day I went to meet defence secretary. 'Sir, there is a slight problem due to bombing Sampur.' 'Aren't you the one who told to bomb Sampur. Now what is the problem?' 'Sir, the LTTE knows that we will first attack Sampur if a war starts. Therefore, they will try to strengthen the area. If sir gives me permission, I can go to Trincomalee, and use our friendly people who broke away from the LTTE and destabilize Sampur for the LTTE.' 'Wasantha, your proposal is good. Do so. I will tell Trincomalee 22 Div. Commander (commander of the 22<sup>nd</sup> Division) to lend you the necessary assistance.' 'Thank you sir.' p279, *Adhishtanaya - Memoirs*, Admiral Wasantha Karannagoda (trans Sinhala).

<sup>145</sup> <https://lrrp2.wordpress.com/2006/05/31/stop-madhu-attacks-mannar-bishop/> 'Bishop Rayappu Joseph has written to Defence Secretary Gotabaya Rajapaksha that claymore mine attacks have been made from the jungle areas killing civilians. The Bishop said that six civilians have been killed by claymore mines attacks within the last few weeks. 'I have requested the Defence Secretary to take care that no military attacks happen in the reservation area,' said Bishop Rayappu Joseph. Deep penetration: The Bishop explained that Madhu is considered a sacred area and many pilgrims visit the place through the year. When questioned why the bishop wrote to the Defence Secretary when it is well known that the LTTE is responsible for claymore mine attacks he said that it is the deep penetration units of the army that were responsible for these

attacks. 'The local army commanders have informed me that these attacks are not conducted by them and it's the rapid deployment forces roaming in the jungles which are under direct instruction from the Defence Ministry that are conducting these attacks.'

<sup>146</sup> A selection of reported incidents (from media sources and ITJP witness statements) that occurred after the Secretary of Defence had been warned by the Bishop:

**29 April 2006:** TamilNet reported that a Tamil man was injured seriously and then died in a claymore attack by the Deep Penetration Unit of the Sri Lankan Army.<sup>146</sup>

**22 May 2006:** TamilNet reported that two people were killed in a claymore attack by the Deep Penetration Unit of the Sri Lankan Army in Madhu.<sup>146</sup>

**August or September 2007:** a claymore attack killed the doctor in charge of Nedunckeray Hospital. He was in an ambulance and also killed were his driver, two medical staff and two civilian patients.

**29 January 2008:** a claymore attack near Madhu on a bus travelling with about 50 school children aged from 6 to 15 years old from a school from Mannar. Every child was either killed or wounded. There were around 30 killed.

US State Department report cites the **same incident**: 'On January 28, a claymore mine attack killed 17 civilians, including nine school children, near Madhu, an area controlled by the LTTE at the time. A military spokesperson denied the army was behind the attack.'

**Approx. June 2008:** travelling from Malangarvi Hospital to Pallamadam Hospital a witness saw a van coming the other way that was blown up by a claymore. There were about 3 people killed, including a senior LTTE cadre and some civilians.

**Late 2008:** between Thunakkai and Vellankulam, the vehicle of a doctor was hit using a claymore mine killing a Catholic priest who was travelling in the vehicle and one of the health staff, and injuring the driver severely and one medical staff. The driver Kumar was severely injured in the attack.

**27 November 2008:** a claymore attack occurred near Lyangankulam, south west of Kilinochchi. This was the LTTE Martyrs Day. An ambulance was ferrying 13 or 14 first aid workers from the NGO, the Health Development Council; they were reportedly not linked to the LTTE. Some of the first aid workers were school children. 11 were killed and only one or two survived the attack.



beginning of the Sri Lankan military's northern offensive, and the focus of international inquiries to date has been on the final bloody months of 2009.

The 572 Brigade<sup>147</sup> was reportedly given the task of capturing Madhu<sup>148</sup> in Mannar District, assisted by the 571 Brigade led by Col G V Ravipriya at the time. Both of these brigade commanders reported directly to Jagath Dias and, according to Gotabaya Rajapaksa, the chain of command worked well, right up to the three service commanders.<sup>149</sup>

The brigade commanders captured the Madhu church on 24 April 2008.<sup>150</sup> Both the LTTE and the Sri Lankan military accused each other of endangering the historic shrine by firing on or from it. As the battle came close to the church, civilians evacuated, but priests remained to protect the precious statue of the Virgin Mary, and they describe being forced to hide in bunkers because the fire was so intense.<sup>151</sup>

Despite this, Gotabaya Rajapaksa later endorsed the actions of Jagath Dias:

*General Jagath Dias led the 57 Division; he did a tremendous task because it was his responsibility to regain Kilinochchi. He was there from the very beginning of the Humanitarian Operations till the very last minute.*<sup>152</sup>

## COLOMBO

In June 2007, hundreds of Tamils were suddenly evicted from Colombo cheap hotels known as lodges and sent to the north east of the island in buses under police escort.<sup>153</sup> Descriptions confirm that armed police officers entered the lodges in Tamil areas of Colombo and 376 people were evicted, 291 males and 85 females.<sup>154</sup> Reports indicate that Gotabaya Rajapaksa didn't just approve the evictions but actually ordered them.<sup>155</sup> A fundamental rights petition was filed in court, but appears to have been settled partly because the Prime Minister apologised

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<sup>147</sup> 572 under the command at the time of Col Senerath Bandara told a journalist later: 'We had liberated the area on April 25, but took another 72-hour period to declare it as we were instructed by the Army Commander and Security Commander Wannu Maj. Gen. Jagath Jayasuriya to confirm the area as totally free of terrorists.' *When four military officers vowed to free Madhu Church of terrorists*, Shanika Sriyananda, *Sunday Observer*, 9 Aug 2009

<sup>148</sup> *ibid*

Also the Lessons Learned and Reconciliation Report (LLRC, 2011), a government-appointed commission, places some of the 57 Division in Madhu, para 3.13

<sup>149</sup> 'We have Task Force 1 operating on the Mannar-Pooneryn front, 57<sup>th</sup> Division operating on the Madhu-Thunukkai front, Task Force 2 on the Mankulam axis and 59<sup>th</sup> Division on the Welioya axis. In addition, we have two divisions positioned at Muhamalai, constantly threatening the enemy. During this period, the role of the three service commanders has been critically important. This is the first instance that we have had commanders who have faced the enemy from the beginning of their careers. All of them have been part of major operations and have brought that experience and knowledge into the equation. They were able to read the battle accurately. All of them exude supreme confidence, are highly motivated and possess exceptional skills. They all have a good understanding of the capabilities of their subordinates and therefore are able to select the proper officers to carry out specific tasks.' [*Gotabaya Rajapaksa*] *Man Behind The Country's Defence Strategy*, *Business Today* interview with Gotabaya Rajapaksa, On file.

<sup>150</sup> *Madhu where the LTTE began its retreat*, Shamindra Ferdinando, 14 Jun 2011, *The Island*

The offensive involved 572 Brigade Commander Lt Col Senarath Bandara, 7 CLLI Lt Col Ranjith Abeywardena, 10

CLLI Lt Col Jagath Koddituwakku and 7SR Lt Col Kithsiri Liyanage, *When four military officers vowed to free Madhu Church of terrorists*, Shanika Sriyananda, *Sunday Observer*, 9 Aug 2009.

'The liberation of Madhu by the 57 Div was the first significant victory achieved by the Army on the Vanni front.' *ibid*.

<sup>151</sup> 'Shell fire hits Madhu Shrine', Amantha Perera, *Sunday Leader*, On file

<sup>152</sup> *Military transformed from victor to reconciler*, Dhaneshi Yatawara, 8 Sep 2013, *The Sunday Observer Lanka*,

<http://archives.sundayobserver.lk/2013/09/08/sec03.asp>  
*Defence Secretary Gotabaya Rajapaksa Salutes The War Heroes*, <https://businesstoday.lk/defence-secretary-gotabaya-rajapaksa-salutes-the-war-heroes/>

<sup>153</sup> *The United States condemns the forced removal of Tamils*, 8 Jun 2007,

<https://web.archive.org/web/20091105131731/http://srilanka.usembassy.gov/pr-08june2007.html>

<sup>154</sup> 28.29, <https://www.refworld.org/pdfid/4a55cf0d2.pdf>

<sup>155</sup> 'We have to defend ourselves. I'm talking about terrorists. Anything is fair,' Gotabaya Rajapaksa told Reuters and the BBC, during the June 2007 controversy.' *Outsiders quit Colombo, tells Defence Secretary*, TamilNet, 13 Sep 2008,

<https://www.tamilnet.com/art.html?catid=13&artid=26933>

'On June 4, last year, at a confidential meeting at the Overall Operations Command Headquarters in Colombo, Defence Secretary, Gotabaya Rajapakse personally gave orders to evict Tamils from Colombo lodges...In an interview last week to the Sunday Lankadeepa Gotabaya Rajapakse was defiant. He said, 'there are lakhs of Tamils in Colombo. We sent back 300 of them who were in Colombo without a valid reason.' *Meet Gota - the 'Ugly American'*, 27 Jan 2008, *Sunday Leader*, On file.



and the Supreme Court had already issued an Interim Order directing the IGP (Inspector General of Police) not to take any steps to evacuate Tamils from Colombo or prevent them from entering and staying in any part of Colombo.<sup>156</sup> However despite the apology a year later, in September 2008, Gotabaya Rajapaksa told the state-run newspaper that thousands of Tamils living in lodges and elsewhere in Colombo should return to their villages in the east of Sri Lanka as they were causing a security problem.<sup>157</sup>

## HUMANITARIAN ASSISTANCE

### Consultative Committee on Humanitarian Assistance (CCHA).

Gotabaya Rajapaksa was well-informed about the deteriorating humanitarian situation in the conflict areas. He himself testified to the domestic Lessons Learnt and Reconciliation Commission (LLRC) that 'the first CCHA [Consultative Committee on Humanitarian Assistance] meeting was held at the Ministry of Defence<sup>158</sup> (on 14 Oct 2006), and that these meetings were held at the Ministry of Defence on a fortnightly basis. He added, 'in this Committee from the government side the Secretary Defence was present all the time'. The meetings included the Commissioner General of Essential Services which means Gotabaya was well aware of the controversy surrounding the amount of food and medicine entering the Vanni, causing great food insecurity and harm to those

injured. In addition, he himself says a wide range of UN and NGO officials and diplomats were present in the meetings.<sup>159</sup>

*Another important factor about the CCHA, the first that we have taken all the minutes the Commission can go through, very importantly you can see how extensively we have discussed these things and attended to them from the very beginning, its not only two weeks but starting from 2006 throughout the end we regularly met and discussed and action has been taken to whatever issues that came up during these meetings.*

It is clear that from the outset Gotabaya played a decisive role in the denial of access for humanitarian aid – a Wikileaks US Embassy telex reported on the meetings of the Bilateral Donors Group (BDG) and the Consultative Committee Meeting on Humanitarian Assistance (CCMHA) in Nov 2006:

*While BDG members, the UN, the ICRC, and the EU are pressing for improved access to LTTE-controlled areas and Jaffna, the Secretary of Defense remains reluctant.*

In addition, Gotabaya was copied in on correspondence from the UN pleading for more medicine to be sent to the war zone. One such letter identified 'an urgent need for antibiotics, dressings, sutures and disinfectants.'<sup>160</sup> The doctors in the Vanni also wrote begging the Government of Sri Lanka, the UN, the ICRC and international community for

<sup>156</sup> ibid 28.28 para.

<sup>157</sup> *Outsiders quit Colombo, tells Defence Secretary*, TamilNet, 13 Sep 2008. <https://www.tamilnet.com/art.html?catid=13&artid=26933>

<sup>158</sup> 'And thereafter at MOD 'Every meeting because it was held at the Ministry of Defence although it is headed by the 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, evacuation etc.'

Also OISL §106 says '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.'

<sup>159</sup> 'Representatives from the Foreign Affairs were present, all the heads of UN Agencies in Sri Lanka were present at this meeting, heads of UNHCR, ICRC, WFP, UNICEF, UNDSS, heads of all these organizations were present all the time and also the head of the delegation of the European Commission and the Ambassador for Germany and all the Ambassadors of the Co-chairs were present, the Ambassador for USA, Ambassador for UK, Japanese

Ambassador, all were present at this meeting and the Chairman of the NGOs Committee were present throughout, the government agents of the districts were present at this meeting, the Secretary to the Health Ministry was present throughout.' LRRRC Testimony.

Reiterated by the Minister of Foreign Affairs on 26 Feb 2020 in the UN Human Rights Council where he said, 'The records of the meetings of the Consultative Committee on Humanitarian Assistance (CCHA) which was attended, inter-alia, by the co-chairs of the peace process and other international partners including UN agencies, clearly indicate that the Government of Sri Lanka made every effort to provide essential supplies and protect the lives of civilians in the conflict zone during the humanitarian operation.' High Level Segment Speech on file.

<sup>160</sup> Correspondence from the Office of the UNR/HC to Basil Rajapaksa, Special Advisor to the President, dated 26 Feb 2009. Cited in footnote 943, PIAC, 'Island of Impunity' report.

medical supplies as early as 26 January 2009, warning that if they didn't arrive within 24 hours many of the injured would die.<sup>161</sup> Although the Government later denied knowing about the shortages, the UN investigation in 2015 (OISL,§994) found that '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'. 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 elderly people had died of starvation.<sup>162</sup> The UN Charles Petrie report also cites in detail this letter from Dr T Varatharajah, who was subsequently jailed and forced into exile:

*On 2 March 2009 the Mullaithivu Office of the Regional Director of Health Services, wrote to the Mullaithivu Government Agent, copying the Secretary to the Ministry of Health, ICRC, and WFP, saying 'You are already aware that the people are facing death by starvation consequent to the ensuing war ... most of the people are consuming leaves ... Six persons from one family who had consumed cooked leaves to which they were not used to [sic] had been brought to the hospital in an unconscious state after vomiting.'*<sup>163</sup>

The UN Petrie report's Annex cites a public statement released on 5 March 2009 by the Office of the Regional Director of Health Services in Mullaitivu in the Vanni in which it referred to 'a humanitarian catastrophe': 'The statement describes a severe shortage of medicines, including anaesthetic drugs, surgical items, IV fluids, antibiotics and vaccines. It stated that 'Due to the non-availability of materials to construct toilets,

open defecation has become common among the majority of the people.''

The UN Petrie report's Annex (§104) further cites a 16 March 2009 open letter from the Regional Directors of Health Services of Mullaithivu and Killinochchi to the Secretary of the Ministry of Health saying '*...less than 5 percent of the combined quota of drugs and dressings that are meant for the last quarter of last year and for the first quarter of this year have been sent to us, so far. You are well aware of the fate of the remaining bulk - to be kept in Vavuniya awaiting security clearance from the **Ministry of defense**, despite our repeated requests and reminders made to you*'. The letter went on to argue that most of 500 deaths in hospitals between January and mid-March 2009 could have been '*prevented if basic infrastructure facilities and essential medicines were made available... We have been supplied with no antibiotics, no anesthetics and not a single bottle of IV fluid*'.

The ICRC ships supposed to bring in supplies experienced heavy shelling in their immediate vicinity, forcing them to withdraw. The UN Petrie report Annex (§105) also cites a UN international staff member who said doctors in the Vanni called him in the middle of the night several times in March, April and May 2009 '*in desperation, saying that their patients were dying because they lacked the means to treat them*'. The Petrie report also includes contemporaneous SMS messages from local UN staff in the war zone referring to drug shortages.

The UN investigation, OISL (§1169), concluded there were:

*...reasonable grounds to believe that the Government knew or had reasons to know the real humanitarian needs of the civilian*

<sup>161</sup> Letter on file entitled 'Humanitarian Catastrophe and Medical Emergency in the Vanni'.

<sup>162</sup> OISL §992 citing: Correspondence from Regional Director of Health, 2 Mar 2009. Letter in Tamil and English, also on file with ITJP. The letter gives the names of the victims and details of deaths:

1. Ponnai Tharmalinagm	M	65y
2. Ponnaiah Ratneswary	F	65y
3. S.Jeyanthini	F	17y
4. Santhanam Visaluxmy	F	72y

5. Arumugam Rasiah	M	66y
Details of those admitted following ingestion some unfamiliar leaves.		

1. Sinnathamby Vasanthabalan	M	46y
2. V.Pathmathevi	F	38y
3. V.Pavitharan	M	14y
4. V.Sathya	F	13y
5. V.Samarventhan	M	06y
6. V.Keerthika	F	06y

<sup>163</sup> Petrie Annex iii B c §103, unredacted version, on file.

*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.*

The shortage of food and medicine seriously endangered civilian lives. OISL (1169) spoke of 'alleged deaths due to starvation'.<sup>164</sup> The Sri Lankan Government including the Ministry of Defence was repeatedly informed of the shortages and their impact, ensuring that Gotabaya Rajapaksa would have known about the shortages as well as from the humanitarian meetings he attended. At the time he had the authority, power and capacity to allow more supplies in to civilians, but he deliberately failed to act.

## **EVACUATION OF UN AND NGOS IN SEPT 2008**

### **On Gotabaya's order**

Sri Lanka has sometimes been referred to as a war without witness because from September 2008

onwards the international media and aid workers were deliberately denied access to the conflict areas. This began when international aid workers were ordered to leave Kilinochchi which was in the war zone in September 2008, with most leaving reluctantly. The Government's stated rationale behind the order was it was unsafe for aid workers to remain in the Vanni. The example of what had happened to the Action Contre le Faim (ACF) staff in Muttur was cited, even though the security forces themselves were alleged to be responsible<sup>165</sup> for the executions of 17 aid workers from ACF in an incident two years earlier. It is notable that nobody has been held accountable for the killings of the ACF workers. One reason aid workers were unsafe in the Vanni was that the MOD refused to let the UN take in necessary protective security equipment.<sup>166</sup>

Gotabaya Rajapaksa himself confirmed in an interview posted on the MOD website that he had control over NGOs in operational areas.<sup>167</sup>

The Government directive to aid organisations and the UN that their staff had to evacuate the war zone in September 2008 was signed by Gotabaya Rajapaksa as Secretary of Defence, according to Human Rights Watch.<sup>168</sup>

<sup>164</sup> OISL (§982) said '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.'

<sup>165</sup> Gotabaya Rajapaksa cited the example of the Muttur killings of aid workers as grounds to remove international aid workers from the Vanni, in an interview on the MOD website in Sep 2008, saying 'Next more importantly is the security threat. This is very relevant when you look at what happened in Muttur.' [https://web.archive.org/web/20080923065349/http://www.defence.lk/new.asp?fname=20080919\\_05](https://web.archive.org/web/20080923065349/http://www.defence.lk/new.asp?fname=20080919_05)

This is despite the fact he knew that the Muttur ACF killings were most likely committed by his own government because the IIGEP report had been published by this time. This IIGEP report said: 'There is ample and undisputed evidence in the ACF case, the Trincomalee case and the Pottuvil case that members of the State security forces were at or near the scenes of crime when the murders were committed.' P6, IIGEP report to Donors, on file.

'In the Commission's opening statement at the Public Hearing on 14 May 2007, Deputy Solicitor General Yasantha Kodagoda, also serving in his capacity as Lead Counsel for the Commission's Panel of Counsel, stated that whoever controlled Muttur Town Centre on a certain date and time were the killers - a day that the LTTE would at the very least be suspects in the killing, and likely the killers. Much of the questioning of witnesses by him during closed sessions of

investigation by the Commission was also designed to point to the LTTE being in control of Muttur at the relevant time, hence the perpetrators. There were many pieces of evidence known to him that established that it was in fact GoSL Commandos and other security forces that controlled Muttur at the relevant time - including an official GoSL press release declaring that the Army was in fact in control at material times.'

<sup>166</sup> 'Restrictions imposed by the Ministry of Defence made it difficult for the UN to take security and communications equipment into the Vanni. Similarly, it was only with difficulty that in July and August 2008 the UN was able to take in the materials to build a limited number of bunkers and safe rooms for staff, and supplementary fuel to provide emergency reserve supplies', p14, Charles Petrie report, Annexes.

<sup>167</sup> 'Again NGOs are not my subject except those in operational areas' 19 Sep 2008, 'These are the best years of our forces -Secretary Defence, MOD', [https://web.archive.org/web/20080923065349/http://www.defence.lk/new.asp?fname=20080919\\_05](https://web.archive.org/web/20080923065349/http://www.defence.lk/new.asp?fname=20080919_05)

<sup>168</sup> 'In September 2008, Sri Lankan Defense Secretary Gotabhaya Rajapaksa ordered the United Nations (UN) and international humanitarian agencies to leave the Vanni'. *Besieged, Displaced, and Detained, The Plight of Civilians in Sri Lanka's Vanni Region*, 23 Dec 2008, <https://www.hrw.org/report/2008/12/23/besieged-displaced-and-detained/plight-civilians-sri-lankas-vanni-region> Also actually from the Minister of Human Rights and Disaster Management too.

The Consultative Committee on Humanitarian Assistance (see above), which included humanitarian agencies, met fortnightly in Gotabaya's office and he attended all meetings. He would have been well briefed on the increasingly desperate humanitarian situation in the Vanni in 2008-9, which saw civilians die of starvation and suffer lack of access to medical supplies and treatment. Nevertheless Reuters also reported there was a face to face meeting between NGOs and the Secretary of Defence to communicate his order in person:

Defence Secretary Gotabaya Rajapaksa himself informed a committee of humanitarian aid leaders on Monday afternoon.

Aid agencies further referenced a written government directive from Gotabaya Rajapaksa:

*Secretary to the Ministry of Defence, Public Security, Law and Order has advised in his letter dated 05/09/2008 and numbered SMOD/320/DEM/GEN(45), to inform all the NGOs registered in this office that no expatriate/employee or any other person employed by an NGO and working in the Vanni will be permitted to travel beyond the Omanthai checkpoint, in consideration of prevailing security situation.<sup>169</sup>*

And staff in the Vanni also directly received notice from the Sri Lankan army:

*That same night, UNHCR and WFP received written communications from the Sri Lanka Army informing them that the Government could not guarantee the safety and security of aid workers within the Wannai and that any movements would be at their own risk.<sup>170</sup>*

The notice to vacate was accompanied by the aerial bombardment of UN sites in the 'Kilinochchi box' that was supposed to be 'conflict free' according to an agreement between the UN and the government. Below is a list compiled from the UN internal review (Petrie) report of attacks on UN sites in the Kilinochchi box:

On **27 November 2007**, offices within the Killinochchi Box of WFP and FORUT, an NGO, within the Killinochchi box, sustained damage following government air strikes, apparently targeting the offices of the LTTE political wing.<sup>171</sup>

On **3 September 2008**, several artillery shells hit within the Killinochchi box close to UN compounds - UN staff believed the artillery shells originated from government forces.<sup>172</sup>

On **9 September 2008** another artillery shell landed in the Box, hitting a WFP Compound.<sup>173</sup>

**10 September 2008** - there was a government air attack on Killinochchi.<sup>174</sup>

**3 October 2008** - UN Offices in Killinochchi were damaged again during a government aerial bombardment<sup>175</sup> and suffered 'substantial collateral damage'.

The GPS coordinates for UN sites in Kilinochchi were well known to the Air Force, which was under the command and control of the Secretary of Defence. It is unthinkable that so many attacks could have occurred without Gotabaya Rajapaksa being aware of them - indeed the UN reported them to the government in writing and they were also reported in the media.<sup>176</sup> There is no indication that Gotabaya Rajapaksa initiated any investigation into what had happened.

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<sup>169</sup> <https://reliefweb.int/report/sri-lanka/sri-lanka-un-ngos-pull-out-north>

<sup>170</sup> Charles Petrie report, Annexes, p14

<sup>171</sup> Charles Petrie report, Annexes

<sup>172</sup> Charles Petrie report, Annexes, p14

<sup>173</sup> 'Later that day the Secretary-General's spokesperson issued a statement<sup>173</sup> referring to the 'Government's request for relocation of UN humanitarian staff' and noting the IHL obligations of all parties, but making no mention of Government security forces as the apparent source of shelling.' Charles Petrie report, Annexes, p15.

Note the UN says 'The JoH was commanded by the Chief of Defence Staff, who was responsible to the Secretary of Defence.'

<sup>174</sup> Charles Petrie report, Annexes, p15

<sup>175</sup> Charles Petrie report, Annexes, P17

<sup>176</sup> 'From October to December, the RC sent a series of letters to the Government regarding the convoys, writing variously to the Minister of Defense, the Chief of Defence staff, the Deputy Secretary to the Treasury and Commissioner General of Essential Services, and to the Minister for Disasters and Human Rights.' Petrie Report Annex, p21.

In his 2010 testimony to the LLRC, Gotabaya said he was aware that allegations were levelled against the Air Force regarding what it bombed: ‘...we were blamed most of the time for bombing by the Air Force and for air strikes’, he said. He goes on to explain the precision of the government’s targeting and that the process of giving approval to strike a target went right up to the air force commander and was based on an enormous amount of information from digital maps, aerial photos and UAV and surveillance aircraft footage. Significantly, he says all air strikes were reviewed by the National Security Council, whose meetings he often chaired and which was under his *de facto* control:

*We had a very clear process that any air strikes were undertaken only after the approval of the Air Force Commander. When the request comes it’s comes all the way up to the Air Force Commander and when we were planning the target we had a very clear procedure... So all these targets were taken on after a thorough surveillance of the area. All the attacks were filmed by these aircraft and we have reviewed all these attacks even at the Security Council each and every air strike that is why even our Pilots were very well trained and they were capable of taking pin point targets...*

The decision to order the UN and aid agencies to evacuate the Vanni effectively removed international witnesses to the violations of IHL and ICL that were coming. It was extremely effective in obstructing the flow of information out of the war zone. Gotabaya Rajapaksa would have known this was would in all likelihood be the potential consequence of his actions. Three months later a report by Human Rights Watch stated that:

*Sri Lankan officials also have shown overt hostility to outside agencies and humanitarian staff in recent months,*

*suggesting that political considerations or a desire to remove independent observers from the scene might also have been behind the ouster.<sup>177</sup>*

This is confirmed by a military officer involved in the offensive in 2008-9, who testified that:

*Gotabaya wanted them out of the Vanni so that they could not report what was happening in the war zone. Gotabaya... basically said that his orders were to demand that the internationals leave and that his commanders were to carry out his order.*

Later on, Gotabaya claimed in his testimony to the LLRC: ‘I want to show that there was nothing in these areas we were hiding and we wanted to be transparent the whole time.’ This was not the case, since in practice he controlled access to the war zone for journalists and aid workers. Journalists allowed to the frontline in 2009 explained that their visits had to be approved by Gotabaya Rajapaksa.<sup>178</sup>

Furthermore, the decision to evacuate greatly intensified the human suffering of civilians in the war area. Human Rights Watch commented in 2008 in a report that:

*This policy has drastically worsened the plight of the civilian population, significantly reducing prospects that essential food, shelter, water, sanitation, and health care would reach affected individuals.<sup>179</sup>*

The decision to remove aid agencies contributed to the Government of Sri Lanka’s denial of humanitarian assistance (food and medicine) to hundreds of thousands of civilians in the war zone in the coming 8 months (Oct 2008-May 2009). The UN Investigation (OISL §983 on) reported on the incidents of starvation caused by the denial of food and the deaths caused by insufficient medical supplies being sent by

<sup>177</sup> *Besieged, Displaced, and Detained, The Plight of Civilians in Sri Lanka’s Vanni Region*, 23 Dec 2008, <https://www.hrw.org/report/2008/12/23/besieged-displaced-and-detained/plight-civilians-sri-lankas-vanni-region>

<sup>178</sup> ‘The visit was facilitated by Defence Secretary Gotabaya Rajapaksa, younger brother of President Mahinda Rajapaksa and one of the architects of the government victory in Eelam War IV.’ Reuters, 2 Nov

2007, *On the killing of Tamilselvan*, <https://frontline.thehindu.com/cover-story/article30187255.ece>

<sup>179</sup> *Besieged, Displaced, and Detained, The Plight of Civilians in Sri Lanka’s Vanni Region*, 23 Dec 2008, <https://www.hrw.org/report/2008/12/23/besieged-displaced-and-detained/plight-civilians-sri-lankas-vanni-region>



government ministries. Had the UN and other international aid workers been allowed to decide whether to remain in the war zone, the humanitarian plight of civilians would have been widely reported domestically and internationally and the government would have found it difficult to distort the population figures<sup>180</sup> and deny food and medicine to civilians. Just two months later, in November 2008, the foreign secretary, Palitha Kahona, claimed just 100,000 people remained in the Vanni, which turned out to be a staggering underestimate since 282,000 people walked out alive in 2009, aside from those who would have died in the intervening period.<sup>181</sup>

A series of attacks by both government forces and the LTTE on UN humanitarian convoys entering the Vanni in 2008-9 are outlined in detail in UN reports such as OISL (§961 on) and the UN Internal Review by Charles Petrie. The UN reported these attacks to Gotabaya's subordinate, the Chief of Defence Staff, Donald Perera.<sup>182</sup>

#### THE NO FIRE ZONES (NFZ)

The three No Fire Zones were unilaterally announced by the Sri Lankan Government. All of them were attacked with heavy weapons by government forces. Civilians were nevertheless instructed by the army to move to these zones, ostensibly for safety only to then be treacherously attacked.

