

Justice for Genocide: Sri Lanka's Responsibility for Genocide against the Tamil People in 2009





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September 2024

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Executive Summary

The 26-year-long war in Sri Lanka ended on May 18, 2009, when Sri Lankan forces defeated the Liberation Tigers of Tamil Eelam (LTTE). The LTTE had launched an armed liberation struggle to establish the separate state of Tamil Eelam in the Tamil homeland in the northern and eastern parts (North-East) of the island. While two United Nations investigations on Sri Lanka found that Sri Lankan forces and the LTTE committed war crimes and crimes against humanity, the UN has been silent on genocide allegations.

The number of Tamil people unaccounted for and presumed dead during the final five months of the war ranged from 40,000 to 169,796, and most civilian casualties were caused by government shelling. The war ended in Mullivaikkal, a village in the Vanni region in the North-East. These final months are known as the “Mullivaikkal Genocide.”

This legal briefing paper proves that Sri Lanka is responsible for genocide against the Tamil people during the final stages of the war in 2009. Specifically, it explains how Sri Lanka is responsible for three of the five genocidal acts enumerated in the Genocide Convention—killing, causing serious harm, and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in part—committed with genocidal intent, which is the intent to destroy, in part, the Tamil people, as such. The targeted “part” were the Tamils in the Vanni.

PEARL uses evidence and findings from two UN investigations on Sri Lanka, international NGOs, and international media, and it makes legal conclusions based on “reasonable grounds,” the standard that UN human rights investigations have used to determine genocide in other contexts.

The Mullivaikkal Genocide

At the LTTE’s peak in the early 2000s, it controlled 76% of Sri Lanka’s North-East, creating the de facto state of Tamil Eelam, whose capital was in Kilinochchi in the Vanni. Meanwhile, the Sri Lankan government still sought to defeat the LTTE, dismantle its de facto state, and recreate a unitary state on the island. The LTTE’s territory shrank as Sri Lanka took control, until only the Vanni remained under LTTE control. In September 2008, Sri Lanka launched its final military offensive to capture the Vanni.

According to the UN, about 300,000 Tamil civilians were trapped in the Vanni war zone as of early 2009. During the final months of the war, the Sri Lankan government and/or its forces engaged in the following conduct constituting one or more genocidal acts:

Conduct	Genocidal act(s)
Deliberately shelling government-designated “No Fire Zones,” killing at least 40,000 Tamil civilians (and averaging 1,000 Tamil civilians killed each day in the final two weeks) and severely injuring another 25,000 to 30,000 Tamils	<ul style="list-style-type: none"> ● Killing ● Causing serious bodily or mental harm
Deliberately shelling hospitals, food distribution lines, and other humanitarian objects	<ul style="list-style-type: none"> ● Killing ● Deliberately inflicting conditions of life calculated to bring about the Tamil people’s partial physical destruction
Raping and sexually mutilating “a large number” (at least hundreds) of Tamil women and girls, an underestimate because survivors “greatly under-reported” experiencing sexual violence	<ul style="list-style-type: none"> ● Causing serious bodily or mental harm
Physically and sexually torturing countless Tamil men and women detainees	<ul style="list-style-type: none"> ● Causing serious bodily or mental harm
Deliberately restricting access to necessary food and medical supplies	<ul style="list-style-type: none"> ● Killing ● Causing serious bodily or mental harm ● Deliberately inflicting conditions of life calculated to bring about the Tamil people’s partial physical destruction
Creating inhumane conditions for internally displaced Tamils	<ul style="list-style-type: none"> ● Deliberately inflicting conditions of life calculated to bring about the Tamil people’s partial physical destruction

As *de jure* state organs, the conduct of the Sri Lankan government and the Sri Lankan military is attributable to the state of Sri Lanka. In situations where state organs committed genocidal acts, it is possible to assess whether a state is responsible for genocide without determining individual responsibility for genocide. The UN Fact-Finding Mission on Myanmar did so by considering the presence of factors in international criminal jurisprudence allowing the inference that genocidal acts were committed with genocidal intent.

Such factors allowing the inference of genocidal intent may take the form of circumstantial evidence, which was used in judgments by the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia, and the International Court of Justice.

Sri Lanka’s genocidal intent driving its conduct and violence against Tamils in the Vanni can be inferred from the following:

Circumstantial evidence in international jurisprudence allowing the inference of each element of genocidal intent	Element of genocidal intent
<ul style="list-style-type: none"> ● Deployment of a disproportionate number of soldiers and special forces (at least 14 times as many as LTTE “core fighters” and with disproportionate capabilities) in the Vanni ● Consistent, methodical conduct against Tamils in the Vanni ● Deliberately disproportionate attacks that indiscriminately killed Tamil civilians in the Vanni, knowing the vast majority of Tamils therein were civilians who did not pose a serious military threat ● Purposeful conflation and reframing of Tamil civilians in the Vanni as LTTE combatants, knowing the vast majority of Tamils therein were civilians who did not pose a serious military threat 	Intent to destroy
<ul style="list-style-type: none"> ● Large relative number and proportion of Tamils in the Vanni relative to the total number of Tamils in Sri Lanka ● Prominence of Tamils in the Vanni among the Tamil people, including their strategic importance and the presence of Tamil Eelam’s leadership (that is, the LTTE’s leadership) among them ● Existence of an opportunity to commit genocide—under the cover of the escalating internal armed conflict, counterinsurgency, and the global “war on terror”—that the Sri Lankan military took, killing at least 13% and presumably up to 	In part (or in substantial part)

<p>57% of the targeted part (the Tamils in the Vanni)</p>	
<ul style="list-style-type: none"> ● The Tamil people share a common language and culture and are thus an “ethnic group” protected by the Genocide Convention ● Large-scale, widespread, systematic, heavy, indiscriminate, and constant shelling of civilians and humanitarian objects in three “No Fire Zones,” each one smaller and with a denser concentration of civilians than the last ● Deliberate underestimates of the number of civilians for the purpose of limiting how much food, surgical, and other medical supplies could enter the war zone ● At least 40,000 civilians killed ● Humanitarian crisis for 284,000 internally displaced Tamils, effectively detained in military-guarded and -run camps in extremely overcrowded, unsafe conditions without sufficient access to food, water, sanitation, or shelter 	<p>A protected group, as such (that is, the victims were chosen by reason of their membership in the group whose destruction was sought)</p>

Ongoing Postwar Human Rights Violations and Persecution

Domestic inaction—coupled with unsuccessful international legal efforts, including the absence of a special court—has enabled alleged Sri Lankan perpetrators of international crimes to enjoy impunity. That impunity has emboldened Sri Lankan forces to continue perpetrating human rights violations against Tamils in the North-East—including arbitrary arrests and detention, enforced disappearances, torture, sexual violence, and repression of the right to memorialize—and to surveil, harass, and intimidate Tamils, including survivors of the genocide. In addition, persisting militarization in the North-East has perpetuated land grabs and displacement.

Because Sri Lanka has committed these violations against Tamils based on their Tamil ethnicity, each violation amounts to persecution.

Recommendations

Genocide recognition is an important way of publicly acknowledging the extraordinary harm suffered by victims, survivors, and their descendants and an important measure of accountability in its own right. It is especially crucial given Sri Lanka's ongoing human rights violations and persecution of Tamils, and the role that genocide denial by perpetrator states plays in intergenerational trauma and injustice.

Policymakers can make and have made genocide determinations based on standards of proof lower than those used by international courts. In fact, policymakers in Canada, France, Italy, New Zealand, the United Kingdom, and the United States have already recognized the genocide against the Tamil people in 2009. On behalf of the hundreds of thousands of Tamil victims and survivors of 2009, governments and UN entities should advance responsibility and justice for Sri Lanka's genocide.

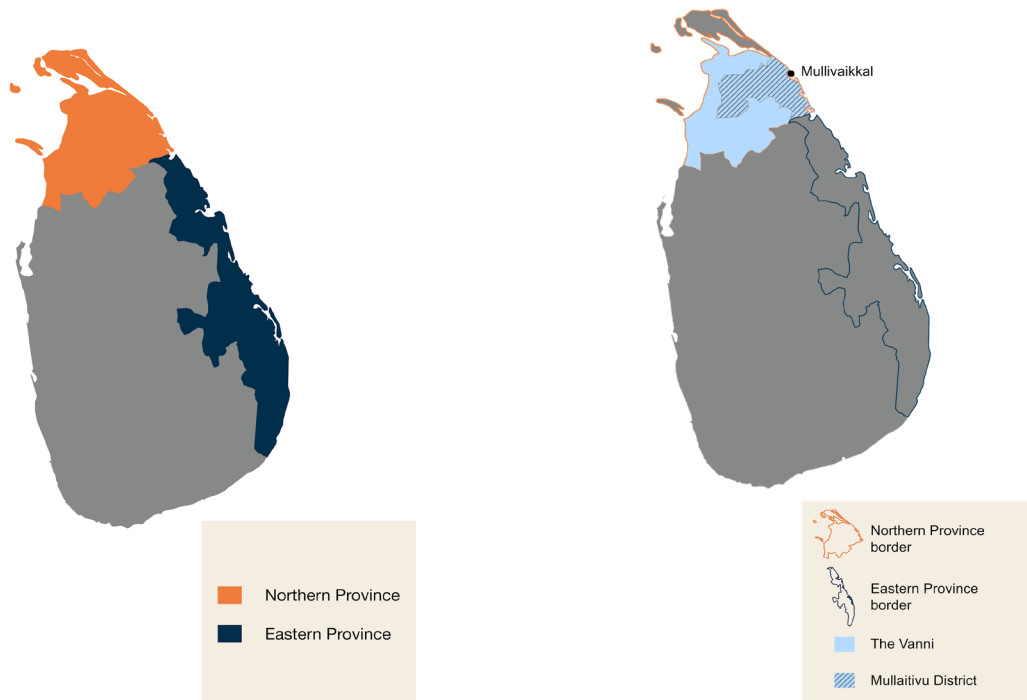
The appropriate branches and levels of governments should:

- Carry out genocide determinations.
- Take action to hold Sri Lanka formally responsible for genocidal acts, such as torture, under relevant international treaties, which may involve bringing a claim to the International Court of Justice.
- Introduce and/or support resolutions and make public statements, including on social media, that:
 - Recognize that Sri Lanka is responsible for genocide against the Tamil people in 2009, and
 - Call for the establishment of an international criminal justice mechanism to investigate alleged Sri Lankan perpetrators of international crimes, including genocide, and prosecute those most responsible.
- Introduce and/or support bills requesting a genocide determination from the executive branch, including an explanation of the decision.

UN entities, namely the Office of the High Commissioner for Human Rights (OHCHR) and its Sri Lanka Accountability Project (OSLap), should:

- Expressly consider genocide allegations in its analyses of evidence, noting that UN human rights investigations have considered and concluded the occurrence of genocide based on "reasonable grounds," including without determining individual responsibility for genocide.
- Urge the UN General Assembly and/or UN Security Council to establish an international criminal justice mechanism to investigate alleged Sri Lankan perpetrators of international crimes, including genocide, and prosecute those most responsible.

Background



Prewar Anti-Tamil Discrimination and Pogroms

Precolonial Sri Lanka was divided into Tamil and Sinhalese kingdoms, with Tamils in the North and East, and Sinhalese kingdoms in the other parts of the island.¹ Sinhalese and Tamils remain the first and second largest ethnic groups, respectively; most Sinhalese are Buddhist, and most Tamils are Hindu.²

European colonization of the island began in 1505, first by the Portuguese, then the Dutch, and finally the British, who seized control of the entire island in 1815, bringing the Tamil and Sinhalese kingdoms under one rule.³ Following the island's independence in 1948, Sinhalese governments promulgated a series of discriminatory laws and policies, reflecting "increasingly ethnic-based and majoritarian politics."⁴ This ideology, or Sinhala-Buddhist nationalism, holds

¹ *Sri Lanka*, Asia Society, <https://asiasociety.org/education/sri-lanka> (last visited Sept. 1, 2024).

² UN Secretary-General, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, ¶ 25 (Mar. 31, 2011), <https://reliefweb.int/report/sri-lanka/report-secretary-generals-panel-experts-accountability-sri-lanka> [hereinafter POE Report].

³ Neil DeVotta, *Sinhalese Buddhist Nationalist Ideology: Implications for Politics and Conflict Resolution in Sri Lanka*, East-West Center Policy Studies, Jan. 2007, at 13, <https://www.eastwestcenter.org/publications/sinhalese-buddhist-nationalist-ideology-implications-politics-and-conflict-resolution-s>.

⁴ U.N. Human Rights Council, *Report of the OHCHR Investigation on Sri Lanka*, U.N. Doc. A/HRC/30/CP.2, ¶ 47 (Sept. 16, 2015), <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session30/documents/a-hrc-30-crp-2.pdf> [hereinafter OISL Report].

that “Sri Lanka is the island of the Sinhalese, who in turn are ennobled to preserve and propagate Buddhism.”⁵

Sinhala-Buddhist nationalism incited structural and physical violence, including five prewar anti-Tamil pogroms, and has been a primary driver of the post-independence ethnic and armed conflict in Sri Lanka.

Timeline of Key Events

Sinhala Only Act and the Gal Oya Riots (1956)

- **1948:** The Citizenship Act removes citizenship from 1 million Tamils of Indian origin,⁶ most of whom were permanently settled on the island at the time.⁷
- **1949:** The Parliamentary Elections Amendment Act makes citizenship a prerequisite to vote, which disenfranchises the now-non-citizen Tamils of Indian origin and gives Sinhalese people the two-thirds majority required to legislate,⁸ including to create a new constitution.
- **1948–1952:** The government completes the Gal Oya Left Bank Irrigation System, which irrigates the dry regions in the East, and settles more than 80,000 Sinhalese people to cultivate the newly irrigated land.⁹
- **June 5, 1956:** The Sinhala Only Act is introduced, seeking to make Sinhala the only national language. Three hundred Tamils peacefully demonstrate outside Parliament before a Sinhalese parliamentarian leads a Sinhalese mob attack against the protesters. The police stand idly by.¹⁰
- **June 5–mid-June 1956:** Government-instigated violence—and accompanying looting and arson—spreads across the capital and then to other parts of the island.¹¹ In Gal Oya, Sinhalese settlers seize government vehicles and explosives to “terrorize” Tamils in the area.¹² At least 150 Tamils are killed.¹³

1958 Pogrom

- **April 1958:** The Prime Minister abrogates a political pact that would have devolved some powers and given the Tamil language greater status than before.¹⁴

⁵ Sinhalese-Buddhist nationalism “privileges Sinhalese Buddhist superordination, justifies subjugation of minorities, and suggests that those belonging to other ethnoreligious communities live in Sri Lanka only due to Sinhalese Buddhist sufferance.” DeVotta, *Sinhalese Buddhist Nationalist Ideology* at vii.

⁶ These Tamils of Indian origin were the descendants of Tamil indentured laborers brought by the British from India during the colonial era to work on coffee and then tea plantations on the island.

⁷ Satchi Ponnambalam, *Sri Lanka: The National Question And The Tamil Liberation Struggle* 75 (1983).

⁸ Ponnambalam at 77-79; *Disenfranchisement of Tamils*, Al Jazeera (Jan. 27, 2009), <https://www.aljazeera.com/news/2009/1/27/disenfranchisement-of-tamils>.

⁹ Robert Muggah, *Relocation Failures in Sri Lanka: A Short History of Internal Displacement and Resettlement* 84-85 (2008).

¹⁰ Ponnambalam at 105; Neil Devotta, *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflicts in Sri Lanka* 95 (2004).

¹¹ Ponnambalam at 105; *Anti-Tamil pogroms and killings*, Tamil Centre for Human Rights, https://web.archive.org/web/20230401164643/http://tchr.net/his_riots_outcome.htm (last visited Sept. 4, 2024).

¹² DeVotta, *Blowback* at 84.

¹³ Ponnambalam at 106; Tamil Centre for Human Rights, *Anti-Tamil pogroms; Remembering 1956 - Sri Lanka's First Anti-Tamil Pogrom*, Tamil Guardian (June 11, 2021), <https://www.tamilguardian.com/content/remembering-1956-sri-lanka-s-first-anti-tamil-pogrom> (citing William Howard Wriggins, *Ceylon: Dilemmas of a New Nation* (2015)).

¹⁴ Ponnambalam at 110-12.

- **May 22, 1958:** Sinhalese mobs at the Polonnaruwa railway junction attack Tamils who had traveled to the Northern Province for a political conference.¹⁵
- **May 22–27, 1958:** The radio stokes anti-Tamil sentiments. Sinhalese mobs pull Tamils off of trains and buses, burn Tamils alive in their homes, and loot Tamil homes and shops.¹⁶ They kill about 300 to 1,500 Tamils¹⁷ and rape about 100 Tamil women.¹⁸ The police stand idly by.¹⁹

Standardization, A New Constitution, and the Tamil Armed Liberation Struggle

- **1971:** The standardization policy requires Tamil students to score higher than Sinhalese students to gain university admission.²⁰
- **1972:** The 1972 constitution grants Buddhism “the foremost place and accordingly it shall be the duty of the State to protect and foster Buddhism.”²¹
- **1976:** The Liberation Tigers of Tamil Eelam (LTTE) is born, refashioned from the Tamil New Tigers, formed in 1972. By this time, armed groups, such as the LTTE, are calling for an armed struggle for a separate state of Tamil Eelam in the traditional Tamil homeland in the northern and eastern parts (North-East) of the island.²²

1977 Pogrom

- **July 1977:** The Tamil-majority areas overwhelmingly vote for a separatist platform in the elections.²³
- **August 13–September 15, 1977:** The election results and the anti-Tamil, Sinhala-Buddhist nationalistic rhetoric of Prime Minister J.R. Jayewardene’s government fuels more anti-Tamil violence.²⁴ Sinhalese mobs kill, assault, and rape Tamils in nearly every part of the island.²⁵

¹⁵ *Id.* at 113. *Remembering the 1958 Pogrom*, Tamil Guardian (May 27, 2022), <https://www.tamilguardian.com/content/remembering-1958-pogrom-1>.

¹⁶ *Id.*

¹⁷ Tamil Guardian, *Remembering the 1958 Pogrom*.

¹⁸ Tamil Centre for Human Rights, *Recorded Figures Arrests, Killings, Disappearances, Rapes, Displacements, and Injuries in the North East, Colombo, and Other Regions (1956-2008 June)* (Feb. 2009), available at https://sangam.org/2009/02/TCHR_Civilian_Casualties.php?uid=3323.

¹⁹ Ponnambalam at 113.

²⁰ Working Paper, Neil DeVotta, United Nations University World Institute for Development Economics Research, *Standardization and ethnocracy in Sri Lanka*, at 3, n.1, n.5 (Aug. 2022), <https://www.wider.unu.edu/sites/default/files/Publications/Working-paper/PDF/wp2022-86-standardization-and-ethnocracy-in-Sri-Lanka.pdf>.

²¹ The Constitution of Sri Lanka (Ceylon) sec. 6 (1972), [https://www.parliament.lk/files/ca/4.%20The%20Constitution%20of%20Sri%20Lanka%20-%20%201972%20\(Article%20105%20%E2%80%93134\)%20Chapter%20XIII.pdf](https://www.parliament.lk/files/ca/4.%20The%20Constitution%20of%20Sri%20Lanka%20-%20%201972%20(Article%20105%20%E2%80%93134)%20Chapter%20XIII.pdf).

²² OISL Report, ¶¶ 47-48.

²³ Vijaya Samaraweera, *Sri Lanka’s 1977 General Election: The Resurgence of the UNP*, 17 *Asian Survey* 1195, 1201, 1205 (1977), <https://www.jstor.org/stable/2643421>; A. Sivanandan, *Report from Sri Lanka, August 1977*, 19 *Race & Class* 180, 182 (1977), <https://journals.sagepub.com/doi/abs/10.1177/030639687701900206>; International Commission of Jurists, Virginia A. Leary, *Ethnic Conflict and Violence in Sri Lanka*, at 14 (Aug. 1983), <https://www.icj.org/wp-content/uploads/1983/08/Sri-Lanka-ethnic-conflict-and-violence-fact-finding-mission-report-1983-eng.pdf>.

²⁴ Neil DeVotta, *The Liberation Tigers of Tamil Eelam and the Lost Quest for Separatism in Sri Lanka*, 49 *Asian Survey* 1021, 1028 (2009), <https://www.jstor.org/stable/10.1525/as.2009.49.6.1021>.

²⁵ Leary at 20.

They also loot and burn Tamil homes and shops.²⁶ The police either stand idly by or actively participate in the violence.²⁷

Another Constitution and the Prevention of Terrorism Act

- **1978:** The 1978 constitution creates the executive presidency, which bolsters the unitary nature of the state.²⁸
- **1979:** The Prevention of Terrorism Act (PTA) is enacted. The government still uses the PTA to arbitrarily arrest and detain, disappear, and torture individuals, mostly Tamils.²⁹ Tamils with real, imputed, or simply suspected ties to the LTTE³⁰ are detained for years without charge or the possibility of judicial review or release.³¹

1981 Burning of the Jaffna Public Library and Pogrom

- **May 31, 1981:** Now-President Jayewardene's government deploys 100 to 300 Sinhalese policemen to Jaffna to influence the elections in its favor and reduce the political representation of Tamil separatists.³² During an election rally of the leading Tamil political party, an unidentified shooter kills two policemen and injures one or two others.³³ Sinhalese security forces rampage for three days, killing several people, defacing or destroying Tamil statues, and burning the market area, more than 100 Tamil shops, a Tamil parliamentarian's home, and a Tamil newspaper's office.³⁴ They also burn the Jaffna Public Library, one of the largest libraries in Asia at the time and home to at least 95,000 rare or irreplaceable documents.³⁵ Ultimately, Jayewardene's political party does not win any seats in Jaffna.³⁶

²⁶ Ponnambalam at 194; Government of Sri Lanka, *Report of the Presidential Commission of Inquiry into the Incidents Which Took Place between 13th August and 15th September, 1977* (July 1980), available at <https://lankafreelibrary.com/2019/10/15/sansoni-commission-1980/>.

