

**KAMAL GUNARATNE
SECRETARY OF DEFENCE
SRI LANKA**

Dossier
December 2019

INTERNATIONAL
TRUTH
AND JUSTICE
PROJECT

**MAJOR GENERAL (RET.)
GABADAGE DON HARISCHANDRA KAMAL
GUNARATNE**

53 Division Commander in 2009
Currently Secretary of Defence
and
Sri Lankan Army Reserve Force.



SUMMARY

Sri Lanka's new secretary of defence commanded one of the most important military divisions in the 2009 war in the Vanni when the United Nations says there are reasonable grounds to say war crimes were committed by the men under his command. It is noteworthy that though appointed to a civilian post, he received a military parade at his inauguration¹ and remains in the Army's Reserve Force².

He went on to run Sri Lanka's most notorious army torture camp in Vavuniya for 18 months after the war at a time of mass detention. The ITJP has documented ten accounts of torture and/or sexual violence committed by soldiers against detainees in that period and this is likely the tip of the iceberg. There is no way as the camp commander he could not have known about detention there – this was not a legal detention site but contained purpose-built cells equipped for torture.

Kamal Gunaratne was also in charge post-war of internally displaced people – this was the illegal detention of 282,000 Tamil civilians who survived the war in Manik Farm and other sites. He also appears to have been involved in screening IDP's for suspected ex combatants and putting them in the government's "rehabilitation programme" which constituted wrongful detention according to the UN³.

After the war as a diplomat, Gunaratne is alleged to have been involved in a murder in the Embassy in Brazil when posted there.

Kamal Gunaratne belongs to the same regiment as the new President, Gotabaya Rajapaksa, and the current Army Commander Shavendra Silva, who are his friends⁴. He was involved in the war since 1985, fighting in the Jaffna peninsula in 1990 when the army lost control and again in 1995 when they recaptured it⁵

¹ <https://www.army.lk/news/new-secretary-defence-major-gen-ret-d-kamal-gunaratne-assumes-office>

However his predecessor also had one - <https://www.army.lk/news/secy-defence-general-ret-d-shantha-kottegoda-honoured-his-former-slli-regiment>

² [http://documents.gov.lk/files/gz/2016/10/2016-10-21\(I-I\)E.pdf](http://documents.gov.lk/files/gz/2016/10/2016-10-21(I-I)E.pdf)

³ 87 b. WGAD recommended regarding rehabilitation victims a "public acknowledgement of wrongful imprisonment and compensation and/or guarantees of non-repetition, including the immediate cessation of harassment and surveillance by the authorities of the detainees and their families.", A/HRC/39/45/Add.2.

⁴ Page 716, Road to Nandikadal'.

⁵ "Major General (Retd) Kamal Gunaratne actively contributed to the Wannu Humanitarian Operations during 2008 - 2009 and many other military operations including Vadamarachchi Operation, Operation Riviresa and Operation Jayasikurui. "

<https://www.army.lk/news/new-secretary-defence-major-gen-ret-d-kamal-gunaratne-assumes-office>

CAREER SUMMARY

GDHK Gunaratne, Gajaba Regiment
Staff number 0/60030

“a battle-hardened Gajaba Regiment warrior⁶”

Nov 2019 Secretary of Defence, Sri Lanka⁷.

Sep 2019 Publishes a book called “Gotabaya” on the President⁸.

2019 Key figure in Gotabaya Rajapaksa’s Viyathmaga Sinhala nationalist professionals’ movement⁹.

6 Sep 2016 Retired and transferred to Army Regular (General) Reserve Force¹⁰.

Publishes book "Road to Nandikadal" on his experiences as a soldier.

Mar 2016 Colonel of the Regiment, Mechanized Infantry Regiment (MIR). His wife Chithrani Gunaratne became Chairpeson of the MIR Seva Vanitha Unit (MIR-SVU)¹¹.

Jan-Feb 2015 Master General Ordnance¹².

Nov 2013 Under investigation for the killing Embassy staff member Nimal Rupasinghe¹³.

2012-14 Deputy Ambassador to Brazil; in 2014 Gotabaya Rajapaksa visited him¹⁴.

⁶ <https://www.army.lk/news/new-secretary-defence-major-gen-retd-kamal-gunaratne-assumes-office>

⁷ <http://www.pmdnews.lk/three-new-secretaries-appointed/>

⁸ <https://twitter.com/gotabayar/status/1177526484103135232?lang=en>

⁹ <https://english.theleader.lk/news/596-kamal-gunaratne-to-become-defense-secretary-if-gotabaya-wins>

Attacks Mahesh Sennanayake the Army Commander: <https://www.colombotelegraph.com/index.php/easter-sunday-attacks-viyathmaga-kamal-gunaratne-trashes-army-commander-and-the-police/>

¹⁰ It's not clear why Kamal Gunaratne has remained on the Reserve Force of the Sri Lankan Army after retirement in 2016. One theory is this may be because it affords him protection in terms of possible prosecution in a military court martial rather than a civil court.

[http://documents.gov.lk/files/gz/2016/10/2016-10-21\(I-I\)E.pdf](http://documents.gov.lk/files/gz/2016/10/2016-10-21(I-I)E.pdf)

¹¹ <https://alt.army.lk/sevavanitha/sevafullart.php?id=14652>

<https://alt.army.lk/sevavanitha/sevafullart>

¹² <https://www.parliament.lk/uploads/documents/paperspresented/performance-report-srilanka-army-2015.pdf>

¹³ <https://economynext.com/sri-lankaes-war-general-faces-investigation-over-embassy-murder-7508/>

<http://dbsjeyaraj.com/dbsj/archives/52803>

<https://lankanewsweb.net/news/special-news/30622-kamal-gunaratne-to-go-to-cid-wednesday>

¹⁴ <https://www.mfa.gov.lk/ta/4459-visit-of-the-secretary-to-the-ministry-of-defence-and-urban-development-to-brazil/>

2012 Adjutant General¹⁵.
 Aug-Dec 2012 Colonel Gajaba Regiment¹⁶.
 2009-2011 SFHQ-W Commander (Joseph Camp) and Competent Authority for the IDP camps¹⁷.
 05 Feb 2009 Promoted to Temporary Major General.
 1 Jul-15 Aug 09 Colonel Gajaba Regiment¹⁸.
 01 Oct 2008 Promoted to Brigadier¹⁹.
 26 Mar 2008 on 53 Division Acting Commander (on leave 1-2 April 2009²⁰).
 2008 55 Division Commander.
 2004-5 Gajaba Regiment Centre Commander²¹.
 2002-4 Defence Services Command and Staff College²².
 1997-1998 1st batch trainees Army Command & Staff College²³.
 17Oct-5 Dec 95 Operation Riviresa in the North.
 1994-7 Jun 97 Commander 6 Gajaba Regiment²⁴.
 1990 Involved in fighting at Jaffna Fort with Gajaba Regiment under Gotabaya Rajapaksa²⁵.
 14 Oct 1983 1 Gajaba Regiment (after Rajarata Rifles disbanded²⁶).
 1983 2nd Lt. Rajarata Rifles (under Gotabaya Rajapaksa) until disbanded for alleged involvement in anti-Tamil riots.
 31 Aug 1981 Joined the Army.
 1980 Left Ananda College, Colombo after A'Levels.

¹⁵ http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=56657 First was Maj Gen Chandrasisri.

https://www.facebook.com/pg/srilankaArmy/photos/?tab=album&album_id=364792186927679

¹⁶ <https://alt.army.lk/gajabaregiment/former-colonels-of-the-regiment>

¹⁷ <https://reliefweb.int/report/sri-lanka/sri-lanka-over-173000-idps-resettled-within-five-months> and https://wikileaks.org/plusd/cables/09COLOMBO1054_a.html

<https://www.army.lk/news/wanni-commander-takes-stock-progress-resettlement-programmes>

¹⁸ <https://alt.army.lk/gajabaregiment/former-colonels-of-the-regiment>

¹⁹ [http://documents.gov.lk/files/gz/2016/7/2016-07-22\(I-I\)E.pdf](http://documents.gov.lk/files/gz/2016/7/2016-07-22(I-I)E.pdf)

²⁰ §1.51 Island of Impunity report, https://www.piac.asn.au/wp-content/uploads/island_of_impunity.pdf

²¹ <https://alt.army.lk/gajabaregiment/fomer-centre-cmmandants>

²² <http://www.dscsc.lk/index.php/history/past-directing-staff>

²³ http://www.ptsrilanka.org/wp-content/uploads/2017/04/britains_dirty_war.pdf

²⁴ <https://alt.army.lk/gajabaregiment/6-gajaba-regiment>

²⁵ Page 189, The Road to Nandikadal, says 1GR under Lt. Col. Gotabaya Rajapaksa in this operation and 1SLSR under Lt. Col. Sarath Fonseka.

"The 1st battalion Gajaba Regiment was established on 14th October 1983 by amalgamating the 1st Rajarata Rifle battalion and 1st Vijayabahu Infantry Regiment as per a decision taken by the Army Headquarters due to the prevailing ethnic and separatist situation in Sri Lanka." <https://alt.army.lk/gajabaregiment/1-gajaba-regiment>

1989

Served in the Gajaba Regiment together



2009

Gajaba Regiment officers instrumental in final war



2019: PRESIDENT – GOTABAYA RAJAPAKSA

Defence Secretary during final war and widely considered to be the official with overall command responsibility.



2019: ARMY COMMANDER – SHAVENDRA SILVA

58 Division Commander in final war. Deputy Permanent Representative to the UN.



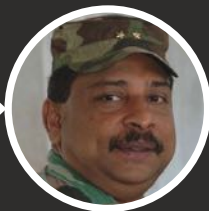
2019: DEFENCE SECRETARY – MAJOR GENERAL KAMAL GUNARATNE

53 Division Commander in final war. Was deputy ambassador to Brazil. Served in the Board of Inquiry that exonerated the Army of war crimes.