Regarding the location of the first NFZ, UN staff<sup>183</sup> at the time knew that it was problematic to locate it so close to the frontlines, while the UN investigation later said that this

offered few escape routes for the civilian population (§803 UN OISL):

*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.<sup>184</sup> 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. (§756 UN OISL)*

In 2011, Gotabaya invoked the No Fire Zones in his defence, though he admitted some civilians were killed after all; this is how his remarks were reported:

*Defence Secretary Gotabaya Rajapaksa, the brother of the President, Mahinda Rajapaksa, has released a passionate justification of the military's controversial action, saying the government "made every effort to protect civilians in the conflict zone through the creation of safe corridors and no-fire zones".<sup>185</sup>*

In spite of the assertion that the NFZs were safe, the UN investigation says they were shelled repeatedly:

*Red Cross, India differ with Sri Lanka, 21 Nov 2008, The Hindu.*

<sup>180</sup> See Charles Petrie report for information on this: 'Low population numbers were used to argue that the quantities of food and other humanitarian assistance being delivered were adequate; low numbers were also used during the conflict and subsequently to rebut allegations of civilian deaths.' Annex II. He also says 'The Government claimed there were 70,000 people in the Wanni in the Fall of 2008. In fact it appears there were at least 360,000.'

<sup>181</sup> 'Foreign Secretary Palitha Kohona said there was no estimate of the displaced in the conflict zone as a census has not been conducted. 'We believe the figure of 2,30,000 to 3,00,000 estimated displaced by various agencies is grossly exaggerated. The government's own assessment is that the figure could be around 1,00,000.'" <https://www.thehindu.com/todays-paper/tp-international/Aid-distribution-Red-Cross-India-differ-with-Sri-Lanka/article15377058.ece>, *Aid distribution:*

<sup>182</sup> 'In one the strongest letters from the UN, on 12 December the RC [resident coordinator] complained to the Government's Chief of Defence staff regarding Government shelling on 9 and 10 December close to a UN convoy for over an hour and despite repeated security assurances being given: the letter provided details of the shelling and specifically stated 'the shelling was delivered by Government forces' and warned that UN staff could have been hit. On 16 December the RC sent a second letter to the Chief of Defence staff regarding restrictions on UN international staff in the Wanni and increasingly frequent searches.' Annexes p33

<sup>183</sup> Testimony. OISL later.

<sup>184</sup> UNOSAT satellite imagery seen by OISL.

<sup>185</sup> <https://www.smh.com.au/world/sri-lankan-civilian-deaths-unavoidable-20110802-1i9t9.html>



*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 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.'* (OISL §762)

### **Informed about Air Attacks**

Apart from the air attacks on UN sites in Kilinochchi **cited above**, concerns about a number of other air strikes hitting civilians were reported to the government by the UN:

*A 17 December [2008] letter reported two aerial bombardments that hit near the Vaddakachchi hospital, while hundreds of people were waiting at the out-patient department, killing two small children and injuring 13 civilians. The letter recalled the Government's IHL obligations...<sup>186</sup>*

*On 13 January the RC [Resident Coordinator of the UN] wrote to the Government regarding 'reports of civilian injuries and deaths as a result of shelling and aerial bombardments' citing the killing of 4 civilians and injury of 18 in Visuvamadu and the killing of one person and injury of six at the Puthukkudirippu Hospital, as well as substantial damage to the hospital.<sup>187</sup>*

There is no indication that Gotabaya Rajapaksa or the government inquired into these complaints from the UN, which both he and the government must have known about.

### **Convoy 11**

In January 2009, UN staff on the 11<sup>th</sup> and last food convoy sent by the UN into the Vanni traveled to PTK. The convoy included 58 trucks with food, accompanied by five 4x4 light

vehicles with long distance radios. In addition to the truck drivers, there were six international staff and five national staff. They were repeatedly attacked by government artillery (130mm shells) with devastating civilian casualties. Sri Lankan authorities delayed the departure and then used the cover of the convoy to advance its soldiers into LTTE-held territory.<sup>188</sup> When the convoy tried to leave, the LTTE refused to let local staff leave the Vanni, resulting in 7 of the UN lorries and 2 international staff remaining behind. One of the international staff members was asked to leave behind the 4x4 vehicle he was driving (the second 4x4), and get into one of the other trucks in the now departing convoy. He refused to do so, threw out the personal effects of the remaining staff, and drove away in the 4x4 following the departing trucks. The remaining UN national and international staff were left with just one light 4x4 vehicle and a single long-range radio.

On the night of 25 January, the UN international staff described absolute mayhem in an area where they said there was 'a total sea of people':

*By 2200 hrs, a virtual, uninterrupted barrage of heavy 130 mm artillery was landing within the GA compound and surrounding areas although not right on our bunkers. It was impacting in the surrounding area of the footprint that I had previously described as being marked by the GPS coordinates give to the Security Forces.*

**W168**

A UN staffer says he repeatedly rang the Australian High Commissioner Kath Klugman who advised him she had personally phoned and spoken to Gotabaya Rajapaksa and the President as well as Palitha Kohona to demand the attacks on the No Fire Zone cease immediately.<sup>189</sup>

The Field Security Coordination Officer (FSCO) was in continuous contact with the United Nations Department of Safety and Security (UNDSS), informing him that the situation was untenable, requesting that the UNDSS-Vavuniya

<sup>186</sup> p33 Petrie Annex, letter to MFA.

<sup>187</sup> ibid

<sup>188</sup> W168 on file, §89.

<sup>189</sup> W168

approach the Sri Lankan Army to ask them not target the area, given they had been supplied with the GPS locations of the convoy.<sup>190</sup> The FSCO made clear to the UNDSS-Vavuniya that the convoy would not be able to survive the next onslaught of shelling, and that there was a need for a safe corridor in order to allow the convoy to go back to PTK or anywhere north towards the coastal area where the battlefield would not reach within next few weeks. The FSCO was given two options by the UNDSS indicating that the two internationals, including the FSCO and the UNOPS staff member, should leave by the single 4x4 light vehicle back to PTK, with a second option that everybody be taken along with the international staff. The FSCO informed the UNDSS that the first option was not an option, and that the entire group would need to move together and be given a safe corridor. Meanwhile UN staff in headquarters were repeatedly calling the security forces pleading with them not to attack, but to no avail. The Sri Lankan security forces knew that their shelling was devastating the IDPs, because they had been informed of this through diplomats and the UN.

In their vicinity there was devastation:

*...shells fired from the SE landed in our immediate vicinity killing at least 2 families 8m from our bunker, 7 dead 15 injured. The decapitated body of the 18yr old daughter we had spoken to earlier in the evening landed at the entrance to our bunker. One WFP driver was hit in the back of the head with shrapnel ... The scene at first light was devastating; within 20m of our location lay 7 dead & 15 seriously injured. 1 dead infant was in a tree under which the family had sheltered and the 2<sup>nd</sup> decapitated infant was hanging from the wire perimeter fence along the Udaiyaarkaddu Suthanthirapuram Junction. The single light vehicle was covered with blood and human body parts all over.*

*We dragged the body of the young woman away from our bunker entrance and covered her with a straw floor mat. The UNDSS vehicle, parked 51 meters from the explosion was covered with pieces of human flesh from the two families and other debris from the explosion.*

That night things got worse:

*Unlike the mortar rounds, which gave you a fraction of a second to take cover, the sheer velocity at which these shells came into our area was mind blowing to me. The shells were so close I could feel the concussive force through the bunker walls. Caught out in the open you would not stand a chance. It was incredibly terrifying. This was the worst period we had experienced so far. I knew we could not possibly survive if this type of shell smacked into our bunker... From midnight on 25 January to 0600hrs, there was a sustained and virtually uninterrupted SFs barrage of incoming heavy 130mm artillery from the south and southeast into our location at an average rate of over three shells per minute. Most shells were landing within 500 meters and many within 50 meters.*

When the convoy finally managed to escape the 'No Fire Zone' they saw utter devastation:

*For most of the eight km stretch between and PTK, the area along road was devastated. The areas from Udaiyaarkaddu, Vallipunam and Kaiveli appeared to have taken the brunt of the artillery barrages. We passed by a number of dead and severely wounded civilians on both north and south sides of the road. A number of the dead on the side of the road were women. All were dressed in saris and obviously not LTTE.*

**W168**

The Petrie report says 'On 26 January, the RC (UN Resident Coordinator) wrote to the government raising the events of the previous days. The letter described a selection of the artillery strikes and deaths and injuries closest to UN personnel and said 'In all instances the shelling originated from government lines...' <sup>191</sup>

#### **PTK FIGHTING: EARLY FEB 2009**

The small town of Puthukkudiyiruppu or PTK was located just outside NFZ 1. However, it was the site of the only moderately well-equipped hospitals (PTK Hospital and the private Ponnambalam Hospital, which were destroyed in air strikes in early February 2009). When the

<sup>190</sup> Petrie Report

<sup>191</sup> para 64

government hospital in PTK was eventually evacuated after being attacked, vital equipment like X-ray machines had to be abandoned. After leaving PTK, the few doctors left operating had to improvise, working in makeshift clinics located in school buildings, without any of the basic facilities essential for surgery.

The UN Petrie report says (p18) that the MOD Joint Operations Headquarters (JOH), which reported directly to Gotabaya Rajapaksa, knew the location of the UN aid hub in PTK:

*The GPS coordinates for the Hub were given by UNDSS to the Ministry of Defence Joint Operations Headquarters (JOH) in Colombo and Security Forces Headquarters in Vavuniya, as well as to the LTTE.*

This is confirmed by the International Crisis Group 2010 War Crimes report which says the hub coordinates were sent to the Joint Operational Headquarters.<sup>192</sup>

The OISL report also says the government knew the UN and hospital were located in PTK.<sup>193</sup> Nevertheless, the UN<sup>194</sup> said the PTK hospital was one of the most heavily hit medical facilities. The attacks started from at least 10 January 2009 and continued until 6 February, when the building had been evacuated. The PTK hospital consisted of a complex of 10 main buildings and more than 20 auxiliary buildings, and was marked with Red Cross emblems clearly visible from the air and in satellite images. The government also knew the hospital was functioning and was being attacked – delegates from the UN and ICRC had visited recently and

were evacuating the injured by road to Vavuniya.<sup>195</sup> That heavy weapons were used on the hospital was later conceded by the then Army Commander, Sarath Fonseka, but he said it was a mistake and suggested it only happened once.<sup>196</sup>

## 2 February 2009 Sky TV interview with Gotabaya Rajapaksa

Despite these statements by Sarath Fonseka, on 2 February 2009 Secretary of Defence Gotabaya Rajapaksa stated in a television news interview that PTK hospital was a legitimate target as it was located outside the government's unilaterally declared NFZ.<sup>197</sup> He said: '*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.*'<sup>198</sup>

Notably the Secretary of Defence did not deny the attacks on the PTK hospital.

He would have also known about the attacks on the hospital from the statements issued at the time by the ICRC which revealed mounting concern. On 1 February 2009, the ICRC complained in a statement (ICRC Ref. 09/26) that PTK hospital had received two direct hits; on 4 February 2009 they issued another statement (ICRC Ref. 09/21) about PTK saying, '*We are shocked that a medical facility has again sustained direct hits.*' The statements were widely picked up by the international media,<sup>199</sup> which means they would have come to the attention of the Secretary of Defence who

<sup>192</sup><https://www.crisisgroup.org/asia/south-asia/sri-lanka/war-crimes-sri-lanka-p10>

<sup>193</sup> OISL §823, '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 hospital and the United Nations facility were known to the Government. Witness statements indicate that there was frequent surveillance of the areas by the security forces using UAVs. The SLA must therefore have been aware of the exact location of the hospital and adjacent United Nations facility in PTK.'

<sup>194</sup> OISL §822 onwards

<sup>195</sup> OISL §832, 'The United Nations and other organizations present in PTK informed the Government and SLA on multiple occasions that the hospital was coming under attack.'

<sup>196</sup> Fonseka admits attacking a no fire zone with heavy weapons (video), 15 Nov 2015.

<sup>197</sup> Sky News, 2 Feb 2009, 'Packed Sri Lanka Hospital Shelled', On file. PTK Hospital legitimate target, Gota video: <https://www.youtube.com/watch?v=pKmM2qg95R0>

<sup>198</sup> OISL §832

<sup>199</sup> *S Lanka hospital 'attacked again'*, 3 Feb 2009, BBC [http://news.bbc.co.uk/1/hi/world/south\\_asia/7866342.stm](http://news.bbc.co.uk/1/hi/world/south_asia/7866342.stm)  
*Deadly strike on S Lanka hospital*, 2 Feb 2009, BBC, [http://news.bbc.co.uk/1/hi/world/south\\_asia/7863538.stm](http://news.bbc.co.uk/1/hi/world/south_asia/7863538.stm)  
Reuters, <https://www.reuters.com/article/us-srilanka-war/sri-lanka-hospital-shelled-at-least-9-dead-icrc-idUSTRE5111ZK20090202>  
*Patients killed in cluster bomb attack on Sri Lankan hospital*, 4 Feb 2009, *The Guardian* <https://www.theguardian.com/weather/2009/feb/04/srilanka-terrorism>  
CMN, 'Sri Lanka hospital shelled for fourth time', <https://edition.cnn.com/2009/WORLD/asiapcf/02/03/sri.lanka.fighting/>

was vigilant about international commentary on the war.

Associated Press reported that the United Nations confirmed that the hospital was hit several times on Sunday 1 February 2009 by artillery shells throughout the day, attacking the 'paediatric ward, a 30-bed ward filled to overflowing'.<sup>200</sup> Gotabaya Rajapaksa appears to have responded to the reports; CNN reported that he had told the Sri Lankan state news agency over the weekend (ie 31 Jan/1 Feb 2009) that he would 'continue with the military offensive until we liberate the remaining area under LTTE (the rebel group's) control'.<sup>201</sup> The original report comes from the *Sunday Island* newspaper which quoted Gotabaya Rajapaksa denying TV footage of attacks in the Vanni, saying, 'These video clips do not indicate bombings or explosions.'<sup>202</sup> The story said he went on to threaten the journalists who had reported on the attacks.

The UN later said:

*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. Between 3 and 4 p.m., two shells hit the hospital, the second killing at least one person. 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.*<sup>203</sup>

Gotabaya Rajapaksa was integral to sending reinforcements to PTK in early February when attacks on the hospital were a daily occurrence.

In his autobiography, one of Gotabaya's subordinate commanders, Kamal Gunaratne (at that time 53 Division Commander) wrote that Sarath Fonseka (then Army Commander) called him

while on leave in Colombo and said the fighting was out of control and 'the Secretary of Defence is also saying you must go and immediately bring the situation under control'.<sup>204</sup> Gunaratne adds that on the way to the airport Gotabaya called him on his mobile, on first name terms with his field commander:

*The Secretary of Defence, Gotabaya Rajapaksa came on line immediately and asked 'Kamal have you left?' and went on to explain the situation was grave in Mulaithivu... He also added that he had great faith in me and believe in my ability to control the situation...*

By 4 February 2009, Independence Day, instead of being at the annual military parade, Kamal Gunaratne reports that Gotabaya was in the Operations Room of the Army Headquarters in Colombo the minute he learned of the attacks:

*I later learned the Secretary of Defence had been up all night with the Army Commander at the Operations Room, monitoring the situation closely.*<sup>205</sup>

This means Gotabaya was monitoring the attacks on PTK on the night of 3 February. Significantly, the UN report (OISL, §828) says this night was when the shelling of the hospital reached its peak:

*The attacks continued throughout the night of 3 February 2009, and intense shelling took place during the morning of 4 February. At least 50 shells landed in the hospital grounds, causing deaths and injuries and extensive damage to the hospital buildings. Five people were killed when shells fell near the entrance of the hospital. One hospital worker described the situation in the hospital by 4 February as 'carnage', the likes of which she had never seen before. Medical staff*

<sup>200</sup> Artillery attack on hospital in Sri Lanka's war zone kills 9 patients, AP, 1 Feb 2009.

<https://www.cbc.ca/news/world/artillery-attack-on-hospital-in-sri-lanka-s-war-zone-kills-9-patients-1.835526>

<sup>201</sup> CNN <https://edition.cnn.com/2009/WORLD/asiapcf/02/03/sri.lanka.fighting/>

Also <http://www.asianews.it/news-en/Vanni-hospital-hit:-at-least-nine-dead-and-dozens-wounded-14366.html>

<sup>202</sup> 'Act responsibly or be chased out,' Gota tells BBC & envoys

On file (<https://sunandadeshapriya.wordpress.com/2009/02/01/act-responsibly-or-be-chased-out-gota-tells-bbc-envoys/>,

<sup>203</sup> §827

<sup>204</sup> Gunaratne, Kamal, p661, *Road to Nandikadal*

<sup>205</sup> Repeated in this story *Gotabhaya Rajapaksa had been with Sarath Fonseka at the Army headquarters' Operations Room as fighting continued into the night*, On file.



*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.*

Given Gotabaya Rajapaksa's presence in the Operations Room all night, he would have had direct knowledge of the repeated attacks on the hospital which he knew was packed with the injured, not just from the earlier ICRC statement, but from field reports and surveillance footage of the area.<sup>206</sup>

Moreover, an eyewitness with the military alleges Gotabaya Rajapaksa personally gave the order to fire on the PTK Hospital:

*If we did not already know they were hospitals, there is no doubt in the end that they were as ICRC and the UN would always radio in their coordinates of the hospitals, food distribution centres and makeshift hospitals. Thus when Gotabaya gave the green light to fire he knew that the artillery was being directed not only at the hospitals but at ICRC and UN staff in the area.<sup>207</sup>*

Doctors at PTK hospital testified that they informed the Health Ministry that patients were pouring in despite the fact the premises were not in the No Fire Zone. 'I told the Government of Sri Lanka Health administration that 'people are coming from the NFZ for treatment, because they have no facilities there'' said Dr Varatharajah (W143). He said the Sri Lankan army agreed to a 500 metre safe zone around the hospital and the ICRC regularly verified that there were no LTTE in the 500 metres. In the end the medical staff narrowly escaped with their lives.

The injured who had taken shelter in the hospital were killed or injured again. Witness W372 described being in PTK hospital when it was attacked in early February 2009.

*I saw the whole ward where my mother-in-law was kept was completely damaged and next to my mother-in-law there was a young boy and mother killed along with many others killed. My mother-in-law was cowering under the bed with her daughter because she was unable to move away and she also had hearing difficulties. But the wall was damaged outside and people panicked running in all directions and screaming and it was complete chaos. Although they knew it was a hospital, they deliberately targeted it and attacked it.*

## PUTUMATTALAN

### ***Bombardment for Months***

The April 2009 incursion into No Fire Zone 2, a long sandy strip of coastal land, followed months of bombardment of hundreds of thousands of civilians mainly sheltering around makeshift hospitals in Putumattalan and Mullivaikkal. Those attacks on Putumattalan were well known to the Sri Lankan military establishment because (a) they had UAV and surveillance footage, (b) infiltrators on the ground, (c) satellite imagery, (d) the coordinates of the makeshift hospitals, (e) they could see the sites with the naked eye across the lagoon and (f) they had access to the desperate reports sent out by the clergy, UN, ICRC, medical staff and others who were trapped there.

### ***The 18 April Incursion***

The following report published in the state-run newspaper stated that it was Gotabaya Rajapaksa who proposed the incursion by Shavendra Silva's forces (58 Division) into the second 'No Fire Zone' at Putumattalan and Pokkanai, which occurred between 18-21 April 2009:

*The newly demarcated NFZ<sup>208</sup> was declared on Friday considering the presence of civilian population inside the area controlled by the LTTE after 58 Division captured the final earth bund existed there in the NFZ as of Friday, in the early hours. However, the decision to redesign the NFZ was taken at the*

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<sup>206</sup> Overall, it is hard to say how many people lost their lives in PTK Hospital on the night that Gotabaya Rajapaksa was watching the war remotely, but one report ('War without Witness') counted 100 casualties on 3 February 2009 and 51 the following day in PTK. The casualty lists compiled by medical staff contain a gap for the first twelve days of February, most likely

because records were destroyed in the attacks that destroyed the building and staff were too busy fleeing for their lives and setting up a new makeshift site. Meticulous spreadsheets commence again from 12 Feb 2009.

<sup>207</sup> On file, W70

<sup>208</sup> This would be NFZ 3.

*Security Council Meeting held on Wednesday following a proposal made by Defence Secretary Gotabhaya Rajapaksa to the Security Council meeting since a major portion of the earlier declared NFZ has already been captured by the troops after April 20... However, President Mahinda Rajapaksa and Defence Secretary Gotabhaya Rajapaksa have been able to stick to their decision that there would be no end to the military operations under any circumstances until the troops capture Tiger leader Velupillai Prabhakaran dead or alive.*<sup>209</sup>

Later Gotabaya praised Shavendra Silva's conduct of the war, saying he had done a marvellous job.<sup>210</sup> Media reports say the progress of the attack on Putumattalan in April 2009 was followed 'around the clock' by the Secretary of Defence and his service commanders.<sup>211</sup> Moreover, Shavendra Silva himself testified to the domestic Lesson Learnt and Reconciliation Commission (LLRC) that he had access to drone footage while commanding the attack which he disingenuously dubbed a 'humanitarian rescue' mission.<sup>212</sup>

### **Civilian Casualties**

The incursion followed months of heavy bombardment of displaced and starving civilians sheltering in Putumattalan. Troops fought their way into the sandy spit of land on and around 20 April 2009. It was an offensive against mainly civilians that saw huge loss of life .

The UN Panel of Experts report confirmed (§109) that the incursion inflicted 'heavy civilian casualties'. The ICRC described it as 'nothing

short of catastrophic'.<sup>213</sup> And as the UN's OISL report (§848) points out, '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'.' The UN also examined satellite imagery that corroborated a vast amount of available witness testimony that the hospital and UN hub in Putumattalan were attacked by the army and air force. The UN reported that cluster munitions were fired and RPGs from such close range that they were indiscriminate in their targeting. The UN added (§847) that on 21 April 2009, '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'.

The International Crisis Group War Crimes report of 2010 also said:

*Then from 19 April - when the security forces were preparing to cross the lagoon and enter the NFZ - there was intense shelling between Putumattalan and Amparanpokkani, with scores of civilian casualties. The hospital was shelled and badly damaged the morning of 20 April, and the security forces and LTTE were fighting in front of it. Many dead and dying civilians were abandoned in or near the hospital as the security forces pushed the LTTE back and essentially split the NFZ in two. Although some 100,000 civilians crossed over to government-controlled areas in the following days, it came at a huge cost. Heavy*

<sup>209</sup> *Troops advance into last Tiger terrain on three fronts, 10 May 2009, Daily News*

<sup>210</sup> 'Brigadier Shavendra Silva of the 58 Division did a marvellous job. His Division joined the campaign of regaining the North from Mannar. They were responsible for captured Pooneryn, all the way up to Paranthan. Then from Paranthan to Vishwamadu, Pudukudiyiruppu and ultimately to Pudumathalan, which was the end of the No Fire Zone. His Division too, was involved from the very beginning of the Wannu campaign until the end and they covered and captured very important ground. Brigadier Shavendra Silva led his Division very efficiently and successfully .' *Business Today*, Jun 2009, *Defence Secretary Gotabaya Rajapaksa Salutes The War Heroes*, [op cit](#)

<sup>211</sup> 'Defence Secretary Gotabaya Rajapaksa, Commander of the Army Lt General Sarath Fonseka, Navy and Air Force Commanders are reportedly in touch with this humanitarian rescue operation round the clock after

this last leg of this LTTE's bloody war for separation was triggered Sunday (19) night.'

<https://www.army.lk/news/worlds-biggest-rescue-operation-full-swing-president-personally-monitors>

<sup>212</sup> 'I was tasked by the Commander to do the biggest civilian rescue mission which is known as the biggest rescue mission in the world which was shown by the UAV pictures at Puthumathalan... we managed to breach a gap of about a kilometer in Puthumathalan identifying the LTTE locations, identifying the LTTE ditches over a period of 3 weeks and my troops, actually my Division was tasked for this entire operation along with commandos and Special Forces went in and came behind their lines.' Representation made by Major General Shavendra Silva, Commander of 58 Division of the Sri Lankan Army, to the LLRC, 8 Sep 2010.

<sup>213</sup> ICRC, 21 Apr 2009, News Release 09/81, 'ICRC calls for exceptional precautionary measures to minimise further bloodshed in 'no-fire zone''



*civilian casualties were incurred in and around the hospital, and medical supplies and equipment were lost or left behind as medical staff again had to evacuate.*

### **Chain of Command**

It was entirely foreseeable that the civilian casualties would be enormous from the incursion into the second 'No Fire Zone'. The AGA's figures for the civilian population present in the war zone were 300,000 in March 2009 (Petrie Annex) which totalled 14 square kilometres in February but was diminishing in size. Civilians were clustered around the Putumattalan makeshift hospital which took the brunt of attacks.<sup>214</sup> The hospital itself was the target of repeated attacks for weeks and conditions there were appalling with the injured lying on the ground in blood-soaked bandages. A video shot on 21 April 2009 shows injured and shell-shocked old women and babies and children being transported on tractors in large numbers to Mullivaikkal.<sup>215</sup>

According to the state-run media, the order to attack Putumattalan on 18 April 2009 had to be approved by not just the President but also by the Secretary of Defence, Gotabaya Rajapaksa:

*That was why Army Commander Lt. General Sarath Fonseka got the full blessings of President Rajapaksa and Defence Secretary Gotabhaya Rajapaksa to go ahead with this biggest humanitarian operation to rescue more than 120,000 civilians trapped inside the No Fire Zone.*<sup>216</sup>

Only when he had permission from the two Rajapaksa brothers did Army Commander Sarath Fonseka convey the order to 58 Division commander Shavendra Silva to begin the offensive against the so called 'No Fire

Zone'.<sup>217</sup> This is confirmed by the Sri Lankan state-run newspaper:

Looking back at controversial attack on Putumattalan and Pokkanai:

*After hours long discussions with them on April 18, the war veteran Lt. Gen. Fonseka, who had the last nod from President Mahinda Rajapaksa and Defence Secretary Gotabhaya Rajapaksa, gave the green light to go ahead as planned. Troops of 58 Division, which was at the close range of the No Fire Zone was assigned the task.*<sup>218</sup>

### **MULLIVAIKKAL ASSAULT (NFZ 3)**

#### ***Continued attacks on Civilians***

The attacks on the third 'No Fire Zone' followed the same pattern as previous months with the only functioning hospitals being repeatedly shelled and civilians subjected to a barrage of fire. The carnage and suffering is well documented in numerous NGO and UN reports over the last decade and the testimony is not repeated here. For example, the OISL said:

*Between 8 and 12 May the facility was shelled on several occasions as the NFZ 3 came under intense daily bombardment by SLA artillery, the air force and the navy (§878). Multiple witnesses described scenes of devastation, with hundreds of bodies of people killed by shelling scattered across areas within the NFZ. (§885)*

#### **Misleading Instructions to Civilians**

In early May 2009 the army reportedly dropped leaflets for Tamils in the war zone instructing them to leave, knowing full well that at this point it was virtually impossible for people to leave without getting killed.<sup>219</sup>

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<sup>214</sup> <https://groundviews.org/2012/09/12/the-end-of-war-in-sri-lanka-captured-for-posterity-by-google-earth/>

<sup>215</sup> On file

<sup>216</sup> *Daily News*, 26 April 2009

<sup>217</sup> From the Field HQ in Vavuniya, General Fonseka hooked up on the army line with Brigadier Shavendra Silva, one of the illustrious war heroes of Sri Lanka. He told Brigadier Silva that the plan to launch the 'biggest hostage rescue operation' in the world was final and that he was being tasked to execute it. 18 Apr 2009, <http://www.indiandefencereview.com/spotlights/lessons-from-the-war-in-sri-lanka/>

ibid. Noting the regiments involved in the incursion were 'The 9th Gemmu Watch Battalion, 8th Gajaba Battalion, 11th Sri Lanka Light Infantry Battalion, the 2nd Commando Battalion under the command of Colonel Ralph Nugera and 1st Special Forces Battalion under the command of Colonel Athula Kodippili were handpicked for the rescue operation,' in *Biggest Human Drama ever without shedding a drop of blood: Freeing over 120,000 hostages*, 3 May 2009, *Daily News*.

<sup>218</sup> ibid

<sup>219</sup> 'The massacre is calculated to coerce the civilians said a rescue worker citing leaflets air dropped Friday

Deceitfully, the army then dropped leaflets to Tamil civilians on 8 and 9 May 2009 advising civilians to stay in 'No Fire Zone 3' despite the fact that it was under fire. This deliberately put civilians in the firing line, instead of protecting them by advising them to move south to the Wadduvakkal bridge where they could be received and processed by the army.<sup>220</sup>

#### A Special Notice to the Public

The Security Forces ask you, the public, to stay where you are at present and not to move to any other places, whether it be in the Northern or Eastern or Western regions (especially not to move to Vellai Mulli Vaikal). These measures are taken in order to ensure your safety. The area where you are allowed to stay is indicated through a picture taken from an airplane.