²⁷ Rajan Hoole, *Sri Lanka: The Arrogance of Power: Myth, Decadence & Murder* Ch. 2.8 (2001), https://uthr.org/Book/CHA02.htm#_Toc527947392.

²⁸ POE Report, ¶ 35; OISL Report, ¶ 51.

²⁹ The International Commission of Jurists documented enforced disappearances of Tamils and custodial torture, ill-treatment, and deaths from July 1979 through June 1983, and Amnesty International documented torture in 1981 and January through February 1982. *Torture - 'Almost Universal Practise' of Sri Lankan Authorities*, Tamil Nation, <https://tamilnation.org/indictment/indict026.htm> (last visited Sep. 2, 2024) (quoting reports by the International Commission of Jurists and Amnesty International); Ben Emmerson, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Visit to Sri Lanka*, U.N. Doc. A/HRC/40/52/Add.3, ¶¶ 8, 47 (Dec. 14, 2018), <https://www.ohchr.org/en/documents/country-reports/ahrc4052add3-visit-sri-lanka-report-special-rapporteur-promotion-and> [hereinafter *Special Rapporteur on Countering Terrorism*]; *Sri Lanka: UN Experts Call for Swift Suspension of Prevention of Terrorism Act and Reform of Counter-Terrorism Law*, OHCHR (Mar. 2, 2022), <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>.

³⁰ The authorities have historically targeted Tamils under the PTA, but since the 2019 Easter Sunday bombings, Tamil-speaking Muslims have also been vulnerable. Human Rights Watch, *"In a Legal Black Hole": Sri Lanka's Failure to Reform the Prevention of Terrorism Act*, at 4 (Feb. 7, 2022), https://www.hrw.org/sites/default/files/media_2022/02/srilanka0222_web.pdf.

³¹ *Special Rapporteur on Countering Terrorism*, ¶ 15.

³² Leary at 31; Ponnambalam at 206; Vinorshan R., *The Burning and Rebuilding of Jaffna Public Library*, 47 *Roots* (May 31, 2020), <https://web.archive.org/web/20220601020327/https://www.47roots.com/1434/>.

³³ Ponnambalam at 207; Leary at 31; Santasilan Kadirgamar, *Jaffna in 1981- Days of Terror*, 46 *Econ. & Pol. Wkly.* 27, 28-29 (2011), <https://www.epw.in/journal/2011/23/commentary/jaffna-1981-days-terror.html>.

³⁴ Leary at 3-4, 31; Ponnambalam at 207 (quoting a statement by the opposition parties); Vinorshan R., *Jaffna Public Library*.

³⁵ Leary at 3-4, 31-32; Vinorshan R., *Jaffna Public Library*.

³⁶ Leary at 33.

- **July–August, 1981:** The government instigates and organizes violence against Tamils across the island.³⁷ While the reported death toll is 25, “scores of women” are gang raped,” thousands lose their homes, and many shops are burned.³⁸

Black July

- **July 23–30, 1983:** The worst prewar pogrom, known as “Black July,” occurs against Tamils across the island, though primarily in Colombo.

Black July

A common misconception is that Black July was in response to the killing of 13 army soldiers on July 23, 1983, by the LTTE. In reality, state violence against Tamils had already been increasing for months: security forces had detained, tortured, and even killed dozens of Tamil civilians. The government then exploited the soldiers’ deaths to trigger mass violence against the Tamil people.³⁹ The government provided Sinhalese mobs with voter lists and the addresses of every Tamil-owned shop, house, and factory,⁴⁰ transporting them around Colombo in government-owned vehicles.⁴¹ These state-sponsored mobs killed about 3,000 Tamils through beatings, hackings, and burning.⁴² They threw Tamil children into burning cauldrons of tar, set on fire cars and buses filled with Tamil passengers,⁴³ and raped many Tamil women.⁴⁴ The police and army stood idly by,⁴⁵ with some encouraging or even engaging in the violence.⁴⁶

³⁷ *Indictment against Sri Lanka: The Charge is Ethnic Cleansing*, Tamil Nation, <https://tamilnation.org/indictment/indict020.htm> (quoting Brian Eads, *The Cover Up That Failed - The Prohibited Report from Colombo*, The London Observer, Sept. 20, 1981) (last visited Sept. 2, 2024).

³⁸ *Id.*; Ponnambalam at 210.

³⁹ Sri Lanka Campaign for Peace & Justice, *Black July 1983: 40 Years On*, at 16 (July 2023), <https://srilankacampaign.org/wp-content/uploads/2023/10/2023-July-Black-July-40-Years-On.pdf>.

⁴⁰ N. Sanmugathan, *Sri Lanka: The Story of the Holocaust*, 26 *Race & Class* 67 (1984), <https://journals.sagepub.com/doi/10.1177/030639688402600105>.

⁴¹ L. Piyadasa, *Sri Lanka: The Holocaust and After* 81 (1984); Eleanor Pavey, *The Massacres in Sri Lanka during the Black July Riots of 1983*, *Mass Violence & Resistance* (May 13, 2008), <https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/massacres-sri-lanka-during-black-july-riots-1983> (citing Jagath P. Seneratne, *Political Violence in Sri Lanka, 1977-1990: Riots, Insurrections, Counter-Insurgencies, Foreign Intervention* (1997)).

⁴² OISL Report, ¶ 48; *Remembering Black July 1983*, Tamil Guardian (July 23, 2018), <https://www.tamilguardian.com/content/remembering-black-july-1983-1> (quoting Ian Ward, *Colombo mobs on race hate rampage*, The Daily Telegraph, July 26, 1983; *Sri Lanka bans Tamil separatists as toll rises*, The Montreal Gazette, July 29, 1983); *Remembering Sri Lanka’s Black July*, BBC News (July 23, 2013), <https://www.bbc.com/news/world-asia-23402727>.

⁴³ *Beneath the Ashes: Remembering Black July and the Violence Before*, Tamil Guardian (Aug. 19, 2019), <https://www.tamilguardian.com/content/beneath-ashes-remembering-black-july-and-violence-%C2%A0>; Tamil Guardian, *Remembering Black July 1983*; Sanmugathan at 65-66.

⁴⁴ *Sri Lanka’s Pogrom*, New Internationalist (Oct. 1, 1983), <https://web.archive.org/web/20231002022325/http://www.newint.org/features/1983/10/01/pogrom/>; Sarath Kumara, *Sri Lankan President Offers Empty Apology for 1983 Pogrom*, WWSW (Aug. 6, 2004), <https://www.wsws.org/en/articles/2004/08/sril-a06.html>.

⁴⁵ International Commission of Jurists, *Human Rights in the World: Sri Lanka*, 31 *The Review* 1, 24 (1983), <https://www.icj.org/wp-content/uploads/2013/07/ICJ-Review-31-1983-eng.pdf> [hereinafter International Commission of Jurists, *Human Rights in the World: Sri Lanka*].

⁴⁶ Kuldip Nayar Delhi, *Tamils shot by soldiers, says leader*, The Times, Aug. 5, 1983.

Approximately two weeks before Black July, a media interview published on July 11, 1983, quoted President Jayewardene as saying:

"I am not worried about the opinion of the Jaffna people⁴⁷ now.... Now we can't think of them. Not about their lives or their opinion about us. Nothing will happen in our favour until the terrorists are wiped out. Just that. You can't cure an appendix patient until you remove the appendix."⁴⁸

In the same interview, Jayewardene said: "The more you put pressure there (in the north) the happier they (the Sinhalese) will be here. Really, if I starve the Tamils out, the Sinhalese will be happy."⁴⁹

Jayewardene's interview expressed the government's exclusionary ideology and dehumanization of Tamil people, tactics that are risk factors for genocide.⁵⁰

In December 1983, the International Commission of Jurists found that "the evidence points clearly to the conclusion that the violence of the Sinhala rioters on the Tamils amounted to acts of genocide."⁵¹

Internal Armed Conflict and Tamil Death Toll

Black July is often considered the spark for the escalation of the LTTE's armed liberation struggle into an internal armed conflict with the Sri Lankan government.

At the LTTE's peak in the early 2000s, it controlled 76% of Sri Lanka's North-East,⁵² creating the de facto state of Tamil Eelam, whose de facto capital was in Kilinochchi in the Vanni region,⁵³ the northern part of the island excluding the Jaffna peninsula. In this de facto state, the LTTE established and ran its own police force, judiciary, detention centers, public services, and economic development initiatives.⁵⁴ Until the end of the war, however, Sri Lankan government agents provided health care and education; in fact, they served as focal points for humanitarian assistance in the LTTE-controlled areas in the war's final phase.⁵⁵

⁴⁷ The term "Jaffna people" or "Jaffna Tamils," though specific to one city, has been used by some to collectively refer to ethnic Tamils historically present on the island. *Sri Lanka*, Minority Rights Group (Mar. 2018), <https://minorityrights.org/country/sri-lanka/>.

⁴⁸ Ian Ward, *Sri Lanka's Leader Vows to Eliminate Tamil Terrorists*, *The Daily Telegraph*, July 11, 1983.

⁴⁹ Ian Ward, *Decades of Racial Bloodshed*, *The Daily Telegraph*, July 26, 1983.

⁵⁰ Gregory Stanton, *The Ten Stages of Genocide*, Genocide Watch (2023), <https://www.genocidewatch.com/tenstages>.

⁵¹ International Commission of Jurists, *Human Rights in the World: Sri Lanka* at 24.

⁵² *Humanitarian Operation Time Line: 1981 - 2009*, Sri Lanka Ministry of Defence (Jan. 20, 2011), <https://web.archive.org/web/20110827212530/http://www.defence.lk/new.asp?fname=Humanitarian>.

⁵³ POE Report, ¶¶ 33, 46.

⁵⁴ Kristian Stokke, *Building the Tamil Eelam State: emerging state institutions and forms of governance in LTTE-controlled areas in Sri Lanka*, 27 *Third World Q.* 1021, 1022 (2006), <https://www.jstor.org/stable/4017738>; POE Report, ¶ 33.

⁵⁵ POE Report, ¶ 33 n.9.

In February 2002, the two warring parties signed a ceasefire agreement, facilitated by the Norwegian government.⁵⁶ Nonetheless, the Sri Lankan government still sought to defeat the LTTE, dismantle its de facto state, and recreate a unitary state on the island.⁵⁷

In November 2005, Mahinda Rajapaksa was elected president on a platform promising to safeguard the unitary nature of the state and refusing to make any concessions to the LTTE.⁵⁸ He appointed as Defense Secretary his brother Gotabaya Rajapaksa,⁵⁹ who was instrumental in devising and implementing the government's military strategy.⁶⁰

Under the Rajapaksas, the Sri Lankan government eventually took control of the East and then parts of the North;⁶¹ by January 2008, only a contiguous area in the Vanni remained under LTTE control.⁶² Thus, capturing the Vanni was essential for a unitary Sri Lankan state on the island.⁶³ That month, the government withdrew from the ceasefire agreement in favor of a military solution.⁶⁴

In September 2008, Sri Lanka launched its final military offensive to capture the Vanni and eliminate the LTTE.⁶⁵ The 26-year-long war in Sri Lanka ended on May 18, 2009, when Sri Lankan forces defeated the LTTE in Mullivaikkal, Mullaitivu District.

The war killed, injured, and displaced hundreds of thousands of Tamils. Since the beginning of the war until the ceasefire's end in January 2008, more than 70,000 people were killed,⁶⁶ predominantly Tamils in the North-East.⁶⁷ In addition, since the 1980s, Sri Lanka has had a "backlog" of 60,000 to 100,000 unresolved enforced disappearances, of whom tens of thousands are Tamils disappeared in the context of the armed conflict.⁶⁸

⁵⁶ OISL Report, ¶ 54.

⁵⁷ Jayadeva Uyangoda, *Ethnic Conflict in Sri Lanka: Changing Dynamics*, East-West Center Policy Studies, Jan. 2007, at 10, <https://www.eastwestcenter.org/publications/ethnic-conflict-sri-lanka-changing-dynamics>; Interview by People for Equality and Relief in Lanka with [Name and location withheld], Political officer in a third-party state's foreign affairs ministry (Apr. 2024) [hereinafter PEARL Interview Apr. 2024].

⁵⁸ David Fickling, *Hardliner wins Sri Lankan presidency*, The Guardian (Nov. 18, 2005), <https://www.theguardian.com/world/2005/nov/18/davidfickling>. OISL Report, ¶ 61.

⁵⁹ POE Report, ¶ 57; OISL Report, ¶ 108.

⁶⁰ See generally International Truth and Justice Project, *Gotabaya Rajapaksa's War Time Role*, at 6-51 (Jan. 2024), https://itjpsl.com/assets/29-English_Gotabaya-Rajapaksas-war-time-role-Jan-2024_Final_26.01.2024_compressed.pdf.

⁶¹ Sri Lanka Ministry of Defence, Humanitarian Operation Time Line.

⁶² POE Report, ¶ 46.

⁶³ Uyangoda at 10; PEARL Interview Apr. 2024.

⁶⁴ POE Report, ¶ 47.

⁶⁵ *Id.*

⁶⁶ Nagesh Narayana & Rob Dawson, *CHRONOLOGY-Collapse of Sri Lanka's troubled ceasefire*, Reuters (Jan. 8, 2008), <https://www.reuters.com/article/markets/asia/chronology-collapse-of-sri-lankas-troubled-ceasefire-idUSCOL119109/>.

⁶⁷ Tamil Centre for Human Rights, *Recorded Figures of Arrests, Killings, Disappearances, Rapes, Displacements, and Injuries to Tamils in the North East, Colombo, and Other Regions (1956-2004)* (2009), https://web.archive.org/web/20230412124659/http://www.tchr.net/50_year_arrest_kill.htm; North East Secretariat on Human Rights, *Statistics on Civilians Affected by War in Northeast (1974-2004)*, at 9 - T5 (Jan. 2005), <https://tamilnation.org/tamileelam/nesohr/060101civiliansstats.pdf>.

⁶⁸ Amnesty International, *Sri Lanka: Refusing to Disappear*, at 3, 11 (Jan. 23, 2017), <https://www.amnesty.org/en/documents/asa37/5497/2017/en/>; U.N. Human Rights Office of the High Commissioner, *Accountability for Enforced Disappearances in Sri Lanka*, ¶¶ 24-29, 129 (May 17, 2024), <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sri-lanka/report-accountability-enforced-disappearances-sri-lanka-may2024-en.pdf> [hereinafter OHCHR Enforced Disappearances Report].

The number of Tamil people unaccounted for and presumed dead during the final five months of the war ranged from 40,000 to 169,796,⁶⁹ and most civilian casualties were caused by government shelling.⁷⁰ These final months are known as the “Mullivaikkal Genocide.”

Allegations of Wartime International Crimes

The United Nations’ comprehensive human rights investigation on Sri Lanka—the Office of the High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL), whose standard of proof was “reasonable grounds to believe”⁷¹—found that Sri Lankan forces and the LTTE committed war crimes and crimes against humanity.⁷²

Given the Sri Lankan government’s non-cooperation and undermining of the investigation,⁷³ the UN decided to leave genocide allegations to be resolved through criminal investigations. According to the UN human rights chief when the OISL Report was released, “We therefore have to leave that judgment [on genocide] to a subsequent criminal investigation, and we hope an international—or let’s say hybrid—special court will preside over that.”⁷⁴ Over 15 years after the war’s end, there is neither a special court nor any criminal investigations into war crimes, crimes against humanity, or genocide. As a result, Tamil victims—those who were killed and those who survived—and their descendants remain without pathways to justice.

Ongoing Postwar Human Rights Violations and Persecution

Since the LTTE’s defeat, the Sri Lankan government has engaged in denial and triumphalism,⁷⁵ which are the final stages of the genocidal process,⁷⁶ instead of justice. Such domestic inaction, coupled with unsuccessful international legal efforts, has enabled alleged Sri Lankan perpetrators of horrific international crimes, including those described in this legal briefing paper, to enjoy impunity.⁷⁷ That impunity has compounded the trauma and harms experienced by

⁶⁹ POE Report, ¶ 137 (“40,000 civilian deaths”); Catholic Diocese of Mannar, *Submission by the Catholic Diocese of Mannar to the Lessons Learnt and Reconciliation Commission*, at 4 (Jan. 8, 2011), available at https://www.tamilnet.com/img/publish/2011/01/LLRCsubmission_by_MannaarDiocese.pdf (“146,679 people seem to be unaccounted for”); International Truth and Justice Project, *Death Toll in Sri Lanka’s 2009 War* (Feb. 2021), https://itjpsl.com/assets/ITJP_death_toll_A4_v6.pdf (estimating 169,796 people unaccounted for based on World Bank household data) [hereinafter ITJP, Death Toll].

⁷⁰ POE Report at ii.

⁷¹ OISL Report, ¶ 33.

⁷² See generally *id.* ¶¶ 1114-1175 (summarizing OISL’s principal findings on gross violations of international human rights law and serious violations of international humanitarian law that may amount to war crimes and/or crimes against humanity).

⁷³ *Id.* ¶ 36.

⁷⁴ Zeid Ra’ad Al-Hussein, *Sri Lanka: international judges ‘should examine war crimes’*, Channel 4 (Sept. 16, 2015), <https://www.channel4.com/news/sri-lanka-international-judges-should-examine-war-crimes>.

⁷⁵ POE Report, ¶¶ 401-403.

⁷⁶ Stanton, Ten Stages of Genocide; Hikmet Karčić, *Triumphalism: The Final Stage of Bosnian Genocide, in Denial: The Final Stage of Genocide?* 100 (John Cox, Amal Khoury, & Sarah Minslow eds., 2021) (citing Hariz Halilovich’s coinage of “triumphalism” as the 11th stage of genocide, occurring when genocide goes unpunished).

⁷⁷ See, e.g., People for Equality and Relief in Lanka, *Letter to UN Special Rapporteur on Torture and Other Cruel, Inhuman Degrading Treatment or Punishment*, at 8-9 (Sept. 16, 2023), <https://pearlaction.org/wp-content/uploads/2023/10/Letter-to-UNSR-on-Torture-FINAL.docx.pdf>; Human Rights Watch, *Open Wounds and Mounting Dangers: Blocking Accountability for Grave Abuses in Sri Lanka* (Feb. 1, 2021), https://www.hrw.org/sites/default/files/media_2021/01/srilanka0221_web.pdf.

Tamils, as individuals and as a people.⁷⁸ It has also emboldened Sri Lankan forces to perpetrate human rights violations against Tamils in the North-East—including arbitrary arrests and detention,⁷⁹ enforced disappearances,⁸⁰ torture,⁸¹ sexual violence,⁸² and repression of the right to memorialize⁸³—and to surveil, harass, and intimidate Tamils,⁸⁴ including survivors of the genocide. Persisting militarization in the North-East has perpetuated land grabs⁸⁵ and displacement.⁸⁶

Mullaitivu District, where the war's final phase was fought, has experienced staggering rates of postwar military occupation.⁸⁷ Militarization remains a serious concern; the UN has recognized that Sri Lanka's "current deployments seem disproportionate to current security requirements" in the former war zone.⁸⁸ Sri Lanka's failure to comprehensively reform its security sector, including by removing individuals "implicated in serious human rights or international humanitarian law violations" from its military, has put Tamil victims and their communities at risk of the aforementioned violations.⁸⁹ When committed on an ethnic basis, these violations amount to persecution.

⁷⁸ Pablo de Greiff, *Visit to Sri Lanka - Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence*, U.N. Doc. A/HRC/45/45/Add.1, ¶ 61-62 (June 18, 2020), <https://www.ohchr.org/en/documents/country-reports/ahrc4545add1-visit-sri-lanka-report-special-rapporteur-promotion-truth>. See generally Knut Rauchfuss & Bianca Schmolze, *Justice heals: The impact of impunity and the fight against it on the recovery of severe human rights violations' survivors*, 18 Torture 38 (2008), <https://drive.reindex.net/RCT/101/TORT2008.1.5.pdf>.

⁷⁹ U.N. Human Rights Council, *Situation of human rights in Sri Lanka - Comprehensive report of the United Nations High Commissioner for Human Rights*, U.N. Doc A/HRC/57/19, ¶¶ 26-27 (Aug. 22, 2024), <https://www.ohchr.org/en/documents/reports/ahrc5719-situation-human-rights-sri-lanka-comprehensive-report-united-nations> [hereinafter OHCHR 2024 Report].

⁸⁰ Enforced disappearance is a continuous crime that begins at the time of arrest, detention, abduction, or other deprivation of liberty and continues until the state acknowledges the detention or releases information about the fate or whereabouts of the disappeared person. U.N. Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, U.N. Doc A/HRC/16/48, ¶ 39(1) (Jan. 26, 2011), https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.48_en.pdf (General comment on enforced disappearance as a continuous crime); OHCHR Enforced Disappearances Report, ¶¶ 76, 129. As mentioned, Sri Lanka has 60,000 to 100,000 unresolved enforced disappearances.