BRIGADIER CHAGGI GALLAGE

59 Division Commander in most of Final War; brief spell with 53 Division. Failed attempt to arrest him in London in 2010.



JAGATH DIAS

57 Division Commander in final war. Ambassador to Germany & Switzerland. 2015 was Chief of Staff of the Army.



MAJOR GENERAL UDAYA PERERA

2009-11 Deputy High Commissioner to Malaysia. 2012 US military training. 2015-17 Commandant at Defence Service Command and Staff College.



MAJOR GENERAL A.K.SUMEDHA PERERA

2009-11 ran "Joseph Camp". Deputy Chief of Staff of the Army. Served in the Court of Inquiry that exonerated the army of war crimes.

INDEX

1.The Early Years_____Page 8

[The 1983 Pogrom, 1984, On the LTTE,
The 1990 Loss and 1995 recapture of Jaffna]

2.The Final War_____Page 11

[The 53 Division , Locations and command in 2008-9,
Drones, United Nations Investigation Report,
Puthukkudiyiruppu, Putumattalan, Karaiyamullivaikal
and Vellamullivaikkal, May 2009 Surrenders,
Summary Executions, Torture].

3.Joseph Camp_____Page 37

[Joseph Camp Commander, Testimony]

4.Manik Farm_____Page 43

[The Competent Authority for IDPs, Role of
the Military, Freedom of Movement, Screening,
Sexual Abuse in Manik Farm]

5.Other post-war allegations_____Page 48

[Brazil Murder, Student Assault,
2019 Royal Institute]

6.Opposing Accountability_____Page 50

[Investigating Himself, 2012 Defence Seminar, Brazil,
2018 Comments on Disappearances, 2019 Support for
Brigadier Priyanka Fernando, Hate Speech]

7.Legal Analysis_____Page 54

Annexures_____Page 88-100

1. THE EARLY YEARS

1.1. THE 1983 POGROM

Regarding the 1983 anti-Tamil pogrom in Sri Lanka, Gunaratne says in his autobiography that members of the army who had supported the “riots” were later punished but added, “I doubt if all of them were identified or punished”²⁷.

His Rajarata Rifles regiment was disbanded after burning and looting occurred in Jaffna and in 1983 commentators said some “token action” was taken against indiscipline in the Army²⁸.

1.2 1984

Describing the army’s search and cordon operations in Tamil villages in the North at night, Gunaratne said “during the search phase we encountered disgraceful conduct of some rotten elements within the ranks, who used this opportunity to rob houses”²⁹.

In another chapter of the book, he writes “There were times we had to face very uncomfortable and embarrassing situations due to the disgraceful conduct of our soldiers...We had received several reports that some soldiers had robbed jewellery during search operations”³⁰. Gunaratne goes on to explain he dealt with the situation by telling the soldiers that the Tamil people were devotees of God and people who did this would be subjected to the curse of God. Reliance on the divine is clearly an inadequate approach to military discipline when a court martial system exists.

1.3 ON THE LTTE

Gunaratne commented on those members of the Liberation Tigers of Tamil Eelam (LTTE) who took cyanide capsules rather than be captured and said, “I was happy to see these terrorists...dying one by one”³¹.

²⁷ Page 53, The Road to Nandikadal.

²⁸ “On 8th June there began desertions from the Rajarata Rifles after 4 men were sacked over the burning in Jaffna on 18th May. Lt.Col L.D.C.E. Waidyaratne was made the new commanding officer following the interdiction of Lt.Col K.M.S. Perera over the desertions. A further 5 officers who criticised the new CO were reportedly sacked along with all 96 deserters.”
<http://www.uthr.org/Book/CHA04.htm>

²⁹ Page 55, Ibid. Also “ugly acts” of soldiers referenced on Page 68.

³⁰ Page 67, Ibid.

³¹ Page 57, Ibid.

He added that during this period (the eighties) “even I have committed some wrongdoings, which I honestly regret today...Assaulting terrorist suspects during interrogation was a very common occurrence in that period”³².

These sort of comments normalise the torture of prisoners of war and are disingenuous because the abuse continued throughout the ensuing decades of war and into the post-war period.



Photo: Gotabaya Rajapaksa and Kamal Gunaratne, 2019

1.4 THE 1990 ARMY LOSS AND 1995 RECAPTURE OF JAFFNA

Gunaratne’s autobiography describes how today’s top army brass were involved in the Jaffna Fort fighting in 1990 which saw government forces lose the peninsula. These included Gotabaya Rajapaksa, his second in command Sumedha Perera³³ (Gajaba Regiment), company commanders Udaya Perera³⁴ (Gajaba Regiment who went on to become Director of Operations in 2009) and Shavendra Silva³⁵ (Gajaba Regiment, 58 Division commander in 2009)³⁶. Gunaratne describes how the money, gold and jewellery kept

³² Page 57, Ibid.

³³ In 2016 Deputy Chief of Staff, <https://www.army.lk/news/major-general-sumedha-perera-appointed-new-deputy-chief-staff>

³⁴ <https://www.linkedin.com/in/udaya-perera-b495134b/>

³⁵ Army Commander in 2019.

³⁶ Page 192, The Road to Nandikadal.

for safe custody by banks inside the Fort were destroyed rather than let them fall into the hands of the LTTE³⁷.

Regarding the recapture of Jaffna in 1995 (Operation Riviresa), Gunaratne describes in detail how soldiers entered abandoned Tamil houses in Jaffna and “pulled things apart”; he says he is not sure how successful the commanding officers were in stopping this wrongdoing. He describes soldiers going on what they called “borrowing parties” where they helped themselves to Tamil goods and damaged their properties. He also describes soldiers spending a lot of time digging for buried treasure on the pretext of looking for weapons – based on the assumption that fleeing Tamils had buried their gold and valuables. Significantly during this operation, hundreds of complaints of enforced disappearances were reported³⁸.

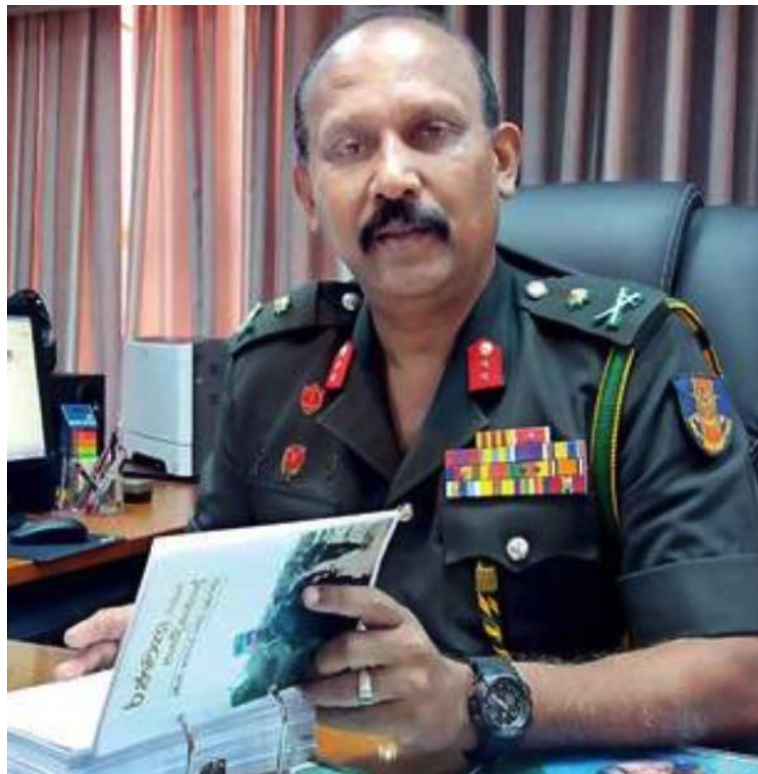


Photo: Kamal Gunaratne and his book on the war, ‘Road to Nandikadal’.

³⁷ Page 200, The Road to Nandikadal.

³⁸ Secretary of the Commission on Disappearances, MCM Iqbal says that the presidential commission SP/6/N/214/97 appointed on 30 April 1998 under Manori Muttettuwagama to investigate disappearances received around 600 complaints from mothers in Jaffna about disappearances during operation Riviresa. <http://www.jdslanka.org/s/index.php/2014-12-24-03-23-00/2014-12-24-03-24-33/485-2015-10-20-23-36-58>

“More and more evidence is emerging of the “disappearance” of approximately 540 people in six months in the middle of 1996 in the Jaffna peninsula.”, Amnesty International, <https://www.refworld.org/docid/3ae6a9900.html>

2. THE FINAL WAR

2.1. THE 53 DIVISION

Until 26 March 2008, Gunaratne was 55 Division Commander³⁹. Then he became 53 Division Commander until the end of the war. In his autobiography, Gunaratne described the 53 Division as “the most powerful division in the army...the 53 Division could be termed the very lifeblood of the Army.” He said at the start of the final phase of the war, in the entire army only the 53 and 55 Divisions “could be considered offensive divisions” in the north⁴⁰. His Division was one of the four main units involved in the ground battles of the 2009 war⁴¹. The 53 Division comprised the Air Mobile Brigade (headed by Col Shantha Dissanayake), the 533 Brigade (headed by Col Jayanath Jayaweera⁴²) the Mechanised Infantry Brigade (150+ light battle tanks). Second in command of the 52 Division was Sudath Perera⁴³ who is now a Major General and Chairman of Sri Lanka Army Athletics⁴⁴.

2.2 LOCATIONS AND COMMAND IN 2008-9

The location of the 53 Division can be ascertained from Ministry of Defence Situation reports, extracts of which are below in **Annexure 1**, the UN investigation report⁴⁵, testimony to the domestic Lessons Learned and Reconciliation Commission (LLRC)⁴⁶, contemporaneous local media reports, and from Kamal Gunaratne’s autobiography on the war.