Security Forces

#### Heavy Weapons used on Civilians

The government screened and counted all those who escaped the war zone so they knew and were fully aware of the tens of thousands of civilians who were inside it during the last week.<sup>221</sup> Survivors (interviewed by the ITJP) describe heavy bombardment by the Sri Lankan security forces of densely populated civilian areas every day in the last week of the war, right up to 16 May, which in itself amounts to criminal conduct and war crimes because the government knew there were tens of thousands of injured and dying, women, children and the elderly, and civilians in the area. It also received desperate phone calls from those still trapped there and from the UN which believed on 17 May that there were 30-80,000 civilians still there.<sup>222</sup>

W374 described seeing an attack on civilians in Velliamullivaikkal on 12 or 13 May 2009 waiting in a long queue for food rations to be handed out at lunchtime:

*Sri Lankan helicopter gunship came and attacked these people. I was also there in the queue. I could see the helicopter which came*

*low and carried out the attack. I didn't see men firing in the helicopter. I think it was a machine gun they used. Many people were injured. We lay on the ground for safety. Even after the MI24 fighter helicopter left the people tore their clothes and tied them around their injuries to stop their bleeding and still they got back in the queue because they were starving and desperate to get food. This was in May 2009 maybe 12 or 13 May. More than 7 people died and more than 25 injured - children and adults mixed. They were all civilians. The food was distributed at specific times in the day only and people would be in the bunkers the rest of the day. The drones were encircling the area all the time, 24 hours.*

Alarmingly, multiple witnesses describe multi-barrelled rocket launcher (MBRL) attacks on the third No Fire Zone from 10-16 May. W374 described an MBRL attack on the hospital in Mullivaikkal in the second week of May 2009. Other survivors described seeing MBRL attacks that week which emanated from Kepalalavu on the other side of the lagoon:

*I also experienced MBRL attacks on civilians between 10-15 May between Rettavaikkal and Mullivaikkal. This MBRL fire was coming from Kepalalavu, from sea, from Mullaitivu, from all sides. I saw casualties as a result and also from incoming rounds (bullets). One incident I recall involved a family of 5 including a baby, who were hiding under a tractor on 15<sup>th</sup> May morning. The MBRL shell fell on top of the tractor and the whole family was killed. The worst thing I saw was this. The shell came from Kepalalavu. In the last days the fire came from Kepalalavu*

with Mahinda Rajapaksa's message asking civilians to come to the SLA side.' *SLA massacres patients with targeted shelling, 64 killed in hospital*, 2 May 2009, <https://www.tamilnet.com/art.html?catid=13&artid=29240>

<sup>220</sup> Translation of leaflets dropped on that date by the security forces in Tamil and Sinhala (LLRC Annex ii).

<sup>221</sup> 'A spokesman for the Sri Lankan army said on May 17 that during the past three days, more than 50,000 people have fled the war zone', <https://www.refworld.org/docid/4a1d3e1023.html>, *Sri Lanka military says all civilians escape war zone*

<sup>222</sup> 'As far as we understand, there are some 20,000 who have come out since Thursday, and according to UN estimates, there are some 30,000-80,000 people still inside the combat zone,' Weiss said. 'It is a tiny area of land, perhaps a third the size of Central Park. There is obviously a very bitter battle being fought over the area at this moment. So we are really waiting to see the final count of civilians to emerge from that area. We expect that there would be a large number of killed and wounded.'" Gordon Weisz in <https://www.refworld.org/docid/4a1d3e1023.html>

mostly, otherwise the army would be hitting its own forces. W383<sup>223</sup>

As late as 16 May 2009, W379 said she was injured by 60mm mortar fire in the area between Wadduvakkal and Mullivaikkal at 1730 hours:

MBRL were also used against civilians on 14 May 2009 according to witness W381.<sup>224</sup> W46 and his niece also both separately described another MBRL attack on Pachchai Undiyal Pilaiyar Kovil on 15 May 2009. They remember the date because it killed W46's mother and injured his niece. This was not the only attack that day. W380 said:

*...suddenly one of the mortars landed in front of the tent and exploded and I was badly injured and in that attack three people were killed and many others were injured but I don't know exactly how many. The tents were very very close at the time so once single mortar could injured many people as it was so crowded. One lost their eyesight, another lost leg. I was hurt in arm, face, stomach and leg and abdomen. The people there were elderly and children, men and women. More than 15 people were injured and one of the men known to me was badly injured and died of his injuries on the way to hospital.*

*On 15<sup>th</sup> night there was a shell attack in the area and one landed in the bunker next to ours where the LTTE kept the mentally disabled children - previously one of the NGO looked after them and in this chaotic situation the LTTE took charge of looking after them. I don't know how many children died - the scene was chaotic and everyone was screaming and crying so this is why we had to move from our bunker. During the last couple of days, nobody was taking care of other people because they have to find a way to save their own lives. If there is an attack we had to leave the area without helping the injured - this was the situation in the final days. It was an artillery shell fired from PTK, based on sounds of explosion. I sometimes find it difficult to remember things. It was chaotic and confused and everywhere there were attacks. I still have nightmares about what happened in the final days of war.*

By the time someone helped her to the Wadduvakkal bridge the next morning to surrender there were bullets flying everywhere so they had to keep stopping to take cover: 'There was shelling but it exploded behind us but we were in range of gunfire. It came from the sea side of the A35 road but from the land. It was tiny distance but it took us all night to walk to the bridge on 17 Morning.'

W401 who moved with the security forces at the frontline said he saw thousands of freshly killed corpses at this time:

On 16 May W384 saw yet another MBRL attack on a densely-packed civilian area:

*At around 8.00pm we witnessed a multi barreled rocket launcher attack on the other side of the A35. I heard many explosions in quick succession followed by the sounds of screaming... The distance between us and the target was no more than 90 metres. The area was densely populated by civilians who were fleeing to the southern front in order to surrender.*

*At the same spot I saw thousands of dead bodies lying on the ground everywhere, civilians and LTTE in uniform together. I could not clearly tell the cause of death, it could've been artillery or gunshots. I couldn't tell but they were clearly not decomposed bodies, the time of death was recent. I only saw these many bodies on 15 and 16 May. I was there on the 13 and 14 May and there were a few dead bodies too but not nearly as many as two days later when I returned under SLA guard.*

<sup>223</sup> W385 also spoke of constant shelling on 16 May and drones flying overhead.

<sup>224</sup> 'By 14 May 2009, just before the SLA met up on the beach, on the same day in this area there was a food lorry belonging to Seran Trade and it had tinned fish and other food stuffs and at the time civilians and LTTE had nothing to eat so the people went there to collect food from the lorry and at the time the

shelling happened in the area which killed many civilians and a couple of LTTE members. The fire came from across the lagoon from PTK - it was MBRL as well as shells... By 15 May the situation became chaotic and LTTE had almost lost control over all territory. Shelling was underway and civilians had nowhere to go and moved in different directions to army area - some went north through PTK, others across the lagoon.'

## Gotabaya's Knowledge of Military Ground Operations

With drone footage and access to his commanders by telephone, Gotabaya Rajapaksa knew what was happening on the ground in the final war zone in the Mullivaikkal area, even though he was physically in the capital Colombo. This US Embassy telex shows Gotabaya was in charge of the Security Council meeting on 13 May 2009 and issuing orders not just to Ministry of Defence staff but to other government ministers as well:

*During the morning of May 13 [2009], Charge called Minister of Disaster Management and Human Rights Samarasinghe to express grave concern about the humanitarian consequences of another day's delay in the Green Ocean's operations. Samarasinghe said he was instructed this morning by Defense Secretary Gotabaya Rajapaksa (who was in a meeting of the Security Council) to provide ICRC Head of Delegation Paul Castella the military's full assurance that there would be no shelling by the Army and food could be off-loaded from the boat and passengers taken aboard...Samarasinghe suggested to Charge that it would be helpful for Rajapaksa and Castella to meet tomorrow, May 14.<sup>225</sup>*

At this time the ICRC was dealing with its third staff member killed in the war zone.<sup>226</sup> 58 Division commander, Shavendra Silva, (as of 2019 the Commander of the Sri Lankan Army) later testified to the LLRC domestic commission that they could see everything on the ground with the drone footage; this means he knew that those under attack included tens of thousands of civilians:

*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.*

Shavendra and Gotabaya were in direct touch, bypassing the Army Commander who was in China 16-19 May 2009 as the war ended.<sup>227</sup> For example in his autobiography, the 53 Division commander, Kamal Gunaratne, describes receiving phone calls from the Secretary of Defence:

*On 14<sup>th</sup> May, I received a call from the Secretary of Defence, Gotabaya Rajapaksa who first inquired about the status of the battlefield and then said he was facing immense pressure from the international community, especially America, to stop the war and therefore he wanted us to hasten the end. I informed him confidently we would be able to finish it all within four days and he seemed to be quite satisfied with my response. He had thereafter spoken to Brigadier Shavendra Silva to convey the same message and had been given the same response. Since Shavendra and I had a close rapport and working relationship, we made plans to finish the war in four days.*

## Denial of access to international observers

Wikileaks telexes show how the ICRC wanted access to the war zone as of 19 May 2009 to treat the wounded but were denied access by Gotabaya Rajapaksa among others:

*ICRC head of party Paul Castella (protect) reported to DCM that Defense Secretary Gotabaya Rajapaksa, Senior Presidential Advisor Basil Rajapaksa, and field commanders have so far refused ICRC offers of assistance in treating the wounded in the safe zone, insisting the military can take care of them. Castella has also asked for ICRC access to the safe zone to oversee the identification of the dead to facilitate the notification of families. This too has been denied.<sup>228</sup>*

<sup>225</sup> [https://wikileaks.org/plusd/cables/09COLOMB0522\\_a.html](https://wikileaks.org/plusd/cables/09COLOMB0522_a.html)

<sup>226</sup> ICRC News Release No 09/100, 13 May 2009, Sri Lanka: *third ICRC staff member killed in conflict area*

<sup>227</sup> See also witness testimony regarding the conversations. *Daily News*, Acting Defence Minister, 15 May 2009. Mahinda Rajapaksa went to Jordan from 14-17 May.

*Maithri-Mahinda talk of forming caretaker grand coalition*, 7 Oct 2018, *Lanka Sunday Times*.

<sup>228</sup> [https://wikileaks.org/plusd/cables/09COLOMB0543\\_a.html](https://wikileaks.org/plusd/cables/09COLOMB0543_a.html)



## Summary Executions

A Sri Lankan soldier testified that surrendees were killed in the final days as they tried to cross over to the Army, unless there were embedded journalists watching the process:

*Gotabaya had directly ordered him to kill them all. Some of them had uniforms and some were in civilian clothes. This order and its execution took place on the 16-19th of May 2009 in the no man's area between the Wadduvakal Bridge and Vellamullivaikal. ... I saw this shooting of surrenderees take place a number of times. A number of groups, some fifty, some seventy-five, some more than twenty five would come forward and they would all be killed. That included children, small children women and old people.*

That executions took place is corroborated by several survivors who describe witnessing them:

### 15 May 2009

*They were shot dead in front of my eyes. The female cadres were screaming not to fire but the army soldiers sprayed them with bullets from their AK47. The soldiers told us not to look back and just walk forwards to the road.*

**W282**

### 16 May 2009

*That day alone, I witnessed at least a hundred of civilians being directly shot at by the SLA and dying in front of my eyes while trying to cross to the SLA controlled area.*

**W292**

*I saw them shooting civilians who were running unarmed towards the road, even children. They were being shot with automatic rifles and a 50-caliber heavy machine gun. One soldier in a camouflage uniform had a black scarf around his neck and a black cloth tight on his head hair and tied at the back and he was shooting at people. He carried a T56-2 rifle and was only 25 metres away. The man shooting the sole 50 Caliber machine gun with the same black scarf was shooting the gun from a heavy mounting tripod placed on the ground. I was very close to him. People were crying and yelling and screaming asking not to shoot them. People approaching the road after the announcement where taking off their shirts and*

*waving them in the air shouting they were surrendering. Some of them were shot down anyway.*

**W129 at 3pm**

### 16-17 May 2009

*Those who were reluctant to undress were attacked by the T56 bayonet, and rifle butts. I saw women who refused to undress and were shot dead on the spot, there could have been 50 persons who got murdered on the spot. People were waiting in queues. There were 400 to 500 people. Soldiers were kicking and beating the civilians, there was a lot of verbal abuse and the shooting did not happen at once. As people refused to take off their clothes or showed any kind of resistance, they were shot dead. This happened over a period of time. I was there from 16 May at night until the afternoon of the 17<sup>th</sup>. This went on during all that time.*

**W401**

### 17 May 2009

*I witnessed an incident on the lagoon side of the A35 where the army shot about 8 or 9 male LTTE cadres not in uniform who were on a tractor trailer They were half naked and had their hands tied behind their backs.*

**W99**

### 18 May 2009

*I think they were conducting a mopping up exercise. I think this because when I walked along the A35 (road) I witnessed soldiers shooting with AK47s and executing injured LTTE people left along the side of the road. There were mostly LTTE women cadres at that place. .. I witnessed 10 people being killed like this including one girl who studied with me at PTK Maha Vithaya school and who was an LTTE member. Her LTTE name is Nila from Medical Unit; I don't recall her birth name or native village but I think she was displaced from Jaffna in 1995. I have been looking for her family to tell them what happened to her but I couldn't find them...*

**W182**

## WHITE FLAG SURRENDERS

In October 2008 before the end of the war Defence Secretary Gotabaya Rajapaksa stated that unarmed LTTE cadres 'would not be considered as terrorists but welcomed as normal



civilians.’<sup>229</sup> This is negated by the actual treatment of suspected LTTE combatants in May 2009.

There has been considerable scrutiny of Gotabaya Rajapaksa’s alleged role in ordering the execution of the LTTE political wing leaders just south of the Wadduvakkal Bridge on 18 May 2009. This incident is known as the ‘white flag incident’ because the surrendees, who were *hors de combat*, carried such a flag, as they had been instructed to do.

The UN investigation published in 2015 concluded, based on multiple testimonies and a forensic examination of photographs of the corpses, that there were ‘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’. Initially the 58 Division of Shavendra Silva claimed responsibility for the killings and then the webpage of the MOD deleted that entry. Eyewitnesses place Shavendra Silva at the Wadduvakkal Bridge on the morning of 18 May and say he shook hands with the surrendering LTTE leaders. He has confirmed he was in the area that day and in charge.<sup>230</sup> This testimony counters various government versions of events, one of which asserts the LTTE leaders were shot in the back by their own people as they surrendered. Gotabaya Rajapaksa and his brothers Mahinda and Basil were all aware of the intention of Pulidevan and Nadesan to surrender:

*General Fonseka said it was Basil Rajapaksa together with the Defence Secretary Gothabaya Rajapaksa who through foreign intermediaries conveyed a message back to the LTTE leaders who wished to surrender to walk out carrying*

*a piece of white cloth. ‘It was their idea’, he said.*<sup>231</sup>

The Indian envoy for the UN, Vijay Nambiar, later described how he had asked twice to be allowed to witness the surrenders.<sup>232</sup>

The UN confirms that the ‘white flag’ surrender was negotiated over several days through a large number of foreign intermediaries including:

*...the 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.*<sup>233</sup>

For more details of those involved in the surrender negotiations see the ITJP’s report on the incident at <http://white-flags.org>.

General Fonseka later said in a controversial newspaper interview in Sri Lanka:

*Later, I learnt that Basil had conveyed this information to the Defense Secretary Gothabaya Rajapaksa – who in turn spoke with Brigadier Shavendra Silva, Commander of the Army’s 58th Division, giving orders not to accommodate any LTTE leaders attempting surrender and that ‘they must all be killed’.*<sup>234</sup>

However, Basil Rajapaksa claimed he hadn’t informed Gotabaya because his brother taken 15 May 2009 off – an odd decision given the war was at its climax and the day before Kamal Gunaratne said he and Silva had received calls from Gotabaya anxious to finish it off (**see above**):

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<sup>229</sup> CPA, *A Profile of Human Rights and Humanitarian Issues in the Wannu and Vavuniya*, Mar 2009, p 31

<sup>230</sup> Meeting in Canadian Mission, 2014, New York

<sup>231</sup> *Sunday Leader* iv reproduced at <http://www.srilankaguardian.org/2009/12/gota-ordered-them-to-be-shot.html>

<sup>232</sup> ‘I asked to go, twice I contacted [US diplomat] Bob Blake, the two of us were planning to go... the ICRC was not able to go by sea route. The Government refused to give us permission. There was no way we could just force our way in.’

‘When asked why he didn’t speak up about the killings that took place he claimed that when he spoke with President Mahinda Rajapaksa and the Defence Secretary Gotabaya Rajapaksa, he was told that it was possible that the killings of those who wanted to surrender were conducted by their own people.’ *Nambiar Speaks Up About ‘White Flag’ Incident*, 25 Feb 2012, On file.

<sup>233</sup> OISL §292

<sup>234</sup> On file.

*Our attempts to contact Defence Secretary Gotabaya Rajapaksa failed. When we telephoned the Defence Ministry Friday we were told Mr. Rajapaksa had not been in office the entire day. His staff refused to release any other telephone number.<sup>235</sup>*

It is also odd that Basil Rajapaksa apparently had no mobile number for his own brother.

## ARBITRARY DETENTION OF WAR SURVIVORS

### Civilians

As Secretary of Defence, Gotabaya Rajapaksa was in charge of deploying the military to manage the care of war survivors. He put the same army officers in charge of looking after Tamil surrendees who had been leading the military offensive against them, bombing and shelling them in the 'No Fire Zones'. These were commanders who had shown they did not distinguish between civilians and combatants. In a post-war atmosphere of triumphalism and complete denial of wrongdoing, this made it foreseeable that further violations of human rights would occur.

The UN investigation (OISL §1074) highlighted Gotabaya Rajapaksa's key role in putting the military in charge of the detention of all 282,000 Tamil survivors from the Vanni at the end of the war:

*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<sup>236</sup>. Although civilian authorities were also involved in the management of IDP issues<sup>237</sup>, 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.'<sup>238</sup> 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'*

### Corruption undermines national security argument

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 and identify LTTE cadres. Despite the fact that the security forces combed through the population looking for suspected LTTE cadres, thousands of people managed to escape the camp by paying bribes because corruption in the security forces was rampant. The endemic corruption undermined the argument that Tamil war survivors were detained on grounds of national security. It was possible at the time to buy a package including escape from Manik Farm camp, transit to Colombo through checkpoints, registration in a guest house, a new passport, visa, air ticket and escort to the airport. This was in some instances managed by the security forces themselves, particularly CID, so they were aware it was occurring. In other cases the security forces were bribed to turn a blind eye. We know that the intelligence services were aware of people leaving because of testimony from the wife of a high profile LTTE leader, who described escaping through Colombo by the skin of her teeth, only to receive telephone calls once she landed in Chennai because the intelligence services who had helped her escape had realised who she really was.

<sup>235</sup> ibid

<sup>236</sup> Appointed as Secretary of Defence by Gotabaya in 2019.

<sup>237</sup> 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.)

<sup>238</sup> Representation made by Gotabaya Rajapaksa, Secretary Ministry of Defence to the LLRC, 17 Aug 2010

## Failure to protect

The Secretary of Defence didn't just put the military in charge of civilians and combatants – he put army commanders in charge who saw civilians and combatants as the enemy they had just fought. It was foreseeable that violations – especially sexual violence – would occur without any safeguards or protection measures put in place for the IDPs. The ITJP has collected testimony from women gang raped in Manik Farm 'IDP camp' by military intelligence and by the army in other detention sites – the youngest victim interviewed by the ITJP being 14 at the time. This was entirely foreseeable given the army's track record of perpetrating sexual violence against Tamils. As Secretary of Defence, Gotabaya Rajapaksa could have put in place measures to ensure that only female police or military officers interrogated female suspects in Manik Farm; this might have reduced the incidents of rape and sexual violence.

Instead several Sri Lankan officials, including Gotabaya Rajapaksa, made light of allegations of rape of Tamil women by soldiers. In 2011 when asked by an Indian TV channel about allegations of rape levelled by a British Tamil aid worker caught up in the final phase of the war, Gotabaya Rajapaksa gave an extraordinary response, apparently arguing it was implausible for such an attractive young woman not to have been raped herself and therefore concluding that her account was incorrect.<sup>239</sup>

## Former Combatants

Thousands<sup>240</sup> of suspected former LTTE cadres were identified by informers and arbitrarily detained in what were misleadingly called 'rehabilitation camps', where they were held incommunicado with no access to legal assistance and no right of appeal. Several male

and female detainees were subjected to torture and sexual violence while in 'rehabilitation' in the early years after the war. The government called this their 'humanitarian mission 2'.

In 2018, the UN Working Group on Arbitrary Detention (A/HRC/39/45/Add.2) said the Sri Lankan rehabilitation process constituted arbitrary detention and recommended (§87b) that current and past detainees receive 'public acknowledgement of wrongful imprisonment and compensation and/or guarantees of non-repetition...' That has yet to happen.

Hundreds of the people who were in the 'rehabilitation' programme have now fled abroad, with many having been granted asylum. The International Organisation of Migration played a major role in resettling detainees from the rehabilitation programme in their villages, including having access to the sites to screen them.<sup>241</sup> Its work was funded by the UK, US, Norwegian, Dutch and Japanese governments. Some of the IOM 'beneficiaries' have been granted asylum in the UK and Holland in part on the basis of torture in the 'rehabilitation' programme that those governments helped fund through the IOM. The IOM was subsequently put as the lead organisation in charge of reparations in Sri Lanka's 2015 transitional justice programme.

Gotabaya Rajapaksa visited the 'rehabilitation camps' (**see below**). Military officers close to Gotabaya Rajapaksa who'd been instrumental in crushing the LTTE and killing Tamil civilians during the recently concluded war, were put in charge of the rehabilitation programme, although they reported to the Ministry of Justice.<sup>242</sup> A year into the rehabilitation

<sup>239</sup>

<https://www.youtube.com/watch?v=HBEqq0bGURg#t=191%20php/rajapaksa-%20promotes-instigator-of-channel-4-protests-to-cabinet/>

<sup>240</sup> Government estimates vary from 11000 to 14000. It is worrying that no precise and consistent figure has ever been produced.

<sup>241</sup> 'Asked whether the IOM had access to ex-LTTE personnel, Danziger said that the Defence Ministry and the Army headquarters worked closely with those running the project. "In fact, we had access to over 11,000 personnel released after rehabilitation, though we were able to assist about 8, 000 so far," he said.' *Sri Lanka generous towards vanquished -outgoing IOM chief Post-war rehabilitation*, 10 Apr 2013, *The Island*.

'The IOM acknowledged that the government had given the agency direct access to ex-LTTE combatants held in several facilities.' *IOM clarifies role in reintegrating Tigers into society*, 1 Dec 2011

<sup>242</sup> 'Last week the GSL announced that the Commissioner General for Rehabilitation portfolio would be assumed by an active service member, Major General Daya Ratnayake, seconded to the Ministry of Justice. The Commissioner General, however, will report to the Minister of Justice through Secretary of Justice Suhada Gamalath.'

[https://wikileaks.org/plusd/cables/09COLOMB0773\\_a.html](https://wikileaks.org/plusd/cables/09COLOMB0773_a.html)  
'The BCGR was set up under the guidance of Ministry of Defence and Ministry of Justice, and is now functioning

programme, a Sri Lankan human rights activist believed Gotabaya Rajapaksa was in effective control of the process:

*There is no publicly available information about the process utilized to determine eligibility for rehabilitation. We do not know who made this decision nor the criteria used to make the determination. Was it only the Secretary Ministry of Defence who had the power to make the decision? Based on news articles one can safely assume that it was indeed the Secretary, MOD and the President who control the fates of the alleged LTTE cadres. For instance, it was reported that 'President Mahinda Rajapakse as well as Secretary Ministry of Defence Gotabaya Rajapakse have given clear instructions that each and every ex-LTTE combatant should be physically, mentally and spiritually rehabilitated before he or she is reintegrated into civil society as peaceful and useful citizens who could work towards the development of the country'. To this effect, 'The Sri Lankan government under direction and supervision of Secretary Defence Mr. Gotabaya Rajapakse designed a comprehensive programme to rehabilitate those ex-combatants at the Rehabilitation Centres established in Jaffna and Vavuniya'. This points to the lack of institutional processes and confirms that only two individuals possess the power to make decisions about the lives of thousands of persons, which they do without consultation or transparency.<sup>243</sup>*

Moreover, the numbers cited by the government for those in 'rehabilitation' camps have never been consistent. The numbers cited have a variance of 3,310 people.

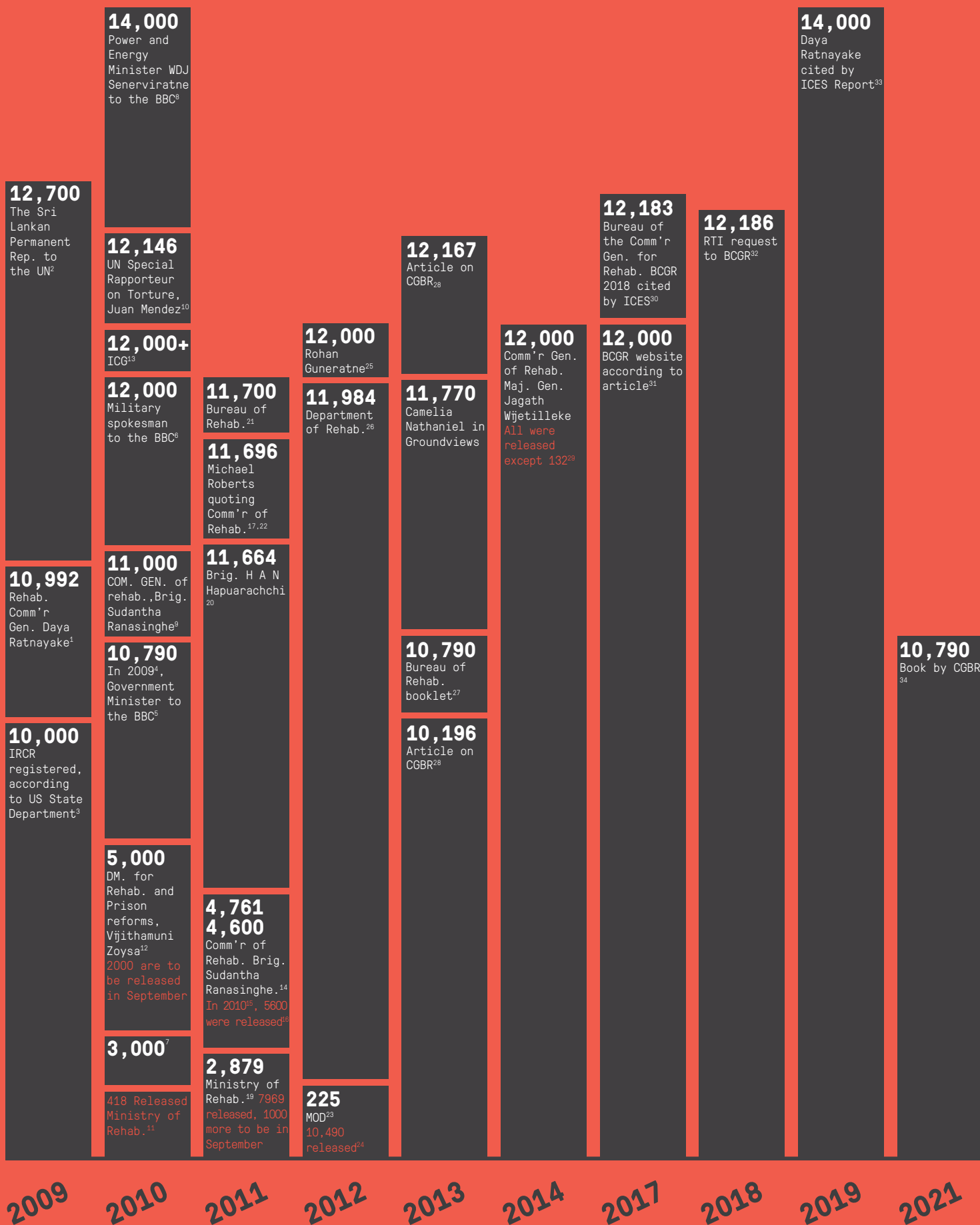
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under the Ministry of Rehabilitation and Prison Reforms.' On file.