⁸¹ OHCHR 2024 Report, ¶¶ 26-27, 29.

⁸² *Id.* ¶¶ 27, 29.

⁸³ *Id.* ¶¶ 15, 27, 38.

⁸⁴ U.N. Human Rights Council, *Situation of human rights in Sri Lanka - Comprehensive report of the United Nations High Commissioner for Human Rights*, U.N. Doc A/HRC/51/5, ¶¶ 30-32 (Oct. 4, 2022), <https://www.ohchr.org/en/documents/reports/ahrc515-situation-human-rights-sri-lanka-comprehensive-report-united-nations-high> [hereinafter OHCHR 2022 Report]. See generally Human Rights Watch, "If We Raise Our Voice They Arrest Us": *Sri Lanka's Proposed Truth And Reconciliation Commission* (Sept. 18, 2023), https://www.hrw.org/sites/default/files/media_2023/09/srilanka0923web.pdf; Adayaalam Centre for Policy Research, *Situation Briefing No. 6: Deteriorating Security Situation for Families of the Disappeared in the North-East of Sri Lanka* (May 16, 2022), https://adayaalam.org/wp-content/uploads/2022/05/2022_05_16_ACPR-Situation-Briefing-No.6-Deteriorating-security-situation-for-families-of-the-disappeared.pdf.

⁸⁵ OHCHR 2022 Report, ¶¶ 46-47; See generally Oakland Institute, *Endless War: The Destroyed Land, Life, and Identity of the Tamil People in Sri Lanka* (2021), <https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/ endless-war-web.pdf>.

⁸⁶ See generally Oakland Institute, *Endless War*.

⁸⁷ Adayaalam Centre for Policy Research & People for Equality and Relief in Lanka, *Normalising the Abnormal: The Militarisation of Mullaitivu*, at 4 (Oct. 2017), <https://pearlaction.org/wp-content/uploads/2021/10/Normalising-the-Abnormal-The-Militarisation-of-Mullaitivu.pdf>.

⁸⁸ U.N. Human Rights Council, *Situation of human rights in Sri Lanka - Report of the United Nations High Commissioner for Human Rights*, U.N. Doc. A/HRC/54/20, ¶ 28 (Sept. 6, 2023), <https://www.ohchr.org/en/press-releases/2023/09/accountability-central-sri-lankas-future-un-human-rights-report> [hereinafter OHCHR 2023 Report].

⁸⁹ *Id.* ¶¶ 28, 33-35 (discussing security forces' surveillance and intimidation of Tamil civil society organizations and Tamil relatives of victims of enforced disappearances); Human Rights Watch, *If We Raise Our Voice They Arrest Us at 13-19* (discussing security forces' intimidation of Tamil relatives of victims of enforced disappearances; Tamil memorialization events, including on May 18; and

Persecution

Under customary international law, persecution is “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”⁹⁰ The “fundamental rights” are determined on a case-by-case basis, guided by international treaties on human rights and international humanitarian law.⁹¹

According to international jurisprudence, imprisonment, enforced disappearances, torture, sexual violence, and forced displacement will, in principle, cause the severe deprivation of fundamental rights.⁹² Confiscating or destroying “private dwellings or businesses, symbolic buildings or means of subsistence” based on identity grounds constitutes an underlying act of persecution.⁹³

It follows that imprisonment, enforced disappearances, torture, sexual violence, forced displacement, and land grabs based on identity grounds each amount to persecution.

Finally, the fundamental right to a remedy⁹⁴ includes victims’ right to memorialize,⁹⁵ which has a “fundamental role” following gross and serious violations,⁹⁶ and to receive guarantees of non-recurrence,⁹⁷ such as security

civil society activists and journalists); People for Equality and Relief in Lanka, *No Trials, Only Tribulations for Tamil Victims of Sri Lanka’s Conflict-related Sexual Violence*, at 44-49 (Aug. 2022), <https://pearlaction.org/wp-content/uploads/2022/08/No-Trials-Only-Tribulations-for-Tamil-Victims-of-Sri-Lankas-CRSV-August-2022.pdf> (discussing security forces’ rapes and sexual exploitation of Tamil women and girls under military occupation).

⁹⁰ *Prosecutor v. Kupreskic*, Case No. IT-95-16-T, Trial Judgment, ¶¶ 579-581 (International Criminal Tribunal for the former Yugoslavia, Jan. 14, 2000), <https://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf>.

⁹¹ *Id.* ¶¶ 621, 623.

⁹² Any act considered to be a crime against humanity in itself will cause a severe deprivation of fundamental rights. *Prosecutor v. Ntaganda*, Case No. ICC-01/04-02/06, Trial Judgment, ¶ 994 (July 8, 2019), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_03568.PDF. Article 7(1) of the Rome Statute enumerates the acts considered to be crimes against humanity, which explicitly include acts of imprisonment, enforced disappearance, torture, sexual violence, and forced displacement. Rome Statute of the International Criminal Court arts. 7(1)(d)-(g), (i), July 17, 1998, 2187 U.N.T.S. 90.

⁹³ *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Trial Judgment, ¶¶ 227, 233 (International Criminal Tribunal for the former Yugoslavia, Mar. 3, 2000), <https://www.icty.org/x/cases/blaskic/tjug/en/bla-tj000303e.pdf>.

⁹⁴ *Situation in the Islamic Republic of Afghanistan*, Case No. ICC-02/17-93, OPCV Consolidated Submissions pursuant to the “Order Scheduling a Hearing before the Appeals Chamber and Other Related Matters”, ¶ 27 (Oct. 22, 2019), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_06240.PDF (explicitly referring to “the fundamental right to a remedy for victims of serious violations of international human rights law and international humanitarian law” and several international human rights instruments in which it is enshrined).

⁹⁵ G.A. Res. 60/147, arts. VII ¶ 11(b), IX ¶ 22(g) (Dec. 16, 2005), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

⁹⁶ Fabián Salvioli, *International legal standards underpinning the pillars of transitional justice - Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, U.N. Doc. A/HRC/54/24, ¶¶ 56-58 (July 10, 2023), <https://www.ohchr.org/en/documents/thematic-reports/ahrc5424-international-legal-standards-underpinning-pillars-transitional>.

⁹⁷ G.A. Res 60/147, arts. VII ¶ 11(b), IX ¶ 23.

sector reform.⁹⁸ The severe deprivation on identity grounds of either the right to memorialize or the right to guarantees of non-recurrence thus amounts to persecution.

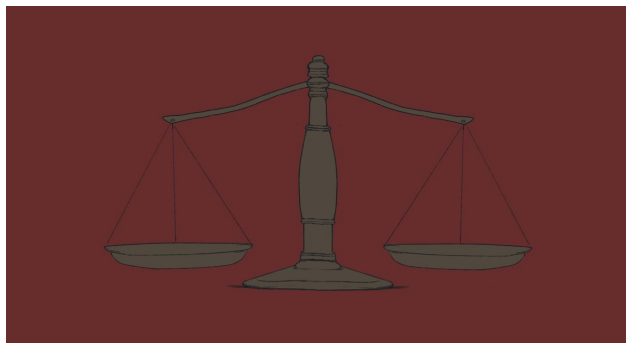
Consequently, Sri Lanka's aforementioned violations against Tamils, committed on an ethnic basis—imprisonment, enforced disappearances, torture, sexual violence, and forced displacement of Tamils; confiscation of Tamil lands; and intentional and severe deprivation of Tamils' rights to memorialize and be guaranteed non-recurrence, including via security sector reform—each amount to persecution.

The lack of an effective international response to persecution is a risk factor for future international crimes, including genocide.⁹⁹

⁹⁸ Pablo de Greiff, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, U.N. Doc. A/HRC/30/42, ¶¶ 23, 68 (Sept. 7, 2015), <https://undocs.org/A/HRC/30/42>.

⁹⁹ Stanton, *Ten Stages of Genocide* at sec. VIII; United Nations, *Framework of Analysis for Atrocity Crimes*, at 20 (2014), https://www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf.

Methodology and Standard of Proof



Given the absence of any international criminal investigations, this legal briefing paper calls on policymakers at different levels of government to formally recognize that Sri Lanka is responsible for genocide against the Tamil people in 2009. It focuses solely on genocide because members of the international community have generally accepted that Sri Lankan forces committed war crimes and crimes against humanity.

Various countries' executive and legislative branches have engaged in such formal recognitions of genocide in other contexts. Modern genocides that have been formally recognized as such include, for example, the genocides of Bosnian Muslims in the former Yugoslavia, Darfuris in Darfur, Rohingyas in Myanmar, Tutsis in Rwanda, Uyghurs in China, and Yazidis in Iraq and Syria. Although recognition of a state's responsibility for genocide by policymakers does not attach legal consequences, it is still an important way of publicly acknowledging the extraordinary harm suffered by victims, survivors, and their descendants. Consequently, it is an important measure of accountability in its own right.

The Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), to which both Sri Lanka and your government are States Parties, defines genocide as:

- any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
- (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.¹⁰⁰

¹⁰⁰ Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide> [hereinafter Genocide Convention].

There is no dispute that the Tamil people share a common language and culture and are thus an ethnic group protected by the Genocide Convention.¹⁰¹

This legal briefing paper demonstrates that Sri Lanka is responsible for genocide against the Tamil people during the final stages of the war in 2009. Specifically, it explains how Sri Lanka is responsible for three of the five genocidal acts—killing, causing serious harm, and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in part—committed with genocidal intent, which is the intent to destroy, in part, the Tamil people, as such. The targeted “part” were the Tamils in the Vanni.

PEARL uses evidence and findings from two UN investigations on Sri Lanka—the UN Secretary-General’s Panel of Experts on Accountability in Sri Lanka (UN Panel of Experts), whose work was done in 2010 and 2011, and the Office of the High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL), whose work was done in 2014 and 2015—international nongovernmental organizations (NGOs), and international media. Their reports do not always identify victims’ ethnicity; however, as there is no dispute that nearly all of the population in the Vanni were ethnic Tamils,¹⁰² PEARL explicitly recognizes and names victims’ identity as ethnic Tamils.

This legal briefing paper proves Sri Lanka’s responsibility for genocide based on the standard of proof of “reasonable grounds.” However, it predominantly relies on rulings by international courts with higher standards of proof: international criminal courts, which use “beyond a reasonable doubt” as their standard of proof (a high standard to protect the accused from wrongful conviction and imprisonment), and the International Court of Justice, which requires “fully conclusive” evidence, or evidence that leaves the court “fully convinced” (a high standard to reflect the “exceptional gravity” of genocide¹⁰³).¹⁰⁴

Various countries¹⁰⁵—including Australia, Canada, and the United States¹⁰⁶—and policymakers can make, and have made, genocide determinations based on standards of proof lower than

¹⁰¹ This legal briefing paper focuses on the Tamil people on the island of Sri Lanka. An ethnic group is one whose members share a common language or culture. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Judgment, ¶ 513 (International Criminal Tribunal for Rwanda, Sept. 2, 1998), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-04/MS15217R0000619817.PDF>.

¹⁰² The Sri Lankan government’s final wartime census in 2001 estimated 94% of the population in the North were ethnic Tamils. See, e.g., Sri Lanka Department of Census and Statistics, *Brief Analysis of Population and Housing Characteristics*, at 10 (2001), <http://www.statistics.gov.lk/Population/StaticInformation/CPH2001/BriefAnalysisPopulationHousingCharacteristics>.

¹⁰³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia v. Serbia*), Judgment, 2007 I.C.J. Rep. 43, ¶ 209 (Feb. 26). This standard of proof has been criticized by a preeminent international criminal legal scholar and judge as “unrealistically high.” Antonio Cassese, *A judicial massacre*, *The Guardian* (Feb. 27, 2007), <https://www.theguardian.com/commentisfree/2007/feb/27/thejudicialmassacreofsrbr>.

¹⁰⁴ In its genocide judgments to date, which considered circumstantial evidence of genocide, the International Court of Justice said a pattern of conduct could prove genocidal intent if that is the “only reasonable inference.” Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*), Judgment, 2015 I.C.J. Rep. 3, ¶ 147-148, 177-178 (Feb. 3) (interpreting Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia v. Serbia*), Judgment, 2007 I.C.J. Rep. 43, ¶ 373 (Feb. 26)).

¹⁰⁵ See generally Law Library of Congress, *Legal Mechanisms for Genocide Determinations* (June 2021), <https://tile.loc.gov/storage-services/service/l/I/g/lrd/2023555911/2023555911.pdf>.

¹⁰⁶ Todd F. Buchwald & Adam Keith, *By Any Other Name: How, When, and Why the US Government Has Made Genocide Determinations*, at 14 (Mar. 18, 2019), https://www.ushmm.org/m/pdfs/Todd_Buchwald_Report_031819.pdf; Beth Van Schaack,

those used by international courts.¹⁰⁷ For example, UN human rights investigations have concluded the occurrence of genocide based on “reasonable grounds.”¹⁰⁸ Such standards are appropriate because genocide determinations by non-judicial entities—including governments (executive and legislative branches), individual policymakers, and UN and civil society human rights investigations—do not themselves result in prison sentences, other adjudications of guilt, or legal state responsibility.

Determining the Commission of Genocide in Myanmar: Legal and Policy Considerations, 17 J. Int'l. Crim. Just. 285, 287 (2019). See, e.g., United States Department of State, Action Memorandum, Has Genocide Occurred in Rwanda?, at 2 (May 21, 1994), available at <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB53/rw052194.pdf>.

¹⁰⁷ Buchwald & Keith at 14; Van Schaack at 287-289.

¹⁰⁸ See, e.g., Based on “reasonable grounds to believe”: “The Commission has determined that ISIS has committed, and is committing, the prohibited acts with the intent to destroy, in whole or in part, the Yazidis of Sinjar, and has, therefore, committed the crime of genocide.” U.N. Human Rights Council, “*They Came to Destroy Us: ISIS Crimes Against Yazidis*,” U.N. Doc. A/HRC/32/CRP.2, ¶¶ 164-165 (Jun. 15, 2016), https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_32_CRP.2_en.pdf. “The Mission therefore concludes, on reasonable grounds, that the factors allowing the inference of genocidal intent are present.” U.N. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, U.N. Doc. A/HRC/39/CRP.2, ¶ 1441 (Sept. 17, 2018), https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf [hereinafter U.N. Myanmar Report 2019].

The Mullivaikkal Genocide (January through May 18, 2009)

In September 2008, Sri Lanka launched its final military offensive with the stated goals of capturing the Vanni (all that remained of the LTTE's de facto state of Tamil Eelam), eliminating the LTTE, dismantling Tamil Eelam,¹⁰⁹ and recreating a unitary state on the island.¹¹⁰ Simultaneously, the government ordered all UN agencies and nongovernmental humanitarian organizations to leave the LTTE-controlled areas.¹¹¹ By September 16, all UN international staff had left the Vanni,¹¹² as had most international observers (including journalists), impacting the provision of humanitarian assistance to Tamil civilians and of information outside the war zone.¹¹³ National staff of the UN and of several international NGOs remained in the Vanni, either by choice or force.¹¹⁴

According to the UN, about 300,000 Tamil civilians were in the Vanni war zone as of early 2009.¹¹⁵ During the final months of the war, the Sri Lankan government and/or its forces:

- deliberately shelled government-designated “No Fire Zones,” killing at least 40,000 Tamil civilians (and averaging 1,000 Tamil civilians killed each day in the final two weeks) and severely injuring another 25,000 to 30,000 Tamils,
- deliberately shelled hospitals, food distribution lines, and other humanitarian objects in “No Fire Zones,”
- raped and sexually mutilated “a large number” (at least hundreds) of Tamil women and girls, an underestimate because survivors “greatly under-reported” experiencing sexual violence,
- physically and sexually tortured countless Tamil men and women detainees,
- deliberately restricted access to necessary food and medical supplies, and
- created inhumane conditions for internally displaced Tamils.¹¹⁶

As *de jure* state organs, which include individuals and entities, the conduct of the Sri Lankan government and the Sri Lankan military is attributable to the state.¹¹⁷

In situations where state organs committed genocidal acts, it is possible to assess whether the state is responsible for genocide without determining individual responsibility for genocide.¹¹⁸

¹⁰⁹ POE Report, ¶¶ 46-47; PEARL Interview Apr. 2024.

¹¹⁰ Uyangoda at 10; PEARL Interview Apr. 2024; David Fickling, *Hardliner wins Sri Lankan presidency*, The Guardian (Nov. 18, 2005), <https://www.theguardian.com/world/2005/nov/18/davidfickling>.

¹¹¹ OISL Report, ¶ 81.

¹¹² *Id.* ¶ 796.

¹¹³ POE Report, ¶ 76; OISL Report, ¶¶ 82, 959.

¹¹⁴ The LTTE did not grant permission for UN national staff and their families to leave. POE Report, ¶ 75; OISL Report, ¶ 82.

¹¹⁵ OISL Report, ¶ 83. This legal briefing paper uses UN estimates, including that 300,000 Tamil civilians were in the Vanni war zone while noting that a local government agent gave a higher estimate of 330,000 Tamil civilians. POE Report, ¶ 100, n.54.

¹¹⁶ See discussion *infra* “[Genocidal Acts against the Tamil People](#).”

¹¹⁷ G.A. Res. 56/83, art. 4 (Jan. 28, 2022), https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

¹¹⁸ “A finding of genocide should not be precluded, for example, where it is clear that a State organ carried out prohibited acts with genocidal intent, but where the author of a genocidal plan or the perpetrators of genocidal acts are not yet identified.” U.N. Human

The UN Fact-Finding Mission on Myanmar did so by considering the presence of factors in international criminal jurisprudence allowing the inference that genocidal acts were committed with genocidal intent.¹¹⁹ Consequently, the state of Sri Lanka's genocidal intent can be inferred in this manner.

This section explains how there are reasonable grounds to believe Sri Lanka is responsible for genocide—genocidal acts committed by state organs with the inference of genocidal intent—against the Tamil people from January through May 18, 2009.

Rights Council, *Detailed findings of the Independent International Fact-Finding Mission on Myanmar*, U.N. Doc. A/HRC/42/CRP.5, ¶ 222, n.490 (Sept. 16, 2019), https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/20190916/A_HRC_42_CRP.5.pdf [hereinafter U.N. Myanmar Report 2019].

¹¹⁹ U.N. Myanmar Report 2018, ¶¶ 1418, 1441; U.N. Myanmar Report 2019, ¶ 223.

Genocidal Acts against the Tamil People

The Sri Lankan government and its forces committed three genocidal acts against the Tamil people in Sri Lanka: (1) killing, (2) causing serious bodily or mental harm, and (3) deliberately inflicting conditions of life calculated to bring about their partial physical destruction.

1. Killing Tamils in the Vanni

Under international criminal law, killing is synonymous with causing death.¹²⁰

Shelling of “No Fire Zones”

As the Sri Lankan military advanced into the Vanni, the government instructed Tamil civilians there to relocate to three consecutive “No Fire Zones” (or “safe zones”) for their safety, which the military then shelled “on a large scale.”¹²¹

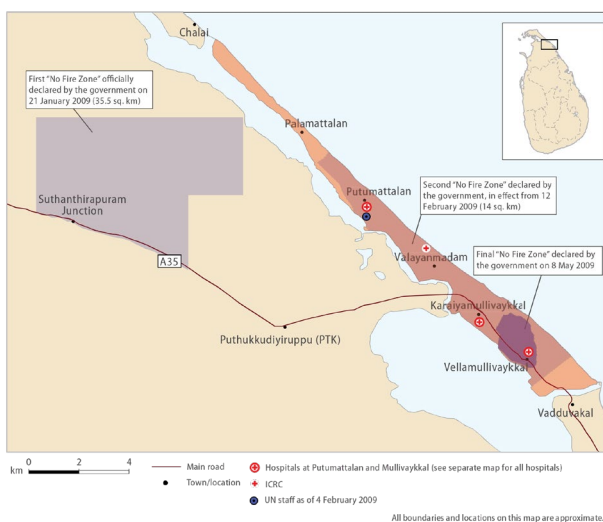


Image 1: The “No Fire Zones” decreased in size: the first was 35.5 square kilometers, the second was 14 square kilometers, and the third was 2 or 3 square kilometers. The UN estimated more than 100,000 Tamil civilians were trapped in the third zone.¹²² Map credit: International Crisis Group (2010). PEARL cropped the original page to remove the header and headings.¹²³

In early 2009, the UN estimated 300,000 Tamil civilians were in the Vanni, trapped by the military’s offensive.¹²⁴ Meanwhile, Sri Lanka’s Ministry of Defence claimed only 70,000 to

¹²⁰ Elements of Crimes of the Rome Statute of the International Criminal Court, art. 6(a)(1), n.2, Jul. 17, 1998, 2187 U.N.T.S. 90, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>.

¹²¹ POE Report at ii; OISL Report, ¶¶ 759-762.

¹²² OISL Report, ¶¶ 93, 803, 836, 874.

¹²³ International Crisis Group, *War Crimes in Sri Lanka*, at 41 (May 17, 2010), <https://icg-prod.s3.amazonaws.com/191-war-crimes-in-sri-lanka.pdf>.

¹²⁴ OISL Report, ¶ 83.