The battle in the north was begun in 2007 by the 57 Division and Task Force 1 (which later became 58 Division) and according to Kamal Gunaratne, “the 53 and 55 Divisions kept the heat on, completely tying the LTTE to the ground of Muhamalai”⁴⁷. He says “the artillery fire exchanged between the army and the terrorists on any given day at Muhamalai exceeded the artillery fire exchanged

³⁹ Date from his autobiography, page 643. ‘Road to Nandikadal’. Prasanna de Silva took over the 55 Division at this point.

“Brig. Kamal Gunaratne, who commanded combat Divisions from the very inception of the Wannu operations”.

<https://www.nation.lk/2009/03/08/military.htm>

⁴⁰ Page 628, ‘Road to Nandikadal’.

⁴¹ “There were three Army Divisions and one Task Force mainly involved in the ground battle. The 53 Division commanded by Major General Kamal Gunarathne, the Task Force 8 commanded by Colonel G.V. Ravipriya, which was again placed under the operational command of the 53 Division and the 58 Division commanded by Brigadier Shavendra Silva were the main offensive elements that fought the End Battle... Major General Kamal Gunarathne, General Officer Commanding [GOC] of the 53 Division was quick to identify the crucial role that his troops have to play in the end battle. He called the entire battlefield commanders to place their troops at red alert and briefed them how to deal with the last escape attempt of the LTTE. All possible escape routes were blocked, ambush teams were placed, and all counter penetration measures were taken.”

June 2009, LLRP blog.

⁴² <https://www.linkedin.com/in/jayanath-jayaweera-47451a69/?ppe=1>

⁴³ Page 659, Road to Nandikadal’.

⁴⁴ <https://www.dailynews.lk/2019/03/22/sports/180990/female-athlete's-harassment-airport-noc-wants-inquiry>

⁴⁵ A/HRC.30.CRP.2

⁴⁶ <http://www.llrcarchive.org/2010/09/major-general-kamal-gunaratne/>

⁴⁷ Page 640, ‘Road to Nandikadal’.

by all five fronts combined”⁴⁸. This means the 53 Division contributed indirectly to the assault on Kilinochchi town in 2008.

The 53 Division was initially in Muhumalai, “constantly pounded by enemy artillery and mortar fire”, according to Gunaratne’s book. From January 2009, his troops moved down to Elephant Pass⁴⁹, Pallai⁵⁰ and then helped capture the whole of the strategic A9 north-south highway.

In January 2009 they moved to Mankulam to assist Task Force 3 which was led by Brigadier Sathyapriya Liyanage, who is the current Chief of Army Staff.



Map from February 2009⁵¹

⁴⁸ Page 651, 'Road to Nandikadal'.

⁴⁹ Page 652, Road to Nandikadal'.

⁵⁰ Also at https://www.youtube.com/watch?v=V_Gr6KWTCKQ

⁵¹ ARMY ENTERS THE LAST BASTION, The Nation. 22 Feb 2009. <https://www.nation.lk/2009/02/22/militarym.htm>

In early Feb 2009, the 53 Division was sent to reinforce troops around Puthukkudiyiruppu (known as PTK for short)⁵² and reports say it remained there through the month⁵³. This is corroborated by contemporaneous Ministry of Defence Situation reports placing the Division in the area on 16,17,28,20, 23 and 24 February and Kamal Gunaratne himself there on 15th April, 2009 (see Annexure 1).



The 53 Division under Kamal Gunaratne led the battle for PTK from the southern front. As the map shows the 53 Division and Task Force 8 were involved in February

⁵² "Army Chief Lt. Gen. Sarath Fonseka immediately sent Brigade Commander 57 Brigade, Maj. Gen. Jagath Dias and Brigade Commander 53 Brigade, Brig. Kamal Gunaratne to assist Brigade Commander 59 Brigade, Brig. Nanadana Udawatta."

<https://www.nation.lk/2009/02/08/militarym.htm>

⁵³ "Heavy fighting was reported yesterday from several parts of Pudukudiyiruppu, as the troops moved into the last bastion of the LTTE from several directions. The 14 Gajaba Regiment of the newly established Task Force VIII under the command of Col G.V. Ravipriya and the 14 Vijayaba Regiment of the 53 Division under Brig. Kamal Gunaratne were advancing from the south of this last major town held by the Tigers, while Brig. Shavendra Silva's 58 Brigade was moving in from other directions."

<https://www.nation.lk/2009/02/22/militarym.htm>

and March 2009 in attacks in the PTK area. By March 2009, the 53 Division was in Puthukkudiyiruppu East⁵⁴ and then in late March/early April⁵⁵ moved to Iranapalai and the northern bank of the Nandikadal Lagoon⁵⁶. It is probable that Kamal Gunaratne's 53 Division was involved in the Anandapuram battle in early April 2009⁵⁷ because he lists the LTTE military leaders who were killed in it but doesn't call the battle by the name of the village⁵⁸.

During April 2009, the 53 Division moved towards the northern bank of the Nanthikadal Lagoon and then Valayanmadam⁵⁹ and Mullivaikkal. Gunaratne testified that his men were under the Wannu Command and "took on Puthukuruiruppu and also the fighting that took place in No Fire Zone area, that is Puthumathalan, Vellimullivaikkal, Karimullivaikkal and Mullaitivu areas, with other Divisions⁶⁰".

By mid-May 2009 the 53 Division was present fighting at the last "No Fire Zone" which was a mere 400 x 400 metre area, along with the 58 Division⁶¹.

2.3 DRONES

The UN Investigation cited testimony from Major General Kamal Gunaratne to the domestic Lessons Learned and Reconciliation Commission (LLRC) in which he said he had:

"the luxury, and I should underline the word luxury, of having the real-time information assets - the UAV support with the down-link right inside the operations room and supported by very experienced pilots that were detached from the Air Force to support us and to coordinate us... So UAV gave

⁵⁴ "Heavy fighting raged throughout this week, as troops continued their advance

into Puthukudiyiruppu, the last LTTE bastion. All Tiger counterattacks, using maximum firepower to halt the troops advance, was to no avail. The advancing forces of 58 Division under Brig. Shavendra Silva, 53 Division under Brig. Kamal Gunaratne, and Task Force VIII under Col. G.V. Ravipriya, continued to make headway, despite heavy resistance."

<https://www.nation.lk/2009/03/01/militarym.htm>

"53 Division under Maj. Gen. Kamal Gunaratne, Task Force VIII under Col. G.V. Ravipriya, and 58 Division under Brig. Shavendra Silva, are engaged in the final battle to liberate Pudukudiyiruppu."

<https://www.nation.lk/2009/03/08/militarym.htm>

"Task Force 8 under Col. G.V. Ravipriya and 53 Division under Maj. Gen. Kamal Gunaratne were engaged in operations from the direction of Pudukudiyirippu south along the A-35 Pranthan-Mullaithivu main road towards north."

<https://www.nation.lk/2009/03/22/militarym.htm>

⁵⁵ 2 Apr 2009: AA: Daily News-2009-04-02 Troops encircle 200 Tigers (divisions 53-58); AA: Daily News-2009-04-03 Troops encircle no fire zone (Map of military movement).

⁵⁶ "The final battle in the Puthukudiyirippu is now on under Maj. Gen. Kamal Gunaratne, commanding 53 Division, Brig. Shavendra Silva commanding 58 Division and Col. G.V. Ravipriya commanding Task Force VIII."

<https://www.nation.lk/2009/04/05/defence.html>

⁵⁷ Described in detail in the ITJP Shavendra Silva dossier. http://www.itjpsl.com/assets/shavendra-Silva_-final-dossier.pdf

⁵⁸ Page 689 and Page 690, 'Road to Nandikadal'. He lists Vidusha and Durga for example.

⁵⁹ "Col. Rohan Palayangoda commanding 5 GW under 53 Division commanded by Maj. Gen. Kamal Gunaratne and soldiers of 2 Special Forces commanded by Maj. Vipula Ihalage, after the battle, advanced from the lagoon towards the bund at Valayanmadam." The Nation, <https://www.nation.lk/2009/04/28/defence.html>

⁶⁰ "53 Division was shifted from Jaffna theatre and we came to Wannu theatre and kept as the Army Commander's reserve for Wannu operations.."

<http://www.llrcarchive.org/2010/09/major-general-kamal-gunaratne/>

⁶¹ Page 721, Road to Nandikadal'.

*us a tremendous support to minimize civilian casualties because with that we knew exactly where our troops were; 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; and we knew exactly where the civilian concentrations were.*⁶²”

In his autobiography he also said there was a monitoring system in his operations room in early February 2009, “whereby I could observe real-time images captured by the UAVs, of the battlefields and the enemy territory. Therefore, we were clearly able to identify the areas of civilian concentration, the terrorist positions and their attack positions”⁶³. In fact Kamal Gunaratne could and should have anticipated the loss of civilian life and damage to civilian property.

2.4 UNITED NATIONS INVESTIGATION REPORT

The OHCHR Investigation into Sri Lanka (OISL) in 2015 named Kamal Gunaratne as 53 Division Commander in 2009⁶⁴. It found reasonable grounds to say the 53 Division while commanded by Gunaratne was involved in attacks on hospitals and civilians in three “No Fire Zones”, summary execution and torture.

2.5 PUTHUKKUDIYIRUPPU

Puthukkudiyiruppu was a small town in the interior of the Vanni where many of the LTTE leaders lived. It was not included in the first No Fire Zone (NFZ1) unilaterally declared by the Government of Sri Lanka in January 2009. Kamal Gunaratne describes not just advancing through the surrounding jungle but also capturing one of the LTTE leader’s underground bunker complexes and fighting in the outskirts of the town⁶⁵.