<sup>243</sup> Reconciliation through 'Rehabilitation' & 'Reintegration' of Ex-LTTE members in Sri Lanka:

Separating Fact from Fiction, 10/19.2010 Ambika Satkunathan

# REHABILITEES: VARYING NUMBERS





1. p9, *Combatant' to 'Civilian': The Psychosocial Wellbeing of Ex-combatants in Kilinochchi and Mullaitivu, Sri Lanka*, 2019, <https://www.ices.lk/publications-1/from-combatant-to-civilian-%3A-the-psychosocial-wellbeing-of-ex-combatants-in-kilinochchi-and-mullaiti> citing Source: BCGR – Department of Government Information booklet (2013)
 

‘Statements by the Government regarding the number of detainees held have been inconsistent. In November 2009, the then Commissioner General for Rehabilitation (CGR) indicated that 10,992 ‘surrendees’ were under his custody.’ ICG 2010, P10, citing in the footnote “This figure, along with a breakdown of 8,894 males and 2,098 females, including children, was presented to donors by the then CGR, General Daya Ratnayake, during a meeting hosted by the Minister of Justice on 16 November 2009.’
2. ICG report, 2010, page 10, .Citing Asia Tribune, 5 December 2009, “The Elders statement on IDPs in Sri Lanka – Sadly outdated and inaccurate – Dr. Kohona”, <http://www.asiantribune.com/news/2009/12/05/elders-statement-idps-sri-lanka-sadly-outdated-and-inaccurate-%E2%80%93-dr-kohona> (accessed on 27 July 2010). Adding that ‘Informally, the previous CGR had spoken of a figure of 12,000 detainees, most recently on 2 February 2010.’
3. Satkunanathan, Ambika, 2018/12/01, The treatment of former combatants in post-war Sri Lanka: A form of arbitrary detention or rehabilitation? [https://www.researchgate.net/publication/343046809\\_The\\_treatment\\_of\\_former\\_combatants\\_in\\_post-war\\_Sri\\_Lanka\\_A\\_form\\_of\\_arbitrary\\_detention\\_or\\_rehabilitation](https://www.researchgate.net/publication/343046809_The_treatment_of_former_combatants_in_post-war_Sri_Lanka_A_form_of_arbitrary_detention_or_rehabilitation)
4. [http://news.bbc.co.uk/2/hi/south\\_asia/8450914.stm](http://news.bbc.co.uk/2/hi/south_asia/8450914.stm), 10 Jan 2010, BBC, Sri Lanka's Tamil Tiger suspects 'won't be freed soon'
5. p8 <http://ices.lk/wp-content/uploads/2019/12/From-Combatant.pdf>, citing BCGR.
6. [http://news.bbc.co.uk/1/hi/world/south\\_asia/8450914.stm](http://news.bbc.co.uk/1/hi/world/south_asia/8450914.stm)
7. Interviews with humanitarian aid workers, July 2010 cited by ICG report, P10.
8. [http://news.bbc.co.uk/1/hi/world/south\\_asia/8450914.stm](http://news.bbc.co.uk/1/hi/world/south_asia/8450914.stm)
9. <http://archives.sundayobserver.lk/2010/02/28/fea03.asp>, Businessmen, Tamil diaspora should help rehabilitation, by Shanika SRIYANANDA, 28 Feb 2010, Sunday Observer.
10. A/HRC/34/54/Add.2, 2016
11. <https://ihl-databases.icrc.org/fr/customary-ihl/v2/rule128?country=lk>
12. <https://ihl-databases.icrc.org/fr/customary-ihl/v2/rule128?country=lk>
13. *Reconciliation In Sri Lanka: Harder Than Ever*, Asia Report No 209, 18 Jul 2011
 

As of the end of July 2010, more than one year after the military defeat of the LTTE by the SLA, it was estimated that up to 8,000 adults were being held in at least a dozen centres for ‘rehabilitation’ on the basis of alleged links with the LTTE. At least 1300 others have been identified as “hard-core” LTTE and
- who have been designated by the Government of Sri Lanka to face criminal prosecution; of these approximately 700 are in a special detention centre in Omanthai.14 Approximately 3,000 detainees had been released in the past year.15
14. <https://www.army.lk/news/former-ltte-cadres-rehabilitation-last-stage>
15. <https://www.bbc.co.uk/news/world-south-asia-12108479> Tamil Tiger releases hit by rehabilitation problems, 3 Jan 2011, BBC
16. <https://ihl-databases.icrc.org/fr/customary-ihl/v2/rule128?country=lk>
17. <https://www.lankaweb.com/news/items/2011/01/02/of-11696-ltte-personnel-taken-into-custody-5586-have-left-rehabilitation-centres-since-the-end-of-the-war/>  
<https://ihl-databases.icrc.org/fr/customary-ihl/v2/rule128?country=lk>
18. <https://timesofindia.indiatimes.com/world/south-asia/lanka-releases-1800-ex-ltte-guerrillas-after-rehabilitation/articleshow/10185260.cms>, 30 Sep 2011, Lanka releases 1,800 ex-LTTE guerrillas after rehabilitation
 

Read more at:  
[http://timesofindia.indiatimes.com/articleshow/10185260.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/10185260.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)
19. <https://reliefweb.int/report/sri-lanka/rehabilitation-ex-ltte-cadres-final-stages>
20. <https://www.businesstoday.lk/article.php?article=3488>, On file.
21. *From Vanni to Cinnamon Grand : Ex-fighters display dancing skills at IOM reception, 2011, available at <https://realsrilankanman.blogspot.com/2011/05/from-vanni-to-cinnamon-grand-ex.html>*
22. *Turning Former LTTE Personnel into Sri Lankan Citizens?*, <https://groundviews.org/2011/10/28/turning-former-ltte-personnel-into-sri-lankan-citizens/> Footnote 1.
23. <https://ihl-databases.icrc.org/fr/customary-ihl/v2/rule128?country=lk>
24. <https://ihl-databases.icrc.org/fr/customary-ihl/v2/rule128?country=lk>
25. *Post-Conflict Reconciliation in Sri Lanka: A Time for Reflection* Author(s): Rohan Gunaratna Source: *Counter Terrorist Trends and Analyses*, Vol 4, No 4 (Apr 2012), pp2-7, International Centre for Political Violence and Terrorism Research
26. <https://m.reliefweb.int/report/472295/sri-lanka/ex-cadres-reintegration-accelerated>
27. p8 <http://ices.lk/wp-content/uploads/2019/12/From-Combatant.pdf>, citing BCGR. On file.
28. [http://news.bbc.co.uk/1/hi/world/south\\_asia/8450914.stm](http://news.bbc.co.uk/1/hi/world/south_asia/8450914.stm)
29. <https://reliefweb.int/report/sri-lanka/rehabilitation-ex-ltte-cadres-nearing-completion>
30. p9, *From 'Combatant' to 'Civilian': The Psychosocial Wellbeing of Ex-combatants in Kilinochchi and Mullaitivu, Sri Lanka*, 2019. ICES on file:

'There is a glaring discrepancy in the numbers of ex-combatants "rehabilitated and reintegrated" provided by the government sources. Recently in a news briefing, former Army Commander Daya Ratnayake, who was the first Commissioner General of Rehabilitation (from July 2009 to February 2010), said that "over 14,000 LTTE members, including those who aided and abetted in killings or attempted killings and bombed religious places were rehabilitated by the Sri Lankan Government. These people were given an amnesty by the government. The convicted LTTE members who attempted to kill the then President were given presidential pardon." (Pothmulla and Sanjeeewa 2019). According to the former Commissioner's statements, the number of ex-combatants surrendered and captured is over 14,000 and all of them were pardoned and rehabilitated. These claims directly oppose the information we gathered from the BCGR and its publications regarding the number of ex-combatants and the information on prosecution of cadres with higher involvement with LTTE. Due to these discrepancies it is difficult to determine which version of information holds the truth. '

31. Satkunanathan, Ambika, 2018/12/01, The treatment of former combatants in post-war Sri Lanka: A form of arbitrary detention or rehabilitation?  
[https://www.researchgate.net/publication/343046809\\_The\\_treatment\\_of\\_former\\_combatants\\_in\\_post-war\\_Sri\\_Lanka\\_A\\_form\\_of\\_arbitrary\\_detention\\_or\\_rehabilitation](https://www.researchgate.net/publication/343046809_The_treatment_of_former_combatants_in_post-war_Sri_Lanka_A_form_of_arbitrary_detention_or_rehabilitation)
32. <https://www.indiatvnews.com/news/world-594-child-soldiers-among-12-000-lttes-rehabilitated-by-sri-lanka-govt-454452>
33. [https://www.ices.lk/files/uqd/fba0ea\\_7c56089ec9fe4c649c5f38c3764f52a6.pdf](https://www.ices.lk/files/uqd/fba0ea_7c56089ec9fe4c649c5f38c3764f52a6.pdf)
34. <https://www.un.int/srilanka/sites/www.un.int/files/Sri%20Lanka/2021/July/book.pdf>

## EFFECTIVE COMMAND AND CONTROL OF TAMIL PARAMILITARIES

**This section illustrates how Gotabaya Rajapaksa – and his brother Basil – exercised control over the breakaway LTTE factions led by Karuna and his associates.**

Violations of human rights by Tamil paramilitaries in the east of Sri Lanka in 2004 who defected from the LTTE and from the Eelam People's Democratic Party have been well documented by the UN.<sup>244</sup> The Sri Lankan Government commanded, controlled, housed, protected, collaborated with and funded and armed these forces who could be used for black operations and false flag operations.<sup>245</sup> Gotabaya Rajapaksa himself said in testimony to the domestic commission that 'the Karuna group then the Pillaiyan group all these ex LTTE cadres even EPDP, PLOTE EPRLF, all these people supported the government for a long period', and that they 'had to carry weapons [...] for their own security'.<sup>246</sup>

After 2004 when the LTTE split, the breakaway faction became armed paramilitaries, deliberately encouraged and facilitated by the Sri Lankan Government even though they should have been disarmed under the terms of the ceasefire agreement. Collaboration by the Sri Lankan Government with the Karuna group coincided with the breakdown of the ceasefire with the LTTE from about 2005 onwards.<sup>247</sup> These

pro-government paramilitaries also routinely recruited and used child soldiers – something the Sri Lankan military facilitated and condoned even as child soldiers were seen inside army camps.<sup>248</sup> In April 2006, the US Government described Gotabaya's attempts to undermine the monitoring of ceasefire violations, which included the government's violations and failure to disarm Tamil groups by all but accusing the Scandinavian monitors of fabricating their evidence.<sup>249</sup> In May 2006, the fact that the armed forces were working with Karuna was raised by US diplomats with Gotabaya Rajapaksa, who conceded it was occurring and agreed it should stop.<sup>250</sup> This was at best disingenuous, though the US Embassy seemed to believe it: *'We were particularly struck by the turnaround in Gotabaya Rajapaksa. Previously he would strenuously deny any connection between the GSL and the Karuna group--now he admits it is probably occurring.'*

In October 2006, Basil Rajapaksa spoke to US diplomats regarding abductions by Tamil groups (EPDP and the Karuna faction); this is how the telex reported on the conversation:

*Rajapaksa said that the Government of Sri Lanka (GSL) has requested Devananda and the Tamil Mukkal Vidutalai Pulikal (TMVP - Tamil People's Liberation Tigers, a.k.a. the Karuna faction) to control their members and in the case of the TMVP to 'go back to Batticaloa. We have clearly instructed Douglas and Karuna*

<sup>244</sup> para 49, OISL 2015, '...paramilitaries were also responsible for grave human rights abuses, particularly arbitrary detention, torture and many thousands of enforced disappearances...' Also para 143 cites EPDP operating out of military bases indicating tacit support. There are multiple references in the report to their role in alleged violations of human rights.

<sup>245</sup> '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.' A/HRC/8/3/Add.3 Para 50, 2008 UN OISL 'A number of witnesses point to close links between Military Intelligence and both the Karuna Group and EPDP.' para 130. UN also cites the domestic commission the LLRC regarding armed groups post war 'continuing acts of extortion, abduction and other criminal acts'. LLRC final report, para 9.73, para 9.74 [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf](http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf), On file.

<sup>246</sup> Transcript Gotabaya Rajapaksa testimony, LLRC, 17 Aug 2010

<sup>247</sup> W250

<sup>248</sup> W141 testimony

<sup>249</sup> 'Since the February talks, the SLMM has delivered in private weekly progress reports on cease-fire violations to both parties, and the GSL has bristled at SLMM's assessment that it has failed to disarm groups operating in areas under its control. Defense Secretary Gotabaya Rajapaksa (the younger brother of President Mahinda Rajapaksa), in a strongly-worded note, leaked to the press and reported on April 2, all but accused out-going SLMM head Hagrup Haukland of fabricating reports of sightings and contacts with "armed groups" in the east'.

[https://wikileaks.org/plusd/cables/06COLOMBO592\\_a.html](https://wikileaks.org/plusd/cables/06COLOMBO592_a.html)

<sup>250</sup> [https://wikileaks.org/plusd/cables/06COLOMBO872\\_a.html](https://wikileaks.org/plusd/cables/06COLOMBO872_a.html)

*that they are personally responsible for the actions of their members.*<sup>251</sup>

The UN later pointed out that Gotabaya Rajapaksa had testified to the LLRC that the Tamil paramilitaries had been disarmed but argued they had to carry weapons for their own security. The OISL report by the UN highlighted the intelligence role the 'Karuna Group' played for the army, navy and STF, identifying LTTE cadres and corpses.<sup>252</sup>

However, the Tamil paramilitaries had more than just an intelligence role as US leaked telexes [COLOMBO 00000728] such as this one from 2007 reveal:

*These groups also enhance security in Colombo by kidnapping and sometimes killing those suspected of working with the LTTE. Frequent abductions by paramilitaries keep critics of the GSL fearful and quiet.*<sup>253</sup>

A military official whose name was redacted in the telex told the Embassy that they "have orders from Defense Secretary Gotabaya Rajapaksa to not interfere with the paramilitaries on the grounds that they are doing 'work' that the military cannot do because of international scrutiny" and "that the Defense Ministry had instructed him not to interfere with 'military intelligence operations'".<sup>254</sup> The same source "alleged, Defense Secretary Gotabaya Rajapaksa has authorized EPDP and Karuna to collect the money from Tamil businessmen. This may account for the sharp rise in lawlessness, especially extortion and kidnapping, that many have

*documented in Vavuniya and Colombo".* A number of MPs are quoted in the telex saying they feared for their lives from the Karuna faction. It goes on to say, "Although the GSL has consistently denied supporting Karuna, XXXXXXXXXXXX allowed PoIOff to listen to tapes of his interview with Gotabaya. The Defense Secretary was effusive in his praise for Karuna...".

It is clear the concerns of the US Embassy were conveyed to Gotabaya Rajapaksa<sup>255</sup> and that the US Embassy believed everything pointed...

*...to a pattern of GSL [Government of Sri Lanka] complicity with paramilitary groups on multiple levels. It appears that this involvement goes beyond merely turning a blind eye to these organizations' less savory activities. At worst, these accounts suggest that top leaders of its security establishment may be providing direction to these paramilitaries.*<sup>256</sup>

Tamil paramilitaries are reported to have had access to multiple detention sites; W76 was in a 'rehabilitation' camp at Nellukulam, where Karuna cadres would interrogate inmates. Likewise, W111 described the breakaway Tamil paramilitary leader Col Karuna himself arriving with high-ranking army officers to visit the camps around Vavuniya.

The Tamil paramilitaries in the east operated closely with the Special Task Force (STF) of the police, which came under Gotabaya Rajapaksa's effective control. One Sinhalese ex-STF officer (W251) recalls his superior

<sup>251</sup> [https://wikileaks.org/plusd/cables/06COLOMBO1622\\_a.html](https://wikileaks.org/plusd/cables/06COLOMBO1622_a.html)

<sup>252</sup> OISL §142; eg W129 'At Omanthai I was arrested. I do not know person who spotted me but I think the informer was from Karuna's side. There were announcements for those in the LTTE to go to one side and the rest to another side. I did not go to the LTTE side and a man came up and pointed to me and said, [named redacted] go to the other side. He said that in good Tamil.'

<sup>253</sup> <https://www.tamilnet.com/img/publish/2010/12/Wikileaks-Blake-01.pdf>, 06 COLOMBO 000728

<sup>254</sup> This version of the telex says 'Jaffna Government Agent K. Ganesh told us that some military commanders in Jaffna, including Major General Chandrasiri, want to clamp down on paramilitaries but have orders from Defense Secretary Gotabaya Rajapaksa to not interfere with the paramilitaries on the grounds that they are doing "work" that the military cannot do because of international scrutiny.'

[https://wikileaks.org/plusd/cables/07COLOMBO728\\_a.html](https://wikileaks.org/plusd/cables/07COLOMBO728_a.html)

<sup>255</sup> 'Addressing the activities of these paramilitaries and their blatant disregard for human rights is a top priority of the Embassy. Ambassador, DCM and Pol Chief have met repeatedly with the President, the Foreign Minister, Foreign Secretary, Defense Secretary Gotabaya Rajapaksa, Human Rights Minister Mahinda Samarasinghe and others to emphasize the importance of reining in these groups and ending the abductions, killings, and other human rights abuses. Visiting senior USG officials, including Assistant Secretary for South and Central Asian Affairs (SCA) Richard SIPDIS [sic] Boucher and Principal Deputy Assistant Secretary for SCA Steven Mann have delivered tough messages on human rights to the highest levels of the GSL, noting that continued abuses could affect defense cooperation.'

' ibid

<sup>256</sup> ibid

officer relaying orders from Gotabaya not to interfere with the Tamil paramilitaries or their political party the TMVP (Tamil Makkal Viduthalai Pulikal):

*The OIC (name redacted) told us not to stop or search Karuna's people or to interfere in anything they were doing. The instruction came from the Defence Minister [sic] Gotabaya Rajapaksa according to the OIC. I saw they boldly carried weapons and moved around armed on bikes. Nobody else would dare openly carrying weapons. The TMVP and the army soldiers were talking directly to Gotabaya during the search operations. Gotabaya called the SP and told him not to interfere with the TMVP cadres. on one occasion there was an argument on the phone about us not interfering. This was early on in my deployment and we had taken some TMVP cadres to our camp to search them but Gotabaya called the SP and told him to let them go and not interfere. My SP was scared of those small TMVP boys because they had direct links to Gotabaya.*

He says he witnessed people in detention in the TMVP camp and also underage cadres with weapons.

In 2007 the TMVP split and Col Karuna who was the most senior figure was replaced by Sivanesathurai Chandrakanthan, known more commonly as Pilliyan, a former LTTE child soldier, who went on to become Chief Minister of the Eastern Province in 2008. A member of the STF recalls being on point duty along the road when Gotabaya Rajapaksa arrived by helicopter in Batticaloa army camp and went to visit Pilliyan at his home. W72 described Basil Rajapaksa, Gotabaya's brother, as being in de facto charge of Pilliyan.

A journalist who witnessed child soldiers<sup>257</sup> being used by the Tamil paramilitaries inside army camps received a series of death threats

and then heard from his sources that the army commanders in the area had been calling Gotabaya Rajapaksa to inform about the incident (W141). This means Gotabaya Rajapaksa would have been aware of the recruitment and use of child soldiers by his allies and of the army condoning this by having them present in army camps - in addition to being aware of extensive human rights reporting on the issue at the time.

Additionally, complaints were made of forced recruitment by the Tamil paramilitaries. The ITJP is in possession of six complaints by family members that Iniyabharati's cadres abducted their (adult) children or husbands in December 2008 and they subsequently disappeared.

A 2007 US leaked telex said Col Karuna was using children as young as fourteen years old.<sup>258</sup> It also described Karuna's pro-government paramilitaries being allowed to pilfer supplies meant for IDPs and alleged his cadres were operating prostitution rings out of IDP camps. Wikileaks alleged that the EPDP preyed on widows with children and young girls in neighbouring villages. Initially seducing them by promises of economic protection, the EPDP are alleged to have taken the children by force and sold them into slavery.<sup>259</sup> Young women were coerced into sexual slavery and forced to have sex with between five and ten soldiers at a time; they were also sold to prostitution rings through EPDP's networks in India and Malaysia. Numerous allegations were made that children were often smuggled out of the country with the help of a corrupt Customs and Immigration officials at Bandaranaike International Airport in Colombo.

Meanwhile Col Karuna travelled to the UK on a genuine diplomatic passport issued under a false name. He was arrested in the UK in November 2007<sup>260</sup> and later sentenced to jail. In

<sup>257</sup> UNICEF says Karuna faction 'not serious' about child releases, 27 Apr 2007, <https://reliefweb.int/report/sri-lanka/sri-lanka-unicef-says-karuna-faction-not-serious-about-child-releases>

*Sri Lankan rebels, breakaway faction still recruiting child soldiers - Ban Ki-moon*, 28 Dec 2007, UN, [https://news.un.org/en/story/2007/12/244632-sri-lankan-](https://news.un.org/en/story/2007/12/244632-sri-lankan-rebels-breakaway-faction-still-recruiting-child-soldiers-ban-ki-moon)

[rebels-breakaway-faction-still-recruiting-child-soldiers-ban-ki-moon](https://www.colombotelegraph.com/index.php/wikileaks-epdp-sold-jaffna-children-girls-to-prostitution-rings-and-boys-to-slavery/)

<sup>258</sup> <https://www.tamilnet.com/img/publish/2010/12/Wikileaks-Blake-01.pdf> COLOMBO 00000728

<sup>259</sup> <https://www.colombotelegraph.com/index.php/wikileaks-epdp-sold-jaffna-children-girls-to-prostitution-rings-and-boys-to-slavery/>

<sup>260</sup> *Sri Lankan rebel breakaway leader Karuna held in UK*, 3 Nov 2007, Reuters,



a statement read out in court in London, Karuna said he had been given the passport by Gotabaya Rajapaksa. The BBC reported:

*Sri Lanka's powerful Defence Secretary, Gotabhaya Rajapaksa, 'arranged everything' for him to come to UK using a diplomatic passport, Karuna has told British immigration authorities. Reading Karuna's statement at the open court, the prosecution said President Rajapaksa's younger brother was known to him since he defected from the LTTE... The passport was given to him only inside the plane bound to UK, according to the statement.<sup>261</sup>*

An ITJP witness working at the Colombo airport, W303, said Duminda Silva (later convicted of murdering a political rival)<sup>262</sup> from the then ruling SLFP exerted a lot of influence over airport security and could order airport senior security staff not to check a certain person.

*Basically if they wanted a person to board the plane, they could facilitate that. In return the senior staff were paid a bribe. At my level we were mostly kept in the dark and didn't receive any bribes. Gotabaya Rajapaksa gave the authorization for Karuna Amman to leave the country on a false passport. He was waiting in the VIP lounge and boarded the plane at the last moment.*

This begs the question of how a well-known paramilitary leader who had previously been a member of a proscribed terrorist group got through airport security and immigration and the airline checks at a time of heightened security at the peak of the war. However, a security official W224 said Gotabaya had control over the black list for immigration:

*During the war the list was controlled by the Immigration Department but Gotabaya gave the order to share it with TID and SIS.*

While Karuna was in London, his subordinate Veera ran his operations. W245 says Veera reported to Karuna but in his absence he had

witnessed him being in direct contact with Gotabaya, and W245 also saw what was referred to as 'Gota's car' arriving. During an illegal operation W245 says the police arrived and 'a while later some Sinhalese guys came and showed some ID and I heard him on the phone referring to 'Gotabaya Sir''.

After Karuna returned from London to Sri Lanka and the war had ended and thousands of ex-LTTE cadres were in detention, Karuna had access to detention sites and visited his ex-comrades. The ITJP has testimony to this effect from those who were visited in detention. W319 said one day he went to the interrogation room handcuffed and Karuna, by now a government minister, was there with two men who appeared to be his bodyguards. While W319 was kneeling, Karuna threatened him, his wife and children:

*He reminded me I was being held incommunicado and no one would know if I was killed... He told me I was being held by TID under the authority of Gotabaya Rajapaksa.*

The Tamil paramilitaries didn't just work with the STF - they also collaborated with the navy in the east of Sri Lanka which had an intelligence function on land. A naval officer W308 recalls being in the east after 2005 and seeing Karuna cadres coming in and out of his naval base:

*During my time there, the Navy was supplying food to a group of about 15 to 20 men from the Karuna group who used the base from time to time. I was directly responsible as the XXX(redacted) for their food. The Karuna guys were young; they were 'small boys' (in stature), but they were quite experienced... The Karuna team would conduct surveillance wearing civvies, but would wear navy camouflage when they mounted certain operations.*

W250 recalls another naval officer seeing Karuna cadres wearing naval uniforms in 2006.

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<https://www.reuters.com/article/idINIndia-30304420071103>, On file.

<sup>261</sup> *Gotabhaya 'gave me passport'*, BBC, 25 Jan 2008, [https://www.bbc.com/sinhala/news/story/2008/01/080125\\_karunajail.shtml](https://www.bbc.com/sinhala/news/story/2008/01/080125_karunajail.shtml)

<sup>262</sup> Courtroom drama as Duminda Silva faces death row, 14 Oct 2018, <https://www.sundayobserver.lk/2018/10/14/news-features/courtroom-drama-duminda-silva-faces-death-row>

*During the Sampur operation, Karuna teams were collaborating with Navy Intelligence and were helping to identify LTTE targets. Collaboration with Karuna's group coincided with the breakdown of the ceasefire with the LTTE from about 2005 onwards.*

A naval officer W314 says he was given orders by the Navy Commander to work with the Karuna faction which his men did not like:

*On one of the occasions when Karannagoda came to my camp he told me to let Karuna and his men move freely. He also told me to give him armoury items. He said to give him weapons including grenades and ammunition because the government had ordered it. Men in my command had died at the hands of Karuna and his men and my men were angry. ..I was being told by people every day about what Karuna and his men were doing in my area. He was collecting money*

*from people. There were some shops. His men would come at night to the shops, point a pistol at the owner and say 'give me everything' and then would take what they wanted. Karuna had area commanders that lived in the jungle. They came every day. They came to the hospital and took medical supplies. They looted food. Karuna recruited child soldiers. If they were old enough to carry a gun they would be recruited. Children are easy to motivate to do suicide missions. I know about the child recruitment because I saw the bodies of dead children. Also parents would come to me to make complaints that their children had been taken to go to war. I instructed families to keep their children inside because if they were found by Karuna walking outside they would be taken. This was happening every day.*

### 3. FAILURE TO INVESTIGATE

'Human rights mean nothing. We do not want to be bothered about it while we're fighting a war. Because of the international campaign, we can't arrest anyone. But I don't care; I will do what I want.'<sup>263</sup>

Gotabaya Rajapaksa

This section explores allegations of incidents of widespread human rights violations brought to the attention of Gotabaya Rajapaksa, the then Secretary of Defence and his failure to respond, given his legal duty to act; having the capacity to act; and knowing full well what the consequences and potential harm would arise from his failure to act. When these rights violations were brought to his attention, he allegedly refused to investigate and prejudged the outcome by saying nothing wrong had been done; in several cases he blocked investigations, or appointed his friends to carry out flawed investigations, and investigated only his political rivals. When he assumed the Presidency of Sri Lanka, he established a Political Victimisation Commission which would lead to overturning previous investigations into his allies.

#### Scale of Allegations

For the entire time Gotabaya Rajapaksa was in office as Secretary to the Defence Ministry there were persistent allegations of systematic human rights violations committed on a widespread scale, mainly against civilians. Sri Lanka had the second highest number of cases in the world of enforced disappearance cases and was the top country of origin for victims of torture treated by the UK's main rehabilitation charity.<sup>264</sup> A UN investigation in 2015 said sexual violence had been used by security forces during the period Gotabaya was

in office as part of an 'institutional policy' (OISL 591).

Allegations of human rights violations occurring on a large scale were brought to the attention of the government, of which Gotabaya Rajapaksa was a key part, on so many occasions that it would be a massive undertaking to try and list them all in a document. A large number of United Nations mechanisms and special mandate holders documented in detail the allegations, making clear recommendations to address the situation that were ignored, in some cases even naming the individuals allegedly responsible for torture, killing and disappearance.<sup>265</sup> The constant stream of allegations was met with denial, or when that became untenable, the establishment of inquiry bodies that were staffed with loyal allies or the perpetrators themselves, to guarantee they never delivered truth or justice to the victims. At the same time the government claimed that it needed technical support in the form of training and capacity building from the international community to deliver justice – a refrain repeated by successive governments. While perpetrators enjoyed impunity, family members who tried to report disappearances or victims who testified in commissions or supplied information to international bodies faced violent reprisals from the security forces.

Even when it came to allegations of violations committed abroad there was a failure to investigate and prosecute. Sri Lankan

<sup>263</sup> <https://www.colombotelegraph.com/index.php/wikileakssthere-will-be-no-investigation-no-one-will-be-able-to-find-out-what-happened-to-keith-gota/?platform=hootsuite>

<sup>264</sup> In 2015 for 4<sup>th</sup> successive year, Freedom from Torture, Un Committee Against Torture, 59th Session submission, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjh3oDildWCAXWNUEEAHbQFAYUQFnoECA80AQ&url=https%3A%2F%2Fwww.refworld.org%2Fpdfid%2F58495d184.pdf&usq=A0vVaw1\\_1ciczRlUwJhyhq4c6YP&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjh3oDildWCAXWNUEEAHbQFAYUQFnoECA80AQ&url=https%3A%2F%2Fwww.refworld.org%2Fpdfid%2F58495d184.pdf&usq=A0vVaw1_1ciczRlUwJhyhq4c6YP&opi=89978449)

<sup>265</sup> [Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development : report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Manfred Nowak, 26 Feb2008, for example.](#)

peacekeepers were repatriated from Haiti in November 2007 after a UN investigation implicated them in systematic sexual exploitation and abuse of children. None was imprisoned, even for such a grave crime.<sup>266</sup> As Secretary of Defence, Gotabaya Rajapaksa had control over the court martial process. To date there is a lack of clarity about the judicial process initiated by Sri Lanka and a failure by the United Nations to hold Sri Lanka to its promises of accountability for grave crimes committed over many years against very vulnerable children.<sup>267</sup>

Nor has there been any accountability for the role Gotabaya Rajapaksa played in 1989 as the person in command and control of Matale District, where numerous people were killed and hundreds of people were subjected to enforced disappearance and torture.<sup>268</sup> In November 2022, UN experts wrote to the Government of Sri Lanka asking what action it had taken<sup>269</sup> following a report by the ITJP based on information from a Sri Lankan Government inquiry that was never made public.<sup>270</sup> There has been no response to the UN, despite the fact that President Ranil Wickremesinghe, who relies on political support from the Rajapaksas to stay in power, has promised to establish a Truth Commission.