100,000 Tamil civilians remained, disputing higher figures and even reprimanding government employees in the war zone who gave higher numbers.¹²⁵ It made this assertion even though the Sri Lankan government had more than enough information from multiple sources—such as government health workers (who worked in LTTE-controlled areas until the end of the war¹²⁶), government unmanned aerial vehicles (UAVs) or drones, humanitarian organizations, and the UN—to accurately estimate the number of civilians.¹²⁷ In other words, the Sri Lankan government knew that there were 300,000 Tamil civilians in the war zone and that its claims that there were only 70,000 to 100,000 were deliberately false.¹²⁸

Before shelling, the military often used drones to identify targets. Their high-resolution footage provided the military with real-time imagery that could be used to identify civilians, combatants, and structures such as hospitals.¹²⁹ In 2010, military commanders made statements regarding the military's reliance on drones to distinguish between civilians, civilian objects, and military targets. The Vanni Security Forces Commander said the use of UAVs "helped in minimizing civilian casualties and maintaining the zero casualty policy,"¹³⁰ which the Sri Lankan government and its forces claimed they had implemented.¹³¹ Army division commanders made similar statements. One army division commander said: "UAVs gave us a tremendous support to minimise civilian casualties because we knew exactly where the LTTE was; we knew exactly where the LTTE reserves were; we knew exactly how the LTTE was concentrating their forces; we knew exactly where the civilian concentration were [*sic*]."¹³² Another said that shelling was "planned through UAV pictures and where we exactly knew where the civilians and the LTTE were."¹³³ OISL said such statements indicated that civilian deaths and damage to civilian objects from shelling "may have been anticipated, known and accepted by Government and military leaders."¹³⁴ That is, government and military leaders knew the military could have distinguished between civilians, civilian objects, and legitimate military targets, yet it chose not to do so and instead indiscriminately, even directly, shelled civilians and civilian objects.

In addition to the direct targeting of civilians and civilian objects, the military consistently used unguided artillery shells and multi-barrel rocket-launchers (MBRLs) and fired rocket-propelled grenades (RPGs) in a manner that decreased their accuracy and greatly decreased the likelihood of hitting military targets.¹³⁵ It did so despite knowing the dense concentration of civilians and the presence of civilian objects in the "No Fire Zones"¹³⁶ and despite having more

¹²⁵ POE Report, ¶¶ 125-126; OISL Report, ¶¶ 974-976.

¹²⁶ OISL Report, ¶ 152.

¹²⁷ POE Report, ¶ 125-126; OISL Report, ¶¶ 981, 1170.

¹²⁸ POE Report, ¶ 125-126; OISL Report, ¶¶ 83, n.31, 1170.

¹²⁹ POE Report, ¶¶ 61, 105; OISL Report, ¶ 981.

¹³⁰ OISL Report, ¶¶ 742-43.

¹³¹ POE Report, ¶ 2; OISL Report, ¶ 734.

¹³² OISL Report, ¶ 736, n.693.

¹³³ *Id.* ¶ 876.

¹³⁴ *Id.* ¶ 745.

¹³⁵ *Id.* ¶¶ 751, 1154-1156.

¹³⁶ POE Report, ¶ 125-126; OISL Report, ¶¶ 791, 1170. The term "populated areas" is synonymous with "concentration of civilians." ICRC Q&A on the issue of explosive weapons in populated areas, 98 Int. Rev. Red Cross 97, 99 (2016), https://international-review.icrc.org/sites/default/files/irc_97_901-8.pdf.

accurate weapons.¹³⁷ Such indiscriminate attacks have qualified as direct targeting under international criminal law.¹³⁸

UN investigations described the military's shelling as "large-scale and widespread," "systematic," "heavy," "intense," "indiscriminate," "continuous," "constant," "incessant," and "sustained."¹³⁹ According to the UN Panel of Experts, "This campaign constituted persecution of the population of the Vanni."¹⁴⁰ On several occasions, the army fired hundreds,¹⁴¹ possibly thousands,¹⁴² of shells in a day or less.

Shelling of Hospitals and Other Humanitarian Objects

The Sri Lankan military's intentional shelling campaign targeted UN facilities, hospitals, food distribution lines, and areas near humanitarian aid ships "in spite of its knowledge of the impact" on targets known to be protected objects.¹⁴³

Every hospital in the Vanni was attacked, even though they were clearly marked with the Red Cross emblem and the government knew their locations. Some were hit multiple times, including the Puthukkudiyiruppu (PTK) Hospital, which the Sri Lankan army attacked between January 29 and February 4.¹⁴⁴ From the night of February 3 through the morning of February 4 alone, at least 50 shells hit the hospital grounds.¹⁴⁵ Amid the attacks on PTK hospital, which was outside the first "No Fire Zone," Defense Secretary Gotabaya Rajapaksa gave a media interview on February 2, claiming that hospitals operating outside the "No Fire Zone" were legitimate targets.¹⁴⁶ In reality, hospitals are presumed to be protected under international humanitarian law (or the laws of war).¹⁴⁷ Furthermore, OISL found that the LTTE did not use hospitals for military purposes and even prohibited carrying weapons inside; thus, no hospitals were legitimate targets at the time of army attacks.¹⁴⁸ While the LTTE did launch attacks from

¹³⁷ OISL Report, ¶ 1156.

¹³⁸ *Prosecutor v. Galić*, Case No. IT-98-29-T, Trial Judgement, ¶ 57, n.101 (International Criminal Tribunal for the former Yugoslavia, Dec. 5, 2003), <https://www.icty.org/x/cases/galic/tjug/en/gal-tj031205e.pdf>.

¹³⁹ See generally POE Report; OISL Report.

¹⁴⁰ POE Report at ii.

¹⁴¹ See, e.g., POE Report, ¶ 84 (reporting that "hundreds of shells rained down," fired by the army, in the early morning of January 24); U.S. Department of State, *Report to Congress on Incidents During the Recent Conflict in Sri Lanka*, at 24-25 (2009), <https://2009-2017.state.gov/documents/organization/131025.pdf> (reporting local sources' accounts of the army firing "more than 200 artillery cluster shells, mortar shells and multi-barrel rocket shells" for 10 hours on February 18) [hereinafter Report to Congress].

¹⁴² See, e.g., *More Than 5,000 Shells Fired on 'Safety Zone', Casualties Uncountable*, TamilNet (Feb. 2, 2009), <https://www.tamilnet.com/art.html?catid=13&artid=28267> (reporting "more than 5,000 artillery shells and Multi Barrel Rocket Launcher (MBRL) rockets" fired by the army all day on February 2); *SLA Fired 5,600 Shells Within 15 Hours : LTTE*, TamilNet (Apr. 28, 2009), <https://www.tamilnet.com/art.html?catid=13&artid=29206> (reporting that, according to LTTE officials, the army fired more than 2,600 MBRL rockets, 1,000 artillery shells, and 2,000 heavy mortar shells from 6 p.m. on April 27 through 11 a.m. on April 28).

¹⁴³ POE Report at ii.

¹⁴⁴ *Id.* at ii, ¶ 91; OISL Report, ¶¶ 783-784.

¹⁴⁵ OISL Report, ¶ 829.

¹⁴⁶ Sky News, *Sri Lankan Defence Secretary Gotabaya Rajapaksa Tells SkyTV Bombing Hospitals Okay*, YouTube (Feb. 2, 2009), at 0:20-0:44, available at <https://web.archive.org/web/20190713081058/https://www.youtube.com/watch?v=pKmM2qg95R0>.

¹⁴⁷ Hospitals only lose their protection when they are used to commit an "act harmful to the enemy." *The protection of hospitals during armed conflicts: What the law says*, International Committee of the Red Cross (June 11, 2023), <https://www.icrc.org/en/document/protection-hospitals-during-armed-conflicts-what-law-says>; OISL Report, ¶ 1151.

¹⁴⁸ OISL Report, ¶ 771-772. Importantly, OISL found no evidence that the LTTE used PTK for military purposes. *Id.* ¶ 834.

locations near hospitals,¹⁴⁹ the military directly targeted the hospitals themselves, as described in this section. It did so systematically despite having drones and accurate weapons that it could have used to identify and target nearby LTTE forces.

Initially, doctors gave the government GPS coordinates of makeshift hospitals to safeguard them. But rather than protect these hospitals from attack, the military used that information to shell them.¹⁵⁰ By the final stages of the war, many doctors stopped providing GPS coordinates, and the only hospitals that were not attacked were the ones whose locations were withheld from the government.¹⁵¹

Image 2 (left): The Sri Lankan military's shelling of PTK hospital, whose Red Cross emblem is clearly visible. Image is based on footage before and after the attacks.



Image 3 (right): The Sri Lankan military's shelling of a food distribution line. Image is based on photographs of such queues.

Civilian Death Toll

According to a private UN document shared with diplomatic missions in Sri Lanka, at the end of January 2009, 33 Tamil civilians were being killed per day; by April, this had increased to 116 per day.¹⁵² In April, Human Rights Watch called the “No Fire Zone” “one of the most dangerous places in the world.”¹⁵³

As of May 13, the UN estimated more than 100,000 Tamil civilians were trapped in the third “No Fire Zone,” which was merely 2 or 3 square kilometers.¹⁵⁴ On the other hand, with respect to

¹⁴⁹ *Id.* ¶ 774.

¹⁵⁰ *Sri Lanka: Repeated Shelling of Hospitals Evidence of War Crimes*, Human Rights Watch (May 8, 2009), <https://www.hrw.org/news/2009/05/08/sri-lanka-repeated-shelling-hospitals-evidence-war-crimes>.

¹⁵¹ Frances Harrison, *Still Counting the Dead: Survivors of Sri Lanka's Hidden War* 77 (2013).

¹⁵² Ravi Nessman, *UN Says 6,500 Tamil Civilians Killed in Sri Lanka*, *Toronto Star* (April 24, 2009),

https://www.thestar.com/news/world/2009/04/24/un_says_6500_tamil_civilians_killed_in_sri_lanka.html.

¹⁵³ *Sri Lanka: Stop Shelling 'No-Fire Zone'*, Human Rights Watch (Apr. 9, 2009), <https://www.hrw.org/news/2009/04/09/sri-lanka-stop-shelling-no-fire-zone>.

¹⁵⁴ OISL Report, ¶¶ 93, 874.

legitimate military targets, only the LTTE's leadership and 250 "hard-core fighters" remained in that area.¹⁵⁵

Despite the military's use of drones to identify targets before shelling, a practice corroborated by military commanders' statements, its shelling filled the densely populated third "No Fire Zone" to such a degree that the UN Panel of Experts concluded: "Due to the lack of space in the third NFZ, civilians had nowhere to hide from the shelling, which was coming in from all sides. Shells rained down everywhere and bullets whizzed through the air."¹⁵⁶ From the end of April until May 19, UN sources said the death toll surged to an average of 1,000 Tamil civilians killed each day.¹⁵⁷

International sources said that in the war's final phase, 40,000 Tamil civilians were killed and the number of Tamils unaccounted for and presumed killed is up to 169,796.¹⁵⁸ Witnesses described shelling that wiped out entire families.¹⁵⁹ The UN Panel of Experts found that "most civilian casualties in the final phases of the war were caused by government shelling."¹⁶⁰ Exactly how many Tamils died, even rounded to the nearest ten thousand, is still unknown.¹⁶¹

Restrictions on Access to Necessary Food and Medical Care

At least thousands of Tamil civilians died from starvation, malnutrition, exhaustion, or lack of medical care, which resulted from the government's deliberate restrictions on necessary food and medical supplies.¹⁶² The UN could not more precisely estimate how many died in this manner during the final phase.¹⁶³ For details on how the government deprived Tamils of necessary food and medical care, see discussion *infra* "[Restrictions on Access to Necessary Food and Medical Care](#)" as conditions of life deliberately calculated to bring about the physical destruction of the Tamils in the Vanni.

2. Causing Serious Bodily or Mental Harm to Tamils in the Vanni

Under international criminal law, conduct causing serious bodily or mental harm includes, among others, torture, inhuman or degrading treatment, rape, and other forms of sexual violence.¹⁶⁴ Starvation and holding victims in internment camps under inhumane conditions can

¹⁵⁵ POE Report, ¶ 120; OISL Report, ¶ 94.

¹⁵⁶ POE Report, ¶ 118.

¹⁵⁷ Catherine Philp, *The hidden massacre: Sri Lanka's final offensive against Tamil Tigers*, The Times (May 29, 2009), <https://www.thetimes.co.uk/article/the-hidden-massacre-sri-lankas-final-offensive-against-tamil-tigers-3nb3k2wqng6>.

¹⁵⁸ POE Report, ¶ 137 ("40,000 civilian deaths"); Submission by the Catholic Diocese of Mannar at 4 ("146,679 people seem to be unaccounted for"); ITJP, Death Toll (estimating 169,796 people unaccounted for based on World Bank household data).

¹⁵⁹ OISL Report, ¶ 1267.

¹⁶⁰ POE Report at ii.

¹⁶¹ *Sri Lanka*, Human Rights Data Analysis Group, <https://hrdag.org/srilanka> (last visited Sept. 5, 2024).

¹⁶² U.N. Secretary-General, *Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka*, U.N. Doc. ST(02)/R425/Sri Lanka, at 9, 18 (Nov. 2012) (analyzing 74-75), <https://digitallibrary.un.org/record/737299?ln=en&v=pdf> [hereinafter U.N. Secretary-General, Internal Review]; OISL Report, ¶ 982-83.

¹⁶³ OISL Report, ¶ 983.

¹⁶⁴ Elements of Crimes of the Rome Statute at art. 6(b)(1), n.3.

also cause serious bodily or mental harm.¹⁶⁵ The serious bodily or mental harm does not need to be “permanent and irremediable.”¹⁶⁶

International courts have found that serious bodily harm can be caused by serious damage to health, “disfigurement,” and serious injury to the external or internal organs or senses,¹⁶⁷ while serious mental harm includes “more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat.”¹⁶⁸

According to international courts, common sense and a case-by-case basis should be used to determine what amounts to serious bodily harm. What amounts to serious mental harm should also be determined on a case-by-case basis.¹⁶⁹

Shelling

Image 4: A Tamil man, who lost his left leg in the shelling, stands with crutches. Image is based on a photograph.



As described above, the Sri Lankan military’s shelling of the “No Fire Zones” killed tens of thousands of Tamils. This shelling also severely injured tens of thousands of survivors. Children were “particularly vulnerable to horrific injuries as shrapnel ripped at their small limbs.”¹⁷⁰

The UN Panel of Experts reported one estimate that doctors performed 40,000 surgical procedures and 5,000 amputations from January to May.¹⁷¹ In the final weeks,

“amputated limbs were collected in piles” in the only remaining hospital in the second “No Fire Zone.”¹⁷²

Handicap International (now Humanity & Inclusion) estimated 25,000 to 30,000 Tamils lost limbs or acquired other physical disabilities.¹⁷³

¹⁶⁵ *Akayesu*, Trial Judgment, ¶ 503 (citing *Attorney-General of the Government of Israel v. Eichmann* (1961)). See discussion *infra* “[Deliberately Inflicting Conditions of Life Calculated to Bring About the Physical Destruction of Tamils in the Vanni](#).”

¹⁶⁶ *Akayesu*, Trial Judgment, ¶ 502.

¹⁶⁷ See, e.g., *Prosecutor v. Kayishema*, Case No. ICTR-95-1-T, Trial Judgment, ¶ 109 (International Criminal Tribunal for Rwanda, May 21, 1999), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-95-01/MS45055R0000620218.PDF>.

¹⁶⁸ See, e.g., *Prosecutor v. Seromba*, Case No. ICTR-2001-66-A, Trial Judgment, ¶ 46 (International Criminal Tribunal for Rwanda, Mar. 12, 2008), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-01-66/MS51133R0000556040.PDF>.

¹⁶⁹ See, e.g., *Kayishema*, Trial Judgment, ¶¶ 108, 110.

¹⁷⁰ POE Report, ¶ 141.

¹⁷¹ *Id.* ¶ 133.

¹⁷² *Id.* ¶ 110.

¹⁷³ Dean Nelson, *Up to 30,000 ‘Disabled’ by Sri Lankan Shells*, *The Telegraph* (May 24, 2009), <https://www.telegraph.co.uk/news/worldnews/asia/srilanka/5378047/Up-to-30000-disabled-by-Sri-Lankan-shells.html>.

Higher rates of surgeries continued after the war. One Médecins Sans Frontières (Doctors Without Borders) surgeon said he performed 30 surgical procedures per day, which was six times his usual number, in the eight days since the war's end.¹⁷⁴

Restrictions on Access to Necessary Medical Supplies

Surviving yet severely injured Tamil civilians suffered further as a result of the government's deliberate restrictions on necessary medical supplies entering the war zone. For details on how the government deprived Tamils of necessary medical care, see discussion *infra* "[Restrictions on Access to Necessary Food and Medical Care](#)" as conditions of life deliberately calculated to bring about the physical destruction of the Tamils in the Vanni

Many people had surgical procedures in the war zone¹⁷⁵ under extremely poor conditions without enough surgical or medical supplies—including anesthetics, scalpels (substituted with butcher knives), gauze and bandages (substituted with sanitary pads, cotton cloths, or old clothes), gloves, and blood (substituted with auto-transfusion, done by catching the patient's blood in a plastic bag, filtering it through cloth, and transfusing it back into the same patient)¹⁷⁶—due to government restrictions on those items.¹⁷⁷ Doctors frequently performed amputations (many without anesthetics) to save patients' lives because "there was simply no other way to treat wounds."¹⁷⁸

The government-imposed lack of medical supplies resulted in serious damage to survivors' health and "disfigurement" in the event of surgical amputations, both of which amount to serious bodily harm and serious mental harm based on international courts' case-by-case approach and common-sense standard.

Rapes and Other Forms of Sexual Violence

In the final months, a "large number of women fleeing from the conflict areas during the peak of fighting were sexually assaulted," according to a former UN field officer.¹⁷⁹ A Tamil member of parliament accused soldiers of sexually abusing Tamil women who had "surrendered" to them.¹⁸⁰ Still, the UN Panel of Experts noted that these crimes were "greatly under-reported."¹⁸¹ Stigma, as well as fear of reprisals by perpetrators, likely contributed to the lack of direct

¹⁷⁴ *Sri Lanka: A Day Among the War-Wounded*, Doctors Without Borders (May 26, 2009), <https://www.doctorswithoutborders.org/latest/sri-lanka-day-among-war-wounded>.

¹⁷⁵ *Id.*

¹⁷⁶ POE Report, ¶¶ 103, 110.

¹⁷⁷ See discussion *infra* "[Deliberately Inflicting Conditions of Life Calculated to Bring About the Physical Destruction of Tamils in the Vanni](#)."

¹⁷⁸ POE Report, ¶ 110.

¹⁷⁹ Human Rights Watch, *We Will Teach You a Lesson: Sexual Violence against Tamils by Sri Lankan Security Forces*, at 7 (Feb. 26, 2013), https://www.hrw.org/sites/default/files/reports/srilanka0213webwcover_0.pdf [hereinafter Human Rights Watch, *We Will Teach You a Lesson*].

¹⁸⁰ Yasmin Sooka, Bar Committee for Human Rights of England and Wales & International Truth and Justice Project, *An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014*, at 78 (Mar. 2014), https://itjpsl.com/assets/STOP_report.pdf.

¹⁸¹ POE Report, ¶ 152.

accounts from survivors. There are, however, many witness accounts of rape and sexual violence by Sri Lankan forces.¹⁸²

Image 5: The sexually mutilated and executed bodies of Tamil women and girls lie in the morgue. Image is based on the witness account of the international agency's local employee described in the text. The artist added sheets to respect the dignity of the victims, who were denied this even in death.



On three or four different occasions in February and March, a local employee of an international agency witnessed at least 200 bodies at a government hospital mortuary, mainly Tamil women and girls, many of which were naked, with slashes, bites, or scratches on their breasts and signs of vaginal mutilation with knives, bottles, and sticks.¹⁸³ Most appeared to have been shot in the forehead at close range,¹⁸⁴ either before or after being violated.

An army soldier saw multiple rape scenes and naked, decapitated, and mutilated women's bodies.¹⁸⁵ A witness was told by a

senior security forces officer that he had participated in the gang rape of female LTTE members who had surrendered. The perpetrators then dismembered and killed each woman by tying one of their legs to a tree and the other to a tractor driving away from the tree.¹⁸⁶

The army soldiers even photographed and filmed their victims as war trophies. Many photographs and videos show dead women, including LTTE fighters and civilians, lying on their backs with exposed breasts, genitals, and spread legs.¹⁸⁷ One video shows the naked bodies of dead or nearly dead women who appear to have been raped or sexually assaulted.¹⁸⁸ The video shows army soldiers loading these naked bodies onto a truck in a highly disrespectful manner while making sexual comments about the bodies.¹⁸⁹ According to the UN Panel of Experts, such footage and commentary permits a "strong inference that rape or sexual violence may have occurred, either prior to or after execution."¹⁹⁰

¹⁸² *Id.* ¶ 152; Chulani Kodikara & Sarala Emmanuel, *Global Discourses and Local Realities: Armed Conflict and the Pursuit of Justice*, in *The Search for Justice: The Sri Lanka Papers 1, 2-3* (Kumari Jayawardena & Kishali Pinto-Jayawardena eds., 2017).

¹⁸³ Public Interest Advocacy Centre, *Island of Impunity? Investigation into International Crimes in the Final Stages of the Sri Lankan Civil War*, ¶ 11.34 (Feb. 2014), <https://researchdirect.westernsydney.edu.au/islandora/object/uws%3A27906/datastream/PDF/citation.pdf> [hereinafter *Island of Impunity*].