2.51 KAMAL GUNARATNE IN CONTROL OF THE SOUTHERN FRONT AT PTK

In February 2009, the Army was attacked by the LTTE as it advanced on Puthukkudiyiruppu (PTK). The attack was a serious challenge to the Army’s advance into the Vanni and could have been a major debacle. Kamal Gunaratne was called back from leave in Colombo and writes that he was on the ground, personally in charge of the battlefield south of PTK from 1 Feb 2009⁶⁶, commanding not just his own 53 Division but also the 59 Division, Task Force 4 and two battalions of Special Forces (he was Colonel of their Regiment)⁶⁷. He describes giving orders

⁶² <http://www.llrcarchive.org/2010/09/major-general-kamal-gunaratne/>

⁶³ Page 681, ‘Road to Nandikadal’. He also had a signal jammer for jamming LTTE transmissions.

⁶⁴ OISL, §116

⁶⁵ Page 684-5, ‘Road to Nandikadal’.

⁶⁶ Page 687, ‘Road to Nandikadal’.

⁶⁷ “I quickly contacted the senior officers of 59 Division and Task Force 4 and instructed them to secure their areas...”, Page 661, ‘Road to Nandikadal’,

“..by then the troops of the 59 Division under my command were extremely weakened..”, Page 688.

to the commanding officers of the Special Forces and Commando regiments and the Artillery Brigade⁶⁸. As reinforcements arrived, he describes reorganising the command structure better to manage all these men in battle, dividing the six battalions into two brigades and asking for a Task Force Commander to manage the two brigades. This was how Task Force 8 (commanded by Col. G.V. Ravipriya, now commanding the Security Force Headquarters - Kilinochchi⁶⁹) was formed under the command of the 53 Division. Gunaratne describes the officers, including the 57 Division commander, Jagath Dias, and Task Force commanders all operating out of what he calls “my headquarters”, in February 2009⁷⁰.

“The battle of Puthukkudiyiruppu which lasted 2 ½ months can be called the most brutal of all battles I have ever commanded in my entire military career”⁷¹.

(Kamal Gunaratne)

“You must go there and immediately take over that front”, Gunaratne says he was told by the then Army Commander, Sarath Fonseka⁷². He adds that Fonseka said the Secretary of Defence at the time, Gotabaya Rajapaksa, was “also saying you must go and immediately bring the situation under control”⁷³. En route to the airport, Gunaratne writes that Gotabaya Rajapaksa personally called him on his mobile phone and asked if he’d left, explaining how crucial it was to bring the situation under control in the Mullaitivu area and how he believed in Gunaratne’s ability to control the crisis⁷⁴. On 4 February 2009, Gunaratne writes that Gotabaya Rajapaksa once again called him from the Army HQ Operations Room in Colombo and urged him to bring the LTTE attacks under control with “whatever means” was at his disposal, having been up all night there monitoring the battle situation⁷⁵. On 3 February, Gotabaya Rajapaksa had given Sky TV news a interview in which he said anything outside “No Fire Zone 1” was a legitimate target, despite the fact the PTK hospital was outside the zone⁷⁶. It is also worth noting the staff and

⁶⁸ Page 662, ‘Road to Nandikadal’.

Page 682, he says Lt Col Thilak Hangilipola commanded the Air Mobile Brigade, Lt Col Jayanath Jayaweera commanded the 533 Brigade and Brig. Lalantha Gamage commanded the 681 Brigade and Lt Col Subhashana Welikal the 682 Brigade under him. Page 688 he adds Col. Athula Kodippili, Special Forces Commander, and Col Priyantha Napagoda of the Artillery Brigade.

⁶⁹ <https://www.dailynews.lk/2019/10/30/local/201422/army-holds-katina-pinkama>

⁷⁰ Page 679, ‘The Road to Nandikdal’.

⁷¹ Page 688, ‘Road to Nandikadal’.

⁷² Page 661, ‘Road to Nandikadal’. Also commanding the front is referenced Page 672 and again on Page 680.

⁷³ Ibid.

⁷⁴ Page 662, ‘Road to Nandikadal’.

⁷⁵ Page 673, ‘Road to Nandikadal’.

⁷⁶ TV interview on file with ITJP; “Nothing should exist beyond the NFZ...no hospital should operate now, no hospital should operate in the area”.

government officials present in PTK hospital on 4th and 5th Feb 2009, describe this as the worst period for attacks on the hospital and also describe a pattern of shelling from government forces on the southern front.

Gunaratne makes it clear in his book that the 58 Division attacked PTK from the west while his 53 Division attacked from the south⁷⁷.

2.52 ATTACKS ON PTK HOSPITAL

The UN investigation report (OISL) says that as the Sri Lankan Army advanced, areas in and around PTK experienced significant bombardment from Government forces from 10 Jan – 6 Feb 2009⁷⁸. This included repeated attacks on the PTK Hospital⁷⁹ which was clearly marked and visible to the military from satellite imagery and drone footage. There are also multiple eyewitnesses to attacks on PTK Hospital, many of them now abroad. Some were actually present in the hospital during attacks and witnessed wounded family members being injured again as a result of the attack on the hospital where they were being treated.

Conditions in the Hospital in PTK were appalling as it came under repeated fire – and documented by the International Committee of the Red Cross. The UN says PTK hospital was one of four hospitals whom their military analysts found were attacked with unguided weapons and ammunition such as Multi-Barrelled Rocket Launchers (MBRLs)⁸⁰. In addition a private hospital in PTK, the Dr. Ponnampalam Memorial Hospital, was also attacked from the air in early February 2009, causing heavy casualties⁸¹. Kamal Gunaratne confirms in his book that he had immense support in the PTK battle from the air force and said pilots would call him and beg him to send them more targets to hit⁸².

Conditions in the hospital were already appalling. A UN international staff member described seeing a constant flow of dead and dying civilians being brought into the PTK hospital from 26-28 January 2009.

“I saw scores of wounded and dying civilian patients who were staked in every conceivable space – on beds, under beds, under tables, in hallways, outside in the driveways and other places...there were a lot of badly wounded babies and small children, women and elderly patients. The wounded, who were still dressed, were all in civilian clothes and many of them, if not the vast majority, were women and children. The hospital staff and doctors were

⁷⁷ Page 687, ‘Road to Nandikadal’.

⁷⁸ OISL, 2015, § 801.

⁷⁹ A full list of reported attacks on the hospital is given in the ITJP’s Shavendra Silva dossier, Page 22.

⁸⁰ OISL, 2015, § 750.

⁸¹ See Shavendra Silva Dossier by ITJP, §3.4.

⁸² Page 683, ‘Road to Nandikadal’.

taxed to the limits and perhaps beyond. The wounds appeared to have been caused by shrapnel and there were many who had lost limbs and had other devastating wounds. There were others who died during our visit". W167

He said, "artillery was coming in sporadically from the south and actually landing to the south of us and occasionally in and around the junction which would indicate that the artillery was being fired by the security forces who were to the south of our location...". Another witness described government shelling coming from the area to the south of PTK in late January.



PTK Hospital

The UN staff member witnessed incoming artillery and MBRL shelling at the hospital on the night of 26 Jan. 2009; this intensified on 27 Jan. with artillery, mortar fire and MBRLs hitting within 500 metres of the PTK Hospital and "the majority of heavy weapons fire was coming from the south and east" from the Sri Lankan forces as well as later in the day small arms fire. On 28-29 Jan. he said there continued to be "heavy artillery and MBRL fire from the south, landing within 200 metres of the hospital, occasionally closer. On 29 Jan., he personally witnessed heavy artillery fired from Security Force positions on the Oddusuddan road towards

PTK. Kamal Gunaratne's forces were advancing from the Oddudsuddan road, according to his autobiography⁸³.

After the UN and ICRC left the PTK Hospital on 29th January the shelling of PTK intensified. A local government employee (W166) said by 3 February shelling was so bad that the Army told the local administration to close the PTK hospital but gave no instructions on what to do with the more than 500 injured patients in the hospital. The witness described the situation on 4th February 2009 which worsened by 5 February with heavy gunfire close by:

"The worst time for shelling in PTK and the hospital then occurred during the day and night of 4th of February itself - Sri Lanka Independence Day. More than 50 shells fell in the actual hospital grounds which caused many deaths and injuries, and extensive damage..."

W166

Contemporaneous text messages (see Page 21) sent out by Tamil employees of the United Nations to their bosses in Colombo also record frequent attacks by the Sri Lankan Army on civilians in PTK at this time.

2.53 MULTI BARRELLED ROCKET LAUNCHERS

Kamal Gunaratne in his book confirms he gave orders to fire MBRLs in February 2009 from the front south of PTK. He describes the weapon as "the most powerful and lethal weapon of the Artillery Regiment" which "usually wreaked enormous damage to the enemy heralding the deaths of many in one go". He elaborated that an MBRL shoots 40 rockets of 122 mm caliber shells within 18 to 22 seconds. He said "the first rocket falls on one spot, the next rocket can fall anywhere up to 800 metres in front or behind the location of the first rocket." This confirms he knew the indiscriminate nature of this weapon used by the Sri Lankan Army. Shockingly, he admits in his book that on one occasion he knowingly ordered the MBRLs to be fired so close to the frontline that he risked his own men being hit, and indeed some died and were injured when he fired close to them⁸⁴.

⁸³ Aeveral references, such as P678, 'Road to Nandikadal'.

⁸⁴ Pages 764-5, 'Road to Nandikadal'.

UN SMS MESSAGES

PUTHUKKUDIYIRUPPU (PTK)

15 January 2009

8 injured closer to AGA office in PTK. 1 km from ICRC... Shelling in Udayarkaddu Visuwamadu & PTK...

28 January 2009

we are in PTK again. I have no words to describe our today experience. I saw more than 10 dead bodies when crossing the road and heard over 60 people got killed in the same village.

28 January 2009

Heavy shelling continues close to PTK hospital within 1 km. We dug bunkers in the new hub. horrible scenes in PTK hospital with injured.

31 January 2009

17 killed and many injured, no actual figures yet by shelling. 5 dead bodies were taken to PTK hospital.

2 February 2009

More tension in PTK after hospital attack.

4 February 2009

PTK hospital being vacated. heavy shelling for about 16 hours. we are in trenches.