### Authority and Power to Investigate

As early as 2006 the Rajapaksa Government promised the US Government it would investigate alleged violations of human rights. Wikileaks telexes quote the foreign secretary Palitha

Kohona reportedly telling the US Government that Gotabaya Rajapaksa was part of a working group under a ministerial committee on human rights.<sup>271</sup>

Instead of carrying out investigations, Gotabaya Rajapaksa blocked all inquiries. A US telex from March 2007 indicates that when 433 police officers and soldiers were arrested on charges of abduction and extortion, Gotabaya Rajapaksa blocked the police chief from briefing the embassy on the progress of investigations.<sup>272</sup> The telex ended with this comment:

*This marks another clear attempt on the part of Rajapaksa to silence well-meaning public servants who may be trying to address the significant number of abductions that have taken place.*

In May the same year, US telexes speak of 'the appointment of a 'One-Man Commission' to investigate reported disappearances'.<sup>273</sup> This was the *Commission to Investigate Killings, Disappearances, Abductions and Unidentified Dead Bodies* and the chair was Mahanama Tilakaratne, a friend of the President's.<sup>274</sup> The US Embassy commented that 'these efforts so far appear aimed more at improving Sri Lanka's image abroad and have yet to produce concrete improvements in the human rights situation'.

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<sup>266</sup> <https://itjpsl.com/assets/press/haiti-FINAL.pdf>, *Let the Punishment Fit the Crime*. Joint report with JDS. Also other reports.

<sup>267</sup> Press statement *Haiti: More than a decade and still hiding*, ITJP, <https://itjpsl.com/assets/press/Press-Statement-haiti-f.pdf>

<sup>268</sup> [https://itjpsl.com/assets/ITJP\\_1989\\_mass\\_grave\\_report\\_v6\\_WEB.pdf](https://itjpsl.com/assets/ITJP_1989_mass_grave_report_v6_WEB.pdf)

<sup>269</sup> <https://itjpsl.com/assets/DownloadPublicCommunicationFile.pdf>

<sup>270</sup> *Gotabaya Rajapaksa's Role In 1989 Mass Atrocities*, 10 May 2022, <https://itjpsl.com/reports/gotabaya-rajapaksa-the-sri-lankan-presidents-role-in-1989-mass-atrocities>

<sup>271</sup> 'In a May 25 [2006] conversation with the Ambassador and DCM, Foreign Secretary H.G.M.S. Palihakkara said that President Rajapaksa is "very keen" in mounting serious investigations into possible security force human rights violations. To that end, Foreign Minister Mangala Samaraweera and Minister of Disaster Management and Human Rights Mahinda Samarasinghe would later on

May 25 hold the first meeting of a revived inter-ministerial committee on human rights which would provide oversight of security force conduct. 'We want to prevent security force misconduct while investigating any that has already taken place,' Palihakkara said. There would be a standing working group under the committee, chaired by Samarasinghe, which would include the service commanders, Defense Secretary Gotabaya Rajapaksa, the Attorney General and others.'

[https://www.wikileaks.org/plusd/cables/06COLOMB0872\\_a.html](https://www.wikileaks.org/plusd/cables/06COLOMB0872_a.html)

<sup>272</sup> 06COLOMB0386\_a, reproduced at <https://www.colombotelegraph.com/index.php/wikileaks-stf-murdered-trinco-students-basil-to-us/>

<sup>273</sup> [https://wikileaks.org/plusd/cables/07COLOMB0728\\_a.html](https://wikileaks.org/plusd/cables/07COLOMB0728_a.html)

<sup>274</sup> <http://www.humanrights.asia/news/ahrc-news/AS-216-2007/> Himself arrested in 1998

<https://www.sundaytimes.lk/981101/frontm.html> and <https://www.tamilnet.com/art.html?catid=13&artid=2056>; <http://www.janasansadaya.org/uploads/files/126-%20595-1998.pdf> in what he said was 'a case teeming with several unusual and strange features'.

In November 2006, the International Independent Group of Eminent Persons (IIGEP) was established to observe and assist *The Commission of Inquiry Appointed to Investigate and Inquire into Serious Violations of Human Rights*, which had been established by President Mahinda Rajapaksa. By the end of March 2007, the IIGEP disbanded because the eminent experts expressed had serious concerns about the operations of the commission. One of the main cases that IIGEP investigated was the killing of 5 Tamil youths in Trincomalee on 2 January 2006. US Embassy telexes indicate that Gotabaya Rajapaksa knew in October 2006 that the Special Task Force were responsible for the killings but claimed he needed more capacity building to progress:

*Speaking with surprising candor, Rajapaksa explained the GSL's efforts to prove that members of the Security Task Force (STF) murdered five students in Trincomalee in January: 'We know the STF did it, but the bullet and gun evidence shows that they did not. They must have separate guns when they want to kill some one. We need forensic experts. We know who did it, but we can't proceed in prosecuting them'.<sup>275</sup>*

In some instances Gotabaya made it clear he had the power to issue orders to the police to investigate, and had no qualms about investigating political rivals. Regarding the case (after the war) of his brother's presidential rival, General Sarath Fonseka, Gotabaya admitted he was issuing orders to police investigators:

*After the then Army Commander sided with the other side later, we never hunted him for personal reasons. We went after him with proper charges only. I asked the CID to do proper investigations regarding these matters. And they carried out such investigations with proper evidence.<sup>276</sup>*

With respect to the anti-Muslim violence in 2014 in Aluthgama, Gotabaya also revealed that he could dispatch the head of the police to the area and the Special Task Force, even though technically the police was not at that point under his control.

*Mr Ali Sabri referred to that Aluthgama incident. As soon as that incident happened, I was able to send the IGP to that place. In addition, the SDIG in charge of this area. The STF as well. We were able to control it in a short period because we sent them.<sup>277</sup>*

### **Immunity Plan and Investigating the Investigators**

After the Easter Sunday bombings, Gotabaya proposed an immunity provision from prosecution for the Sri Lankan military and intelligence services in a report he handed to the President.<sup>278</sup>

*'If they cannot do it, I will do it when the next government comes to power',* Gotabaya is reported as saying regarding his immunity plan.<sup>279</sup>

Following his return to power in 2019, Gotabaya Rajapaksa appointed a commission to look into alleged politicisation of criminal investigations into corruption initiated under the previous Sirisena Government.<sup>280</sup> It is noteworthy that several of the President's associates were those investigated between 2015-19. The commission established by Gotabaya recommended reparations for those who had been investigated and charged. The UN complained it actively intervened in court proceedings in several high profile human rights cases<sup>281</sup> and then said it 'obstructed and intervened in judicial proceedings on several 'emblematic' human rights cases.'<sup>282</sup>

<sup>275</sup> [https://wikileaks.org/plusd/cables/06COLOMB01622\\_a.html](https://wikileaks.org/plusd/cables/06COLOMB01622_a.html)

<sup>276</sup> 12 Feb 2019 Kelum Bandara interview, *Daily Mirror*, <http://www.dailymirror.lk/article/How-can-there-be-freedom-without-discipline-Gotabaya-162220.html>

<sup>277</sup> 2 August 2018 Gota in Forum 5 21'56'-22'32'

<sup>278</sup> <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/882-sri-lanka-president-accepts-proposal-to-legalise-impunity-video>

<sup>279</sup> <http://www.sundayobserver.lk/2019/05/19/news-features/bulathwatte-bewilderment>

<sup>280</sup> [https://www.presidentsoffice.gov.lk/wp-content/uploads/2020/02/2157-44\\_E.pdf](https://www.presidentsoffice.gov.lk/wp-content/uploads/2020/02/2157-44_E.pdf), On file.

<sup>281</sup> para 50, A/HRC/51.5 2020

<sup>282</sup> A/ HRC/49/9 para 12



## Failure to Prevent:

During the decade Gotabaya was in charge of the Ministry of Defence, the responsibility to prevent abuses of human rights through training of personnel lay with the Ministry of Defence which, according to its own website, oversaw security training programmes and institutes. Both the police and army structures contained human rights sections. Additionally, both the military and police had received extensive overseas training, in particular the senior officers in command positions.<sup>283</sup> Gotabaya himself boasted:

*Training on human rights, international humanitarian law and the law of armed conflict as well as highlighting the necessity to protect civilians has been integral to the training syllabi of the Sri Lankan Armed Forces for many years.*<sup>284</sup>

The security forces received extensive training by the United Kingdom, the ICRC, and the United States. In its Annual Report 1997 the ICRC stated that by 1997 military academies had incorporated the 'law of war' into their syllabus.<sup>285</sup> In August 1998, the *Calgary Herald* reported that the Sri Lankan Army (SLA) had 'established 'human rights cells' to educate its troops'. The training covered human rights and International Humanitarian Law (IHL),<sup>286</sup> and meant that security officers knew they were committing violations of human rights and IHL and also that they had a duty to investigate allegations.

Gotabaya Rajapaksa is reported to have acknowledged that the Sri Lankan navy in particular had a problem with human rights when speaking to US diplomats but hoped training - not criminal investigations - would rectify the problem:

*'We have few complaints in areas of SLA presence, but we have a problem with the SLN,' Rajapaksa explained. 'We didn't expect them to work with civilians and they weren't trained.' He said the President has prioritized human rights training for the Navy.*<sup>287</sup>

## Refusal to Investigate the 2009 War

In a BBC TV interview in February 2010, Gotabaya Rajapaksa went so far as to say he would not allow any investigation into the final phase of the war in Sri Lanka and asserted nothing wrong had happened:

*Whether it is the United Nations or any other country, we are not - I am not allowing any investigations in this country. There is no reason. Nothing wrong happened in this country. Take it from me. There will be no investigations for anything in this country.*<sup>288</sup>

He argued Western countries should investigate their own war crimes first:

*Sri Lankan military [are] much much better than all these forces in everywhere in the world when it comes to civilian casualties - all the precautions to prevent civilian casualties from the beginning to the end. If someone talks about taking our military into war crimes tribunals before that you have to take US, UK troops, all those troops and leaders to war crimes... before we are prepared to do any investigation in this land they must do investigations in those lands. So UN or human rights organisations or anybody should first do those investigation than talk about investigations here.*<sup>289</sup>

<sup>283</sup> *Sri Lanka: The human rights training given to the police/army in the North and/or Colombo since January 1997*, 1 Feb 1999, [https://www.refworld.org/docid/3ae6ac9a68.html%20\[accessed%2013%20October%202023](https://www.refworld.org/docid/3ae6ac9a68.html%20[accessed%2013%20October%202023)

Also Annex 2 of the ITJP's TID torture report at [https://itjpsl.com/assets/press/ITJP\\_TID\\_report\\_final\\_SINGLES.pdf](https://itjpsl.com/assets/press/ITJP_TID_report_final_SINGLES.pdf) lists training courses.

<sup>284</sup> *Defence Secretary Spells Out How Political Will Brought Peace to Sri Lanka Inaugurating Seminar on Defeating Terrorism-Sri Lankan*, on file.

<sup>285</sup> International Committee of the Red Cross (ICRC), 1 Jul 1998, Annual Report 1997, 'Sri Lanka'.

<sup>286</sup> *Calgary Herald*, 22 Aug 1998, final edition, Lynne Duke, 'Sri Lanka Battle Rages Far From World's Spotlight: A Bloody Stalemate Has Come to Characterize This Island Nation's Punishing 15-Year Civil War.' (NEXIS)

<sup>287</sup> 06COLOMBO1622\_a, [https://wikileaks.org/plusd/cables/06COLOMBO1622\\_a.html](https://wikileaks.org/plusd/cables/06COLOMBO1622_a.html)

<sup>288</sup> BBC World News Asia Today, [www.youtube.com/watch?v=1DyFQ-xdD-U](http://www.youtube.com/watch?v=1DyFQ-xdD-U). On file.

<sup>289</sup> <https://www.youtube.com/watch?v=Vtm54Y9USEg>

## DISAPPEARANCES

### Brought to the Knowledge of the Government

Sri Lanka had the second highest disappearance case load in the world dating back to the JVP period, when Gotabaya was in the army, and later from the war in the northeast when he was secretary to the Ministry of Defence. According to the UN Working Group on Enforced and Involuntary Disappearances (WGEID) reports of 2007, 2008, 2009 and 2010, the Sri Lankan Army, the police (CID, TID, STF) and Tamil paramilitary groups were allegedly responsible for the majority of the cases of enforced disappearances (OISL 412). It is noteworthy that WGEID was never allowed to visit Sri Lanka during the entire period the Rajapaksas were in power. The UN said after the war ended in 2009, *'Young Tamil males, whether or not they had any links to the LTTE, were particularly vulnerable to enforced disappearances in Government-controlled areas'* (OISL 408). Overall the UN commented that despite the scale of enforced disappearances, the Rajapaksa government had for the most part downplayed the phenomenon and denied the role of the security forces.<sup>290</sup>

In 2007, the UN Working Group on Enforced and Involuntary Disappearances stated that it had transmitted more cases of 'disappearances' as urgent appeals to the Sri Lankan Government in 2006 than to any other country in the world<sup>291</sup> and followed this up with a number of

additional statements that year.<sup>292</sup> UN High Commissioner for Human Rights, Louise Arbour, raised the issue of disappearances while on a visit to Sri Lanka<sup>293</sup> and again in a letter to the President.<sup>294</sup> US Congressmen raised the issue and in May 2007,<sup>295</sup> Assistant Secretary of State for South and Central Asian Affairs Richard A Boucher voiced his concerns about the growing number of abductions and killings,<sup>296</sup> as did Under Secretary of State for Political Affairs R Nicholas Burns and Under Secretary of State for Democracy and Global Affairs Paula Dobriansky in October 2007.<sup>297</sup> The US suspended the issuance of licenses for the sale or transfer of military equipment and services to Sri Lanka because of its poor human rights record; Senator Patrick Leahy emphasised the gravity of the human rights problems in Sri Lanka in November 2007 addressing the US Senate.<sup>298</sup> The EU also repeatedly raised the issue of disappearances in Sri Lanka in 2007.<sup>299</sup>

In March 2008 Human Rights Watch (HRW)<sup>300</sup> said the Sri Lankan Government was responsible for widespread abductions and 'disappearances' that amounted to a national crisis.<sup>301</sup> The HRW report concluded that a crucial factor was 'the systemic impunity enjoyed by members of the security forces and pro-government armed groups for abuses they commit'.

<sup>290</sup> OISL, §396

<sup>291</sup> A/HRC/10/9, para 366, <https://www.ohchr.org/en/press-releases/2009/10/working-group-enforced-or-involuntary-disappearances-concludes-eighty-first>

<sup>292</sup> 'The United Nations Working Group on Enforced or Involuntary Disappearances concluded its 82nd session,' press statement, 29 Jun 2007, <https://www.ohchr.org/en/statements/2009/10/united-nations-working-group-enforced-or-involuntary-disappearances-concluded>

UN Working Group on Enforced or Involuntary Disappearances Concludes its 83rd Session, Revises Methods of Work and Adopts Annual Report, 30 Nov 2007, <https://www.ohchr.org/en/press-releases/2009/10/un-working-group-enforced-or-involuntary-disappearances-concludes-its-83rd>

<sup>293</sup> UN, *Sri Lanka should cooperate on human rights*, High Commissioner says, 15 Oct 2007, <https://news.un.org/en/story/2007/10/235822>

<sup>294</sup> *Lanka rejects UN monitors again*, 9 Dec 2007, referenced in <https://www.sundaytimes.lk/071209/News/news0003.html>

<sup>295</sup> *Ackerman Calls for Increased U.S. Efforts in Sri Lanka*, 10 Jul 2007, <https://webharvest.gov/congress112th/20121231061610/htt>

<p://ackerman.house.gov/2007-statements-remarks/ackerman-calls-for-increased-us-efforts-in-sri-lanka/>

<sup>296</sup> Richard A Boucher, Assistant Secretary of State for South and Central Asian Affairs, Remarks to the Press at the Cinnamon Grand Hotel Colombo, Sri Lanka, 10 May 2007, <https://2001-2009.state.gov/p/sca/rls/rm/2007/84701.htm>

<sup>297</sup> *Under Secretaries Burns and Dobriansky Meet With Human Rights Defenders*, 30 Oct 2007, <https://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94376.htm>

<sup>298</sup> *Congressional Record – Senate*, Nov 2007, S13723, <https://www.govinfo.gov/content/pkg/CREC-2007-11-02/pdf/CREC-2007-11-02-pt1-PgS13723.pdf>

<sup>299</sup> Footnotes 335 and 336, HRW report, [https://www.hrw.org/reports/2008/srilanka0308/8.htm#\\_ftn335](https://www.hrw.org/reports/2008/srilanka0308/8.htm#_ftn335), On file.

<sup>300</sup> <https://www.hrw.org/news/2008/03/06/sri-lanka-disappearances-security-forces-national-crisis>

<sup>301</sup> *NGOs produced lists naming the disappeared such as this one for 2007 alone* <http://www.humanrights.asia/news/urgent-appeals/UP-157-2007/>

In 2011 the UN Committee Against Torture<sup>302</sup> also said it was concerned that 475 new cases of enforced disappearance during the period 2006-2010 were transmitted by WGEID to the Government of Sri Lanka in which it was alleged that the military, police, the Criminal Investigation Department (CID) were the alleged perpetrators.<sup>303</sup>

In 2012, the Sri Lankan Government's own Lessons Learnt and Reconciliation Commission (LLRC) also expressed its 'grave concern' (para 4.318) about the number of alleged disappearances of LTTE cadres who had surrendered to the Sri Lanka Army at the end of the war. The LLRC again reminded the Sri Lankan Government of its duty to investigate (para 4.319).

### **Tainted or No Investigations into Disappearances**

On 14 May 2008, during the country's presentation for the Universal Periodic Review at the UN Human Rights Council, the then attorney general C R De Silva stated that of 355 alleged disappearances submitted to the government, initial investigations revealed 12 persons had left the country, 17 persons were back living with their families, and 11 young persons had 'eloped'. De Silva was unable to account for the remaining 315 cases on the list whose disappearance was not credibly investigated.<sup>304</sup> The US State Department Human Rights report for 2008 said, 'During the year, no military, police or paramilitary members were convicted of any domestic human rights abuse.'

On 11 August 2006, the domestic Human Rights Commission told WGEID it had stopped investigating allegations of disappearance cases at the request of the government.<sup>305</sup> This led the commission to be downgraded to B status. The UN reported that its sources stated that when a complaint about an arrest and

detention was received by the Human Rights Commission at the time, 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.<sup>306</sup>

In 2006, an investigative commission was established called the '*Presidential Commission on Abductions, Disappearances, and Killings*' and then a follow-on commission in May 2007. The UN reviewed the unpublished findings in 2015 and found the investigation lacked credibility or independence. Regarding the 2007 commission, the UN said, 'this report appeared to be primarily aimed at undermining and dismissing allegations of disappearances' (OISL 490). Bizarrely, at the top of the list of recommendations was that legal action should be taken against people who complained to the police of abductions and disappearances, despite allegedly knowing where they were.

When complaints were sent directly to the Ministry of Defence, staff failed to take them seriously. For example, two members of the Sri Lanka Socialist Equality Party disappeared in 2007 in a heavily controlled military area and their case was immediately reported to the Secretary of Defence by fax (which the Additional Secretary in the ministry reportedly confirmed had been received) but the political party told the media a prompt investigation had not been initiated and it didn't even appear that their complaint had even been properly read.<sup>307</sup> It took months for the domestic Human Rights Commission to agree to open an investigation, and then the local commanders in charge of the area where the men disappeared simply refused to appear to testify.<sup>308</sup> This case was widely reported for months and the Secretary of Defence had the power to order any

<sup>302</sup> CAR/C?LKA/CO/3-4  
<https://digitallibrary.un.org/record/719227?ln=en>  
*Committee against Torture Forty-seventh session 31 October-25 November 2011 Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture*

<sup>303</sup> CAR/C?LKA/CO/3-4

<sup>304</sup> <https://www.refworld.org/country,.USDOS,.LKA,.49a8f151c>

[\\_0.html](#) - sourced from  
<http://www.lankaweb.com/news/items08/140508-2.html>

<sup>305</sup> OISL, para 472

<sup>306</sup> OISL, para 475

<sup>307</sup> *Sri Lankan defence ministry stalls on inquiry into missing SEP member*, 28 Mar 2008 World Socialist Web site, on file,

<sup>308</sup> <https://www.wsws.org/en/articles/2007/10/sril-o15.html>

officer to attend commission hearings but failed to do so.

In June 2012, when asked about disappearances, Gotabaya Rajapaksa claimed he had investigated the issue:

*I am the Secretary Defence. I have investigated this. Don't take the word from these people. Take the word from me... These are wrong allegations... I have investigated these things. These are not correct... These 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.*<sup>309</sup>

In May 2012 he also claimed that many disappeared had left Sri Lanka to go abroad and that the allegations of enforced disappearances were '*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*'.<sup>310</sup>

Again in 2013, Gotabaya Rajapaksa told Sri Lanka's state-run newspaper that no LTTE cadre who had surrendered to the armed forces had

been subjected to enforced disappearance.<sup>311</sup> It is not clear what investigation he conducted, if any, or how he reached his conclusion that flies in the face of the facts.

In 2014, at Sri Lanka's 5<sup>th</sup> Periodic Report to the Human Rights Committee, the Government of Sri Lanka claimed that the reference to 'white vans' as a means of disappearance was 'a sensationalised allegation that appeared in some media reports, rather than being based on realistic facts'. Sri Lanka also categorically rejected allegations of involvement of the military in enforced disappearances.<sup>312</sup>

In 2020, Gotabaya Rajapaksa caused uproar by telling the UN resident coordinator that thousands of the 'missing' were dead. He claimed most had been taken by the LTTE and gone missing. Later he said investigations would be held into the matter that he already appeared to have prejudged.<sup>313</sup> It is noteworthy that as of 2022 several key figures alleged by the UN to be responsible for enforced disappearance, such as Shavendra Silva and Kamal Gunaratne, were in key positions of power.

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<sup>309</sup> <https://groundviews.org/2012/06/02/gotabaya-rajapaksa-on-disappearances-in-sri-lanka/>

And BBC

[https://www.youtube.com/watch?time\\_continue=73&v=WUQ7L\\_fOWJE&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=73&v=WUQ7L_fOWJE&feature=emb_logo)

<sup>310</sup> *Gotabaya Rajapaksa: Sri Lanka north 'not just for Tamils'*, BBC, 28 May 2012, <http://www.bbc.com/news/world-asia-18207198>

<sup>311</sup> *Defence Secretary Answers Critics - No LTTE Surrenderees Went Missing all 11,800 Surrenderees Integrated into Society*

*Army Submits Recommendations to LLRC*, Dharma Sri Abeyratne, 25 Jan 2013, *Daily News*, on file.

<sup>312</sup> 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 Lanka to the 'List of Issues'; Introductory Statement of H E Mr Ravinatha P. Aryasinha, Ambassador, Permanent Representative of Sri Lanka, 7 October 2014. (§398 OISL)

<sup>313</sup> First

<https://www.presidentsoffice.gov.lk/index.php/2020/01/17/un-resident-coordinator-delighted-with-presidents-sustainable-development-programs/?lang=en> then: <https://www.presidentsoffice.gov.lk/index.php/2020/01/24/death-certificates-for-missing-after-investigations/?lang=en>

Also after the elections Gotabaya played down the issue of enforced disappearance.

<http://www.ddinews.gov.in/international/minority-tamils-misled-decades-politicians-sri-lanka-president-gotabaya-rajapaksa>

## 4. LEGAL ANALYSIS

'Human rights and freedom are for good people not for bad people.'<sup>314</sup>

### LEGAL FRAMEWORK APPLICABLE TO SRI LANKA

This analysis relies on customary international law, international humanitarian law ('IHL'), international human rights and international criminal law applicable to the non-international armed conflict ('NIAC') in Sri Lanka.<sup>315</sup> The prohibition of international crimes such as crimes against humanity, war crimes, genocide, and crime torture (as a standing alone crime) have reached the status of customary international law, with certain elements of these crimes having also developed under customary international law.<sup>316</sup> Sri Lanka is not a State Party to the three Additional Protocols to the 1949 Geneva Conventions.<sup>317</sup> At the time of the armed conflict, Sri Lanka was

a State Party to a number of international human rights treaties.<sup>318</sup> In 2016 Sri Lanka also ratified the International Convention for the Protection of All Persons from Enforced Disappearance.

### International Criminal Court (ICC)<sup>319</sup>

Sri Lanka is not a State Party to the Rome Statute of the International Criminal Court ('ICC'), but the ICC may still exercise jurisdiction over the crimes committed in Sri Lanka during the conflict either through a declaration accepting jurisdiction by Sri Lanka,<sup>320</sup> a UN Security Council referral,<sup>321</sup> or in case of a crime committed by a national of a signatory State to the ICC Rome Statute or on the territory of a Member State.<sup>322</sup> Sri

<sup>314</sup> <https://www.news18.com/news/world/were-back-to-square-one-man-who-helped-defeat-ltte-flays-sirisena-govt-for-turning-blind-eye-to-intel-2116763.html>

<sup>315</sup> The duration and intensity of the violent incidents described, and the apparent level of organisation of the LTTE, allows the conclusion that the conflict in Sri Lanka was of an internal character. It was not simply domestic disturbances or tensions or criminal acts and consequently the majority of violent attacks and other incidents described in this report were the result of armed conflict.

<sup>316</sup> Sri Lanka ratified the 1949 Four Geneva Conventions in 1959<sup>316</sup> and is also bound by Common Article 3 to the four Geneva Conventions which have been recognised as customary international law applicable to NIAC. All parties to the conflict in Sri Lanka were also bound by other rules of customary international law that apply to non-international armed conflicts, in particular the principles of distinction, precaution and proportionality. The duration and intensity of the violent incidents described, and the apparent level of organisation of the LTTE, allows concluding that the conflict in Sri Lanka was of an internal character. It was not simply domestic disturbances or tensions or criminal acts. Consequently, the majority of violent attacks and other incidents described in this report are the result of armed conflict.

In particular, Sri Lanka has not ratified Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

<sup>318</sup> The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (accessed in 1994); the Convention on the Prevention and Punishment of the Crime of Genocide (accessed in 1950), the International Covenant on Civil and Political Rights (ICCPR) (accessed in 1980); the International Covenant on Economic, Social and Cultural Rights (ICESCR) (accessed in 1980); Convention on the Elimination of All Forms of Discrimination against Women (accessed in 1981); the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) (accessed in 1982); the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW) (accessed in 1996); Convention on the Rights of the Child (ratified in 1991); the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (ratified in 2000) or the Optional Protocol to the Convention on the Rights of the Child on the Sale of Child Prostitution and Child Pornography (ratified in 2006).

<sup>319</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No 92-9227-227-6, <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 27 December 2023]

<sup>320</sup> Art 12(2) and (3) ICC Statute

<sup>321</sup> Art 13(b) ICC Statute

<sup>322</sup> In this case, a State Party concerned can refer a case to the ICC or the Prosecutor can act *proprio motu* see Article 12(2), 13(a) and (c) of the ICC Statute.



Lankans who are dual nationals and whose second nationality is that of the State Party to the ICC Rome Statute can still be tried before the ICC if the concerned State refers the case to the ICC or if the ICC Prosecutor acts *proprio motu*.<sup>323</sup> Moreover, the individual criminal responsibility of an alleged perpetrator can be engaged by States that included provisions on universal jurisdiction in their national law<sup>324</sup> or before a special or hybrid-court that could be potentially established to try those responsible for international crimes committed in Sri Lanka during the war.

State Parties to the Convention against Torture are also required to prosecute alleged perpetrators of torture in any territory within their jurisdiction if such persons are not extradited to another State.<sup>325</sup> Similarly, the International Convention for the Protection of all Persons from Enforced Disappearance provides that State Parties shall take such measures as may be necessary to prosecute the alleged perpetrators of enforced disappearance in any territory within their jurisdiction, if such persons are not surrendered or extradited to another State or international tribunal.<sup>326</sup>

Nevertheless, despite Sri Lanka's treaty and customary law obligations, as well as its domestic obligations, there has been no accountability in Sri Lanka over the last three decades for the gross violations of international human rights ('IHL'), international criminal law ('ICL') and international humanitarian law ('IHL'), and related crimes perpetrated during the civil conflict that ended in May 2009 and in the post-conflict period.

### Command Responsibility

Command responsibility assigns criminal responsibility to higher-ranking members of the military for crimes of genocide, crimes against humanity and war crimes committed directly or by their subordinates. The fact that any of the violations referred to in this report were committed by a subordinate does not relieve

Gotabaya of criminal responsibility if Gotabaya knew or had reason to know that his subordinates were about to commit such acts or had done so and he failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators.

The development of command responsibility enables prosecutions beyond the direct perpetrators of the crimes, since without it superiors could absolve themselves of any wrongdoing, for instance by arguing that the subordinates were not following orders when they committed crimes, or that they were at no time at the scene of the violations. A commander is duty-bound to intervene when acts of subordinates constitute or would constitute violations of IHL, IHL and ICL, and to prevent or repress these.