¹⁸⁴ *Id.* ¶ 11.34.

¹⁸⁵ *The Sri Lankan Soldiers 'Whose Hearts Turned to Stone'*, Channel 4 News (July 27, 2011), <https://www.channel4.com/news/the-sri-lankan-soldiers-whose-hearts-turned-to-stone>.

¹⁸⁶ *Island of Impunity*, ¶ 11.30.

¹⁸⁷ POE Report, ¶ 153; *Island of Impunity*, ¶ 11.29; OISL Report, ¶ 323.

¹⁸⁸ *Island of Impunity*, ¶ 11.31; *No Fire Zone: The Killing Fields of Sri Lanka* at 38:05-38:25 (Channel 4 documentary, 2013) [hereinafter *Channel 4, No Fire Zone*].

¹⁸⁹ *Channel 4, No Fire Zone* at 39:15-39:47.

¹⁹⁰ POE Report, ¶ 153.

A family witnessed the defilement of female LTTE cadres' corpses in Kilinochchi (taken over by the government on January 2¹⁹¹). One member of that family heard Sri Lankan soldiers "uttering deranged, hateful things as if to an animal" during the act.¹⁹²

Rapes During Screening Processes

From the beginning of 2009 until the end of the war, hundreds of thousands of Tamil civilians, as well as LTTE *hors de combat* and political officials, fled and crossed into government-controlled territory. Before being placed in detention camps for internally displaced people (IDPs), these Tamils underwent an abusive screening process,¹⁹³ where OISL determined "the likelihood of sexual harassment and assault at the various screening and checkpoints was considerable."¹⁹⁴

Several witnesses reported seeing soldiers take young women toward the jungle, including behind sentry posts and into the bushes, and then hearing their screams. One witness heard gunshots afterward.¹⁹⁵

Human Rights Watch documented an account of Tamil women who "surrendered" to the army in March being sexually humiliated and raped. Soldiers made all the women strip naked and walk around the soldiers, who were laughing at them, before raping them in front of everyone, including their children and grandchildren.¹⁹⁶

Physical and Sexual Torture

Sri Lankan security forces' use of torture was "widespread, systematic and particularly brutal" in the war's final days and immediate aftermath, after hundreds of thousands of Tamil civilians, as well as LTTE *hors de combat* and political officials, crossed into government-controlled areas and were detained *en masse*¹⁹⁷ or placed in "closed camps" for IDPs.¹⁹⁸

Photographs show extrajudicially executed LTTE cadres whose bodies bore signs of torture.¹⁹⁹ However, most of the torture happened off the battlefield. Security forces committed torture in army camps, police stations and facilities, and prisons; they also set up "rehabilitation centers," including in school and college buildings, where torture occurred.²⁰⁰ According to OISL, "Victims

¹⁹¹ Maseeh Rahman, *Sri Lankan President Hails Victory as Army Seizes Tamil Tiger Capital*, The Guardian (Jan. 2, 2009), <https://www.theguardian.com/world/2009/jan/02/srilanka>.

¹⁹² Rohini Mohan, *The Fear of Rape: Tamil Women and Wartime Sexual Violence*, in *The Search for Justice*, at 98, 107.

¹⁹³ OISL Report, ¶ 1038.

¹⁹⁴ *Id.* ¶ 614.

¹⁹⁵ *Id.* ¶ 613.

¹⁹⁶ Human Rights Watch, *We Will Teach You a Lesson* at 106.

¹⁹⁷ OISL Report, ¶¶ 543, 1024-1025.

¹⁹⁸ See discussion *infra* "[Inhumane Conditions in De Facto Internment Camps](#)."

¹⁹⁹ POE Report, ¶¶ 149-150.

²⁰⁰ OISL Report, ¶¶ 546-552.

were often repeatedly tortured throughout a period of detention that would typically range from a few weeks to several years” via “premeditated” acts.²⁰¹

Veteran investigators noted “the particular cruelty and brutality” of the torture recounted by victims,²⁰² which was physical and/or sexual in nature.

Human Rights Watch found that the government used torture to “instill terror in individuals and the broader Tamil population,” with sexual violence being a key element of that strategy.²⁰³ Indeed, the torture, particularly sexual torture, caused serious mental harm.²⁰⁴

“Countless” Tamil men and women detained by security forces in 2009 were subjected to rape and other forms of sexual violence, including as torture.²⁰⁵ In fact, custodial sexual torture occurred against Tamil men and women on an equal basis,²⁰⁶ which was deemed “a particularly shocking finding” by the UN human rights chief when the OISL Report was released.²⁰⁷

Human Rights Watch believed that “patterns across perpetrators, places of detention, and interrogation practices ... strongly suggest that rape and other sexual violence was a systematic practice that was known or should have been known at the highest levels of the state security apparatus.”²⁰⁸ OISL similarly concluded that “incidents of sexual violence were not isolated acts but part of a deliberate policy to inflict torture” and “part of an institutional policy within the security forces.”²⁰⁹

Moreover, OISL recorded many cases of perpetrators calling torture victims “*Tamil dog*” or “*Tamil dogs*” with “the intent clearly being to break down that person emotionally and physically,” indicating their “persecutory” behavior.²¹⁰ “Dog” is used as a slur in both the Sinhala and Tamil languages; in Sinhala, “Tamil dog” and “Tamil dogs” are ethnic slurs, where the plural often refers to the Tamil people as a whole. This dehumanizing language has been used not only in places of detention, but in the Sinhalese community in general.²¹¹ The long-standing, systematic use of derogatory and dehumanizing language against members of a protected group in a society and “specific utterances” to that effect by direct perpetrators are factors allowing the inference of genocidal intent.²¹²

²⁰¹ *Id.* ¶ 544.

²⁰² *Id.* ¶ 540.

²⁰³ Human Rights Watch, *We Will Teach You a Lesson* at 4-5, 29.

²⁰⁴ See discussion *infra* “[Mental Health Impacts](#).”

²⁰⁵ Human Rights Watch, *We Will Teach You a Lesson* at 6, 29.

²⁰⁶ OISL Report, ¶¶ 587-588.

²⁰⁷ Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein to the Human Rights Council, OHCHR (Sept. 30, 2015), <https://www.ohchr.org/en/statements/2015/09/statement-un-high-commissioner-human-rights-zeid-raad-al-hussein-videolink-human>.

²⁰⁸ Human Rights Watch, *We Will Teach You a Lesson* at 34.

²⁰⁹ OISL Report, ¶ 592.

²¹⁰ *Id.* ¶¶ 561, 588.

²¹¹ Interview by People for Equality and Relief in Lanka with [Name and location withheld], Political officer in a third-party state's foreign affairs ministry with fluency in Tamil and Sinhala, including an understanding of ethnic slurs and their use in Sri Lanka (Mar. 2024)

²¹² U.N. Myanmar Report 2018, ¶¶ 1415, 1419-1422.

Mental Health Impacts

Image 6: A Tamil family, whose members were injured and are exhibiting signs of trauma.



The genocidal acts described above resulted not only in physical trauma (from shelling, rape and sexual violence, and/or torture), but also serious mental health impacts for Tamil survivors.²¹³

According to UN investigations, in the immediate aftermath, many Tamils were “severely traumatized” and depressed;²¹⁴ and some Tamils died by suicide.²¹⁵ Experiences of shelling, lack of food and shelter, and fear of the security forces traumatized the affected

Tamil population.²¹⁶

UN investigators who conducted their work in 2014 and 2015 were “deeply struck by the extent of the trauma which victims continue to suffer despite the passage of time.”²¹⁷ Many survivors were “profoundly traumatized by their experiences and memories of the shelling and the devastation they witnessed.”²¹⁸ According to OISL, survivors still “suffer[ed] from the psychological trauma of feeling trapped while exposed to artillery strikes and gunfire.”²¹⁹

Tamils tortured by security forces had experienced “traumatic symptoms, including suicidal thoughts, sleeplessness, intrusive thoughts, inability to concentrate, depression and other symptoms of PTSD.”²²⁰ One expert said sexual torture in particular produced “the most severe and persistent psychological damage,” which is “great and permeates everything” in their daily life; some attempted suicide or died by suicide.²²¹

3. Deliberately Inflicting Conditions of Life Calculated to Bring About the Physical Destruction of Tamils in the Vanni

Under international criminal law, the “conditions of life” calculated to bring about a group’s physical destruction, in whole or in part, include the “deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.”²²² International courts have noted that a “lack of proper housing” or the “withholding [of]

²¹³ POE Report, ¶ 139. Human Rights Watch, *We Will Teach You a Lesson* at 40.

²¹⁴ POE Report, ¶¶ 139, 159. OISL Report, ¶ 1095.

²¹⁵ POE Report, ¶ 159.

²¹⁶ OISL Report, ¶ 612.

²¹⁷ *Id.* ¶ 45.

²¹⁸ *Id.* ¶ 886.

²¹⁹ *Id.* ¶ 917.

²²⁰ *Id.* ¶ 539.

²²¹ *Id.* ¶¶ 579-80.

²²² Elements of Crimes of the Rome Statute at art. 6(c)(4) & n.4.

sufficient living accommodation for a reasonable period” that “lead to a slow death”,²²³ severe overcrowding, inadequate medical care, insufficient access to food and water, poor hygienic conditions, and the spread of preventable diseases in detention facilities; and living conditions that had “serious effects” on detainees²²⁴ are also such “conditions of life.”

Whether the conditions of life were deliberately calculated to bring about the group’s physical destruction, in whole or in part, depends on (1) the characteristics of the group, such as its vulnerability, (2) how long group members were subjected to those conditions²²⁵ (a duration that is undefined²²⁶), and (3) the actual nature of the conditions of life.²²⁷ International courts have considered these “illustrative factors” in determining the probability that the conditions of life in question would lead to a group’s physical destruction, in whole or in part.²²⁸

Restrictions on Access to Necessary Food and Medical Care

The Sri Lankan government deliberately deprived Tamils in the Vanni of sufficient food and medical supplies, causing at least thousands of preventable deaths from starvation or lack of medical care and chronic and acute malnutrition, which in turn increases the risk of death.

Strategy of Underestimating the Civilian Population to Limit Necessary Food and Medical Supplies

As detailed above, in early 2009, the UN estimated 300,000 Tamil civilians were trapped in the Vanni. The Sri Lankan government not only disputed this number, claiming only 70,000 to 100,000 Tamil civilians remained, but even reprimanded government employees in the war zone who gave higher numbers.²²⁹

UN investigations determined that the Sri Lankan government intentionally understated the number of civilians for the purpose of limiting how much food, surgical, and other medical supplies could enter the war zone.²³⁰ According to the UN Panel of Experts, it used “greatly reduced estimates, as part of a strategy to limit the supplies going into the Vanni, thereby putting ever-greater pressure on the civilian population.” A senior Sri Lankan government official even admitted this fact.²³¹

²²³ See, e.g., *Kayishema*, Trial Judgment, ¶¶ 115-116; *Prosecutor v. Stakić*, Case No. IT-97-24-T, Trial Judgment, ¶ 517 (International Criminal Tribunal for the former Yugoslavia, July 31, 2003), <https://www.icty.org/x/cases/stakic/tjug/en/stak-tj030731e.pdf>.

²²⁴ See, e.g., *Croatia v. Serbia*, ¶ 161; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Trial Judgment, ¶ 2584 (International Criminal Tribunal for the former Yugoslavia, Mar. 24, 2016), https://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf.

²²⁵ See, e.g., *Karadžić*, Trial Judgment, ¶ 548, n.1741 (citing previous international criminal jurisprudence).

²²⁶ William A. Schabas, *Genocide in International Law: The Crime of Crimes* 190-91 (2nd ed. 2009).

²²⁷ See, e.g., *Karadžić*, Trial Judgment, ¶ 548, n.1741 (citing previous international criminal jurisprudence).

²²⁸ *Id.* ¶ 548, n.1741 (citing previous international criminal jurisprudence).

²²⁹ See discussion *supra* “Shelling of ‘No Fire Zones’.”

²³⁰ POE Report, ¶¶ 124-125. OISL Report, ¶ 984.

²³¹ POE Report, ¶ 131.

Furthermore, following their expulsion from the war zone in September 2008, the UN and other international humanitarian organizations could no longer assess and quickly address the humanitarian needs of the Tamil civilian population.²³²

The Sri Lankan government's purposeful underestimates and consequent restrictions on humanitarian assistance caused many deaths of Tamil civilians from starvation, malnutrition, exhaustion, or lack of medical care.²³³ At least thousands died from lack of food and medical care.²³⁴ According to OISL, the government's "strict controls" on food, water, and medical supplies further impacted survivors' well-being.²³⁵

1. Vulnerability of Tamils in the Vanni War Zone

Even before the final months, the departure of most international observers from the Vanni "left the population vulnerable to violations."²³⁶

As the Sri Lankan military and its intentional shelling campaign advanced into the Vanni, the fleeing Tamil civilian population "became increasingly vulnerable and had to rely on humanitarian assistance for food and shelter." Furthermore, a "large part" was "especially vulnerable," including children, pregnant women, and older people.²³⁷ UN investigations explicitly stressed the heightened vulnerability of children, pregnant and lactating women, and older people when describing the toll on them from the lack of access to food and medical care.²³⁸

2. Duration of the Restrictions on Access to Necessary Food and Medical Supplies

The Sri Lankan government's strategy of underestimating the number of civilians in the Vanni began by January 30, 2009.²³⁹ The consequent actual nature of the conditions of life themselves, detailed below, lasted until the end of the war, May 18, 2009.

The duration of the inhumane conditions of life (about 109 days) may be considered long.²⁴⁰ As mentioned, what constitutes a long duration remains undefined.

3. Actual Nature of the Conditions of Life

²³² OISL Report, ¶ 959.

²³³ POE Report, ¶¶ 128-129, 176(c). U.N. Secretary-General, Internal Review at 18. OISL Report, ¶¶ 982-83.

²³⁴ U.N. Secretary-General, Internal Review at 9, 18 (analyzing 74-76).

²³⁵ OISL Report, ¶ 1267.

²³⁶ *Id.* ¶¶ 82, 959.

²³⁷ POE Report, ¶ 72.

²³⁸ *Id.* ¶ 140; OISL Report, ¶ 983, 990.

²³⁹ POE Report, ¶ 125, n.69 (citing a Ministry of Defence news article published on January 30, 2009).

²⁴⁰ The *Kayishema* Trial Chamber found that the duration of the deprivation of food, water, and adequate sanitary and medical facilities of Tutsis seeking refuge in three locations—the longest of which was from about April 6 through April 19, 1994 (13 days) (¶¶ 13, 314-317)—was "not of sufficient length ... to bring about the destruction of the group" (¶ 548). *Kayishema*, Trial Judgment.

Tamils in the Vanni endured conditions of life leading to starvation and malnutrition (from the deliberate deprivation of food) and civilian casualties (from the deliberate deprivation of medical care).

Starvation and Malnutrition Caused by the Deliberate Deprivation of Food

OISL highlighted how the government's strategy to limit food entering the Vanni had "serious consequences on the population that had already been impacted by decreasing access to food, with growing levels of malnutrition and acute malnutrition," noting the "longer term impact" of decades of both war and government restrictions.²⁴¹

In early March, the Mullaitivu Office of the Regional Director of Health Services wrote to the Health Secretary, among others: "You are already aware that the people are facing death by starvation consequent to the ensuing war ... most of the people are consuming leaves," which has caused vomiting and unconsciousness in some.²⁴² In early May, a local organization said 150,000 Tamils were "at immediate risk of starving to death in the NFZ."²⁴³

Chronic and acute malnutrition, including in children, also increased as the war raged.²⁴⁴ This was a dire trend because children face the highest risk of dying from starvation, and malnutrition also increases the risk of death.²⁴⁵ In March, 25% of children under 5 suffered from acute malnutrition;²⁴⁶ by May, that figure had jumped to 35%.²⁴⁷ A senior UN official said that the internally displaced Tamils—not just the children—who fled the war zone were among the worst cases of malnutrition he had ever seen.²⁴⁸

As mentioned, experiences of lacking food, among others, traumatized the affected Tamil population.²⁴⁹

Civilian Casualties Caused by the Deliberate Deprivation of Medical Care

Tamils in the Vanni were deliberately deprived of necessary medical care through:

- The military's intentional shelling of every hospital in the Vanni and of areas near humanitarian aid ships (for details, see discussion *supra* "[Shelling of Hospitals and Other Humanitarian Objects](#)") as conduct killing Tamils in the Vanni); and

²⁴¹ OISL Report, ¶ 984.

²⁴² U.N. Secretary-General, Internal Review at 74-75.

²⁴³ Report to Congress at 58.

²⁴⁴ OISL Report, ¶ 990.

²⁴⁵ *Malnutrition: Emergencies and disasters*, World Health Organization (Jan. 20, 2020), <https://www.who.int/news-room/questions-and-answers/item/malnutrition-emergencies-and-disasters>; Action contre la Faim, *Adult Malnutrition in Emergencies: An Overview of Diagnosis and Treatment*, at 19 (Sept. 2006), <https://www.actioncontrelafaim.org/en/publication/adult-malnutrition-in-emergencies>.

²⁴⁶ UNICEF, *Sri Lanka: UNICEF humanitarian action update*, at 1 (Apr. 28, 2009), <https://reliefweb.int/report/sri-lanka/sri-lanka-unicef-humanitarian-action-update-28-apr-2009>; OISL Report, ¶ 990.

²⁴⁷ OISL Report, ¶ 990.

²⁴⁸ *Id.* ¶ 994.

²⁴⁹ See discussion *supra* "[Mental Health Impacts](#)."

- The government’s intentional underestimates of the number of civilians for the purpose of limiting how many surgical and other medical supplies could enter the Vanni war zone, despite doctors’ repeated requests for supplies (detailed below).

This two-prong strategy dramatically reduced the availability²⁵⁰ and quality of medical care in the war zone.

According to the UN Panel of Experts, in just one hospital, “many patients died due to lack of access to proper medical care, and scores of bodies were deposited in front of the hospital each day.”²⁵¹

Government doctors who remained in the Vanni, even after the government directed them to leave in February, repeatedly wrote letters and gave interviews regarding their inadequate medical supplies.²⁵² On March 16, they wrote to the government: “Most of the hospital deaths could have been prevented if basic infrastructure facilities and essential medicines were made available.” This letter described their “desperate situation of not being able to provide even lifesaving emergency surgery.”²⁵³ But instead of permitting the entry of the requested necessary medical supplies, the Ministry of Health threatened the doctors to stop speaking to the media and stop “complaining” or be punished.²⁵⁴ The ministry also said it could not send anesthetics due to a lack of trained anesthetists or surgeons in hospitals.²⁵⁵ In reality, the remaining medical personnel included senior surgeons, many of whom were government doctors,²⁵⁶ and many medics who knew how to administer anesthetic injections.²⁵⁷ These medics would be considered anesthetists.²⁵⁸ In other words, the Sri Lankan government knew there were surgeons as well as medical personnel trained and capable of administering anesthetics, and its claims to the contrary were deliberately false.

According to US Embassy in Colombo sources, the government prohibited anesthetics from entering the “No Fire Zone” because the government did not want them to be used on injured LTTE combatants.²⁵⁹ That is not a legitimate reason, as wounded and sick combatants are entitled to receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition.²⁶⁰ Furthermore, the Sri Lankan government knew there were 300,000 Tamil civilians, and the LTTE had up to only 20,000 combatants in the same

²⁵⁰ OISL Report, ¶ 1002.

²⁵¹ POE Report, ¶ 103.

²⁵² *Id.* ¶ 128, n.76.

²⁵³ *Id.* ¶ 128.

²⁵⁴ *Id.*

²⁵⁵ OISL Report, ¶ 1007.

²⁵⁶ *Id.*

²⁵⁷ Harrison at 80.

²⁵⁸ Any medic trained to administer anesthetics would be considered an anesthetist. This is different from an anesthesiologist. Interview by People for Equality and Relief in Lanka with [Name and location withheld], practicing American surgeon (Aug. 26, 2024).

²⁵⁹ Report to Congress at 54.

²⁶⁰ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 12, 1949, 75 U.N.T.S. 970, <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-3>; *Customary IHL - Rule 110. Treatment and Care of the Wounded, Sick and Shipwrecked*, International Committee of the Red Cross Database, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule110> (last visited Sept. 5, 2024).

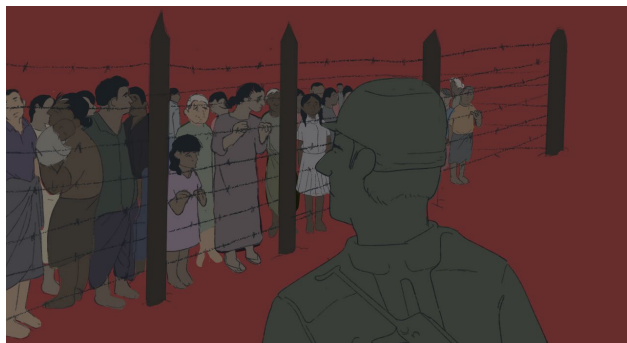
area²⁶¹ (which the government must have known due to its reliance on drones' real-time high-resolution footage²⁶²).