14 February 2009

Today score: 14 killed in a kfir attack in areas close to PTK hospital.

2.6 PUTUMATTALAN



Feb 2009 - looking towards Putumattalan.

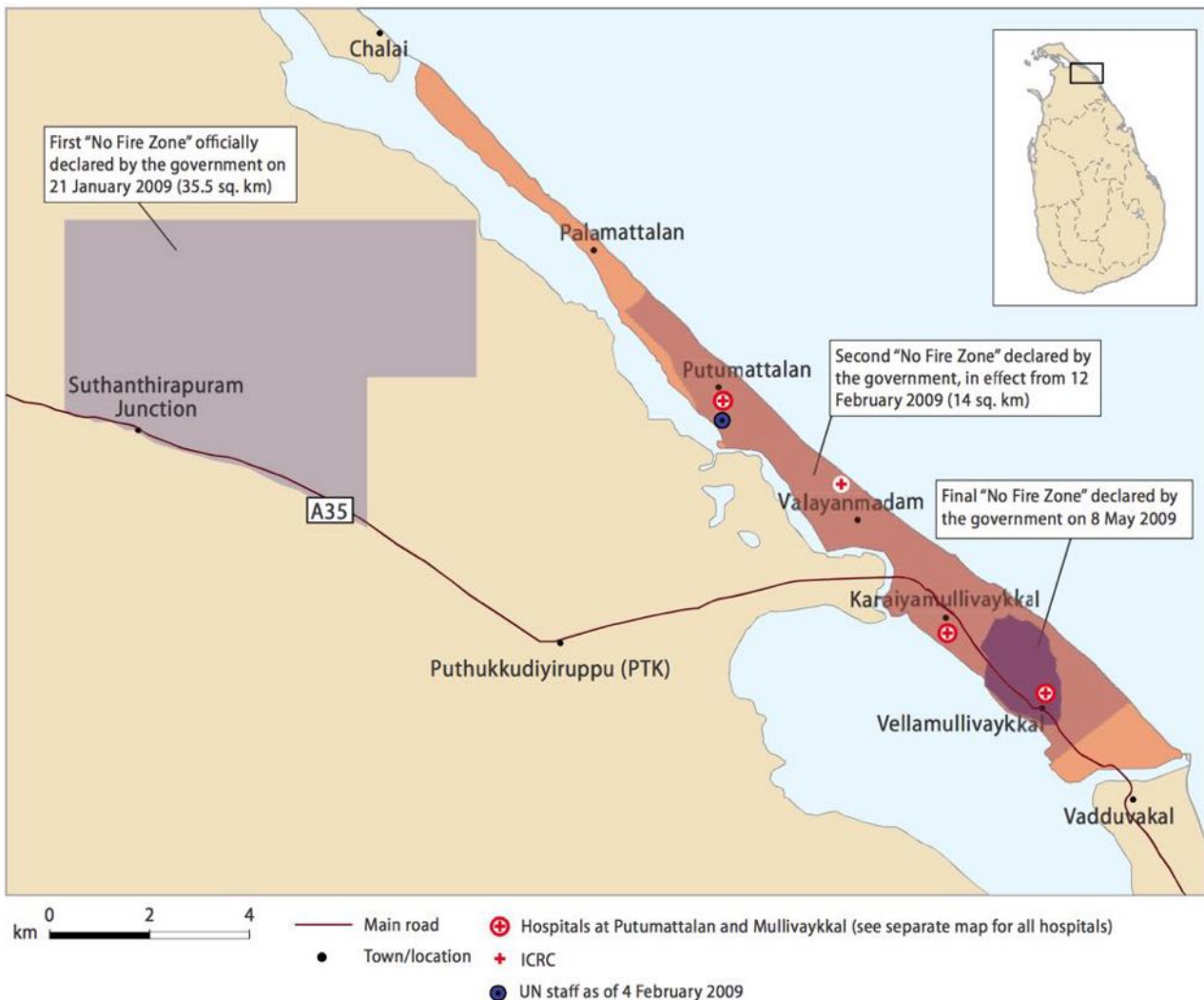
Putumattalan lay within the second No Fire Zone which was unilaterally declared by the Government of Sri Lanka from 12 February 2009. At least 300,000 Tamil civilians flocked to the 14km² narrow spit of sandy land, thinking they would be safe there. The capture of Putumattalan occurred from 18-21 April 2009 and resulted in the narrow spit, where civilians and the LTTE remained, being severed in two. The 55 Division advanced on Putumattalan from the North from Chalai, the 58 Division, including Special Forces and Commandos, advanced from the west across the lagoon while Gunaratne says the 53 Division advanced from the south along the A35 road into the No Fire Zone⁸⁵ using troops from 5 Gemunu Watch of the Air Mobile Brigade to wade through the lagoon and marshes and capture a sandbank two kilometres south of the 58 Division's position.

2.61 POPULATION NUMBERS

At the time the Government of Sri Lanka denied the population figures in No Fire Zone 2 were as high as hundreds of thousands - in order to downplay the risk to so many civilians and to justify sending in vastly inadequate supplies of food in order to starve the population into submission. A UN Internal Review found

⁸⁵ Page 696, 'Road to Nandikadal'.

only 12% of food needs of the population were met from September 2008 to January 2009⁸⁶ and that was before the worst of the fighting began.



MAP: From The International Crisis Group report, 2010.

On 9 March 2009, the Government claimed there were only 70,000 people left in the war zone⁸⁷. Interestingly in his autobiography, Kamal Gunaratne says, “around 300,000 civilians were cornered, along with all types of vehicles in Pudumathalan”⁸⁸. He gives no explanation for why the population figures in the war zone had initially been downplayed by the Sri Lankan security forces and government and later scaled up so drastically, but was fully aware that 282,308 people eventually emerged from the war zone⁸⁹. It is probably that Gunaratne was aware already in March 2009 that 300,000 people were trapped in the No Fire Zone – given his personal access to intelligence including from the drone, surveillance aircraft and satellite footage.

⁸⁶ Para 96.

⁸⁷ Charles Petrie report, Annexures, Table on Page 4, quotes source as “Cited in 9 March 2009 UNCT briefing to diplomats as the Government estimate of people trapped in the Vanni.”

⁸⁸ Page 694, ‘Road to Nandikadal’.

⁸⁹ Figure from Charles Petrie report, Table cited above.

2.62 CIVILIAN PRESENCE

Putumattalan was finally captured in a very bloody battle from 18-21 April, resulting in very heavy casualties and an exodus of one hundred thousand civilians. Gunaratne writes in his autobiography as if there were no civilians under fire there:

“We closed the loop and entrapped the terrorist on 17th April 2009 and the most brutal phase of the Pudukuduirippu battle began thereafter...our soldiers countered with resilience and grit, fighting non stop for three days”⁹⁰.

Later however he acknowledges there were civilian casualties, saying, “it was inevitable some harm would come to them as they were corralled together among the terrorists” and adding, “under the circumstances it was clear to anyone some harm would come to civilians caught in the middle of a battle”⁹¹.

The 100,000 civilians who poured out of the No Fire Zone at Putumattalan were starving, exhausted and traumatised. Gunaratne claims in his book that “they were greeted with a cup of hot tea and a warm meal before sending them to the rear, for further processing”⁹². This is pure fantasy. Not one survivor has described being given such food or tea and it is hard to imagine how in a scorched war zone in the jungle the Sri Lankan Army would have the logistics to boil tea and heat or cook food for 100,000 people. Indeed later in his book Gunaratne describes desperate people climbing coconut trees because they are so thirsty, which is corroborated by survivor testimony. He also claims people leaving Mullivaikkal in May 2009 also had hot meals and adequate water – something that contradicts the testimony of hundreds of survivors, some of whom describe being so desperately thirsty they drank from dirty puddles and corpse-infested lagoon water.

Gunaratne claims the LTTE used artillery, mortar and machine guns from among the civilian population; this contradicts testimony from LTTE survivors who say it was impossible to move heavy weapons from the first to the second No Fire Zone and they had to bury them. Interestingly Gunaratne’s book corroborates the LTTE did bury at least two Chinese manufactured 130mm artillery guns in the jungle near PTK because he describes his troops finding them⁹³.

2.63 THE UNITED NATIONS

The UN Panel of Experts report found credible allegations that from 6 February 2009 the Army continuously shelled within the area that became the second No Fire

⁹⁰ Page 689, ‘Road to Nandikadal’.

⁹¹ Page 695, ‘Road to Nandikadal’. Again on Page 708 regarding Mullivaikkal surrendees: “We did our best to feed every civilian with a warm meal, cooked by the soldiers...and a continuous supply of water was supplied using mobile bowsers”.

⁹² Page 697, ‘Road to Nandikadal’.

⁹³ Page 682, ‘Road to Nandikadal’.

Zone, from all directions including land, air and sea. The Panel estimated there were 300,000 - 330,000 civilians in that very small area. The Army used “aerial bombardment, long-range artillery, howitzers and MBRLs as well as small mortars, RPGs [rocket-propelled grenades] and small arms fire, some of it fired from a close range.⁹⁴”

The UN’s 2015 OISL investigation said regarding Putumattalan Hospital that the: “Security forces present included the 53 and 58th Division and Task Force 8 of the SLA.⁹⁵”



Photo: Putumattalan Hospital, 2009.

This is further corroborated by the Sri Lankan Ministry of Defence situation reports on 6 and 8 April 2009 which say the 53 Division was moving towards the northern bank of the lagoon. On 17, 20, 22 and 27 April 2009 these reports describes the 53 Division as being involved in “hostage-rescue operations” of civilians; on 18 April just as Putumattalan is falling to the army, the 53 Division is described as fighting alongside the 58 Division.

⁹⁴ UNPOE, para 100.

⁹⁵ OISL §840

The US Congress report lists incidents at Putumattalan (also referred to as Mattalan) and includes 6 attacks on the Putumattalan Hospital. For a summary of the incidents see **Annexure 2**.