Art 25 and Art 28 of the Rome Statute define the modes of liability under the ICC Statute.<sup>327</sup> ICC Art 28 defines command responsibility as a form of responsibility for crimes that are 'within the jurisdiction of the court', namely the crimes of genocide, crimes against humanity and war crimes, as set out in Arts 6-8.18.<sup>328</sup>

Art 28(a) of the CC sets out two requirements related to the status of the accused and functional hierarchical organisational structures of the military institution. The first requirement is that the accused is 'a military commander or person effectively acting as a military commander'. In other words, it requires a *de facto* or *de jure* status of a military commander, which implies powers as well as duties, ie that the perpetrator was a military commander or a person effectively acting as a military commander.

The second requirement is the existence of a functional hierarchical structure within the military institution, where 'forces [are] under a commander's effective command and control, or effective authority and control'. In both instances, a distinction is made between a person who is a formal military commander with

<sup>323</sup> 12(2), 13(a) and (c) of the ICC Statute.

<sup>324</sup> Belgium, Denmark, Germany, the Netherlands, the UK or Switzerland.

<sup>325</sup> Art 7(1) CAT

<sup>326</sup> Art 9 of the International Convention for the Protection of all Persons from Enforced Disappearance.

<sup>327</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 1 Jan 2024]

<sup>328</sup> *ibid*

the power to command and control and a person effectively acting as a military commander with the authority and control.

International humanitarian law and international criminal law place a greater responsibility on superiors than their subordinates in ensuring that law is not violated. Superiors, by virtue of their elevated position in the hierarchy, have an affirmative duty to ensure that IHL is duly respected and breaches are appropriately addressed. Failure to do so can be interpreted as acquiescence in the unlawful acts of their subordinates, encouraging further breaches and developing a culture of impunity.

The ICC Statute introduces additional elements that must be met to establish that a non-military superior had the requisite *mens rea* to be held liable through command responsibility. It must be shown not only that the superior had information in their possession regarding the acts of subordinates, but that the superior consciously disregarded such information.

### **International Crimes Imputed to Gotabaya Rajapaksa**

This report presents detailed linkage evidence connecting Gotabaya Rajapaksa to orders given to commanders in the field demonstrating that he had contemporaneous knowledge of the violations of IHL, HRL and ICL committed during the final phase of the war which ended in May 2009 and in its aftermath. It also details that while in office Gotabaya had countless opportunities to prevent these violations and initiate credible investigations into them; instead Gotabaya prevented accountability

efforts, rewarding and protecting alleged perpetrators.

### **Violations of International Humanitarian Law (IHL)**

For charges of war crimes to arise, an armed conflict needs to exist and the conduct in question should be linked to the armed conflict, requiring that the existence of the armed conflict must, at a minimum, play 'a substantial part in the perpetrator's ability to commit [the crime], his decision to commit it, the manner in which it was committed or the purpose for which it was committed'.<sup>329</sup>

War crimes can be committed by any individual, civilian or military, as long as the nexus to the armed conflict is established.<sup>330</sup> The definition of war crimes requires that the crime is committed against a protected group of people or property under customary international humanitarian or treaty law.<sup>331</sup>

### **Prohibition of War Crimes**

#### **Protected Persons**

In non-international armed conflicts, persons who are not members of state, armed forces or organised groups of a party to the conflict are civilians and enjoy protection against direct attacks unless they take a direct part in hostilities.<sup>332</sup> Article 50(3) of the Additional Protocol I provides that 'The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.'<sup>333</sup> Immunity of civilians from an attack is closely related to the fundamental principle of international humanitarian law, namely the principle of distinction. The principle of distinction obliges parties to the

<sup>329</sup> eg Kunarac et al, Appeals Chamber Judgment (n 75), para 58. See also Rutaganda, Appeals Chamber Judgment (n 74), paras 569-570.

<sup>330</sup> *Prosecutor v Akayesu*, ICTR-96-4, Trial Chamber, Judgment, 2 Sep 1998, see also Art 8(2) of the Rome Statute.

<sup>331</sup> Common Article 3 protects 'persons no longer taking active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or other cause.'

<sup>332</sup> 1977 Protocol Additional to the Geneva Conventions of 12 Aug 1949 relating to the Protection of Victims of International Armed Conflicts, Art. 51(3); 1977 Protocol Additional to the Geneva Conventions of 12 Aug 1949

relating to the Protection of Victims of Non-International Armed Conflicts, Art 13(3).

<sup>333</sup> Similar provision was included in the draft of Additional Protocol II that was by consensus but ultimately removed from the final draft for the sake of simplicity. [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule6\\_sectionb](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule6_sectionb). *Prosecutor v Pavle Strugar*, Case No IT-01-42-T, Judgement (TC), 31 Jan 2005, para 282. See also Tadić, judgment, 7 May 1997, para 638. In its judgment in the Tadić case in 1997, the ICTY Trial Chamber stated 'It is clear that the targeted population [of a crime against humanity] must be of predominantly civilian nature. The presence of certain non-civilians in their midst does not change the character of the population.'

armed conflict to distinguish at all times between lawful and protected targets.<sup>334</sup> This includes members of armed forces who have laid down their arms and those placed *hors de combat* as a result of sickness, wounds, surrender, detention, or any other cause.<sup>335</sup> Medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances, unless engaged in acts harmful to the enemy.<sup>336</sup> The Rome Statute criminalises as war crimes a range of violations that target civilians and other protected persons, including medical and religious personnel or persons *hors de combat*.

### Protected Objects: Distinction between the Civilian Objects and Military Objectives

Civilian objects are objects that are not linked to military objectives.<sup>337</sup> International humanitarian law requires that the conflicting parties 'take all feasible precautions' to avoid or minimise incidental loss of civilian life and damage to civilian objects,<sup>338</sup> including doing everything feasible to verify the objects of attack are indeed military objectives.<sup>339</sup> Parties to the conflict must also give 'effective advance warning' of attacks when circumstances permit.<sup>340</sup>

### Prohibition of Indiscriminate and Disproportionate Attacks

Indiscriminate attacks are those '...(a) which are not directed at a specific military objective; (b) which employ a method or means

of combat which cannot be directed at a specific military objective; or (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction'.<sup>341</sup> This principle prohibiting indiscriminate attacks has been recognised under customary international law as applicable to NIAC.

The principle of proportionality also constitutes a fundamental principle of international humanitarian law that has been identified as a norm of customary international law applicable to NIAC. This principle prohibits all parties to the conflict from 'launching an attack which may be expected to cause incidental loss of civilian 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'.<sup>342</sup>

### War Crimes

*'Making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack'*<sup>343</sup> during a non-international armed conflict has been recognised as a serious violation of international humanitarian law.<sup>344</sup> Similarly,

<sup>334</sup> ICRC Customary IHL Database, Rule 1

<sup>335</sup> By way of example, common Article 3 protects 'persons no longer taking active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or other cause'.

<sup>336</sup> First, Second and Fourth Geneva Conventions, 1949; Art 15 of the Additional Protocol 1. This rule is implicit in common Article 3 of the Geneva Conventions and has been included in Additional Protocol II, Article 9(1). Recognised as norm of customary international law applicable during the non-international armed conflict. See ICRC, Rule 25, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule25#Fn\\_E202BFDC\\_00011](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule25#Fn_E202BFDC_00011)

<sup>337</sup> ICRC, Rule 9

<sup>338</sup> Additional Protocol I, Art 57

<sup>339</sup> AP I, Art 52(3); Art 57(2)

<sup>340</sup> *ibid*

<sup>341</sup> ICRC, Rule 12, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule12](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule12)

<sup>342</sup> ICRC, Rule 14, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule14/](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14/)

<sup>343</sup> In order to determine whether the attack against civilian was deliberate the ICTY Trial Chamber ruled that *inter alia* the following criteria should be considered: 'the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirement of the laws of war'. ICTY, *Prosecutor v. Kunarac, Kovac and Vukovic*, Appeals Judgement, IT-96-23-T and IT-96-23/1-A, 12 June 2001, para 91.

<sup>344</sup> ICRC, Rule 156, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156>. Moreover, under the Statute of the International Criminal Court 'intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities' constitutes a war crime in international armed conflicts. ICC Statute, Article 8(2)(b)(i), eg Article 8(2)(e)(ii) of the ICC Statute provides that 'directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems

'launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage' and 'making non-defended localities the object of attack' have been cited as serious violations of international humanitarian law during a NIAC.<sup>345</sup>

Any of the following acts constitutes a serious violation of international humanitarian law in a NIAC if committed against civilians or other protected persons: 'Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture'; committing outrages upon personal dignity; taking hostages or passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.'<sup>346</sup>

Violations of the laws of war by one side to a conflict do not justify violations by the opposing side.<sup>347</sup>

### Crimes against humanity

Crimes against humanity refer to specific crimes committed in the context of a large-scale attack targeting civilians, regardless of nationality. These crimes include murder, torture, sexual violence, enslavement, persecution and enforced disappearance. Crimes against humanity have often been committed as part of State policies, but they can also be perpetrated by non-State armed groups or paramilitary forces. Crimes against humanity, unlike war crimes, can be committed in war or

peace time, and are not necessarily committed against a specific national, ethnic, racial or religious group.

The contextual elements of crimes against humanity require the commission of acts as part of a widespread or systematic attack directed against any civilian population, with the perpetrator(s) having knowledge of the attack.<sup>348</sup> 'Attacks directed against any civilian population' means 'a course of conduct involving multiple commission of acts against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack.'<sup>349</sup> The acts do not need to be widespread or systematic themselves but can form part of a widespread or systematic attack.<sup>350</sup>

### Policy or Organisational Requirement

The ICTY and the ICTR held that, as a matter of customary law, it is not necessary to show that the attack was carried out as part of a policy or plan.<sup>351</sup> However, the ICC has held that the attack must be committed 'pursuant to or in furtherance of a State or organizational policy to commit such attack' and requires that 'the State or organization actively promote or encourage such an attack against a civilian population'.<sup>352</sup>

Different approaches have been taken by the ICTY and the ICC in dealing with the organisational policy requirement, which reflects that state or organisational policy is not a requirement of crimes against humanity under customary international law.

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of the Geneva Conventions in conformity with international law' during the non-international armed conflict, when committed with criminal intent, constitutes a war crime; see also Additional Protocol II, Articles 9 and 11.

<sup>345</sup> *ibid*

<sup>346</sup> Common Article 3 to the Four Geneva Conventions has crystallized into customary international law.

<sup>347</sup> ICRC Rule 140, citing Common Articles 1 and 3 to the Geneva Conventions.

<sup>348</sup> Rome Statute, Art 7 (1)

<sup>349</sup> Rome Statute, Art 7 (2)

<sup>350</sup> *Prosecutor v. Tadić*, Appeals Judgement, IT-94-1-A, 15 Jul 1999, n 311 to para 248, citing *Prosecutor v. Mile Mrksić et al*, Trial Chamber I 'Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence', IT-95-13-R61, 3 Apr 1996, para 30: '[A]s long as there is a link with the widespread or systematic attack against a civilian population, a

single act could qualify as a crime against humanity. As such, an individual committing a crime against a single victim or a limited number of victims might be recognised as guilty of a crime against humanity if his acts were part of the specific context identified above.'

<sup>351</sup> Kunarac et al, AJ ¶ 98; Blaškić, AJ ¶ 100; but see *Situation in the Republic of Kenya*, Case No ICC-01/09-01/1, Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing, Pre-Trial Chamber II, 6 Mar.2011; William Samoei Ruto et al, Case No ICC-01/09-01/11, Dissenting Opinion by Judge Hans-Peter Kaul to Pre-Trial Chamber II's 'Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang', 15 Mar 2011.

<sup>352</sup> Rome Statute, Art 7(2), ICC Elements of Crimes (n 85), Introduction to Art 7.

## INCIDENTS

### Attacks in the Mannar District (North)

Towards the end of 2005 and in 2006, fighting and clashes resumed in the east and also in the north, particularly in and around Mannar district, using Col Karuna's 'Deep Penetration Units'. At the time of the attacks, Gotabaya Rajapaksa was in command and control of the security forces in Mannar district and at the Madhu church, given his role and functions within the National Security Council and the Joint Operational HQ (JOH). The Bishop responsible for Madhu church stated that the security forces and paramilitary forces were acting 'under direct instructions from the Defence Ministry'. Bishop Rayappu Joseph effectively put Gotabaya on notice by writing to him and stating '...I have requested the Defence Secretary to take care that no military attacks happen in the reservation area'.<sup>353</sup>

Gotabaya Rajapaksa was therefore fully informed by his subordinates about the violations committed in Mannar District against civilians and protected objects such as the shrine. He also knew further violations were about to be committed, and given his position and exercise of effective power and control over the security forces and paramilitaries, should at the very least have taken steps to end the attacks or initiated an inquiry into the killing of the six civilians as reported to him by the Bishop, taking the necessary precautions to prevent similar crimes in the future. He chose to ignore the information in his possession, failing to initiate an inquiry to determine who was responsible or to punish the perpetrators responsible.<sup>354</sup>

The attacks resulted in the deaths of civilians, the displacement of 16,000 and significant injuries in the civilian population, all of which were foreseeable given the weapons used (eg claymore mines), and means

and methods that included aerial bombardment and artillery shelling, making it impossible to distinguish between civilian and military targets and violating the principle of distinction. Given the density of the civilian population in the area, the fact that Madhu was well known as a pilgrim destination and a sanctuary, was frequented by civilians and in close proximity to the village, and that attacks were not directed at a specific military object, there are reasonable grounds to believe these attacks were indiscriminate and disproportionate, constituting serious violations of international humanitarian law. Since the violations were committed by the parties to the conflict in the context where hostilities were taking place, there is a clear nexus to an armed non-international conflict.

Consequently, these acts can engage individual criminal responsibility for war crimes.<sup>355</sup>

### Access by Humanitarian agencies and relief and aid organisations

Access to humanitarian services, under IHL rules governing humanitarian action, are aimed at preserving life and security or seeking to restore or maintain the mental and physical wellbeing of all persons who may be in need of assistance and/or protection as a result of an armed conflict.<sup>356</sup> Consequently, the State cannot limit assistance to civilians alone – wounded and sick fighters, prisoners of war, persons otherwise deprived of their liberty in relation to the armed conflict, and other vulnerable individuals affected by armed conflict are also entitled to such assistance.

### Kilinochchi - Blocking the Provision of Humanitarian Aid

In September 2008, aid organisations and the UN were ordered to evacuate staff from the war zone around Kilinochchi under written notice from Gotabaya Rajapaksa.<sup>357</sup> This was confirmed by Reuters and a number of aid agencies who

<sup>353</sup> 'Civilian injured in Madhu claymore attack dies', <https://tamilnet.com/art.html?catid=13&artid=17964>

<sup>354</sup> 'Military transformed from victor to reconciler', Dhaneshi Yatawara, 8 Sep 2013, *Sunday Observer Lanka*, <http://archives.sundayobserver.lk/2013/09/08/sec03.asp> 'Defence Secretary Gotabaya Rajapaksa Salutes The War Heroes', *Business Today*, On file.

<sup>355</sup> Art 8(2)(e)(i) of the ICC Statute, ICTY, Tadić case, Case No IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals

Chamber, 2 Oct 1995, §§ 100-118; ICRC, Rule 156, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156>.

<sup>356</sup> [https://casebook.icrc.org/a\\_to\\_z/glossary/humanitarian-assistance](https://casebook.icrc.org/a_to_z/glossary/humanitarian-assistance)

<sup>357</sup> 'Besieged, Displaced, and Detained, The Plight of Civilians in Sri Lanka's Vanni Region', 23 Dec 2008, <https://www.hrw.org/report/2008/12/23/besieged-displaced-and-detained/plight-civilians-sri-lankas-vanni-region>



received explicit letters signed by Gotabaya Rajapaksa telling them to leave the war zone. This despite Kilinochchi being accepted and understood by the government and the LTTE, as well as the international community, to be a safe zone for the delivery of humanitarian aid. Evidence in this report establishes that between July and October 2008 the Sri Lankan Army was responsible for the shelling and bombardment of the Kilinochchi hospital and the UN base (in the 'Kilinochchi box') knowing full well civilians were based there, resulting in numerous civilian casualties and extensive damage to UN buildings and the hospital.<sup>358</sup> According to eyewitness testimony, multi-barrelled rocket launchers (MBRLs) were also employed by the Sri Lanka Army during the attacks on Kilinochchi.<sup>359</sup> The Sri Lankan Army knew that in the normal course of events repeated aerial bombardment and shelling, also using MRLBs (in most cases, unguided weapons lacking precision and accuracy) would cause extensive loss of civilian lives and damage to civilian objects.

The launching of indiscriminate attacks on Kilinochchi, including against civilians, and civilian and medical objects, caused numerous deaths and injuries to civilians and excessive damage to civilian objects. The precision of the government's targeting, which was based on an enormous amount of information from digital maps, aerial photos and UAV and surveillance aircraft footage, points to these indiscriminate attacks being deliberate. Gotabaya Rajapaksa confirmed that the process of approving the striking of a target went right up to the commander of the Air Force and was reviewed by the National Security Council, which was under his *de facto* control and whose meetings he usually chaired.<sup>360</sup> These attacks constitute serious violations of international humanitarian law which are strictly prohibited, and are also violations of the principle of distinction and proportion.<sup>361</sup>

The evidence in this report confirms that Gotabaya Rajapaksa was in full possession of the facts in respect of the targeted attacks on Kilinochchi and of the crimes committed there by his subordinates, including attacks at the hospital and the UN bases. He was also in effective command and control of his subordinates, but rather than acknowledge the violations committed by his subordinates or to punish them, he congratulated them for capturing Kilinochchi.<sup>362</sup> Failure to ensure accountability for the crimes committed in Kilinochchi is a direct result of Gotabaya's inaction.

Based on the information and evidence in this report, there are reasonable grounds that Gotabaya Rajapaksa bears command responsibility for serious violations which, if proven, amount to war crimes and crimes against humanity committed by his subordinates in violation of the principles of distinction, precaution and proportionality, which engage his criminal responsibility.

### **Prohibition of Torture**

The Geneva Conventions strictly prohibit torture, at all times and in all circumstances. In its definition of torture, international humanitarian law includes intentional violence to the life, health, physical or mental well-being, but also 'outrages upon personal dignity, in particular humiliating and degrading treatments' toward persons who are not, or no longer, taking part in the hostilities.<sup>363</sup> Under GVC-V Common Art 3 such acts are prohibited at any time and in any place. The definition covers torture under all its forms, physical or psychological. The crime of torture can amount to a war crime if committed with the required intent and has been explicitly mentioned in a number of statutes of the hybrid and international tribunals, including the Rome Statute of the ICC.<sup>364</sup> Several international tribunals and bodies have also recognised rape and sexual violence as a form of torture.<sup>365</sup> The crime of torture as a

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<sup>358</sup> Charles Petrie report, Annexes, p14

<sup>359</sup> *ibid*

<sup>360</sup> <https://www.jurist.org/news/2010/08/sri-lanka-defense-minister-defends-government-conduct-during-civil-war/>

<sup>361</sup> <https://casebook.icrc.org/a-to-z/glossary/distinction>

<sup>362</sup> <https://www.jurist.org/news/2010/08/sri-lanka-defense-minister-defends-government-conduct-during-civil-war/>

<sup>363</sup> GIII Art 17, API Art 75.2, APII Art. 4.2

<sup>364</sup> Art 8(2)(c)

<sup>365</sup> Rape and sexual violence have been recognised as forms of torture by several international human rights mechanisms including the international criminal tribunals, Committee Against Torture and by independent special rapporteurs. See eg *Prosecutor v Akayesu*, ICTR-

crime against humanity has been recognised under customary international law.<sup>366</sup>

Torture was committed during the war in Sri Lanka and in its aftermath. Torture was also widespread in the IDP camps and the rehabilitation camps run by the security forces under the command and control of Gotabaya Rajapaksa. Torture was perpetrated against Tamils surrendering as well as persons perceived to be or have formerly been or otherwise associated with the LTTE. The torture of Tamil civilians continued well beyond the end of the war. Given Gotabaya Rajapaksa's command and control of the security forces, reasonable grounds exist to indicate his criminal responsibility for the torture committed by the security forces and also for his failure to take action against the members of the security forces since he was fully aware of the torture being committed by the security forces. Torture in these circumstances, if proven, amounts to war crimes and crimes against humanity which engages his criminal responsibility.

## Prohibition of Rape and other Forms of Sexual Violence

Depending on the context, rape and other forms of sexual violence may amount to war crimes<sup>367</sup> or crimes against humanity.<sup>368</sup> They may also constitute other crimes under the Rome Statute, including outrages upon personal dignity (as a war crime or crime against humanity),<sup>369</sup> and other inhumane acts (as a crime against humanity).<sup>370</sup> Rape and sexual violence constitute war crimes if committed in the context of, or associated with, an armed conflict,<sup>371</sup> though there is no requirement to show the acts were carried out at a time or location where the actual hostilities occurred, provided that they were closely related to them<sup>372</sup> and that the direct perpetrator was aware of the factual circumstances establishing the existence of the armed conflict.<sup>373</sup>

Sexual violence, including rape, is strictly prohibited under both customary and treaty-based IHL<sup>374</sup> and under IHRL.<sup>375</sup> When committed as part of a widespread or systematic attack against the civilian population, rape as a crime against humanity has been recognised under customary international law. Several international tribunals and bodies have also

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96-4-T, Trial Judgment, 2 Sep 1998; ICTY *Prosecutor v Kunarac*, No IT-96-23, Trial Judgment, 22 Feb 2001; Committee Against Torture, General Comment No 2, Implementation of Article 2 by State Parties (CAT/C/GC/2), 24 Jan 2008.

<sup>366</sup> Kaing Guek Eav alias Duch, ECCC, para 353.

<sup>367</sup> Rome Statute, Art 8(2)(e)(vi)

<sup>368</sup> Rome Statute, Art 7(1)(k) (Crime against humanity of other inhumane acts)

<sup>369</sup> Rome Statute, Art 8(2)(c)(ii)

<sup>370</sup> Rome Statute, Art 7(1)(k)

<sup>371</sup> See generally ICC, Elements of Crimes (2011), Introduction to Article 8, p 13 (the Elements of Crimes are designed to 'assist' the Court in the interpretation and application of the crimes over which it has jurisdiction - Article 9, Rome Statute). *Prosecutor v Ntaganda* (No ICC-01/04-02/06), Trial Chamber VI, Judgment, 8 Jul 2019, paras 698-704, 716-717 and 726; ICTY, *Prosecutor v Tadić* (No IT-94-1-A), Decision on the defence motion for interlocutory appeal on jurisdiction, 2 Oct 1995, para 70.

<sup>372</sup> *Prosecutor v Ntaganda*, ICC-01/04-02/06, Trial Judgment, 8 Jul 2019, para 731.

<sup>373</sup> ICC Elements of Crimes, Introduction to Article 8, p13

<sup>374</sup> Common Article 3(1) to the Geneva Conventions provides that '[p]ersons taking no active part in the hostilities [...] shall in all circumstances be treated humanely', meaning free from 'violence to life and person' and 'outrages upon personal dignity, in particular humiliating and degrading treatment'. This

has been widely accepted as encompassing rape and other forms of sexual violence. See ICRC Commentary to Geneva Convention III (2020), paras 732-743; Additional Protocol II to the Geneva Conventions, Article 4(2)(e), which includes 'rape, enforced prostitution and any other form of indecent assault' as outrages upon personal dignity; ICTR Statute (1994), Art 4(e); SCSL Statute (2002), Art 3(e); *Prosecutor v Kunarac et al*, IT-96-23 & IT-96-23/1-A, Appeal Judgment, 12 Jun 2002, para 150: '[s]exual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture'. See also *Prosecutor v Prlić et al*, IT-04-74-T, Trial Judgment, 29 May 2013, para 116; *Prosecutor v Furundžija*, IT-95-17/1-T, Trial Judgment, 10 Dec 1998, para 272; *Prosecutor v Bagosora et al*, ICTR-98-41-T, Judgment and Sentence, 18 Dec 2008, para 2254.

<sup>375</sup> ECtHR, *M C v Bulgaria*, Application no 39272/98, Judgment, 4 Dec 2003, paras 148-166; ECtHR, *Aydın v Turkey*, Application no. 23178/94, Judgment, 25 Sep 1997, paras 82-86; Inter-American Commission on Human Rights, Case 10.970 (Peru), Report, 1996, p185; UN Committee Against Torture, *T A v Sweden*, CAT/C/34/D/226/2003, 27 May 2005, paras 2.4 and 7.3; Committee on the Elimination of Discrimination against Women, 'General recommendation No 35 on gender-based violence against women, updating general recommendation No. 19', 26 Jun 2017, paras 10-20.

recognised rape and sexual violence as a form of torture.<sup>376</sup>

The evidence in this report confirms that the security forces raped<sup>377</sup> numerous victims by penetrating (i) their anuses with their sexual organs (penises) and with objects, including glass bottles and barbed wire pipes; (ii) the mouths of the victims with their sexual organs (penises). They were subjected to other forms of sexual violence recognised under international law, namely forced nudity and genital mutilation, including inserting thin metal rods into their penises, beating their genitals with sticks, and burning their genitals.

These acts were perpetrated by force, threats of force or coercion, by the Sri Lankan security forces, in conditions in which the victims were in arbitrary and incommunicado detention, indicating that the security forces took advantage of a coercive environment.

Gotabaya Rajapaksa was fully aware of violations which included rape and sexual violence being committed by the security forces, who were subordinates under his command and control during the armed conflict, particularly in the final days of the war when Tamil women, men and children were surrendering, as well as in the aftermath. Additionally, armed forces under his command as Secretary of Defence were responsible for rape and other forms of sexual violence committed in IDP camps as well as 'rehabilitation camps' set up to target LTTE cadres, political opponents and those remotely connected to the LTTE. Rape and sexual violence by the security forces continued in the

aftermath of the conflict, in violation of IHL, HRL and ICL.

Given Gotabaya Rajapaksa's command and control of the security forces, reasonable grounds exist to indicate his command responsibility for the rape and sexual violence committed by the security forces acting under his command and control, and also of his failure to take action against them and hold them accountable, given his contemporaneous knowledge of the violations committed by them. Rape and sexual violence under these circumstances amount to war crimes and crimes against humanity, which engages his criminal responsibility.

### **No Fire Zones**

Humanitarian law establishes different methods to define areas or zones providing special protection for populations in danger and within which no fighting may take place.<sup>378</sup> These zones are intended to shelter civilians, the wounded and sick during the conflict. Hospital and safety zones should be excluded from military operations, while neutralised zones are typically established in areas where military operations are taking place.<sup>379</sup> As established by the ICRC in its study on Customary IHL, directing an attack against a zone set up to shelter civilians, the wounded and sick from the effects of hostilities is prohibited under international humanitarian law and constitutes a violation of a norm of customary international law applicable to non-international armed conflict.<sup>380</sup>

### **Prohibition of the use of prohibited and indiscriminate weapons**

The use of some prohibited weapons during a non-international armed conflict has been classified as a war crime under the ICC

<sup>376</sup> Rape and sexual violence have been recognised as forms of torture by several international human rights mechanisms including the international criminal tribunals, Committee Against Torture and by independent special rapporteurs. See eg *Prosecutor v Akayesu*, ICTR-96-4-T, Trial Judgment, 2 Sep 1998; ICTY *Prosecutor v Kunarac*, No IT-96-23, Trial Judgement, 22 Feb 2001; Committee Against Torture, General Comment No 2, Implementation of Article 2 by State Parties (CAT/C/GC/2), 24 Jan 2008.

<sup>377</sup> The *actus reus* of rape (as a war crime or crime against humanity) is that 'The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ or of the anal or

genital opening of the victim with any object or any other part of the body; and, the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.'

<sup>378</sup> <https://guide-humanitarian-law.org/content/article/3/protected-areas-and-zones/>

<sup>379</sup> ICRC, Rule 35, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule35](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule35)

<sup>380</sup> *ibid*

Statute, including employing poison or poisoned weapons, asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices, bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or which is pierced with incisions.<sup>381</sup>

### War Crimes and Crimes against Humanity Committed in No-Fire Zones

On 21 January 2009, the Sri Lankan government unilaterally declared NFZ-1, a 35km<sup>2</sup> No-Fire Zone for civilians north of the A35 road between the Udayarkattu junction and the Manjal Palam (Yellow Bridge) in Mullaitivu district.<sup>382</sup> NFZ-1 was directly situated on the main axis of the SLA advance, along the A35 highway from Kilinochchi towards Puthukkudiyiruppu (known as PTK), which was questionable given its proximity to the ongoing hostilities.<sup>383</sup> The second NFZ ('NFZ-2') was declared on 12 February 2009, with the government distributing leaflets encouraging civilians to congregate in an area that was 14km<sup>2</sup>, approximately the size of London's Hyde Park.<sup>384</sup> Around 330,000 people, predominantly civilians, congregated in NFZ-2.