By mid-April, organizations estimated receiving only 5% of necessary medical supplies, including anesthetics, dressings, and injectable pain relief medications, causing “avoidable deaths.”²⁶³ Less than a week later, sources in the “No Fire Zone” told the US Embassy in Colombo that “many” wounded by shelling did not go to the hospital because they “understood there was almost no treatment available.”²⁶⁴ By mid-May, medical supplies were so scarce that what few medical personnel remained carried their supplies in shopping bags while fleeing the violence.²⁶⁵

Taken together, the illustrative factors in Sri Lanka—(1) the vulnerability of Tamils in the Vanni war zone, (2) the months-long duration of the government’s restrictions on their access to necessary food and medical care, and (3) the deadly nature of the conditions (evidenced by rates of malnutrition, which increases the risk of death; starvation, including to death; and avoidable deaths due to insufficient medical supplies)—were likely to lead to the physical destruction of the Tamils in the Vanni. In other words, the conditions of life in the war zone were deliberately calculated to bring about the physical destruction of the Tamils in the Vanni.

Inhumane Conditions in De Facto Internment Camps

Image 7: Internally displaced Tamil civilians look outside barbed wire fences, trapping them in what Human Rights Watch called “de facto internment camps,” as a Sri Lankan soldier stands guard. Image is based on photographs.



As mentioned, hundreds of thousands of Tamil civilians, as well as LTTE *hors de combat* and political officials, fled the war zone from the beginning of 2009 until the end of the war.²⁶⁶ When Tamils crossed into government-controlled territory, the government either detained them in army camps, police stations and facilities, prisons, or “rehabilitation centers”²⁶⁷ or placed them in “closed camps” for IDPs,²⁶⁸ with inhumane conditions calculated to bring about the Tamil people’s partial physical destruction.

²⁶¹ POE Report, ¶¶ 66.

²⁶² See discussion *supra* “[Shelling of “No Fire Zones.”](#)”

²⁶³ Report to Congress at 56.

²⁶⁴ *Id.* at 37.

²⁶⁵ OISL Report, ¶ 1014.

²⁶⁶ OISL Report, ¶¶ 1024-1025.

²⁶⁷ See discussion *supra* “[Physical and Sexual Torture.](#)”

²⁶⁸ POE Report, ¶¶ 154-155.

1. Vulnerability of Effectively Detained Tamils

According to OISL, this deprivation of liberty based on Tamil ethnicity may amount to the crime against humanity of persecution.²⁶⁹

The government also imposed “severe restrictions” on international organizations’ access to the internally displaced Tamils. According to the UN Panel of Experts, “The restrictions suggest an attempt by the Government to prevent those who came out of the conflict zone from relaying their experiences to international agencies and NGOs.” The absence of international monitors “increased the vulnerability of IDPs to violations in the camp,”²⁷⁰ such as of women to sexual and gender-based violence, including rape and sexual exploitation.²⁷¹ OISL described Tamils crossing into government-controlled territory as possessing the “vulnerability of a population traumatised by shelling, lack of food and shelter and their fear of the security forces.”²⁷²

2. Duration of the Inhumane Conditions

At the peak of its operation, Menik Farm was one of the largest IDP camps in the world, holding about 220,000 of the total 284,000 Tamil IDPs. It ran from February 2009 to September 24, 2012.²⁷³

In February, the government proposed holding the Tamil IDPs in these camps for up to three years. Following pushback from the UN Refugee Agency (UNHCR), among others, the government said it would resettle 80% of them by the end of the year.²⁷⁴ Later that month, Human Rights Watch expressed concerns that “the government will end up interning those placed there indefinitely.”²⁷⁵

However, because of international pressure, the government slowly started releasing the Tamil IDPs,²⁷⁶ albeit while misrepresenting its progress. On several occasions, the government falsely claimed that it released thousands when, in reality, many of those were simply transferred to other camps or a temporary holding facility.²⁷⁷ For example, on September 24, the government

²⁶⁹ OISL Report, ¶ 1175.

²⁷⁰ POE Report, ¶ 156.

²⁷¹ *Id.* ¶¶ 156, 161, 228; OISL Report, ¶¶ 618, 1079.

²⁷² OISL Report, ¶ 612.

²⁷³ *Id.* ¶ 1072; *Sri Lanka Closes Huge Menik Farm Displacement Camp*, BBC News (Sept. 24, 2012), <https://www.bbc.com/news/world-asia-19703826>.

²⁷⁴ Jeremy Page, *Barbed wire villages raise fears of refugee concentration camps*, Times Online (Feb. 13, 2009), <https://web.archive.org/web/20090803192022/http://www.timesonline.co.uk/tol/news/world/asia/article5721635.ece>; Jo Becker, *Demanding Accountability for War Crimes in Sri Lanka*, in *Campaigning for Justice: Human Rights Advocacy in Practice* 152, 171 (2012) (describing the role of international NGOs in pressuring the Sri Lankan government to release internally displaced Tamils from the camps).

²⁷⁵ Human Rights Watch, *War on the Displaced: Sri Lankan Army and LTTE Abuses against Civilians in the Vanni*, at 36 (Feb. 2009), https://www.hrw.org/sites/default/files/reports/srilanka0209web_0.pdf [hereinafter Human Rights Watch, *War on the Displaced*].

²⁷⁶ *CORRECTED-Nearly 10,000 Sri Lanka war refugees go home*, Reuters (Sept. 11, 2009),

<https://www.reuters.com/article/economy/corrected-nearly-10000-sri-lanka-war-refugees-go-home-idUSCOL445684>; Becker at 171.

²⁷⁷ *Sri Lanka: Tensions Mount as Camp Conditions Deteriorate*, Human Rights Watch (Oct. 10, 2009), <https://www.hrw.org/news/2009/10/10/sri-lanka-tensions-mount-camp-conditions-deteriorate>.

announced 40,000 releases, but the UN said the government had released fewer than 15,000. Human Rights Watch called the government’s process “a ruse to hold as many Tamils for as long as possible in the camps.”²⁷⁸

Accordingly, Tamils endured inhumane conditions of life in the camps for varying lengths of time, depending on when the government released them:

Date	Duration of the camps’ inhumane conditions of life since the war’s end	Tamils experiencing those conditions
December 4, 2009	200 days	135,000 ²⁷⁹
March 11, 2010	297 days	92,000 ²⁸⁰
March 3, 2011	654 days	17,701 ²⁸¹
September 24, 2012 (Menik Farm’s closure)	1,225 days	1,160 ²⁸²

The UN Commission of Inquiry on Syria considered 683 days of inhumane conditions of life to be long. Based on this, the 654 days of inhumane conditions of life for 17,701 Tamils would likely be considered long.²⁸³ And because what constitutes a long duration remains undefined, the 200 days of inhumane conditions of life for 135,000 Tamils may also be considered long.

3. Actual Nature of the Conditions of Life

In a February 2009 report, Human Rights Watch dubbed the camps “de facto internment camps,” describing their perimeters as “secured with coils of barbed wire, sandbags, and machine-gun nests.”²⁸⁴ Conditions worsened, and in April, the UN’s top humanitarian official

²⁷⁸ *Id.*

²⁷⁹ Sulakshini Perera, *UNHCR welcomes Sri Lankan decision to ease conditions for internally displaced*, UNHCR (Dec. 5, 2009), <https://www.unhcr.org/us/news/stories/unhcr-welcomes-sri-lankan-decision-ease-conditions-internally-displaced>.

²⁸⁰ OISL Report, ¶ 1112, n.1201.

²⁸¹ *Id.* ¶ 1112.

²⁸² BBC News, *Sri Lanka Closes Huge Menik Farm*.

²⁸³ The UN Commission of Inquiry on Syria found that ISIS committed the act of deliberately inflicting on captured Yazidi women and girls conditions of life to bring about the Yazidis’ physical destruction, in whole or in part, including through rapes and sexual enslavement, the provision of limited food and water, no provision of medical care, and severe beatings, from August 3, 2014, through June 15, 2016 (683 days). U.N. Human Rights Council, *They Came to Destroy*, ¶¶ 138-141. The Sri Lankan government provided Tamil IDPs in de facto internment camps with limited food and water and denied them necessary medical care and psychosocial support (see discussion *infra* “[Actual Nature of the Conditions of Life](#)” in the camps), including for similar durations (as detailed in the table above).

²⁸⁴ Human Rights Watch, *War on the Displaced* at 32.

referred to this situation as a “crisis” due to the “swollen camps that are filling up with 200,000 people who fled the fighting, many in very poor condition, with more likely on the way soon.”²⁸⁵

By June, 284,000 internally displaced Tamils were effectively detained in military-guarded and -run camps in extremely overcrowded, unsafe conditions without sufficient access to food, water, sanitation, or shelter.²⁸⁶ Importantly, this does not mean that only 16,000 Tamils died, because the aforementioned 300,000 Tamil civilians in the Vanni war zone was an estimate and may have been tens of thousands higher.²⁸⁷

According to the UN Panel of Experts, some Tamil IDPs died while waiting for authorization to get basic medical treatment or from preventable diseases. In addition, although many Tamils were “severely traumatized” and depressed, the Sri Lankan government did not allow mental health and psychosocial support service providers to enter the camps until September 2009.²⁸⁸ This likely contributed to some Tamils dying by suicide.²⁸⁹ Médecins Sans Frontières learned from police, morgue, and International Committee of the Red Cross (ICRC) sources that, in the largest camp, 10-15 Tamils died per day in late May, a mortality rate three times the national average.²⁹⁰ A local judge found that in the camps, more than five older people died per day from starvation or malnutrition.²⁹¹

Taken together, the illustrative factors in Sri Lanka—(1) the vulnerability of Tamil IDPs in de facto internment camps in the Vanni, (2) the months- to years-long duration of their effective detention, and (3) the inhumane, even deadly, nature of the conditions (evidenced by overcrowding; insufficient access to food, water, sanitation, shelter, and medical and psychosocial care; and avoidable deaths from preventable diseases, malnutrition, and starvation or by suicide)—were likely to lead to the physical destruction of the Tamils in the Vanni. In other words, the conditions of life in the IDP camps were deliberately calculated to bring about the physical destruction of the Tamils in the Vanni.

²⁸⁵ *UN concern about Sri Lanka's twin humanitarian crises*, UN Office for the Coordination of Humanitarian Affairs (Apr. 28, 2009), [https://reliefweb.int/report/sri-lanka/un-concern-about-sri-lankas-twin-humanitarian-crises?OpenDocument=\[hereinafter OCHA Press Release\]](https://reliefweb.int/report/sri-lanka/un-concern-about-sri-lankas-twin-humanitarian-crises?OpenDocument=[hereinafter%20OCHA%20Press%20Release]).

²⁸⁶ OCHA Press Release; POE Report, ¶ 160; OISL Report, ¶ 1064.

²⁸⁷ As mentioned, a local government official estimated 330,000 Tamil civilians were in the Vanni war zone. POE Report, ¶ 100, n.54.

²⁸⁸ POE Report, ¶¶ 139, 159; OISL Report, ¶ 1095.

²⁸⁹ POE Report, ¶ 159.

²⁹⁰ Fabrice Weissman, *Sri Lanka. Amid All-out War, in Agir à tout prix? Négociations humanitaires: l'expérience de MSF* (Claire Magone, Michaël Neuman & Fabrice Weissman eds., 2012), <https://msf-crash.org/en/publications/agir-tout-prix-negociations-humanitaires-l'experiance-de-msf/i-stories>.

²⁹¹ OISL Report, ¶ 1092.

Genocidal Intent

Genocidal intent can be inferred from circumstantial evidence. The International Criminal Tribunal for Rwanda,²⁹² the International Criminal Tribunal for the former Yugoslavia,²⁹³ and the International Court of Justice²⁹⁴ have relied on such evidence in their judgments.

Regarding state responsibility, in situations where state organs, such as a government or a military, committed genocidal acts, it is possible to assess whether the state is responsible for genocide without determining individual responsibility.²⁹⁵ The UN Fact-Finding Mission on Myanmar did so by considering the presence of factors in international criminal jurisprudence allowing the inference that genocidal acts were committed with genocidal intent.²⁹⁶ In this manner and based on reasonable grounds, it concluded that the state of Myanmar's genocidal intent can be inferred.²⁹⁷

Applying the factors and facts considered by international courts and the UN, this section explains how there are reasonable grounds to infer the state of Sri Lanka's (1) intent to destroy, (2) in part, (3) the Tamil people, as such, during the final stages of the war.

1. Intent to Destroy

According to international jurisprudence, the intent to destroy can be inferred from, among other factors:

- the differences in the number and nature of the forces involved,²⁹⁸
- the existence of consistent and methodical conduct, including in a safe haven,²⁹⁹ and
- the indiscriminate killing of members of a protected group.³⁰⁰

²⁹² See, e.g., *Akayesu*, Trial Judgment, ¶ 523.

²⁹³ See, e.g., *Prosecutor v. Jelisić*, Case No. IT-95-10-A, Appeals Judgment, ¶ 47 (International Criminal Tribunal for the former Yugoslavia, July 5, 2001), <https://www.icty.org/x/cases/jelusic/acjug/en/jel-aj010705.pdf>.

²⁹⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia v. Serbia*), Judgment, 2007 I.C.J. Rep. 43, ¶ 242 (Feb. 26), <https://www.icj-cij.org/sites/default/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>.

²⁹⁵ U.N. Myanmar Report 2019, ¶ 222.

²⁹⁶ U.N. Myanmar Report 2018, ¶¶ 1418, 1441; U.N. Myanmar Report 2019, ¶ 223.

²⁹⁷ U.N. Myanmar Report 2019, ¶ 223.

²⁹⁸ The *Krstić* Trial Chamber found that the number and nature of the forces involved, among other factors, was evidence that the killings of military-aged Bosnian Muslim men on and after July 13, 1995, were planned, a fact that could help provide the intent to destroy. *Prosecutor v. Krstić*, Case No. IT-98-33-T, Trial Judgment, ¶¶ 572-573 (International Criminal Tribunal for the former Yugoslavia, Aug. 2, 2001), <https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>. The forces involved were 1,000-2,000 well-disciplined, well-armed Bosnian Serb Army soldiers deployed against 5,000-7,500 Army of Bosnia Herzegovina male soldiers who were neither well-organized nor well-equipped. *Id.* ¶ 21, n.28.

²⁹⁹ The *Kayishema* Trial Chamber considered that Tutsis gathered in historical safe havens, after which Hutu assailants surrounded these places—preventing the Tutsis from leaving and denying them food, medicine, and sanitary facilities—before eventually killing them. The chamber found that this “consistent and methodical pattern of killing is further evidence of the specific intent.” *Kayishema*, Trial Judgment, ¶¶ 93, 535. The International Court of Justice found genocidal intent in the context of the methodical mass killing of Bosnian Muslims, a protected group, who were in a designated “safe area.” See generally *Bosnia v. Serbia*, Trial Judgment.

³⁰⁰ In the *Krstić* trial, the defense argued that the Bosnian Serb Army killed “men of military age” to eliminate any “potential military threat.” However, the Trial Chamber found that the Bosnian Serb Army did not differentiate between men of military status and civilians, including boys, older men, and people with physical disabilities, all of whom were unlikely to be combatants. The Appeals Chamber agreed with the Trial Chamber that these men and boys “did not present a serious military threat” and its inference that the Bosnian Serb Army’s “decision to kill them did not stem solely from the intent to eliminate them as a threat.” The Appeals Chamber

As analyzed below, these three factors exist in Sri Lanka.

Disproportionate Number and Capabilities of Soldiers and Special Forces in the Vanni

The UN Panel of Experts found that the Sri Lankan army had “vastly superior firepower and troop numbers” and “air supremacy” over the LTTE.³⁰¹

According to the Sri Lankan government, between 70,000 and 120,000 Sri Lankan army soldiers were deployed in the northern war zone in May 2009,³⁰² including more than 30,000 highly trained special forces.³⁰³ The military had new equipment and weapons, including heavy weapons, aircraft, and drones.³⁰⁴ On the other hand, by September 2008, the LTTE’s “core fighters” were no more than 5,000 and many cadres were “inexperienced.”³⁰⁵ After September, the LTTE increasingly relied on forced recruitment, including of children as young as 14.³⁰⁶ Toward the end of the war, newly recruited combatants’ training was very short, sometimes just a few days, before their deployment.³⁰⁷

The disproportionate number of Sri Lankan army soldiers—at least 14 times as many as LTTE “core fighters” and with disproportionate capabilities—indicates Sri Lanka’s intent was to destroy the Tamils in the Vanni rather than to simply defeat the LTTE.

Consistent, Methodical Conduct against Tamils in the Vanni

According to OISL, from February 21, 2002, until November 15, 2011, “The sheer number of allegations, their gravity, recurrence and the similarities in their *modus operandi*, as well as the consistent pattern of conduct they indicate, all point towards system crimes.”³⁰⁸ OISL reached this conclusion after analyzing, among other conduct by the Sri Lankan government and/or its forces, the shelling of Tamil civilians and civilian objects; rape, other forms of sexual violence, and torture perpetrated against Tamil civilians; denial of humanitarian assistance to Tamil

further concluded: “The killing of the military aged men was, assuredly, a physical destruction, and given the scope of the killings the Trial Chamber could legitimately draw the inference that their extermination was motivated by a genocidal intent.” *Prosecutor v. Krstić*, Case No. IT-98-33-A, Appeals Judgment, ¶¶ 26-27 (International Criminal Tribunal for the former Yugoslavia, Apr. 19, 2004), <https://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>.

³⁰¹ POE Report, ¶ 59.

³⁰² *Lalith Weertaunge Rebuts President on Northern Troop Numbers*, Colombo Telegraph (Jan. 23, 2014), <https://www.colombotelegraph.com/index.php/lalith-weertaunge-rebuts-president-on-northern-troop-numbers/> (reporting 70,000 army soldiers at the end of the war, according to former President Mahinda Rajapaksa); Sri Lanka Lessons Learnt & Reconciliation Commission, *Taking Forward the National Plan of Action*, at 7 (Jan. 21, 2014), <https://www.dh-web.org/hrsits/GenevaLWppt.pdf> (showing less than 120,000 army soldiers, according to Mahinda Rajapaksa’s Secretary to the President Lalith Weeratunga).

³⁰³ Peter Layton, *How Sri Lanka Won the War*, The Diplomat (Apr. 9, 2015), <https://thediplomat.com/2015/04/how-sri-lanka-won-the-war/>.

³⁰⁴ POE Report, ¶ 58.

³⁰⁵ *Id.* ¶¶ 66-67.

³⁰⁶ *Id.* ¶ 68.

³⁰⁷ OISL Report, ¶ 643.

³⁰⁸ *Id.* ¶ 1114; OHCHR *Investigation on Sri Lanka: Mandate*, U.N. Human Rights Council, <https://www.ohchr.org/en/hr-bodies/hrc/oisl>.

civilians; and effective detention of internally displaced Tamils in camps with inhumane conditions during the war’s final phase.³⁰⁹

UN investigations found patterns of the following conduct by the Sri Lankan government and/or its forces,³¹⁰ indicating the conduct’s consistent, methodical, and intentional nature:

Conduct	Consistent, methodical nature of conduct
Shelling of Tamil civilians and civilian objects in “No Fire Zones”	Shelling was “large-scale and widespread,” systematic, “heavy,” “intense,” “indiscriminate,” “continuous,” “constant,” “incessant,” and “sustained.” — UN Panel of Experts and OISL
Rapes and other forms of sexual violence against Tamil women and girls	A “large number of women fleeing from the conflict areas during the peak of fighting were sexually assaulted.” — Former UN field officer The many photographs and videos of dead female LTTE cadres lying on their backs with exposed breasts, genitals, and spread legs permit a “strong inference that rape or sexual violence may have occurred, either prior to or after execution.” — UN Panel of Experts “The likelihood of sexual harassment and assault at the various screening and checkpoints was considerable.” — OISL
Physical and sexual torture	Sri Lankan security forces’ use of torture was “widespread, systematic and particularly brutal” in the war’s final days and immediate aftermath. — OISL “Victims were often repeatedly tortured throughout a period of detention that would typically range from a few weeks to several years” via “premeditated” acts.

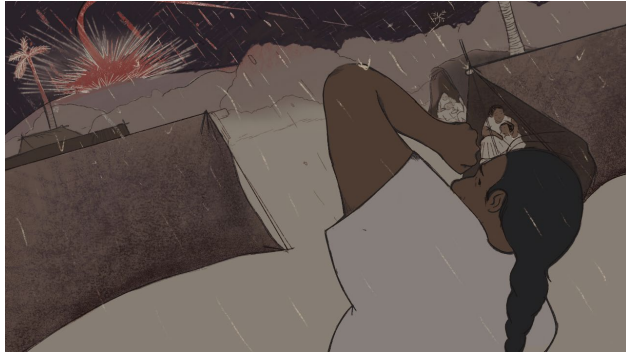
³⁰⁹ See generally OISL Report, § XVII.