The 2010 report by the International Crisis Group, *War Crimes in Sri Lanka*⁹⁶, cited several attacks on Putumattalan, its hospital and the adjacent UN hub. It described devastating casualties during the capture of Putumattalan. In addition, the 2014 *Island of Impunity* report⁹⁷ by the International Crimes Evidence Project in Australia collated UN and iNGO reporting available in 2014 on the Putumattalan attacks. It found reasonable grounds to suspect that these attacks were on civilians, had occurred in the context of the military's widespread and consistent practice of bombardment of the No Fire Zones, and likely constituted war crimes. [For more information on the attacks on the Hospital see the ITJP Shavendra Silva dossier section on PTK.]

The ITJP has listed contemporaneous SMS sent by UN staff from the War Zone regarding attacks; these come from the Annexure to the Charles Petrie Internal Review of 2012 that looked at the UN's own conduct in the 2009 War in Sri Lanka. In addition, the ITJP is in possession of further SMS sent back and forth between UN staff inside and outside the Vanni, which also make it clear that the Putumattalan hospital was repeatedly hit and that this information was passed on to the Army.

2.64 TESTIMONY

War survivors, including patients, medical staff and iNGO, UN and ICRC workers, speak of Putumattalan Hospital overflowing with injured civilians, many of whom were treated under a tree. They describe coming under repeated attack for months.

This is the testimony of an employee of the ICRC:

"From February until April I saw many security force attacks directed at the civilian population. I saw Kfir133 jets attack civilian targets on many occasions. On one day I saw about ten such attacks where they dropped bombs. Usually there were at least three attacks per day. I know that many of these Kfir attacks were on civilian targets because I would often either go to the site of the attack and help load wounded to take to the hospital, or I would be at the hospital and see them brought in. The wounds they suffered were not gunshot wound but were bad blast wounds from shrapnel. Often these wounds were deep, jagged, and often amputations or wounds that led to amputations..."

⁹⁶ <https://www.crisisgroup.org/asia/south-asia/sri-lanka/war-crimes-sri-lanka>

⁹⁷ https://www.piac.asn.au/wp-content/uploads/island_of_impunity.pdf

W59

The same Tamil ICRC official described coming under fire attack as he and his ICRC colleagues were standing on a clearly marked ICRC ship in March or April 2009 that had come in with the clearance of the security forces. Another witness described another attack on Putumattalan Hospital:

"I recall an MBRL [Multi-Barrel Rocket Launcher] and artillery shell attack which occurred in early April 2009. This attack affected the back part of the hospital closest to the sea and killed around 20 people. I believe at least 50 people were injured in the attack. .. The shells had come from the Security Forces' side."

W155

A mother of a young baby in the War Zone described visiting the Putumattalan Hospital in the spring of 2009:

"One time I went because some of my relations were wounded. I went very soon after the shelling and saw many dead and wounded civilians. The dead were under tents and many wounded civilians were outside on the ground because the hospital was overflowing with wounded. Trucks and trailers were bringing in many more civilians that had been wounded or killed in the civilian areas along the coast."

W42

SMS FROM UN INTERNAL REVIEW REPORT

10 March 2009 11.47pm

Very very heavy shelling going on close to our hub in west. Many shells landed from 200m. lots of human casualties. and no injuries in hub so far. Pls ask SLA to stop.

11.25pm

There is no shelling now but the point a shell hit was the place of my previous location where I had a tarpaulin before floods. If I didn't shift ??.

12 March 2009 09.06pm

Very urgent. 3 artillery shells came from west hit 400 mts from hub in south of Mathalam. lots of casualties. Pls ask SLA to stop.

09.21pm

Shelling continues. 7 hit here so far please do something quickly.

13 March 2009 01.07am

22 civilians admitted with heavy injuries by shell hit 30 mins back in Mathalam. There were deaths but no dead bodies were taken to hospital.

02.19am

shelling started again. 3 artillery hit in the same direction as earlier but closer south, we're under the trucks."

07.33pm

2 artillery shells hit Mathalam just 20 mins back, one hit 200 mts from hub in west, one child killed and in 2nd incident, 500 mts from port in west, 7 civilians killed.

09.05pm

Our area under shelling very heavy and very close, many shells hit in the surroundings.

08.45pm

On 14th of March, 52 injured (17 children, 19 women), admitted in Mathalam hospital and 25 (7 children, 9 women), also admitted died.

16 March 2009 06.59pm

Heavy shelling continues close to PTK hospital within 1 km. We dug bunkers in the new hub, horrible scenes in PTK hospital with injured.

16 March 2009 06.59pm

On 15th of March, 61 injured (18 children, 23 women) by shells in NFZ admitted in Mathalam hospital, 5 admitted with severe injuries died.

07.08pm

On 16th of March, 55 injured (22 children, 25 women) admitted in Mathalam hospital hit by shell, gunfire in NFZ, 4 died.

OTHER UN SMS

24 March 2009 7:02:59am

A RPG SHEL HIT ONE OF THE ENTRANCES OF THE HOSP. 20 MINS BACK. MANY CASUALTIES. WIL TEL U LATER MORE.

3:54:35pm

A RPG SHEL HIT 50METER FROM HUB IN EAST (IN FRONT OF HOSP. 10 M) 10 MINS BACK. ONE CHILD GOT KILED IN THE SPOT.PLS ASK THEM DONT LAUNCH RPGS AMONG IDPS SETTLEMENT

5:18:49pm

Shocking news. I have contacted SF HQ on this.take all measures for your safety.

5:20:44pm

Have u informed SFHQ?

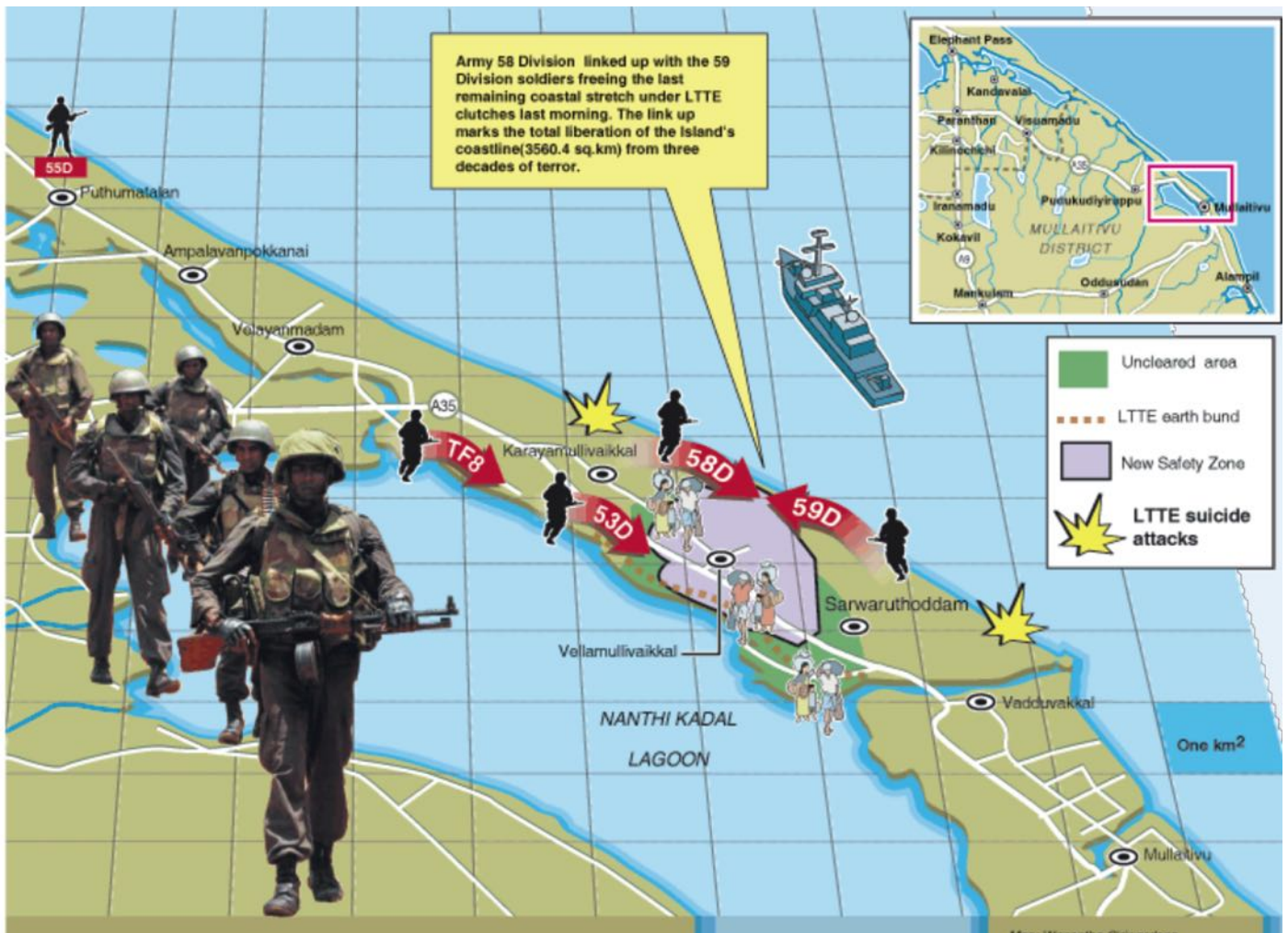
5:28:13pm

Yes .