On 8 May 2009 the Sri Lankan Army unilaterally announced the third NFZ ('NFZ-3'), which was less than 2km<sup>2</sup>.<sup>385</sup> When NFZ-3 was established, room for displaced civilians was reportedly so limited that people were forced to sleep on top of corpses.<sup>386</sup> From early February 2009 until the end of the war in May 2009, the Sri Lanka Army conducted a series of attacks, including continuous artillery deliberately targeting the civilian population and civilian objects such as hospitals and a church, in complete violation of the IHL principles of proportionality and distinction.<sup>387</sup> The UN

reported that between 8-12 May 2009 NFZ-3 came under 'intense daily bombardment by SLA artillery, the air force and the navy'.<sup>388</sup> Hospitals including PTK, Vallipunam and Udayaarkaadu, Puttamattalan, and Vellmullivaikkal were shelled and bombed.<sup>389</sup>

The attacks on the Puttamattalan hospital are considered to be emblematic of the violations by the Sri Lankan military against hospitals and other civilian objects. Between 8 February 2009 and late April 2009 the hospital was repeatedly attacked,<sup>390</sup> with 58 Division involved in the operation to capture Puttamattalan from early April 2009.<sup>391</sup> Heavy bombardment of NFZ-3 by the Sri Lankan army, air force and navy included the use of cluster munitions, white phosphorus and mortars, resulting in extensive civilian casualties and suffering. The attack on the makeshift hospital has been confirmed by UN satellite imagery<sup>392</sup> and corroborated by witness testimony obtained by the ITJP.<sup>393</sup>

All the hospitals sustained extensive damage as a result of relentless shelling and bombardment by the security forces, severely limiting the ability to deliver life-saving medical treatment to civilians, inflicting great suffering on hundreds of civilians, and serious injury to body and physical and mental health.<sup>394</sup> The relentless shelling and bombardment was carried out in the full knowledge that the hospitals were providing medical treatment to wounded and sick civilians and persons who were *hors de combat*, including survivors of previous hospital attacks. The harm experienced by the victims was of a similar character and comparable gravity to other acts listed under Article 7, such as

<sup>381</sup> Art 8(2)(e)

<sup>382</sup> Sri Lanka Army, 'Army Declares New Safe Zone for Wannai Civilians', 21 Jan 2009, <http://www.army.lk/morenews.php?id=19769>, cited in the HRW, 'War on the Displaced Sri Lankan Army and LTTE Abuses against Civilians in the Vanni' (2009), <https://www.hrw.org/report/2009/02/19/war-displaced/sri-lankan-army-and-ltte-abuses-against-civilians-vanni#page>

<sup>383</sup> *ibid*

<sup>384</sup> para 874, OISL

<sup>385</sup> para. 873, OISL

<sup>386</sup> W288

<sup>387</sup> See evidence describing two attacks against the food distribution points in Pokkanai, p18 of this report; evidence describing the attack against Puttamattalan

hospital, p26-28 of this report; attack against the church and hospital in Valayanmadam, p37-39; attack against hospital in Mullivaikkal, p43 of this report.

<sup>388</sup> para 878, OISL

<sup>389</sup> See evidence describing two attacks against the food distribution points in Pokkanai, p18 of this report; evidence describing the attack against Puttamattalan hospital, p26-28 of this report; attack against the church and hospital in Valayanmadam, p37-39; attack against hospital in Mullivaikkal, p43 of this report.

<sup>390</sup> Annexure 3; W59

<sup>391</sup> Annexure 2

<sup>392</sup> p42 of this report

<sup>393</sup> eg W280, W288, W292, W289, W60 p42-44 of this report.

<sup>394</sup> OISL, paras 1145-1160

murder; the forcible transfer of the population; imprisonment or other severe deprivation of physical torture; rape and other forms of sexual violence; enforced disappearance, persecution, extermination, and inhumane treatment which has intentionally causing great suffering, or serious injury to body or to mental or physical health. The attacks formed part of a widespread and systematic offensive directed against the civilian population. None of the targeted facilities constituted a legitimate military objective. ICRC statements and witness accounts confirm that the facilities were being used for medical purposes at the time they were targeted and that they were delivering treatment to hundreds of wounded civilians, including children. There is no evidence that the LTTE were firing at the security forces from within the facilities or in their immediate vicinity, or that there were other military objectives in the area.

The government rebutted allegations of violations, saying the attacks on the NFZs were lawful given the LTTE military presence in the area and the need to 'rescue civilians' because, they said, the LTTE allegedly committed serious violations of international humanitarian law by establishing military objectives within highly populated areas, using civilians as 'shields'.<sup>395</sup> According to the jurisprudence of the ICTY, 'the presence within the civilian population of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character'.<sup>396</sup>

Based on the evidence in this report, there are reasonable grounds to believe the government not only deliberately ordered displaced people to gather in NFZs but also failed to warn them of impending attacks and that in some instances the Sri Lanka Army deliberately misled civilians on the actual conduct of hostilities. A witness testified that at some point in the

final stage of war on Pokkanai, the Sri Lanka Army announced on loudspeakers there would be no shelling for two days, resulting in people leaving their shelters. Despite the announcement, the same person witnessed a shell falling on a number of people, killing all of them.<sup>397</sup> While planning to attack the NFZs the Sri Lanka army should, at the very minimum, have warned displaced civilians that they intended to bomb the so called 'safe zones'. There is no indication such warning were ever issued.<sup>398</sup>

The use by the Sri Lankan security forces of cluster munitions and white phosphorus not only constitutes a serious violation of international humanitarian law in itself but use of this type of weaponry as well as RPGs within a densely populated civilian area was a clear violation by the Sri Lankan security forces of the principles of distinction, precaution and proportionality.

The evidence in this report confirms that there are reasonable grounds to believe that the attacks by the Sri Lankan Army in the No-Fire Zones, targeting primarily the civilian population, comprising as many as 330,000 people scattered over the No-Fire Zones, were committed as part of a widespread or systematic offensive. In addition, the series of military attacks by the Sri Lankan armed forces using shelling, bombardment, cluster munitions, white phosphorus and mortars in Pokkanai, Puttumattalan, Valayanmadam and towards the end of conflict in Mullivaikkal, were completely disproportionate, violating the principles of distinction and proportion, given that the security forces were fully aware of the presence of the 330,000 civilians in the No-Fire Zones since the government had access to intelligence and surveillance confirming the large numbers, as well as the exact locations,

<sup>395</sup> *ibid*

<sup>396</sup> Similar provision was included in the draft of Additional Protocol II that was by consensus but ultimately removed from the final draft for the sake of simplicity. [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule6\\_sectionb](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule6_sectionb). *Prosecutor v Pavle Strugar*, Case No IT-01-42-T, Judgement (TC), 31 Jan 2005, para 282. See also Tadić, Judgment, 7 May 1997,

para 638 where the ICTY Trial Chamber stated 'It is clear that the targeted population [of a crime against humanity] must be of predominantly civilian nature. The presence of certain non-civilians in their midst does not change the character of the population.'

<sup>397</sup> W247, p19-20 of this report

<sup>398</sup> <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15>



of civilians and civilian objects in these areas.<sup>399</sup>

The attacks against the civilian population took place pursuant to a State or organisational policy to commit such attacks, in accordance with decisions taken at a strategic level within the National Security Council and JOH, responsible for strategic decisions related to the military operations within the Vanni region. The existence of a plan or policy can be inferred from the systematic character of the attack, and the significant resources utilised, as well as the heavy weaponry and number of divisions involved.

The military operations against Mullivaikkal resulted in massive civilian casualties (one witness recalls seeing 'more than a thousand dead men, women and children'),<sup>400</sup> and damage to civilians objects such as the hospital. In addition, there are reasonable grounds to believe that targeted attacks on hospitals which did not constitute a military objective amounted to the war crime of attacking protected objects under Article 8 (2) (e) (iv) Rome Statute.

There are reasonable grounds to believe these attacks amounted to the crime against humanity and 'other inhumane acts' under Article 7(1)(k) Rome Statute.<sup>401</sup>

Using cluster munition and white phosphorus not only constitutes a serious violation of international humanitarian law in itself but violates the principles of distinction and proportionality.

The SLA commanders who reported directly to Gotabaya were therefore fully aware that in attacking the NFZs it was foreseeable large numbers of civilians would die and sustain injuries, given the heavy weaponry used in such densely populated areas. Gotabaya Rajapaksa not only knew about and could have foreseen the impact of the attacks on civilian and protected

objects such as the hospitals by the security forces under his command, he also failed to prevent these attacks and to hold the security forces accountable for them. He admitted civilians were killed in 'No Fire Zones', and yet in reports nevertheless claimed that government 'made every effort to protect civilians in the conflict zone through the creation of safe corridors and no-fire zones'.

The attacks in the No-Fire Zones constitute violations of international humanitarian law and amount to war crimes and crimes against humanity which, if proven, engages Gotabaya Rajapaksa's individual criminal responsibility.

### **Deprivation of Objects Indispensable to Survival**

There is a clear prohibition against intentionally starving civilians in war, directly prohibiting the 'starvation of civilians as a method of combat'<sup>402</sup> by means of 'attacking, destroying, removing, or rendering useless, for that purpose, objects indispensable to the survival of the civilian population'; 'foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installation, and supplies, and irrigation works' all qualify as protected civilian objects under the provision.<sup>403</sup> As with the prohibition against directly starving civilians, the ICRC stated it found ample evidence to determine that, since at least the 1990s, all parties to a conflict in both IACs and NIACs are under a legal obligation to allow the passage of humanitarian aid.<sup>404</sup>

As Secretary of Defence, Gotabaya Rajapaksa deliberately failed to issue permits to humanitarian aid organisations and humanitarian agencies to allow medical supplies to reach those in need in the Vanni. In addition, evidence in this report confirms that the ministry under his effective control failed to give the requisite security clearance for

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<sup>399</sup> Access to UAV and surveillance footage and communication sent out by the clergy, UN, ICRC, medical staff, and others trapped in No-Fire Zones.

<sup>400</sup> W158, p44, this report

<sup>401</sup> EoC, p12

<sup>402</sup> <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule53#title-3>

<sup>403</sup> Art 54(2) AP I

<sup>404</sup> This is reflected in customary Rules 55 (access to humanitarian relief for civilians in need) and 56 (freedom of movement of humanitarian relief personnel).

medical supplies, contrary to multiple requests by the Regional Directors of Health Services of Mullaitivu, impacting on their ability to provide desperately needed health services to the population.<sup>405</sup> An open letter from one of the Regional Directors of Health Services of Mullaitivu argued that most of the 500 deaths in hospitals between January and mid-March 2009 could have been 'prevented if basic infrastructure facilities and essential medicines were made available... We have been supplied with no antibiotics, no anaesthetics and not a single bottle of IV fluid'.<sup>406</sup> Gotabaya was fully aware that by impeding the provision of relief supplies to the Vanni Region, the foreseeable consequence would be death through starvation and the failure to be able to deal with serious injuries to thousands of civilians. Moreover, Gotabaya was copied in on correspondence from the UN pleading for more medicine to be sent to the war zone.<sup>407</sup> A telex disclosed by Wikileaks and indicative of his hostile attitude towards humanitarian assistance reveals that already in 2006 Gotabaya was 'reluctant' to allow more access to LTTE-controlled areas by the UN, the ICRC and the EU.

Based on the information and evidence in this report, there are reasonable grounds to suspect Gotabaya Rajapaksa's denial of access to humanitarian agencies to the Vanni, coupled with his failure to address the shortage of food and medical supplies in the area, resulted in the starvation of the civilian population and the deprivation of civilians of objects indispensable to their survival. His responsibility in this regard can be further inferred from the air strikes against the ICRC convoys<sup>408</sup> conducted by the Sri Lanka Air Force under his effective command and control, which were intended to intimidate humanitarian agencies.<sup>409</sup> These acts, if proven, amount to

war crimes and crimes against humanity, which engages Gotabaya Rajapaksa's individual criminal responsibility.

### **Summary executions, torture, rape, and other forms sexual violence**

Summary executions are unlawful under any circumstances, including of members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.

The evidence in this report indicates that the LTTE political leaders and those accompanying them were unlawfully killed on the morning of 18 May 2009 following their surrender into the custody of the security forces by members of the Vanni Security Forces, contrary to IHL, ICL and IHRL. At the time of their deaths, the LTTE political leaders, along with other combatants, were *hors de combat*, had clearly expressed their intention to surrender, were walking slowly and unarmed towards the security forces and were carrying white flags, in compliance with the government's instructions, eventually surrendering into the custody of the security forces.

The OISL report concluded, based on forensic analysis and other evidence collected, including witness testimony, video evidence and open-source evidence, that there were 'reasonable grounds to believe' that Nadesan and Puleedevan 'may have been executed by the security forces sometime after 06:00 am on 18 May'.<sup>410</sup> While initially 58 Division under Shavendra Silva claimed responsibility for the killings, the webpage of the MOD deleted that entry.

Clearly these unlawful killings were committed deliberately, with the intention of killing the

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<sup>405</sup> 'Both governmental and non-governmental forces may confiscate relief or refuse permission to access a certain region.' Christia Rottenseiner, 'The Denial of Humanitarian Assistance as a Crime under International Law', *International Review of the Red Cross*, No 845, p555-582.

<sup>406</sup> p37, this report

<sup>407</sup> p36, this report

<sup>408</sup> D Marcus, 'Famine Crimes in International Law', 97 *AJIL* 245, p258

<sup>409</sup> 'A very effective means of impeding the work of humanitarian organizations is simply to state that

their security cannot be guaranteed. Any actor- State agents, rebel forces, other non-governmental groups, bandits, or civilians - could obstruct the delivery of assistance by intimidating aid workers or drivers, or by attacking relief convoys, ships or aircrafts, or aid personnel. In some cases, snipers have attacked people on their way to collect humanitarian assistance." Christina Rottenseiner, 'The Denial of Humanitarian Assistance as a Crime under International Law.'

*International Review of the Red Cross*, No 845, p555-582

<sup>410</sup> OHCHR Investigation on Sri Lanka (OISL), [A/HRC/30/CRP.2, 16 Sep 2015. para 304](#)

surrendered and civilians, and therefore amount to war crimes. The security forces were fully aware they were *hors de combat*, not least because they surrendered into their custody, unarmed, holding white flags, with their surrender having been negotiated at the highest levels of government.

The killing of the LTTE political leadership and other 'white flag' surrenderers on or around 18 May 2009 constitutes a violation of IHL and amounts to a war crime.

These unlawful killings also constitute crimes against humanity, as they were committed as part of the widespread and/or systematic attack directed against the Tamil population by the Sri Lankan security forces, under the command and effective control of Gotabaya Rajapaksa.

Gotabaya Rajapaksa allegedly ordered the summary executions, and had contemporaneous knowledge of them, took no action to prevent them, and failed to act against those responsible. These violations, if proven, amount to war crimes and crimes against humanity, which engages his individual criminal responsibility.

#### **Prohibition of Enforced Disappearance**

Since 2016, Sri Lanka has been a State Party to the International Convention for the Protection of All Persons from Enforced Disappearance, which obliges Sri Lanka to criminalise enforced disappearance as an international crime under its domestic legal system.<sup>411</sup>

Sri Lanka has the second highest disappearance case-load in the world. The UN Working Group on Enforced and Involuntary Disappearances (WGEID) registered over 12,000 complaints of enforced disappearances between 1980 and 2014.<sup>412</sup> The Sri Lankan Army, the police (CID, TID, STF) and Tamil paramilitary groups are alleged to be responsible for the majority of the cases of enforced disappearances.<sup>413</sup>

Evidence detailed in this report shows that Father Francis and hundreds of civilians and former LTTE cadres who had laid down their arms

were deprived of their liberty by the security forces on or around 18 May as they surrendered into their custody. Multiple ITJP eyewitnesses saw Father Francis and hundreds of others being loaded by the security forces onto buses, never to be seen again. Families of the disappeared have filed multiple *habeas corpus* petitions before the courts in Sri Lanka, to no avail as the Government of Sri Lanka and the security forces continue to deny arresting and/or detaining these surrenderers and in some instances assert, without offering any evidence or conducting any investigations, that they died in combat or fled the country.

Evidence indicates that these disappearances were carried out by members of the Sri Lankan Security Forces, who intended to remove these individuals from the protection of the law for a prolonged period of time, as they were not registered as having been alive at the time of the surrender and were transported to an undisclosed location. There are reasonable grounds to believe these enforced disappearances formed part of the widespread and/or systematic attack directed against the Tamil population. Family members of the disappeared have also been subjected to reprisals, harassment and detention in response to their search for information about the fate of loved ones whom they handed over into the custody of the security forces. The victims and their relatives have been denied the right to an effective remedy for the violations, including the right to the truth.

Based on the evidence in this report, there are reasonable grounds to believe the Sri Lankan security forces were responsible for enforced disappearances, committed as part of a widespread and systematic attack against the Tamil civilian population, given the geographical scope and timeframe in which they were committed, targeting the same population. 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.<sup>414</sup>

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<sup>411</sup> Art 2, International Convention for the Protection of All Persons from Enforced Disappearance

<sup>412</sup> WGEID 2007, 2008, 2009 and 2010

<sup>413</sup> OISL 412

<sup>414</sup> OISL [A/HRC/30/CRP.2](#), 16 Sep 2015, paras 1127-1128

The evidence in this report demonstrates that Gotabaya Rajapaksa, in his capacity as Secretary of Defence, is responsible for the enforced disappearances committed during the JVP period in Matale, the civil war in 2009, the end of the war in 2009, and its aftermath. Gotabaya had personal knowledge of the system in place and of the violations committed by the security forces acting under his command and control. His refusal to acknowledge the deprivation of freedom or to provide information on the fate or whereabouts of the disappeared is significant, and has been a key characteristic of how the Sri Lankan government has dealt with disappearances to date.

Based on the information and evidence in this report, there are reasonable grounds to believe that Gotabaya has command responsibility for the violations committed by his subordinates which, if proven, amount to war crimes and crimes against humanity which engages his individual criminal responsibility.

#### **Imprisonment or severe deprivation of physical liberty**

The right to personal liberty is defined by Article 9 of the International Covenant on Civil and Political Rights.

#### **Arbitrary Detention, and Internal Displacement in IDP Camps and Rehabilitation Camps**

The prohibition of arbitrary deprivation of liberty in non-international armed conflicts is based on international human rights law. The UN Guiding Principles on Internal Displacement provide that, consistent with the right to liberty, internally displaced persons 'shall not be interned in or confined to a camp', and that 'exceptional circumstances' may permit confinement, only for so long as it is 'absolutely necessary'. The ICRC noted that the Sri Lankan government has not demonstrated that such circumstances exist.<sup>415</sup> The UN Guiding Principles on Internal Displacement provide authoritative standards on the obligations of

governments to internally displaced persons. Under the principles, authorities must provide displaced persons with 'at a minimum' safe access to essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation.<sup>416</sup>

Arbitrary detentions documented both during and after the conflict of ethnic Tamils with actual or perceived LLTE links constitute a course of conduct involving the commission of prohibited acts within the meaning of Article 7(1) Rome Statute.

The Sri Lankan security forces violated UN Principles on Internal Displacement by not allowing persons to move freely outside of established camps and by separating families that were internally displaced, which constituted inhuman and discriminatory treatment.<sup>417</sup> Moreover, discriminatory screening processes inside the camps, including those carried out after May 2009, leading to arbitrary detention, torture, and sexual violence of actual or perceived current or former members of the LTTE, were in violation of Geneva Convention IIV, Art 3 and PII, Art 2 (2).

The Sri Lankan government's refusal to allow the ICRC and the UN High Commissioner for Refugees access to the IDP camps to monitor the screening process constitutes a violation of Geneva Convention IV, Art 3.

The evidence in this report shows that the Sri Lankan security forces acting under Gotabaya Rajapaksa's command routinely violated the fundamental rights of detainees through illegal imprisonment and deprivation of liberty, murder and arbitrary detention, including the right to be informed of specific reasons for arrest, the right to challenge the lawfulness of the detention before an independent judicial authority, and the right of access to legal counsel and family members, as well as the failure to inform families of the basis for the detainees' arrest and their whereabouts. These

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<sup>415</sup> UN High Commissioner for Refugees (UNHCR), 'Guiding Principles on Internal Displacement', 22 Jul 1998, ADM 1.1,PRL 12.1, PRO0/98/109, <https://www.refworld.org/docid/3c3da07f7.html> [accessed 13 Oct 2023]

<sup>416</sup> *ibid*

<sup>417</sup> UN Guiding Principles on Internal Displacement, Principles 14 and 17

violations raise serious concerns that in all likelihood most detainees were victims of torture and cruel and inhuman treatment, given the lack of due process and access to the law. In all probability, given the lack of information, there is also a risk that most of the surrenderees were 'disappeared'.

### **'Rehabilitation' Camps**

The ITJP's first report in 2014 on torture and sexual violence ('An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014') noted that former LTTE cadres were forced to enter into the Sri Lankan government's so called 'rehabilitation program' for ex-combatants. Evidence in this report confirms that the rehabilitation program involved torture and scant rehabilitation. On 21 January 2010, OHCHR raised concerns regarding 'the legality of the detention of those separated for alleged involvement with the LTTE and placed in "rehabilitation centers"' adding there were 'over 11,000 according to available figures but that the true numbers are unknown', and urging the government give the ICRC access to the centres.<sup>418</sup>

The government's rehabilitation programme has since been declared wrongful detention by the UN Working Group on Arbitrary Detention and UN Special Rapporteur Juan Mendez, who called for its closure.

Regarding the treatment of surrenderees, the International Commission of Jurists said it was 'concerned that the government's *'surrendee'* and *'rehabilitation'* regime failed to adhere to international law and standards, jeopardising the rights to liberty, due process, and fair trial. There are also allegations of torture and enforced disappearance.<sup>419</sup>

In 2015, the ITJP also identified the location of the Trincomalee secret naval torture site and based on survivor testimony published the GPS coordinates. The site was subsequently visited by the Working Group on Enforced or Involuntary Disappearances who corroborated

its existence and the details provided by the ITJP.

The evidence in this report confirms that the Sri Lankan security forces, under the command and control of Gotabaya Rajapaksa, are responsible for deaths in the IDP camps and rehabilitation camps, and gross human rights violations, which included the arbitrary deprivation of liberty as well as the mandatory and involuntary nature of rehabilitation, torture and sexual violence. The forced rehabilitation involved the deprivation of liberty of the 'rehabilittee' and may have amounted to individual and collective punishment without criminal conviction, the denial of legal safeguards and, in some instances, a duration of up to two years' detention without charge, being brought to trial, or having access to legal representation.

Based on the information and evidence in this report, there are reasonable grounds to believe that Gotabaya should be held responsible for the violations committed by his subordinates and which, if proven, amount to war crimes and crimes against humanity, which engages his individual criminal responsibility.

### **Prohibition of Murder**

The evidence in this report confirms the central role played by Gotabaya Rajapaksa in the violations of IHL, HRIL and ICL committed in the final stages of the Sri Lankan civil war, which amount to grave breaches of the Geneva Conventions, violations of international humanitarian law and international criminal law during the civil war in Sri Lanka and its aftermath. The grave breaches include murder, torture and inhuman treatment, executions, perfidy, rape and other forms of sexual violence, deprivation of liberty, severe bodily and mental harm, and starvation.

### **Prohibition of mutilation of dead bodies**

Additional Protocol II to the Geneva Conventions sets out the obligation to take all possible measures to prevent the dead from

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<sup>418</sup> Petrie Report, Annex

<sup>419</sup> Executive summary of a briefing note, 'Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE

Suspects', Sep 2010, International Commission of Jurists.



being despoiled in non-international armed conflicts.<sup>420</sup> The prohibition of mutilation of dead bodies has also been recognised as a rule of customary international law applicable to non-international armed conflict.<sup>421</sup> Under the ICC Statute, the prohibition of mutilating dead bodies in non-international armed conflicts is covered by the war crime of ‘committing outrages upon personal dignity’.<sup>422</sup>

The OISL report noted that they had viewed disturbing video and photographic material taken on mobile phones by soldiers and noted the outrageous treatment of female bodies and LTTE fighters whose bodies had been desecrated, and indicated that this material should be considered in the broader context of the humiliating and degrading sexual abuse to which detainees were subjected when alive.

The evidence in this report confirms that the security forces under the command and effective control of Gotabaya Rajapaksa were responsible for the desecration and mutilation of the dead bodies perpetrated by the security forces operating under his command and effective control, and who despite knowing these incidents were taking place did nothing to prevent them or hold those responsible accountable.

Gotabaya’s actions amount to war crimes of outrages to personal dignity and crimes against humanity, for which he bears criminal responsibility.

### **Prohibition of the Recruitment of Child Soldiers**

Sri Lanka ratified the Convention on the Rights of the Child in 1991 and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2000. At the time of the conflict, Sri Lanka was therefore already bound by their provisions.

Under international law, the prohibition against recruiting children into the armed forces and armed groups has reached the status of customary international law and is applicable to non-international armed conflicts.<sup>423</sup> It is explicitly mentioned as a war crime applicable to non-international armed conflict in the Statute of the ICC.<sup>424</sup>

The evidence in this report confirms that Gotabaya Rajapaksa was the *de facto* and *de jure* commander of the Karuna paramilitary group and that a commander-subordinate relationship existed over the paramilitary group (Karuna TMVP) responsible for the recruitment of children, facilitating their passage unhindered through SLA checkpoints.

Karuna reported directly to Gotabaya Rajapaksa on the paramilitary group’s activities, including the illegal recruitment of children, and provided safe passage by the child recruits through checkpoints and army camps, and nevertheless took no action to stop or prevent the recruitment of children, or to hold the paramilitary group and their leadership to account, violating IHL, HRL and ICL.

These violations amount to war crimes and crimes against humanity, if proven, and engage Gotabaya Rajapaksa’s individual criminal responsibility.

### **Persecution on ethnic, political and gender grounds**

The crime of persecution has been defined by the Rome Statute as ‘the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity’ on political, racial, national, ethnic, cultural, religious, gender or other grounds, universally recognised as impermissible under international law, and is recognised as a crime against humanity, identifiable group or collectivity.<sup>425</sup>

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<sup>420</sup> Additional Protocol II, Article 8 (adopted by consensus)

<sup>421</sup> ICRC, Rule 113, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule113](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule113)

<sup>422</sup> Art 8(2)(c)(ii), ICC Statute read together with the elements for this crime in ICC Elements of Crimes, p27 n49

<sup>423</sup> [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule136](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule136)

<sup>424</sup> Art 8(2)(e)(vii)

<sup>425</sup> Art 7.1.h, ICC Statute

The evidence in this report shows that Tamils were targeted and victimised as a group and collectively and discriminated against, based on their Tamil ethnicity, and their religion as Hindus and Christians in an ethno-national Sinhala Buddhist state, as well as on political grounds, because of their perceived support for the LTTE, their membership of the LTTE and their political opposition to the Sri Lankan government. The violations included arbitrary detention, enforced disappearances, torture, brutal rape and sexual violence, illegal imprisonment, displacement in IDP camps and unlawful killings during the armed conflict. In the context of surrendering, Tamil survivors were compelled to enter IDP camps (likened to concentration camps), with former LTTE members forced to undergo rehabilitation which varied according to gender in 'rehabilitation camps'. Not even children were spared unlawful detention, torture, rape and sexual violence.

Moreover, in the final days of the war, the summary executions of Tamil, men, women, and children, including former LTTE combatants who had surrendered or who were *hors de combat*, constitutes a stark example of persecution of Tamils through murder. During the civil war, Tamils were deprived of their fundamental rights to protection and access to objects indispensable for their survival, including food, medical assistance and water.

The information and evidence in this report shows that the Sri Lankan government and security forces acted under the *de facto* command and control of Gotabaya Rajapaksa who was allegedly responsible for targeting Tamils in Sri Lanka, engaging in discriminatory behaviour against them on political, ethnic, religious and gender grounds, which if proven amount to war crimes and crimes against humanity, which engages Gotabaya's individual criminal responsibility.

### **Gotabaya Rajapaksa's Individual Criminal Responsibility**

Between 2005 and 2015, Gotabaya Rajapaksa was the Secretary to the Ministry of Defence, the

most senior civil servant in government and the one responsible for the formulation and execution of defence strategies and safeguarding Sri Lanka's territorial integrity and sovereignty.<sup>426</sup> Gotabaya was also powerful politically, as his brother Mahinda Rajapaksa was the President of Sri Lanka and the Commander in Chief of the Armed Forces. The evidence in this report indicates that Gotabaya Rajapaksa in the Ministry of Defence assumed *de facto* command of the armed forces and military intelligence until 2015 since he exercised effective control over the Armed Forces. While President Mahinda Rajapaksa legally retained the power to appoint the commanders, Gotabaya had 'authority over all appointments, promotions, and disciplinary matters, including the power to prosecute offenders in a court martial [within the armed forces]'.<sup>427</sup>

The evidence in this report confirms that Gotabaya Rajapaksa was the 'interface between the military and the political authority' and controlled all army appointments and enjoyed significant influence in instructing ministers and political nominations abroad and locally.<sup>428</sup>

The networks he had established during his time in the military included his former military colleagues, whom he appointed to senior positions. It is against this background that any assessment of the role and responsibility of Gotabaya Rajapaksa in the commission of international crimes must take place.