³¹⁰ *Id.*

	<p>— OISL</p> <p>“Incidents of sexual violence were not isolated acts but part of a deliberate policy to inflict torture” and “part of an institutional policy within the security forces.”</p> <p>— OISL</p>
<p>Restrictions on access to necessary food and medical supplies</p>	<p>The Sri Lankan government used “greatly reduced estimates, as part of a strategy to limit the supplies going into the Vanni, thereby putting ever-greater pressure on the civilian population.”</p> <p>— UN Panel of Experts</p>
<p>Effectively detaining Tamil IDPs in camps with inhumane conditions</p>	<p>The Sri Lankan government placed hundreds of thousands of Tamils civilians, as well as LTTE <i>hors de combat</i> and political officials, in “closed camps” for IDPs.</p> <p>— UN Panel of Experts and OISL</p> <p>The deprivation of liberty based on Tamil ethnicity may amount to the crime against humanity of persecution.</p> <p>— OISL</p> <p>Camps were extremely overcrowded and had unsafe conditions without sufficient access to food, water, sanitation, shelter, or medical and mental health and psychosocial care.</p> <p>— UN Panel of Experts and OISL</p>

Indiscriminate Killing of Tamil Civilians in the Vanni

Image 8: A female Tamil civilian shields her face from the Sri Lankan military's shelling. Tamil families, displaced by the shelling, cower in nearby tents. Image is based on photographs.



The UN Panel of Experts concluded that the Sri Lankan military shelled the three “No Fire Zones”—where the government had instructed Tamil civilians to go for safety—in a “large-scale and widespread” manner “in spite of its knowledge of the impact, provided by its own intelligence systems and through notification by the United Nations, the ICRC and others.”³¹¹ As mentioned, during several of the worst periods of shelling, the army fired hundreds, possibly thousands, of shells in a day or less.

In addition, in January 2009, the LTTE began enforcing a policy of preventing civilians from leaving the areas under its control,³¹² of which the government was aware.³¹³ While “many” Tamil civilians did not try to leave for fear of reprisals from the LTTE,³¹⁴ “many” chose to stay in the LTTE-controlled areas for various reasons.³¹⁵ OISL found that those in the latter category were afraid of abuses by the Sri Lankan government and/or its forces—including enforced disappearances, torture, rape, and losing their freedom in government-run IDP camps—if they crossed over.³¹⁶ Moreover, the Vanni was home for most of the remaining civilians.³¹⁷

Deliberately Disproportionate (or Indiscriminate) Attacks on Tamil Civilians

Within one week of declaring the first “No Fire Zone,” the government alleged the LTTE was using Tamil civilians as “human shields.”³¹⁸ By at least April, a military spokesman claimed the “LTTE [was] keeping all civilians in that area as hostages.”³¹⁹ For the final months, and even after the war’s end, the Sri Lankan government and its forces maintained it followed a “zero civilian casualty” policy. Furthermore, it framed its campaign in the Vanni as a “humanitarian rescue operation”³²⁰ taking place during a counterinsurgency against a “terrorist” organization (for details on the use of counterinsurgency as a cover to commit genocide, see discussion *infra* “[Opportunity to Commit Genocide Existed](#)”).

³¹¹ POE Report at ii.

³¹² OISL could not confirm whether this policy included shooting civilians who attempted to cross into government-controlled territory. POE Report, ¶ 177(a); OISL Report, ¶¶ 907-908.

³¹³ Human Rights Watch, *War on the Displaced* at 20.

³¹⁴ OISL Report, ¶ 911.

³¹⁵ *Id.* ¶¶ 913-915.

³¹⁶ POE Report, ¶ 71; OISL Report at 915.

³¹⁷ POE Report, ¶ 71.

³¹⁸ See, e.g., ‘*Many civilians dead*’ in Sri Lanka, Al Jazeera (Jan. 27, 2009), <https://www.aljazeera.com/news/2009/1/27/many-civilians-dead-in-sri-lanka>.

³¹⁹ *Army to rescue trapped civilians but NGO says people still at risk*, Radio France Internationale (Apr. 10, 2009), http://www1.rfi.fr/actuen/articles/112/article_3442.asp; *Sri Lankans flee ‘hellish’ war zone*, Al Jazeera (Apr. 22, 2009), <https://www.aljazeera.com/news/2009/4/22/sri-lankans-flee-hellish-war-zone-2>; POE Report, ¶ 174.

³²⁰ POE Report, ¶ 2; OISL Report, ¶ 734.

As mentioned, the Sri Lankan government and its forces had more than enough information to know the vast majority of Tamils in the war zone were civilians (that is, 300,000) who did not pose a serious military threat. In comparison, the LTTE had up to 20,000 combatants, including no more than 5,000 “core fighters” in the same area.³²¹ By April 20, Defense Secretary Gotabaya Rajapaksa said only 200 fighters remained in the area,³²² but the military’s shelling killed an average of 1,000 Tamil civilians each day from the end of April until May 19.

Knowing LTTE fighters constituted less than 7% of Tamils in the Vanni in the first “No Fire Zone,” a figure that decreased as combatants were increasingly killed or captured, the army nevertheless failed to take all feasible precautions to avoid or minimize civilian casualties while pushing both the LTTE and Tamil civilians into increasingly smaller “No Fire Zones.”³²³ Instead, the army did the opposite by launching deliberately disproportionate attacks. Launching a disproportionate attack is prohibited under international humanitarian law,³²⁴ and disproportionate attacks, deliberate or not, are a type of indiscriminate attack.³²⁵ In other words, the army’s attacks did not differentiate between LTTE combatants and trapped Tamil civilians, thus indiscriminately killing tens of thousands of Tamil civilians in the Vanni.

To maintain it was implementing a “zero civilian casualty” policy, under which the Sri Lankan military bore zero responsibility for civilian casualties, the government tried to reframe the civilian population as LTTE combatants. Civilian casualties that the government could not redefine away were deemed human shields and blamed on the LTTE.

Conflation and Reframing of Tamil Civilians as LTTE Combatants

Since 2008, Sri Lankan officials increasingly reframed the civilian population as LTTE combatants in an attempt to claim casualties were only of combatants.

The UN Panel of Experts believed “the Government conflated civilians with LTTE in the final stages of the war,” noting that since 2008, the government increasingly applied the Tamil word *Maaveerar* (Great Heroes)—which Tamils have used to describe killed or otherwise fallen LTTE fighters—to all Tamils in the Vanni.³²⁶ At the time when international observers were leaving the LTTE-controlled areas in September 2008, Defense Secretary Gotabaya Rajapaksa said: “Anybody who is not supporting the Forces, they are in [*sic*] the other side, because there are only two sides[,] LTTE and the Security Forces,”³²⁷ categorizing all Tamils who do not support the military as LTTE sympathizers.

³²¹ POE Report, ¶ 66.

³²² *Sri Lankan army ‘rescues civilians’*, Al Jazeera (Apr. 20, 2009), <https://www.aljazeera.com/news/2009/4/20/sri-lankan-army-rescues-civilians>.

³²³ POE Report, ¶ 205; OISL Report, ¶ 777.

³²⁴ Customary IHL - Rule 14. Proportionality in Attack, International Committee of the Red Cross Database, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule14> (last visited Sept. 5, 2024) [hereinafter ICRC Customary Rule 14].

³²⁵ Additional Protocol I to the Geneva Conventions art. 51(5)(b), June 8, 1977, 1125 U.N.T.S. 17512 (entered into force Dec. 7, 1978), <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-51>.

³²⁶ POE Report, ¶ 131, n.77.

³²⁷ *A matter of time for total victory for the Security Forces*, Daily News (Sept. 11, 2008), <https://archives.dailynews.lk/2008/09/11/fea02.asp>.

On January 28, 2009, Sri Lanka's military spokesman told the media: "We are targeting the LTTE. We are not targeting any civilians, so there can't be any civilians killed." In a media interview on February 3, Gotabaya Rajapaksa said "only LTTE sympathizers" were present in the government-designated safe zone. Based on these statements, Human Rights Watch concluded that the Sri Lankan government treated civilians as legitimate LTTE targets.³²⁸

On February 8, a UN delegation presented an estimated civilian death toll to Sri Lankan ministers and officers. According to a UN spokesperson at the time, Gotabaya Rajapaksa angrily "insisted that they should refer to the dead as 'people' rather than 'civilians,' suggesting that no distinction could be made between fighters and innocent victims."³²⁹

In a media interview on March 2, the Minister of Disaster Management and Human Rights said: "We have never targeted civilians and we will never target civilians." Nevertheless, later in that interview, he said the government responds to civilian death tolls by asking "How do you identify a civilian from a terrorist?"³³⁰ Similarly, the Sri Lankan media anonymously quoted a senior Sri Lankan diplomat as saying "a fighter doesn't become a civilian when he dons a sarong."³³¹ Human Rights Watch cited this diplomat's quote and another by the Health Secretary—who had said "terrorists fight in civil clothes and when they get wounded they can be mistakenly considered as civilians"—accusing the government of targeting civilians and denying their civilian status.³³² Importantly, both during and after the final phase, neither international NGOs nor the UN documented perfidious attacks³³³ (for example, LTTE fighters intentionally feigning civilian status, including by disguising themselves in civilian clothes, to conduct attacks) by the LTTE in the war zone.

Three days after the government announced on April 27 that the army had been instructed to stop using heavy weapons, President Mahinda Rajapaksa reiterated these alleged instructions. "We can't use heavy weapons," he said. "And we can't do air attacks, because we are worried about the innocent people there. They may be Tamils. But they are citizens of this country."³³⁴ His statement frames Tamils as a lesser people, albeit with citizenship, and also lies: the shelling did not stop, killing an average of 1,000 Tamil civilians each day from the end of April until May 19.³³⁵

Finally, in the aforementioned media interview where Gotabaya Rajapaksa claimed that hospitals operating outside the "No Fire Zone" were legitimate targets, he also said: "to crush

³²⁸ Human Rights Watch, *War on the Displaced* at 19-20.

³²⁹ Gordon Weiss, *The Cage: The Fight for Sri Lanka and the Last Days of the Tamil Tigers* 124 (2012).

³³⁰ Interview by BBC HARDtalk with Mahinda Samarasinghe, Disaster Management and Human Rights Minister of Sri Lanka (Mar. 2, 2009), available at <https://archives.dailynews.lk/2009/03/10/fea03.asp>.

³³¹ *Lanka's battle with the world*, *The Sunday Times* (Mar. 29, 2009), <https://www.sundaytimes.lk/090329/Editorial.html>.

³³² Meenakshi Ganguly, *Island of blood*, *Hindustan Times* (Apr. 30, 2009), <https://www.hindustantimes.com/india/island-of-blood/story-c3eQU1OxsY2PkvfsgneE4M.html>.

³³³ The "simulation of civilian status[,] because civilians not taking a direct part in hostilities must be respected and may not be the object of attack," "committed with the intent to betray the confidence of the adversary" is considered a perfidious act. *Customary IHL - Rule 65. Perfidy*, International Committee of the Red Cross Database, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule65> (last visited Sept. 5, 2024).

³³⁴ Harrison at 12. OISL Report, ¶ 870.

³³⁵ See discussion *supra* "[Civilian Death Toll](#)."

the terrorists, there is nothing called unproportionate.”³³⁶ Again, launching a disproportionate attack is prohibited under international humanitarian law.

For two years after the war’s end, until the release of the UN Panel of Experts’ report, the government maintained that it abided by a “zero civilian casualty” policy.³³⁷ Notably, denial is a final stage of the genocidal process.³³⁸

The Sri Lankan military’s deliberately disproportionate attacks that indiscriminately killed Tamil civilians, coupled with the government and military’s purposeful conflation of Tamil civilians with LTTE combatants, indicate Sri Lanka’s intent was to destroy the Tamils in the Vanni.

Denial of Responsibility for Tamil Civilian Casualties

Despite the absence of most international observers in the war zone, the Sri Lankan government could not conceal mounting Tamil civilian casualties.

Amnesty International, Human Rights Watch, and the International Crisis Group apprised policymakers in key capitals and embassies in Colombo and published op-eds in major international media.³³⁹ Tamil diaspora organizations also organized advocacy campaigns and massive demonstrations in major cities³⁴⁰ and engaged with the media about the dire situation of Tamils trapped in the war zone.³⁴¹

The Sri Lankan government responded by denouncing the NGOs and their findings.³⁴² It also blamed the LTTE, particularly with human shielding accusations, attempting to place sole responsibility for civilian casualties on the LTTE. According to a February 2009 Human Rights Watch report, the “government has sought to justify attacks that have resulted in high civilian casualties on the grounds ... that the LTTE’s use of civilians as shields rendered the LTTE fully responsible for any civilian loss.”³⁴³

The government’s denial of responsibility continued after the war’s end, as exemplified by its response to the UN Panel of Experts’ report. Although this report forced the government to admit it did, in fact, cause civilian casualties, it only conceded “collateral damage.”³⁴⁴ Collateral

³³⁶ POE Report, ¶ 93 (citing Gotabaya Rajapaksa’s *Sky News* interview on Feb. 2, 2009).

³³⁷ *Sri Lanka Admits to Civilian Deaths During War*, VOA News (July 31, 2011), <https://www.voanews.com/a/sri-lanka-admits-to-civilian-deaths-during-war-126522063/143150.html>. See generally OISL Report, ¶¶ 733-745 (describing and refuting the government’s alleged “zero civilian casualty” policy).

³³⁸ Stanton, *Ten Stages of Genocide*.

³³⁹ Becker at 155-56.

³⁴⁰ See, e.g., Becker at 167.

³⁴¹ In early 2009, PEARL organized a hunger strike called “Starving for Peace” to raise awareness about the plight of the Tamils in the Vanni. See, e.g., Jillian Jorgensen & Farah Stockman, *Teen fasts to publicize plight of Tamils in Sri Lanka*, *The Boston Globe* (Feb. 13, 2009), https://web.archive.org/web/20090216110418/https://www.boston.com/news/local/massachusetts/articles/2009/02/13/teen_fasts_to_publicize_plight_of_tamils_in_sri_lanka/.

³⁴² Becker at 156.

³⁴³ Human Rights Watch, *War on the Displaced* at 20.

³⁴⁴ Sri Lanka Ministry of Defence, *Humanitarian Operation Factual Analysis: July 2006 - May 2009*, ¶¶ 12, 283 (July 2011), https://web.archive.org/web/20111107213544/https://www.defence.lk/news/20110801_Conf.pdf.

damage is legally acceptable if civilian casualties and/or damage to civilian objects is not “excessive in relation to the concrete and direct military advantage anticipated” (or disproportionate).³⁴⁵

The government claimed whatever collateral damage it caused had resulted from the “LTTE’s cynical choice of tactics including the unlawful strategy of deliberately shielding their operatives and munitions.”³⁴⁶ Importantly, however, the UN Panel of Experts concluded the LTTE did not use human shields.³⁴⁷

Instead, the UN Panel of Experts found that the LTTE’s conduct constituted hostage-taking “insofar as they forced thousands of civilians ... to remain in areas under their control,” not human shielding.³⁴⁸ Yet even after the release of the UN Panel of Experts’ report with this finding, the government continued to claim the LTTE was using human shields, as analyzed below. Human shielding requires purposefully placing civilians or combatants *hors de combat* close to military objectives with the goal of preventing enemy attacks on such objectives.³⁴⁹ Hostage-taking does not.³⁵⁰

The Sri Lankan government alleged human shielding, instead of hostage-taking, to justify its own attacks on Tamil civilians. Human shields (unlike hostages) must be, by definition, purposefully placed near a military objective. In the government’s view, the warring party that used human shields (that is, the LTTE) intentionally violated the principle of distinction and would bear full responsibility for human shield casualties.³⁵¹ Such a position purports to absolve the attacking party (that is, Sri Lanka) of any responsibility for human shield casualties. In reality, one warring party’s use of human shields does not remove the attacking party’s legal obligations to distinguish between civilians (that is, human shields) and military targets and to not launch indiscriminate or disproportionate attacks.

International humanitarian law notwithstanding, since the 20th century, including today, states have used human shielding accusations, blaming and trying to shift responsibility for mass civilian deaths, even genocide, to those using human shields.³⁵² Denial, as a final stage of the

³⁴⁵ ICRC Customary Rule 14.

³⁴⁶ Sri Lanka Army, *Full Report of the Army Board on LLRC Observations Released*, ¶ 15 (Jan. 2013), https://www.army.lk/docimages/image/LLRC_2013.pdf.

³⁴⁷ POE Report, ¶ 237.

³⁴⁸ *Id.*

³⁴⁹ “The use of human shields requires an intentional co-location of military objectives and civilians or persons *hors de combat* with the specific intent of trying to prevent the targeting of those military objectives.” *Customary IHL - Rule 97. Human Shields*, International Committee of the Red Cross Database, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule97> (last visited Sept. 5, 2024).

³⁵⁰ *Customary IHL - Rule 96. Hostage-Taking*, International Committee of the Red Cross Database, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule96> (last visited Sept. 5, 2024).

³⁵¹ Neve Gordon & Nicola Perugini, *Human Shields: A History of People in the Line of Fire* 147, n.23 (2020) (describing an argument in Michael A. Newton & Larry May, *Proportionality in International Law* (2014)). Michael Newton was one of the international humanitarian law experts hired by the Sri Lankan government to defend its conduct. He argued all Tamil civilians in the “No Fire Zones” were human shields. *Id.* at 143, 147.

³⁵² Beth Van Schaack, *Human Shields: Complementary Duties Under IHL*, 110 *AJIL Unbound* 317, 317 (2017), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/9BEEED33AE28923975BCED78F08208C3/S2398772316000052a.pdf/div-class-title-human-shields->

genocidal process, not only concerns whether genocidal acts occurred, but also responsibility for them.³⁵³ The Sri Lankan government's actions fit this pattern by denying that the military's attacks were deliberately disproportionate and indiscriminately killed Tamil civilians.

2. In Part (or In Substantial Part)

According to international jurisprudence, for the purposes of genocide, "part" of a group depends on:

- its substantiality (the primary requirement),³⁵⁴ determined by its numeric size and proportion in relation to the whole group, and
- other criteria, including but not limited to its prominence among the whole group³⁵⁵ and whether the alleged perpetrators had the opportunity available to commit genocide.³⁵⁶

As analyzed below, the Tamils in the Vanni were a substantial and prominent part of the Tamil people, and the Sri Lankan military had—and took—the opportunity available to commit genocide.

Large Relative Number and Proportion of Tamils in the Vanni

The substantiality of the targeted part of a group is the primary requirement, according to the International Court of Justice.³⁵⁷

During the war's final phase, the targeted group of at least 300,000 Tamils in the Vanni constituted almost 10% of the total number of Tamils in Sri Lanka and 20% of those in the North-East. The 40,000 to 169,796 Tamils killed or unaccounted for and presumed killed constituted about 1.3 to 5.5% of the total number of Tamils in Sri Lanka and about 2.7% to 11.3% of those in the North-East.³⁵⁸ As mentioned, the shelling sometimes wiped out entire families.³⁵⁹ These figures are numerically and proportionally large (that is, substantial) and comparable to those used as evidence of genocidal intent in international criminal jurisprudence.³⁶⁰

complementary-duties-under-ihl-div.pdf; Nicola Perugini & Neve Gordon, *A Legal Justification for Genocide*, Jewish Currents (July 17, 2024), <https://jewishcurrents.org/human-shields-gaza-israel-a-legal-justification-for-genocide>.

³⁵³ Stanton, Ten Stages of Genocide.

³⁵⁴ *Bosnia v. Serbia*, ¶¶ 198 (citing *Krstić*, Appeals Judgment, ¶ 8-11), 296; *Krstić*, Appeals Judgment, ¶ 12.

³⁵⁵ *Bosnia v. Serbia*, ¶ 200 (citing *Krstić*, Appeals Judgment, ¶ 12).

³⁵⁶ *Bosnia v. Serbia*, ¶ 199 (citing *Krstić*, Appeals Judgment, ¶ 13); *Krstić*, Appeals Judgment, ¶ 13.

³⁵⁷ *Bosnia v. Serbia*, ¶ 296.

³⁵⁸ PEARL used the Sri Lankan government's final wartime census in 2001 to calculate the percentages. Sri Lanka Department of Census and Statistics, *Brief Analysis of Population and Housing Characteristics*, at 10 (estimating 3,092,676 people of Tamil ethnicity on the island, including 1,501,475 in the eight districts in the North (Jaffna, Kilinochchi, Mannar, Mullaitivu, and Vavuniya) and East (Amparai, Batticaloa, and Trincomalee)).

³⁵⁹ OISL Report, ¶ 1267.

³⁶⁰ In 1995, before the Srebrenica genocide occurred, approximately 40,000 Bosnian Muslims, including displaced people, were in Srebrenica. They were just under 2.9% of the total number of Bosnian Muslims in Bosnia and Herzegovina. *Krstić*, Appeals Judgment, ¶ 15, n.27. Although the *Krstić* Appeals Chamber considered this "only a small percentage," it determined that Bosnian Muslims in Srebrenica constituted a "substantial part" of all Bosnian Muslims in Bosnia and Herzegovina due to the part's prominence. *Id.* ¶¶ 15-18.