12:34:59am

7 FIVE INCH SHELS HIT CLOSE OUR TO HUB. DONT KNOW ABOUT HUMAN CASUALTIES SINCE HUNDREDS OF PEOPLE CAMPED IN OUR AREA 2 SEE THE POSIBILITY 4 ESCAPING. V R SCARED

2.7 KARAIYAMULLIVAIKAL AND VELLAMULLIVAIKKAL



Map: May 2009⁹⁸

On 8 May 2009 the Sri Lankan Army announced the third No Fire Zone, which was less than 2km square⁹⁹. The UN report¹⁰⁰ describes the third No Fire Zone coming under “intense daily bombardment by SLA artillery, the air force and the navy” between 8-12 May and there were reports of “continuous shelling and devastation as the shells hit the ground”. This is also an area where it is alleged the Sri Lankan Army used white phosphorous and cluster munitions against civilians¹⁰¹. A

⁹⁸ SECURITY FORCES POISED FOR VICTORY, The Nation. 17 May 2009, https://atrocitiesarchives.weebly.com/uploads/1/2/0/7/120745407/nation-2009-05-17-security_forces_poised_for_victory.pdf

⁹⁹ OISL §873

¹⁰⁰ para 878

¹⁰¹ In the final week of the War several witnesses described seeing white phosphorous being used against the tiny area still under LTTE control in which tens of thousands of civilians were crammed:

“I saw a young man who was digging a bunker while my father and I quickly popped out of our bunker to cook food. We went back inside and felt the vibrations of an explosion and then we heard screams. I looked outside and saw the man in flames in front of me, after what looked like a phosphorus bomb shelling. I recognized the black smoke typical of phosphorus bombs as well as the distinctive burning reaction on the man’s body.” W292

“During that period, I also witnessed two or three times chemical bombs being used. The whole place became covered in gas and there was a distinctive smell. People became disoriented and then just collapsed on the floor. I was told that it was phosphorus bombs used by the SLA.” W283

“In the jungle when they attacked with what I think was phosphorous or some other sort of chemical, the trees would burn, and people got serious burninjuries. We knew the Army was fighting like this from 2007 but at that time the civilians were outside the range and it only impacted LTTE cadres.” W280

recent ITJP report, "Buried Wounds", compares the testimony of cluster munition victims inside and outside Sri Lanka, based on 18 victims interviewed inside Sri Lanka who were injured in Putumattalan, Valayanmadam and Mullivaikkal from 9 Feb 2009 to 13 May 2009¹⁰².

By mid-April, 53 Division troops moved towards Vellamullivaikkal¹⁰³ and by late in the month were attacking south of Valayanmadam. By the second week of May 2009, the 53 Division was attacking Karaiyamullivaikal and the last "No Fire Zone"¹⁰⁴.

The UN said:

"On 13 May, the 58th Division was pushing its way forward towards the coastline with the aim of advancing south from there, with the 53rd Division moving east along the A35 road towards the lagoon. Troops from the 55th Division pushed further south from Putumattalan. At that point, the United Nations estimated that more than 100,000 civilians remained trapped within three square kilometres. From 14 May, senior LTTE cadres began to communicate their intent to surrender to several Sri Lankan and foreign intermediaries. On 15 May, the LTTE began destroying their communications equipment. On 16 May, the 58th and 59th Divisions of the SLA linked on the coastline. The 53rd Division continued to make its way south, along the Nanthikadal lagoon."¹⁰⁵

"I daily saw cluster munitions. Normal artillery fire will explode when it hits the ground or its target - it explodes so that a 60 degrees angle from the point of impact is a 'Safe Zone', so that is why we told people to lie down. The cluster bombs exploded about 30ft above the ground. When it explodes 12, 16 or 32 smaller bomblets hit the ground and then explode. RPG direct fire when it hits the ground it doesn't explode, some sort of tube landed and only exploded when someone handled it." W280

"While in Karaiyamullivaikkal we had to go to queue for food. One day I was in line. A cluster bomb came in and exploded amongst the civilians. I saw at least 50 dead, smashed and destroyed bodies - mainly elderly, pregnant ladies and children. On another occasion, I saw a queue of children line up for kanji and a cluster bomb exploded. I saw at least 10 children killed outright and many others were wounded. These incidents were at the end of April or early May." W60

"When we got to Mullivaikkal, I saw all the shelling from the sea, bombing from the air, and shooting from the ground soldiers. From the air I saw cluster bombs and chemicals. There was so much smoke everywhere. The people who were dead, their bodies were burnt. I remember seeing green and blue smoke after the bombing." W63

"In the final stage of the War, the Army announced that they believed all us Tamil people in the area were LTTE and therefore they are going to kill us. They attacked and killed civilians using many types of weapons including artillery, Kfirs, helicopters, snipers, cluster bombs and poisonous gases which are internationally banned. These were not LTTE cadres who were being attacked, they were innocent civilians." W287

"We stayed in Vellamullivaykkal for about four or five days and due to the advancing army and shelling we moved to the Wadduvakal bridge on 16 May 2009. On the way to the bridge I saw more than a thousand dead men, women and children dead on the road and beside it. Bodies and limbs and wounded were everywhere. There was a terrible stench. I could tell that they had been killed by shelling and cluster bombs." W158

¹⁰² http://www.itjpsl.com/assets/press/ITJP_cluster_report_vf_AW.pdf, Buried Wounds, 2019.

¹⁰³ "Troops of 53 Division under Maj. Gen. Kamal Guneratna, were able to demolish two security bunds heavily laden with mines during the week leading into the New Year. Lt. Col. Rohan Palayangoda commanding 5 GW and Lt. Col. Ajantha Wijesuriya commanding 1 GW, coming under the Airborne Brigade commanded by Col. Thilak Hangilipola, took part in this operation. These troops were entrusted with the task of advancing from Nandikadal lagoon and penetrating an earthen wall built across the A-35 (Paranthan-Mulativu) road. After the capture of Pudukudyirippu, 53 Division and Task Force VIII, were given the task of capturing 2.5 km stretch of the A-35 road. Capturing this stretch to the NFZ, could result in the zone being split up into two parts. The Vellamullawaikal area, where the Tiger leadership is in, and the Pudumattalan area, where civilians are held.", Overcoming ditch-earth bunds, April 2009, LLRP blog.

¹⁰⁴ "The 58 Division and the 53 Division under Maj. Gen. Kamal Guneratne, had advanced to Vellamullawaikkal, north of the NFZ. By May 11, these two Units had entered the NFZ.", The Nation, SECURITY FORCES POISED FOR VICTORY.

¹⁰⁵ OISL §93, §94

This is further corroborated by Gunaratne in his book who says after the capture of Putumattalan the 55 Division remained in a holding pattern to the north while the 53 and 58 Divisions advanced south towards Mullivaikkal¹⁰⁶. He says the 58 Division hugged the sea coastline while his 53 Division moved southwards parallel to it, adjacent to the Lagoon. The 59 Division was advancing towards them from the south in Wadduvakkal.



Photo: 28 April 2009

On 14 May 2009, Gunaratne confirms that both he and 58 Division commander Shavendra Silva each received a call from the then secretary of defence, Gotabaya Rajapaksa, who asked him to “hasten the end” of the war to avoid succumbing to US pressure to halt the fighting¹⁰⁷. Gunaratne then says “there really seemed no option left but to continue the attacks and crush the terrorists who were ready to fight to their last bullet”¹⁰⁸. He also says on 17-18 May 2009 the Army Commander and the Secretary of Defence were both on the phone checking up on progress.

¹⁰⁶ Page 699, ‘Road to Nandikadal’.

¹⁰⁷ Page 710, ‘Road to Nandikadal’.

¹⁰⁸ Page 712, ‘Road to Nandikadal’.

Later on 16 May 2009, Gunaratne described being asked by one of his officers whether boats they were firing on while exiting the No Fire Zone across the Lagoon might be carrying civilians. He replied:

“All I could ask him was, if he was in his right mind? I was one hundred percent sure all the civilians had escaped the terrorists and were now with us”¹⁰⁹.

On 17 May 2009, Gunaratne relates that he issued a “special instruction” to all his troops not to accept surrenders from anyone claiming to be a civilian. This is deeply concerning considering survivor testimony shows there were still thousands of civilians, including children, trapped in the No Fire Zone on this date.



Photo: Mullivaikkal Hospital

Civilians who did survive describe mayhem in the Mullivaikkal Hospital from late April onwards. This man was injured in Putumattalan and spent three weeks on the floor:

¹⁰⁹ Page 714 and again on 717 ‘Road to Nandikedal’.

“It was total mayhem. There were injured fighters and civilians everywhere on the floor and outside of the makeshift hospital. There were no trained doctors and I only received basic treatment from an LTTE senior first aider. I stayed at the hospital for about 3 weeks, laying on the floor. I was feeling very scared as we were surrounded by the SLA and the hospital was also under shelling. There were constantly noises of explosions and people screaming. I did not move because there was nowhere safe to go to and the entire area was overcrowded.”

W292

Survivors witnessed horror in these places:

“It was complete chaos, it cannot be described in words. Crying and screaming parents carried their wounded children here and there in panic. The children were severely wounded, some with their half-severed limbs hanging from their bodies. Until 10 May we had the hope that the UN or another part of the international community would try to stop the War. On that day the Army was closing in on us and we were trapped in a small space.”

W289

2.8 MAY 2009 SURRENDERS

The UN investigation documented in detail multiple instances of summary execution of surrendeers. Eyewitness testimony collected by the ITJP also describes how many Tamil civilians struggled to surrender in the last days of the war in May 2009 because of the continuous fire at the final No Fire Zone.

The UN investigation describes the 53 Division as one of the units surrounding the final enclave in the last days of the war:

“On 8 May 2009, the third and final NFZ was announced by the Government. Following SLA advances, the new NFZ3 included the small remaining central part of the NFZ2 still under LTTE control, covering less than two square kilometres. Communications announcing the NFZ3, including maps, was submitted to international organizations and were sent to SLA commanders, including those of the 53th, 55th, 58th and 59th Divisions of the SLA which surrounded the area¹¹⁰.”

In his autobiography, Gunaratne on two occasions described issuing order to his troops not to enable surrenders on 17 May 2009:

“I also issued a special instruction to all my troops, not to accept anyone who came forward claiming to be civilians, as I was sure all the civilians

¹¹⁰ OISL §873

had let the NFZ (No Fire Zone) by then. I was very firm in my orders to ensure if anyone did come across the lagoon claiming to be a civilian, they should be kept outside in the waters till morning to be checked thoroughly before taking them into our area”¹¹¹.