Gotabaya had the power and authority to organise the establishment in the army of new battalions, brigades and divisions.<sup>429</sup> He appointed senior military officials who were actively involved in the 2009 battles, bypassing existing structures and seniority to make these appointments.<sup>430</sup> He also had authority, direction, control and supervision over the Chief of Defence Staff,<sup>431</sup> a position he reformulated in 2009. Gotabaya was also the second highest level member of the National Security Council, which was 'charged with the maintenance of national security, with

<sup>426</sup> [http://www.defence.lk/main\\_abt.asp?fname=mission](http://www.defence.lk/main_abt.asp?fname=mission), cited in OSIL, para 106

<sup>427</sup> Footnote 12 of this report

<sup>428</sup> Footnote 46 of this report

<sup>429</sup> *Gotabaya*, p75, Kamal Gunaratne

<sup>430</sup> <http://www.indiandefencereview.com/spotlights/lessons-from-the-war-in-sri-lanka/2/>, *Gotabaya*, p78, Kamal Gunaratne

<sup>431</sup> *Daily News*, 12 Jun 2009, on new law for CDS.

authority to direct security operations and matters incidental to it',<sup>432</sup> and commanded the Joint Operations Headquarters (JOH) responsible for coordinating operations among the police and armed forces and implementing the decisions of the National Security Council.<sup>433</sup>

Appearing before the Lessons Learnt and Reconciliation Commission (LLRC), Gotabaya admitted having masterminded the military operation in the last phase of war leading to victory over the LTTE, stating '...When we were planning the military campaign operation' and added that he was 'especially interested to present the facts to the Commission how we planned the military Operation'.<sup>434</sup> Gotabaya also admitted publicly that he led the armed forces, '*Whilst serving as the Secretary of Defence, I was privileged to give leadership, motivation and logistical support to the victorious Armed Forces of Sri Lanka.*'<sup>435</sup> He is also quoted as saying that, '*You know that as the defence secretary, first I was able to direct the forces and the intelligence services to end terrorism within two and a half years.*'<sup>436</sup>

Gotabaya not only knew about specific operations but allegedly gave specific operational orders to the commanders of the troops. Gotabaya Rajapaksa's immediate subordinate, the Army Commander Sarath Fonseka, also informed Parliament that Gotabaya had within two minutes approved the attack on Mavil Aru.<sup>437</sup> The evidence detailed in this report further suggests that Gotabaya was informed daily about military and national security developments. As reported by a Sri Lankan newspaper '*It was the defence Secretary (...) who was able to have a direct link with the*

*Commander-in-chief and make requests on behalf of the Armed Forces, including the raising of the numbers almost by two-fold, and it was he who stood firm in the face of external pressures holding the President not to yield. It would be grossly unfair to say the Defence Secretary just provided 'necessary support' to end the war.*'<sup>438</sup>

While a number of intelligence agencies existed in Sri Lanka during the war and survived post-war, in reality their functions, though separate on paper, were blurred, with many taking on military or military-like functions during the armed conflict. Gotabaya Rajapaksa was in effective command and control over military intelligence known as the Military Intelligence Corps. While military intelligence fell directly under the remit of the Army Commander, Sarath Fonseka, Fonseka alleged that Gotabaya Rajapaksa was in effective command, and that the Defence Secretary handled the Colombo intelligence operations unofficially from the Defence Ministry, accusing Gotabaya and his subordinates of being involved in various unscrupulous activities including the '*white van culture*'.

Gotabaya Rajapaksa also exercised command and control over the the State Intelligence Service and the police until 2013 when the Ministry of Law and Order took over the oversight responsibility of this law enforcement agency. In this regard, between 2005-2013 all police forces, including the Criminal Investigation Department (CID), the Terrorism Investigation Division (TID), the paramilitary Special Task Force (STF)<sup>439</sup>, and the Colombo Crimes Division

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<sup>432</sup> Paranagama Report §179

<sup>433</sup> OSIL, para 112; also the individual who was Chief of Defence Staff for the JOH from 2006-9 was Donald Perera who also answered to the Secretary of Defence, Gotabaya Rajapaksa. In 2015 he was questioned over the MiG aircraft deal by Sri Lanka's Financial Fraud Investigation Division, 2 Apr 2015, <http://www.ft.lk/article/402905/Former-Air-Chief-Marshal-Donald-Perera-questioned-over-MiG-aircraft-transaction>

<sup>434</sup> Gotabaya Rajapaksa transcript, LLRC

<sup>435</sup> <https://www.facebook.com/437355006429820/posts/1275498389282140?sfns=mo> (Gotabaya's Facebook page).

Corroborated in *Gota's War* p291, 'Gota had decided to give the opportunity to Sarath Fonseka.'

<sup>436</sup> 19 Oct 2019, Beliatta election campaign rally, <https://www.youtube.com/watch?v=BdtQ-E5sBPw> 10'47'-11'37.

<sup>437</sup> '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.' This marked the start of the final war in the East. §66, OISL, 2015.

<sup>438</sup> 'From Hero to Zero: The Fonseka fallout', 18 Oct 2009, *Sunday Times Lanka*, <http://www.sundaytimes.lk/091018/Columns/political.html>

<sup>439</sup> 'The Special Task Force has been reassigned under the Ministry of Defence, Public Security, Law & Order with effect from 1<sup>st</sup> August 2006 and all matters of the Special Task Force are now handled by the Police

(CCD) reported to the Ministry of Defence. Gotabaya bypassed the regular chain of command, including the Additional Secretaries of Defence, the Inspector General of the Police, and Deputy Inspector General of Police.<sup>440</sup> The report shows how Gotabaya Rajapaksa played an instrumental role in ordering the armed forces to engage in military attacks resulting in tens of thousands of civilian deaths from early 2006, and the intensification of the armed conflict in the country between 2008 to the end of the war in May 2009. The violations included summary executions, arbitrary and unlawful detentions, and torture, as well as rape and other forms of sexual violence. Gotabaya was fully aware of the mounting unfolding humanitarian crisis, and was personally responsible for ordering international aid and relief organisations to leave the war zone in 2008, ensuring that the war zone would be free from independent, international monitoring and observation. Together with the Ministry of Defence, Gotabaya deliberately obstructed aid and humanitarian agencies from accessing the war zone, preventing the delivery of food and medicines and objects indispensable to the survival of the population.

The ICC pre-trial judgment in the Bemba case noted that the notion of *de facto* commanders ‘...may generally encompass superiors who have authority and control over regular government forces such as armed police units or irregular forces (non-government forces) including rebel groups, paramilitary units, including inter alia, armed resistance movements and militias

that follow a structure of military hierarchy or a chain of command.’<sup>441</sup>

Gotabaya Rajapaksa as the *de facto* commander of the Karuna paramilitary group<sup>442</sup> authorised the leadership to extort and collect money from Tamil businessmen, and failed to take steps to prevent the recruitment and use of child soldiers.<sup>443</sup> In late 2007 he also allegedly provided Col Karuna with a diplomatic passport to travel to the UK issued under a false name.<sup>444</sup> According to an ITJP witness, Karuna went through passport security in Sri Lanka facilitated by Gotabaya, who had effective control over the ‘*black list*’ shared with immigration.<sup>445</sup>

Gotabaya also enjoyed the means to wage war against the LTTE and Tamil civilians, which included using communication equipment, intelligence provided by UAVs and heavy weaponry and artillery used in these attacks indiscriminately and disproportionately, even at the point in the conflict when the LTTE posed no further military threat as they did not have the capacity or access to weapons to continue to fight. Gotabaya was also fully aware of the arbitrary and illegal detention, torture, rape and sexual violence perpetrated by his subordinates, and despite his knowledge of these violations failed to prevent them, or act against them, instead manifesting his approval of these actions through public affirmation of the security forces and the rewarding of senior commanders.

The Bemba case<sup>446</sup> set out the criteria for command responsibility, which includes the

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Division, since of then.’ On file, MOD webpage, Ref MOD D.

‘The STF only operate under orders from Gotabaya’, ITJP witness.

<sup>440</sup> eg it was Gotabaya’s ‘order’ that the intelligence units should be united under Hendawitharana, ‘Exclusive: Gota’s Intelligence Czar Caught Red Handed As Chinese Mole’, <https://www.colombotelegraph.com/index.php/exclusive-gotas-intelligence-czar-caught-red-handed-as-chinese-mole/> Millions Credited To Ex-Intelligence Chief Maj Gen Kapila Hendawitharana’s Account, 25 Feb 2017, <https://srilankabrief.org/millions-credited-to-ex-intelligence-chief-maj-gen-kapila-hendawitharanas-account/>. In interviews with *Business Today*, Apr 2009, both the Inspector General of the Sri Lankan Police at the time and the Deputy Inspector General of the Criminal Investigation Division described close

coordination (including weekly meetings under the Secretary of Defence), of the various intelligence services, including the SIS, police intelligence units and the Directorate of Military Intelligence to exchange information on the LTTE, Apr 2009, On file.

<sup>441</sup> [https://www.icc-cpi.int/CourtRecords/CR2009\\_04528.PDF](https://www.icc-cpi.int/CourtRecords/CR2009_04528.PDF) para 410

<sup>442</sup> [https://wikileaks.org/plusd/cables/06COLOMBO1622\\_a.html](https://wikileaks.org/plusd/cables/06COLOMBO1622_a.html) 06COLOMBO1622\_a

<sup>443</sup> [https://wikileaks.org/plusd/cables/07COLOMBO728\\_a.html](https://wikileaks.org/plusd/cables/07COLOMBO728_a.html)

<sup>444</sup> ‘Gotabhaya “gave me passport”’, BBC Sinhala, 25 Jan 2008, [https://www.bbc.com/sinhala/news/story/2008/01/080125\\_karunajail.shtml](https://www.bbc.com/sinhala/news/story/2008/01/080125_karunajail.shtml)

<sup>445</sup> p51 of this report.

<sup>446</sup> <https://casebook.icrc.org/case-study/international-criminal-court-trial-judgment-case-prosecutor-v-jean-pierre-bemba-gombo>

power to issue orders and the authority to order security forces or units under Bemba's command, whether under his immediate command or at lower levels, to engage in hostilities, to ensure compliance with orders, including consideration of whether the orders were actually followed.

Gotabaya Rajapaksa authorised the reorganisation of units, and made changes to command structures, bypassing the regular chain of command. He had the power to promote, replace, remove or discipline any member of the forces, and to direct the forces to various locations where the conflict was taking place.

Gotabaya Rajapaksa bears responsibility for the persecution of the Tamil civilian population in the Vanni, collectively punishing on the basis of race, ethnicity and religion as well

as political opposition to the government on racial, religious and political grounds.<sup>447</sup>

Gotabaya Rajapaksa, as the former Secretary to the Ministry of Defence, and *de facto* and *de jure* commander of the security forces in Sri Lanka and paramilitary groups, bears responsibility for allegedly ordering them to commit the violations set out in this report, and having contemporaneous knowledge failing to prevent, stop, or hold them accountable. These acts constitute serious violations of the laws and customs applicable in non-international armed conflicts, which based on the information and evidence in this report if proven amount to war crimes and crimes against humanity, for which Gotabaya should be held criminally accountable under the theory of command responsibility.

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<sup>447</sup> UN Secretary-General (UNSG), Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 Mar 2011,

<https://www.refworld.org/docid/4db7b23e2.html> [accessed 28 Nov 2023]



‘You cannot judge a person by what he did during a war situation.’

Gotabaya Rajapaksa<sup>448</sup>

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<sup>448</sup> <http://www.dailymirror.lk/article/How-can-there-be-freedom-without-discipline-Gotabaya-162220.html>

# ANNEXURE 1: GOTABAYA RAJAPAKSA CAREER

20 Jun 1949	Born in Matara
Education	Ananda College <sup>449</sup>
26 Apr 1971	Joined the Sri Lankan Army as a cadet officer.
25 May 1972	Commissioned as a second lieutenant and given his first command as an officer in the Ceylon Signals Corps after basic training at the Army Training Centre, Diyatalawa.
1972	Military College of Signals, Rawalpindi, Signals young officers course.
Unknown	Sinha Regiment and Rajarata Rifles.
1974	Posted to Jaffna <sup>450</sup>
1975	School of Infantry and Tactics, Quetta Infantry company commanders' course.
1980	Counter-Insurgency and Jungle Warfare School, Assam, India.
1982-83	Wellington Defence Services Staff College (DSSC), Nilgris, Tamil Nadu, Command and Staff Officer Training.
14 Oct 1983	Gajaba Regiment (after Rajarata Rifles was disbanded for alleged involvement in anti-Tamil riots and amalgamated with Vijayabahu Infantry Regiment).
1987 May & Jun	Vadamarachchi Operation, Jaffna <sup>451</sup>
1987 Jul	Recalled to Colombo after IPKF intervention and in Vidyalkankara camp <sup>452</sup> .
1987 Dec	Staff position, Army HQ <sup>453</sup>
1988	Visits USA <sup>454</sup>
1989 <sup>455</sup>	Fort Benning, USA Advanced Infantry Officers course <sup>456</sup>
1 May 89	Official biographer (C A Chandraprema <sup>457</sup> ) says Gotabaya Rajapaksa was in 1 <sup>st</sup> Gajaba Regiment and with the promotion to Commanding Officer he was posted to Matale as district coordinating officer until the end of the 2 <sup>nd</sup> JVP insurrection (officially 13 Nov 1989 <sup>458</sup> ) but believed to be there till Jan 1990.
8 Jul 1989-26 Jan 91	Commander 1 Gajaba Regiment <sup>459</sup>

<sup>449</sup> Like Karannagoda, Fonseka, Sarath Weerasekera, Jagath Dias, Prasanna de Silva, Chagie Gallage and Kamal Gunaratne.

<sup>450</sup> 'I spent most of my time in Jaffna. I first went to Jaffna around 1974.' As a Signals officer. - Interview with Chandana Kariyawasam, Ceylon Week in Sinhala, <https://ceylonweek.com/2016/02/19/gotabaya-rajapaksa-telling-how-to-come-sarath-fonseka-lead-to-army.html>

<sup>451</sup> VADAMARACHCHI OPERATION, JAFFNA: 1987 May & June, Eelam II War

Gotabaya Rajapaksa was active in the war in the north from the early days - by his own admission commanding a battalion of the Gajaba Regiment when it captured Velvetithurai (VVT) in the Jaffna Peninsula. He complained the Vadamarachchi operation in the late eighties had to be abandoned midway due to Indian intervention, with the Indian Prime Minister complaining of 'horrific loss of life'. Gotabaya is quite convinced that the war would not have dragged so long if the Vadamarachchi operation was allowed to succeed. This shows that his strong belief in a military not political solution. *'General Wimalaratne was the one who said that we cannot stay like this and expanded these camps. This was a rehearsal to go to war. Once it was brought to a certain level, the Vadamarachchi operation was launched to clean it up totally. That Vadamarachchi operation had to be halted midway due to Indian intervention.'*

Source: (<https://ceylonweek.com/2016/02/19/gotabaya-rajapaksa-telling-how-to-come-sarath-fonseka-lead-to-army.html>)

Lalith Weeratunga, Secretary To The President, <https://www.businesstoday.lk/article.php?article=7101>

<sup>452</sup> Interview with Chandana Kariyawasam, Ceylon Week in Sinhala, <https://ceylonweek.com/2016/02/19/gotabaya-rajapaksa-telling-how-to-come-sarath-fonseka-lead-to-army.html>

<sup>453</sup> Gota's War. P 173.

<sup>454</sup> Gota's war P173

<sup>455</sup> This is the date the course concluded according to Gota's War.

<sup>456</sup> P177, Gota's War

<sup>457</sup> <https://itjpsl.com/assets/press/Chandraprema-PRESS-RELEASE-english.pdf>

<sup>458</sup> Date Wijeweera was killed. 'Gota remained the security coordinating officer of Matale until the end of second JVP insurrection' Gota's War, pg 177.

<sup>459</sup> <https://alt.army.lk/gajabaregiment/1-gajaba-regiment>, Online official Biography says 1983-1990.

Jan1990 Gotabaya Rajapaksa applied for 3 months leave and went to USA.

1990 Operation 'Strike Hard' and Operation Thrividha Balaya.

1990 Led one battalion in the assault to retake Jaffna fort<sup>460</sup>.

Late 1990 Moves to Summit flats<sup>461</sup>.

1990-1991 Coordinating Officer Weli Oya area - the site of human rights violations and Sinhala colonisation. [8 Jul 1990 Photograph shows him with Sumedha Perera off the seas of Muttur.]

Late 1990 At the behest of Minister Wijeratne, Army Headquarters appointed Lt Col Rajapaksa as the Deputy Commandant of the Kotelawala Defence Academy (KDA), in late 1990<sup>462</sup>.

Jul. 1991 Elephant Pass Battle

1 Nov. 1991 Retired from the army as a Lieutenant Colonel and emigrated to the US<sup>463</sup> where he acquired US citizenship.

In the USA, '...he worked in Loyola Law School in Los Angeles, U.S. as a Systems Integrator and Unix Solaris Administrator'.<sup>464</sup>

2005 Appointed Secretary of Defence of Sri Lanka by his brother the President and held the post for ten years, while a dual national.

1 Dec 2006 Failed assassination attempt in Colombo.

6 Sep 2009 University of Colombo confers a Doctor of Letters on him for recognition as a 'war hero'.

16 Nov 2019 Elected President of Sri Lanka.

12 Jul 2022 Flees Sri Lanka for the Maldives, Singapore and Thailand in the face of calls for his removal and mass protests.<sup>465</sup>

22 Jul 2022 ITJP files criminal complaint in Singapore<sup>466</sup>.

2 Sep 2022 Returns to Sri Lanka.<sup>467</sup>

<sup>460</sup> 'General Kobbekaduwa called me to Vavuniya with Sarath Fonseka and said that our two battalions will have to launch the assault'.

1990 JAFFNA FORT

Kamal Gunaratne's autobiography describes how today's top army brass were involved in the Jaffna Fort fighting in 1990 which saw government forces lose the peninsula. These included Gotabaya Rajapaksa, his second in command Sumedha Perera (Gajaba Regiment), company commanders Udaya Perera (Gajaba Regiment) and Shavendra Silva (Gajaba Regiment). Sarath Fonseka later alleged in the election campaign in 2019 that Gotabaya Rajapaksa left the army because he risked been court-martialled for acts in Jaffna:

*'In the war, Gotabaya and I went together for the operation to liberate the Jaffna fort. Due to incidents that happened after the battle, the deputy defence secretary at the time Ranjan Wijeratne decided to take Gotabaya Rajapaksa to a military court. Then Gotabaya and Mahinda Rajapaksa who was an opposition MP met Ranjan Wijeratne and requested not to court martial him and allow to leave the army. General Ranjan Wijeratne granted that request. Ashamed to tell the real reason he says that he left on personal grounds.'*

<http://www.dinamina.lk/2019/10/21/%E0%B6%B4%E0%B7%94%E0%B7%80%E0%B6%AD%E0%B7%8A/82709/%E0%B6%BA%E0%B7%94%E0%B6%AF-%E0%B6%B6%E0%B7%92%E0%B6%B8%E0%B6%A7-%E0%B7%80%E0%B6%A9%E0%B7%8F-%E0%B7%80%E0%B7%90%E0%B6%A9%E0%B7%92-%E0%B6%9A%E0%B7%8F%E0%B6%BD%E0%B6%BA%E0%B6%9A%E0%B7%8A-%E0%B6%9C%E0%B7%9D%E0%B6%A8%E0%B7%8F%E0%B6%B7%E0%B6%BA-%E0%B6%9C%E0%B6%AD-%E0%B6%9A%E0%B7%85%E0%B7%9A-%E0%B6%9A%E0%B7%9C%E0%B7%85%E0%B6%B9%E0%B6%BA%E0%B7%92>

21 October 2019 Dinamina.

<sup>461</sup> *Ayoma wins the day*, 30 Jun 2013, *The Island*, 'War on terror revisited : Part 151.

<sup>462</sup> *ibid*

<sup>463</sup> *ibid*

<sup>464</sup> <http://gotabaya.info/about>. On file.

<sup>465</sup> <https://www.theguardian.com/world/2022/jul/12/sri-lanka-president-gotabaya-rajapaksa-fails-attempt-flee-airport>

<sup>466</sup> <https://www.aljazeera.com/news/2022/7/24/rights-group-seeks-arrest-of-former-sri-lanka-president>

<https://itjpsl.com/press-releases/itjp-files-criminal-complaint-against-gotabaya-rajapaksa-in-singapore>

<sup>467</sup> <https://www.aljazeera.com/news/2022/9/2/sri-lankas-gotabaya-rajapaksa-returns-weeks-after-fleeing-island>

## ANNEXURE 2: MEDIA REPORTS

22 Dec 2005 in Jaffna

'The brother of SL President Rajapakse and the Secretary of Defence Mr. Gotabaya Rajapakse, Chief of Defence Staff Vice Admiral Daya Sandagiri were also present at the meeting.'<sup>468</sup>

LLRP Blog<sup>469</sup>, 31 May 2006

'The Bishop of Mannar Rayappu Joseph has expressed his concerns over the killings taking place in the Madhu area. Bishop Rayappu Joseph has written to Defence Secretary Gotabaya Rajapaksha that claymore mine attacks have been made from the jungle areas killing civilians. The Bishop said that six civilians have been killed by claymore mines attacks within the last few weeks. 'I have requested the Defence Secretary to take care that no military attacks happen in the reservation area,' said Bishop Rayappu Joseph.'

LLRP blog<sup>470</sup>, 31 Aug 2008

'Last week, Defence Secretary Gotabhaya Rajapaksa announced that exit routes will be opened to enable civilians to enter into government controlled areas in Vavuniya... Defence Secretary Gotabhaya Rajapaksa told a press conference that 'zero civilian casualties' is an objective in the current military operation. Same emphasis was laid on the safety of civilians during the military operation to capture the eastern enclave of the LTTE, Vakarai, though with rather mixed success.'

MOD Situation Report, 31st Aug 2008

'The Secretary of Defence, Mr Gotabhaya Rajapaksha, accompanied by the Chief of Defence Staff, Air Marshal Donald Perera and the Commander of the Navy, Vice Admiral Wasantha Karannagoda, visited Mannar yesterday the 30th August 2008, in order to assess the security situation in the area. The itinerary of the visit comprised of visiting and assessing security condition of the area under North Central Naval Command.'

*The Island*<sup>471</sup>, 23 Sep 2012

'During the final phase of naval operations (Jan-May 2009), small boat units carried out operations along with the FAC. The SLN's small boat operations attracted the attention of many countries, including India. The SBS had the opportunity to train with US personnel over the years, hence the top international recognition. Defence Secretary Gotabhaya Rajapaksa visited the SLN production facility at Welisara on Sep 11, 2008 to highlight the importance of the concept.'

**September 2008: Withdrawal of UN and INGOs from the war zone - letter came from Gotabaya<sup>472</sup>**

This was the prelude to the war intensifying and the way to ensure there were no international witnesses. Also, UN sites were bombed on a number of occasions to force a UN evacuation.

'Minister Samarasinghe informed the media that at a meeting held on 08 September 2008, Mr. Gotabhaya Rajapaksa, Secretary Defence had requested all UN and INGOs to shift their

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<sup>468</sup> <https://lrrp2.wordpress.com/2005/12/22/sla-attacks-on-jaffna-protesters-justified-says-fonseka/>

<sup>469</sup> <https://lrrp2.wordpress.com/2006/05/31/stop-madhu-attacks-mannar-bishop/>

<sup>470</sup> <https://lrrp2.wordpress.com/2008/08/31/human-suffering-looms-large-in-the-wanni/>

<sup>471</sup> <http://slwaronterror.blogspot.com/2012/09/fac-role-in-battle-off-mullaitivu.html>

<sup>472</sup> *The Island*, 20 Nov 2012, 'Defence Secretary Gotabhaya Rajapaksa took a strong stand on clandestine INGO operations. Acknowledging that the UN and INGOs had an important role to play to alleviate the suffering of civilians, Defence Secretary Rajapaksa insisted that the LTTE couldn't be allowed to exploit those engaged in humanitarian operations.'  
<http://slwaronterror.blogspot.com/2012/11/earth-bunds-on-vanni-front-and-ingo.html>

'Defence Secretary Rajapaksa declared that depriving the LTTE of INGO and NGO support was a prerequisite for defeating terrorism. An irate Rajapaksa said that Task Force I (TFI) and the 57 Division advancing on western and central fronts, respectively had come across heavily fortified defence lines, consisting of ditches cum bunds across open terrain and waterways. The mounds built by the LTTE linking the western coastal line at Nachchikudah via Akkarayankulam to Thiruvurukandi posed a major challenge to the advancing troops. The Defence Secretary asserted that the LTTE could never have built such fortifications without using equipment made available by INGOs.' *Defence Secretary: terrorists benefited by INGOs, NGOs*, 8 Aug 2008, *The Island*.

operations from uncleared areas in the Vanni and continue their humanitarian operations from the Vavuniya hub.’<sup>473</sup>

**Daily News (state-run paper), 19 Sep 2008**

‘But ultimately all the INGOs heeded the government’s call especially due to the hardline stance taken by Defence Secretary Gotabhaya Rajapaksa that all the INGO and NGOs must withdraw from Wanni.’

**ICRC location at entry to Wanni**

**Daily News (state-run paper), 18 Nov 2008**

‘According [to] the Army sources troops operating in the Omanthai defence line also can link up to Makulam as they have cleared the area north of Omanthai after deploying Commando troops and Special Forces troops. Defence Secretary Gotabhaya Rajapaksa last week told the *Daily News* that the Defence Ministry has already taken the initiative to shift the Omanthai Entry Exit Point to south of Oddusudan after informing the ICRC to find a suitable location for this entry exit point. The capture of Mankulam will lay a solid foundation for the shifting of Omanthai Entry Exit point to the South of Oddusudan, military sources added.’

**22 Feb 2009**

‘With the confirmation of the fact that both Tiger aircraft which were on a suicide mission were destroyed due to the anti-aircraft fire, the Defence authorities had a sigh of relief. Defence Spokesman Minister Keheliya Rambukwella, Defence Secretary Gotabhaya Rajapaksa and Air Force Commander Air Marshal Roshan Gunatilleka visited the scene of the explosion, the Inland Revenue Department building premises to observe the situation first-hand.’<sup>474</sup>

**17 April 2009 Visits Kilinochchi**

‘Secretary of Defence Gotabhaya Rajapaksa, Chief of Defence Staff (CDS) Air Chief Marshal Donald Perera, Army Commander Lieutenant

General Sarath Fonseka, Navy Commander Vice Admiral Wasantha Karannagoda, Inspector General of Police Jayantha Wickramaratne had also accompanied the President.’<sup>475</sup>



Defence Secretary Gotabhaya Rajapaksa, Navy Commander Wasantha Karannagoda and IGP Jayantha Wickremaratne joining the tea party. Pix by Sudath Silva

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**No Fire Zone Locations**

Which were unilaterally announced by GOSL and located on the frontline – see OISL for an analysis of the problems. Not to mention the NFZs were each repeatedly bombarded.

**Daily News, 7 Feb 2009, Interview with Gotabaya – re NFZ 2**

‘The Government has demarcated an area equal to half the total area still to be cleared as a No fire zone and it is the LTTE that is keeping the civilians by force without allowing them to enter that zone. This is the main factor which these spokesperson hide,’ added the Defence Secretary. ‘There is a well-orchestrated campaign to discredit the Government and the Security Forces and bring pressure on it to declare a ceasefire by LTTE agents who have infiltrated international organizations and media institutions over a period of time.’

<sup>473</sup> Press Release, Ministry of Disaster Management and Human Rights, 3 Oct 2008, on file.

<sup>474</sup> *Sunday Observer* – ‘Air Force proves its mettle’.

<sup>475</sup> *First Visit by a head of state: President in Kilinochchi*, 17 Apr 2009, *Daily News*

Also: ‘Meanwhile Defence Secretary Gotabhaya Rajapaksa toured Wanni on Friday (11). Army Commander Lt-Gen. Jagath Jayasuriya accompanied him on this tour. On arrival in Mulaitivu, the Defence Secretary had been accorded a March Past by the Ninth Gajaba Regiment.

Incidentally Gajaba is his old regiment. There after he had toured Pudumattalan region where the final battle took place. Here he had addressed the troops of 59 Division, Task Force VIII and Task Force II and told them he would always look into their welfare and also make every effort to rebuild the lives of those brave soldiers who have become disabled.’

<https://lrrp.wordpress.com/2009/09/>

<sup>476</sup> On file.



He also denies population numbers (says 140k ppl whereas 282k emerge alive) in war zone to reduce food supplies, denies use of cluster bombs (not true) and champions the rehabilitation programme since discredited as mass illegal detention.

***Daily News, 10 May 2009 – on NFZ 3***

'However, the decision to redesign the NFZ was taken at the Security Council Meeting held on Wednesday following a proposal made by Defence Secretary Gotabhaya Rajapaksa to the Security Council meeting since a major portion of the earlier declared NFZ has already been captured by the troops after April 20.'

**LLRP Blog,<sup>477</sup> 14 Sep 2009**

'Meanwhile Defence Secretary Gotabhaya Rajapaksa toured Wannai on Friday (11). Army Commander Lt. Gen. Jagath Jayasuriya accompanied him on this tour. On arrival in Mulaitivu, the Defence Secretary had been accorded a March Past by the Ninth Gajaba Regiment. Incidentally Gajaba is his old regiment. There after he had toured Pudumattalan region where the final battle took place.'

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<sup>477</sup> <https://lrrp.wordpress.com/2009/09/14/six-tiger-stragglers-gunned-down-in-kovilladdi-jungles/>

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