Prominence of Tamils in the Vanni among the Tamil People

The prominence of the targeted part of a group can be determined by its strategic importance³⁶¹ and presence of leadership whose extermination would impact the group's survival,³⁶² such as political leaders, law enforcement personnel, and military personnel.³⁶³ A UN Security Council-established commission noted that law enforcement and military personnel may constitute "a significant section of a group" if their extermination "renders the group at large defenceless against other abuses of a similar or other nature, particularly if the leadership is being eliminated as well."³⁶⁴ The commission further considered whether "at the same time or in the wake of that [extermination of leadership], [the group] has a relatively large number of the members ... killed or subjected to other heinous acts."³⁶⁵

The LTTE-controlled North-East constituted the de facto state of Tamil Eelam, whose capital was in Kilinochchi in the Vanni.³⁶⁶ Thus, capturing the Vanni, the last area under LTTE control, was essential to the Sri Lankan government's goal of recreating a unitary state on the island.³⁶⁷ This situation involves facts analogous to those used by international courts to determine the strategic importance of Bosnian Muslims in Srebrenica, among Bosnian Muslims as a whole, to alleged Bosnian Serb Army perpetrators.³⁶⁸

In addition, the LTTE's leadership (both civilian and combatant) were among the Tamils in the Vanni. When Sri Lanka's final military offensive exterminated the LTTE's leadership, including by extrajudicially executing those who had surrendered,³⁶⁹ it rendered Tamils defenseless to the Sri Lankan government and security forces' arbitrary arrests and detention, custodial physical and sexual torture, land grabs, and internal displacement that persists to date.³⁷⁰

³⁶¹ Alongside its analysis of the numeric size and proportion of Bosnian Muslims in Srebrenica, the *Krstić* Appeals Chamber considered that Srebrenica was of "immense strategic importance" to the Bosnian Serb leadership who desired its "capture and ethnic purification" to undermine the viability of a Bosnian Muslim state and to enable the creation of a contiguous ethnically Serb state. *Krstić*, Appeals Judgment, ¶ 15.

³⁶² U.N. Security Council, *Letter dated 24 May 1994 from the Secretary-General to the President of the Security Council*, U.N. Doc. S/1994/674 (May 27, 1994), ¶ 94, <https://www.legal-tools.org/doc/3a3ae2/pdf> [hereinafter Secretary-General Letter]. By contrast, the *Tolimir* Appeals Chamber could not infer genocidal intent given the lack of evidence that the Bosnian Serb Army's killings of three Bosnian Muslim leaders of Žepa would "intimidate and expedite the removal of the Bosnian Muslims of Žepa, prevent their return, or impact their survival as a group in any other way" or "[affect] the ability of those removed civilians to survive and reconstitute themselves as a group." *Prosecutor v. Tolimir*, Case No. IT-05-88/2-A, Appeals Judgment, ¶¶ 266-67, 269 (International Criminal Tribunal for the former Yugoslavia, Apr. 8, 2015), https://www.icty.org/x/cases/tolimir/acjug/en/150408_judgement.pdf.

³⁶³ *Jelisić*, Trial Judgment, ¶ 82 (quoting Secretary-General Letter, ¶ 94); *Prosecutor v. Sikirica*, Case No. IT-95-8-T, Trial Judgment, ¶ 65 (International Criminal Tribunal for the former Yugoslavia, Sept. 3, 2001), <https://www.legal-tools.org/doc/682ea1/pdf>; *Krstić*, Appeals Judgment, ¶ 12 (citing *Jelisić*, Trial Judgment, ¶ 82; *Sikirica*, Trial Judgment, ¶ 65); *Bosnia v. Serbia*, ¶ 200 (citing *Krstić*, Appeals Judgment, ¶ 12); Secretary-General Letter, ¶ 94.

³⁶⁴ Secretary-General Letter, ¶ 94.

³⁶⁵ Other heinous acts include, for example, large-scale deportations or forced displacement. *Id.*

³⁶⁶ POE Report, ¶¶ 33, 46.

³⁶⁷ See discussion *supra* "[Internal Armed Conflict and Tamil Death Toll](#)."

³⁶⁸ *Bosnia v. Serbia*, ¶ 296 (citing *Krstić*, Appeals Judgment, ¶ 15); *Krstić*, Appeals Judgment, ¶ 15.

³⁶⁹ In the last week of the war, the Sri Lankan army extrajudicially executed "a number of" LTTE political civilian and combatant members, including leaders and prominent figures, after they surrendered. See *generally* OISL Report, ¶¶ 286-311, 315-317.

³⁷⁰ See discussion *supra* "[Ongoing Postwar Human Rights Violations and Persecution](#)."

The strategic importance of Tamils in the Vanni, the “relatively large number” of Tamil victims in the Vanni during the extermination of Tamil Eelam’s leadership (that is, the LTTE’s leadership), and the consequent inability of Tamils in the North-East to defend against Sri Lanka’s postwar and ongoing human rights violations and persecution in the wake of that extermination indicates the prominence of Tamils in the Vanni among the Tamil people.

Opportunity to Commit Genocide Was Available and Taken

The Sri Lankan government and its forces had the opportunity to commit genocide against the Tamil people in 2009, created—and, importantly, shielded—by the final military offensive to capture the Vanni and eliminate the LTTE.

Opportunity to Commit Genocide Existed

The opportunity available to commit genocide depends partly on the geographical area of the perpetrators’ activity and control.³⁷¹

To determine what opportunity was available to the Sri Lankan government and its forces to commit genocide in 2009, it is useful to consider international courts’ analysis of what opportunity was available to the Bosnian Serb Army in 1995. The International Criminal Tribunal for the former Yugoslavia found that Bosnian Muslims in Srebrenica were the only part of the Bosnian Muslim group within the geographic area of activity and control of the Bosnian Serb Army forces who allegedly had genocidal intent. Consequently, the Bosnian Serb Army’s opportunity to commit genocide against the Bosnian Muslim group was limited to Bosnian Muslims in Srebrenica.³⁷²

Analogous facts in Sri Lanka reveal that the Sri Lankan government and its forces’ opportunity to commit genocide against the Tamil people was limited to Tamils in the Vanni.

³⁷¹ *Bosnia v. Serbia*, ¶ 199 (citing *Krstić*, Appeals Judgment, ¶ 13).

³⁷² *Krstić*, Appeals Judgment, ¶ 17.

	Facts in Srebrenica ³⁷³	Analogous facts in Sri Lanka
Geographical area of the government and/or military’s authority	The authority of the Bosnian Serb Army extended throughout Bosnia, excluding Srebrenica	The authority of the Sri Lankan government and military—whose conduct as <i>de jure</i> state organs is attributable to the state—extended throughout Sri Lanka, excluding the LTTE-controlled Vanni
Alleged perpetrators	The Bosnian Serb Army forces charged with capturing Srebrenica	The Sri Lankan military forces charged with capturing the Vanni
Geographical area of the alleged perpetrators’ authority	The authority of the alleged perpetrators of the Srebrenica genocide (Bosnian Serb Army forces charged with capturing Srebrenica) was limited to Srebrenica and the surrounding region	The authority of the alleged perpetrators of the “Mullivaikkal Genocide” (Sri Lankan military forces charged with capturing the Vanni) was limited to the Vanni
Part of the group within the alleged perpetrators’ area of authority	Bosnian Muslims in Srebrenica	Tamils in the Vanni

The context in which Sri Lankan forces’ killings of Tamils in the Vanni occurred—an escalating internal armed conflict and counterinsurgency—further explains the geographical area of the perpetrators’ activity and control.

Internal armed conflict and genocide are not mutually exclusive,³⁷⁴ and neither are counterinsurgency and genocide.³⁷⁵ In fact, both internal armed conflict³⁷⁶ and

³⁷³ *Id.*

³⁷⁴ Genocides usually happen during armed conflicts, including if one warring party expands its targeting from combatants to civilian populations perceived as supporting the other party. *What have we learned about the risk factors and warning signs of genocide?*, United States Holocaust Memorial Museum, <https://encyclopedia.ushmm.org/content/en/question/what-have-we-learned-about-the-risk-factors-and-warning-signs-of-genocide> (last visited Sept. 5, 2024); A. Dirk Moses, *Civil War or Genocide? Britain and the Secession of East Pakistan in 1971*, in *Civil Wars in South Asia: State, Sovereignty, Development* 142, 144 (Aparna Sundar & Nandini Sundar eds., 2014), available at https://www.dirkmoses.com/uploads/7/3/8/2/7382125/moses_civil_war_or_genocide_east_pakistan.pdf.

³⁷⁵ See generally Cheng Xu, *Draining the Sea: Counterinsurgency as an Instrument of Genocide*, 12 *Genocide Studies International* 6 (2018), <https://www.jstor.org/stable/26986085>.

³⁷⁶ Nicolas Rost, *Will it happen again? On the possibility of forecasting the risk of genocide*, 15 *Journal of Genocide Research* 41, 49 (2013). See generally Xu, *Draining the Sea*.

counterinsurgency³⁷⁷ can be—and have been—used as a cover to commit genocide.³⁷⁸ Despite this fact, perpetrator states, and even members of the international community, often claim that mass violence in the context of an internal armed conflict or counterinsurgency cannot, by definition, be genocide.³⁷⁹

This paradigm enabled President Mahinda Rajapaksa's government to frame its final military offensive solely within the global "war on terror,"³⁸⁰ also gaining the support of other states in this manner.³⁸¹ It correctly predicted that a winning counterinsurgency against a "terrorist" organization would outweigh criticisms of Sri Lankan forces' conduct.³⁸² As mentioned, the departure of most international observers from the Vanni "left the population vulnerable to violations," and Tamil sources left behind were dismissed or perceived as biased.³⁸³ This meant Tamils' early and contemporaneous warnings of escalating genocidal violence went unheeded.³⁸⁴

That the Sri Lankan government and its forces had the opportunity to commit genocide can be inferred from officials' statements. In response to major donor governments' call on February 3, 2009, for the government and the LTTE to implement a temporary humanitarian ceasefire, the Prime Minister said: "Under no circumstance will the Government suspend the ongoing military operations against LTTE terrorists until they are completely wiped out from the face of the land."³⁸⁵ After the LTTE requested a truce on February 23, an army division commander said: "We have a job to do. We are not bothered about any truce at the moment."³⁸⁶ Also expressing the no-holds-barred nature of the war's final phase, President Mahinda Rajapaksa said on March 31: "We will not cave in to pressures from any international quarters, locally and internationally, and will not stop until the war is completely over."³⁸⁷

Consequently, the final military offensive to capture the Vanni presented an opportunity for the Sri Lankan government and its forces—under the cover of the intensified counterinsurgency to defeat the LTTE and end 26 years of war—to commit genocidal acts with the intent to destroy the Tamils therein.

³⁷⁷ See generally Xu, *Draining the Sea*.

³⁷⁸ Kate Cronin-Furman, *The Problems of Genocide Advocacy*, 2023 *Global Intellectual History* (Special Issue) 1, 4 (reviewing A. Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (2021)), <https://www.tandfonline.com/doi/full/10.1080/23801883.2023.2253013>.

³⁷⁹ Moses, *The Problems of Genocide* at 2; Cronin-Furman at 4 (referring to claims that China could not have committed genocide against the Uyghur people because "China experienced repeated terrorist attacks in Xinjiang" and that Myanmar could not have committed genocide against the Rohingya people because of its "legitimate counter-insurgency campaign against militants").

³⁸⁰ Becker at 168-69.

³⁸¹ POE Report, ¶¶ 44; Becker at 169.

³⁸² Becker at 158-59, 168-69.

³⁸³ POE Report, ¶¶ 76, 134.

³⁸⁴ Cronin-Furman at 5.

³⁸⁵ Political Editor, *Rajapaksa rides high, victory is nigh*, *The Sunday Times* (Feb. 8, 2009), <https://www.sundaytimes.lk/090208/Columns/political.html>.

³⁸⁶ C. Bryson Hull, *Sri Lankan army measures end of 25-year war in days*, *Reuters* (Feb. 23, 2009), <https://www.reuters.com/article/us-srilanka-war-frontline-idUSCBH2300120090223/>.

³⁸⁷ Harrison at 11.

In other words, the legal and factual opportunity available to commit genocide was limited to the Vanni and the Tamils therein.

Opportunity to Commit Genocide Was Taken

According to the International Court of Justice, the “criterion of opportunity must ... be weighed against the first and essential factor of substantiality” in determining whether genocide occurred.³⁸⁸ As already shown, the targeted part (the Tamils in the Vanni) is a substantial part of the whole group.³⁸⁹ To quantitatively determine whether the opportunity available to commit genocide was taken, the International Court of Justice compared the numeric size of the targeted part of the group to the number of deaths in the group.³⁹⁰

During the final phase, the Sri Lankan military operated in the Vanni, where they targeted at least 300,000 Tamils therein with genocidal acts, of whom 40,000 to 169,796 Tamils were killed or unaccounted for and presumed killed (in other words, 13% to 57% of the targeted part). Thus, the military took the available opportunity to kill at least 13% and presumably up to 57% of the targeted part. These percentages are much larger than those rejected by the International Court of Justice in a previous opportunity analysis.³⁹¹

The International Court of Justice also considered three less essential factors to determine whether the opportunity available to commit genocide was taken: whether mass displacements sought to physically destroy the targeted part, alleged perpetrators did not often evacuate civilians, and alleged perpetrators mostly executed captured combatants.³⁹²

Regarding the first two of the aforementioned three less essential factors, the Sri Lankan military’s strategy of instructing Tamil civilians in the Vanni to relocate to three consecutive “No Fire Zones” for their safety before intentionally shelling those areas had the objective of physically destroying the targeted part, not displacing *en masse* or evacuating civilians for their safety.³⁹³ Regarding the third less essential factor, although not all captured or surrendered LTTE combatants were executed, the LTTE’s leadership (both civilian and combatant) and many others were. LTTE members who were taken alive and detained were subjected to physical and sexual torture constituting the genocidal act of causing serious bodily or mental harm.³⁹⁴

³⁸⁸ *Bosnia v. Serbia*, ¶ 199.

³⁸⁹ See discussion *supra* [“Large Relative Number and Proportion of Tamils in the Vanni.”](#)

³⁹⁰ *Croatia v. Serbia*, ¶ 437.

³⁹¹ The targeted part in *Croatia v. Serbia* were the 1,700,000 to 1,800,000 Croats living in the regions of Eastern Slavonia, Western Slavonia, Banovina/Banija, Kordun, Lika, and Dalmatia in 1991, who were deemed a substantial part of the Croat group. The International Court of Justice found that 12,500 Croat deaths in relation to the targeted part was too small to conclude that the alleged perpetrators availed themselves of their opportunity to destroy a substantial part of the group. *Id.* ¶¶ 406, 437. 12,500 Croat deaths was less than 0.75% of the targeted part.

³⁹² *Id.* ¶¶ 434-36.

³⁹³ See discussion *supra* [“Indiscriminate Killing of Tamil Civilians in the Vanni.”](#)

³⁹⁴ See discussion *supra* [“Causing Serious Bodily or Mental Harm to Tamils in the Vanni.”](#)

3. A Protected Group, As Such

An ethnic group is one whose members share a common language or culture,³⁹⁵ and the Tamil people share both.³⁹⁶ Thus, the Tamil people are an ethnic group protected by the Genocide Convention.

According to international jurisprudence, the “as such” element stresses the “intent to destroy the protected group”³⁹⁷ and “presupposes that the victims were chosen by reason of their membership in the group whose destruction was sought.”³⁹⁸ This element can be inferred from the following factors, among others, which existed in Sri Lanka:

Factors in international jurisprudence indicating the victims were chosen because of their membership in the protected group whose destruction was sought	Factors in Sri Lanka indicating the victims were chosen because of their Tamil ethnicity (see discussion <i>supra</i> “ Genocidal Acts against the Tamil People ”)
Actions to prevent humanitarian assistance (for example, attacking humanitarian vehicles or creating food and medicine shortages) ³⁹⁹	Shelling of hospitals and areas near humanitarian aid ships Deliberate underestimates of the number of civilians for the purpose of limiting how much food, surgical, and other medical supplies could enter the war zone
Intensity and scale of the violence (for example, shelling safe zones, hospitals, and other humanitarian objects) ⁴⁰⁰	Large-scale, widespread, systematic, heavy, indiscriminate, and constant shelling of civilians, UN facilities, hospitals, food distribution lines, and areas near humanitarian aid ships in three “No Fire Zones,” each one smaller and with a denser concentration of civilians than the last

³⁹⁵ *Akayesu*, Trial Judgment, ¶ 513.

³⁹⁶ The sources of factual evidence in this paper recognize that the Tamil people are an ethnic group.

³⁹⁷ *Bosnia v. Serbia*, ¶ 187.

³⁹⁸ *Krstić*, Trial Judgment, ¶ 561.

³⁹⁹ The *Krstić* Trial Chamber inferred that the defendant chose Bosnian Muslims in Srebrenica *as such* from, among other facts, the Bosnian Serb Army’s harassment of humanitarian convoys heading for Srebrenica and the obstacles in evacuating the wounded and sick as well as the “extreme shortage of food and medicines.” *Id.* ¶¶ 565-566.

⁴⁰⁰ The Bosnian Serb Army shelled Srebrenica, a safe area, after achieving a military victory. Its shelling hit a hospital and UN peacekeeping compound. A UN Military Observer described the shelling as “quite high intensity, considering the size of those villages.” The *Krstić* Trial Chamber inferred that the defendant chose Bosnian Muslims in Srebrenica *as such* from, among other facts, this intensity and scale of violence. *Id.* ¶¶ 122, 565-566.

Number of civilian deaths (ranging from thousands to tens of thousands) ⁴⁰¹	At least 40,000 Tamil civilians were killed
Humanitarian crisis for displaced people (for example, if there is overcrowding and little food or water) ⁴⁰²	284,000 internally displaced Tamils were effectively detained in military-guarded and -run camps in extremely overcrowded, unsafe conditions without sufficient access to food, water, sanitation, or shelter The UN's top humanitarian official referred to this situation as a "crisis"

The presence of the aforementioned factors in Sri Lanka indicates that the Sri Lankan government and its forces targeted the victims with intentional, systematic violence because of their Tamil ethnicity. In other words, the alleged Sri Lankan perpetrators targeted the victims by reason of their membership in the Tamil ethnic group, whose destruction was sought.

⁴⁰¹ The *Kayishema* Trial Chamber inferred that the defendant Kayishema chose Tutsis as *such* based on the "tens of thousands" killed, whereas the *Krstić* Trial Chamber inferred that the defendant chose Bosnian Muslims as *such* based on the Bosnian Serb Army's execution of 7,000 to 8,000 Bosnian Muslim men. *Kayishema*, Trial Judgment, ¶ 531; *Krstić*, Trial Judgment, ¶ 84.

⁴⁰² The *Krstić* Trial Chamber found a "humanitarian crisis" due to the 20,000 to 25,000 Bosnian Muslims fleeing Srebrenica and seeking refuge in Potočari, including the UN compound, under "deplorable" conditions of overcrowding, heat, and little food or water. *Krstić*, Trial Judgment, ¶¶ 37-38, 568.

The Significance of Genocide Recognition

Policymakers can play an important role in redressing international crimes and upholding human rights. Knowing this, Tamil victims of international crimes have long called for genocide recognition and international criminal justice.⁴⁰³ Their pleas having gone unheard for over 15 years, Tamils are still waiting for justice.

Third-party genocide recognition provides victims with an acknowledgment that the specific crime of genocide was committed against them, which is crucial given the role that genocide denial by perpetrator states plays in intergenerational trauma and injustice.⁴⁰⁴ Such recognition carries weight for those affected even years after the genocide.⁴⁰⁵

Recognition of Sri Lanka's genocide against the Tamil people in 2009 by a State Party to the Genocide Convention (State Party) may implicate three legal obligations vis-à-vis alleged Sri Lankan genocidaires:

- To prevent genocide (Article I),
- To punish genocide (Article I), and
- To grant extradition of alleged genocidaires (Article VII).

Since the genocide is over and the Sri Lankan government has no plans or political will to prosecute alleged genocidaires, any obligations to prevent genocide or grant extradition of alleged genocidaires are moot. Thus, the only relevant provision is to punish genocide.⁴⁰⁶

A State Party can easily satisfy this expectation to punish genocide by:

- Applying national and universal jurisdiction, as relevant and in accordance with its domestic laws;
- Supporting the UN's Sri Lanka Accountability Project (OSLap), and urging it to expressly consider genocide allegations in its analyses of evidence; and
- Supporting the establishment of an international criminal justice mechanism to investigate alleged Sri Lankan perpetrators of international crimes, including genocide, and prosecute those most responsible.

⁴⁰³ See, e.g., Association for Relatives of the Enforced Disappearances, *Appeal from Associations for relatives of the Enforced Disappearances in Amparai, 2200 days of protest: 'We need an international justice mechanism!'* (Feb. 29, 2024), available at <https://www.tamilrightsgroup.org/wp-content/uploads/2024/03/ARED-Amparai-APPEAL-Feb2024.pdf>.

⁴⁰⁴ Michelle E. Ringrose, *The Politicization of the Genocide Label: Genocide Rhetoric in the UN Security Council*, 14 *Genocide Studies & Prevention* 124, 127 (2020), <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1603&context=gsp>; Melanie Altanian, *Genocide Denialism as an Intergenerational Injustice*, in *Intergenerational Equity: Environmental and Cultural Concerns* 159 (Thomas Cottier, Shaheez Lalani, & Clarence Siziba eds., 2019). See Buchwald & Keith at 23.

⁴⁰⁵ See, e.g., Lauren Baillie, *Why Biden's Recognition of the Armenian Genocide is Significant*, United States Institute of Peace (Apr. 29, 2021), <https://www.usip.org/publications/2021/04/why-bidens-recognition-armenian-genocide-significant>.

⁴⁰⁶ The International Court of Justice noted that states' obligations to prevent and punish genocide is not limited to the territory where the genocide was committed. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia v. Yugoslavia*), Judgment, 1996 I.C. J. Rep. 595, ¶ 31 (July 11), <https://www.icj-cij.org/sites/default/files/case-related/91/091-19960711-JUD-01-00-EN.pdf>.