“...rather than trying to make them surrender and face another disaster, I personally believed it was better to fight and kill every terrorist and thereby, render a greater service in ensuring security for our people and the country...we were prepared to pave the way for them to lay down their lives”¹¹².

Later Gunaratne contradicted this when he testified to the domestic Lessons Learned and Reconciliation Commission that LTTE combatants did surrender and were regarded as internally displaced people¹¹³. He also said that former cadres who were put in the rehabilitation programme would still need to be under surveillance: “each and every rehabilitee will have to be observed”. He also confirmed that LTTE cadres who surrendered or were apprehended were handed over to the intelligence agencies and then sent for rehabilitation¹¹⁴.

2.9 SUMMARY EXECUTIONS

For eyewitness testimony regarding summary executions see the ITJP Shavendra Silva dossier Pages 67-70.

The UN said the 53 Division accepted the surrenders of members of the LTTE some of whom were subsequently disappeared or summarily executed while hors de combat. The UN investigation says there were two main areas of “so-called white flag ‘surrenders’ taking place” - one to the north of Vellamullivaikkal where people ‘surrendered’ to 53rd and 59 Div. and one to the south near the Vadduvakal bridge where they surrendered to 58th Division.¹¹⁵”

The presence of Gunaratne’s forces in attacks in the final days of the war is further corroborated by his own Facebook page in which he proudly announces he commanded the Division that killed the rebel leader, Vellupillai Prabhakaran. An army biography also says of Kamal Gunaratne that he “has a proven record of warfare was the one in charge of Nanthikandal lagoon area when Prabhakaran heaved his last¹¹⁶.” It is not established how Prabhakaran was killed. One Sri Lankan media report suggested the 53 Division had executed Prabhakaran’s 12 year old son

¹¹¹ Page 716, Road to Nandikadal’. Repeated Page 717.

¹¹² Page 721, ‘Road to Nandikadal’.

¹¹³ “I mean hundreds of LTTE combatants who surrendered, and we separated them from the other IDPs because when you are handling an IDP situation you have to separate the dangerous IDPs from other IDPs. But we considered everybody as IDPs so we separated the dangerous IDPs from other IDPs and we sent them for rehabilitation centres.” LLRC Testimony.

<http://www.llrcarchive.org/2010/09/major-general-kamal-gunaratne/>

¹¹⁴ Page 711, ‘Road to Nandikadal’.

¹¹⁵ OISL, §287

¹¹⁶ <https://www.army.lk/news/new-wanni-commander-takes-office>

Balachandran but their responsibility for the crime has not been corroborated and father and son were not together at the time¹¹⁷.

It is worth noting in his autobiography, Kamal Gunaratne asserts that he is unmoved by the scale of killing in the 2009 war. He writes:

“I have seen hundreds of bodies of dead terrorists through my extensive experience on the battlefields and seeing another dead terrorist was not a great thing. However, seeing the dead bodies of terrorists who were killed and brought back by my soldiers at Muhamalai brought me immense satisfaction”¹¹⁸.

2.91 ISAIPRIYA



Photo: Isaipriya in Army custody before execution.

¹¹⁷ https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/LKA/INT_CRC_NGO_LKA_29832_E.pdf

¹¹⁸ Page 631, 'Road to Nandikadal',

In particular the UN investigation concluded that a prominent Tamil TV broadcaster and singer known as Isaipriya was executed after surrendering and said the 53 Division had initially claimed responsibility in an army communique (below).

“According to the official website of the security forces, Isaipriya was killed on 18 May by soldiers of the 53rd division.¹¹⁹”

Tuesday, May 29, 2012 NEWS BAR » model aircraft - By Shanika Sriyananda

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Last modified on: 12/30/2010 11:42:34 PM

Identified LTTE leaders who were killed during the Last Battle

Identified LTTE leaders who were killed on 18 May 2009 by 53 Division troops :

Srl.	Rank	Name	Appointment
01.	Lieutenant Colonel	Subeyshin	Administration
02.	Colonel	Madhawan	Intelligence
03.	Lieutenant Colonel	Mannan	Intelligence - Batticaloa
04.	Lieutenant Colonel	Malarawan Master	Doctor
05.	Lieutenant Colonel	Gnanawel	Intelligence
06.	Lieutenant Colonel	Thena Amudhan	'Radha' Regt
07.	Captain	Neelawan	Intelligence Attack Group
08.	Captain	Paridi	Intelligence Attack Group
09.	Lieutenant Colonel	Nalan	Intelligence Attack Group
10.	Lieutenant Colonel	Wannan	Pottu Amman's Escort
11.	Lieutenant Colonel	Mawanana	Intelligence Attack Group
12.	Lieutenant Colonel	Anbu	Black Tiger Instructor
13.	Lieutenant Colonel	Ilango	Intelligence Leader - Baticaloa
14.	Major	Pardeepan	Pottu Amman's son
15.	Lieutenant Colonel	Viduthalei	Sea Tiger
16.	Colonel	Teepan	Intelligence ID section
17.	Lieutenant Colonel	"52"	Intelligence Attack Group
18.	Lieutenant Colonel	Anbu Maran	Banu's Escort
19.	Lieutenant Colonel	Medani	Kapil Amman's Wife
20.	Colonel	Poorani	Sea Tiger Female Leader
21.	Brigadier	Banu	Military Commander
22.	Lieutenant Colonel	Pugalendi	Training Master
23.	Colonel	Charles Anthony	Air Wing/Technical Division
24.	Brigadier	Rathnam Master	Military Intelligence / Black Tiger Ops
25.	Colonel	Wasandan	--
26.	Lieutenant Colonel	Issei Piriya	Communications/Publicity Wing
27.	Lieutenant Colonel	Thomas	Military Intelligence/Infiltration Wing
28.	Colonel	Luxman	Military Commander
29.	Major	"52"	Jeyam's Escort
30.	Brigadier	Jayam	Military Commander
31.	Lieutenant Colonel	Amuduni	Female Black Tiger Wing

A video has been released showing Isaipriya surrendering unarmed at the lagoon edge¹²⁰; photographs have been published showing her corpse. Witness testimony has identified Lt Col Harendra Ranasinghe¹²¹ of the Special Forces in the video as one

¹¹⁹ OISL, §314

¹²⁰ <https://www.youtube.com/watch?v=RUB6n6icWd4> and on file.

¹²¹ HARENDRA PARAKRAMA RANASINGHE, <https://2009-2017.state.gov/documents/organization/227828.pdf> in DC in Summer 2014.

of the people accepting the surrender of Isaipriya though there's no indication he was responsible for her execution but he would likely know who was. He went on to become the defence attache in Washington in 2014- 2015¹²².

The UN said:

“Independent forensic examination of the photographs and video footage indicate that Isaipriya was shot in the head. In the images her body is positioned such that only the exit wound on the left side of her in temporal area is visible. Skull pieces and protruding brain are visible. Based on the video footage and photographs along with witness testimonies, OISL has reasonable grounds to believe that security forces captured Isaipriya alive and then killed her with gunshots to the head execution-style. Further, based on the images of Isaipriya's dead body and those of many other women, OISL believes that Isaipriya's dead body was desecrated.”¹²³

2.92 TORTURE

The UN Investigation specified the 53 Division as one of three named military units alleged to have perpetrated torture during or after the war:

“Acts of torture were perpetrated by State agents from the Sri Lankan Police (SLP), including the Special Task Force (STF), the Criminal Investigation Department (CID), and the Terrorism Investigation Department (TID), the Sri Lankan Army (SLA), particularly the 53rd, 55th and 58th brigades, the Military Police, the Military Intelligence, and the National Intelligence Bureau (NIB).”¹²⁴

¹²² <https://www.army.lk/news/commander-shares-views-army-chiefs-attending-ausa-sessions-washington>
<http://www.dami.army.pentagon.mil/g2Docs/DAMI-FL/FL%20Winter%202015%20Newsletter.pdf>

¹²³ OISL, §316.

¹²⁴ OISL, §544

3. JOSEPH CAMP

3.1 COMMANDER 20 JULY 2009 - 22 DEC 2010¹²⁵

Immediately after the war, Kamal Gunaratne was in charge of the Wannu Security Force Headquarters (SFHQ-W) in Vavuniya, commonly known as Joseph Camp. This is arguably Sri Lanka's most notorious army torture site¹²⁶.

During this period when Gunaratne was in command, the ITJP has documented the following ten cases of torture and sexual violence perpetrated by the Army in Joseph Camp. Victims describe purpose-built torture rooms inside this army camp and systematic torture and sexual violence by the military.

That illegal detention and the use of torture was commonplace in Joseph Camp was and is well known in Sri Lanka and it is inconceivable that Kamal Gunaratne did not know. Victims detained and tortured there in his period of command describe senior officers entering the interrogation rooms.

3.2 TESTIMONY

W74 2009 (INCLUDING AFTER 20 JULY)

W74 says his interrogators wore army uniforms and were Sinhalese with one Muslim interpreter. He was taken to a room equipped for torture inside Joseph Camp:

"When the blindfold was removed I instinctively look up and I saw inside the middle of room metal chains with manacles hanging from the ceiling. Inside the room I also saw, s-lon pipes¹²⁷, wooden batons, there were blood splatters on the old cemented wall."

W74 was hung from the ceiling by the wrists in manacles, beaten with batons and sticks, his feet burned with cigarettes and lighters, subjected to falaka while on a bench and asphyxiated by a petrol bag and had his genitals burned with a lighter and beaten. At night drunken soldiers in uniform subjected him to sexual abuse.

"The interrogators and the translator seemed cheerful, talking loudly, laughing all while inflicting torture. They sometimes called in a female

¹²⁵ SFHQ-W website copy on file. Also <https://www.army.lk/news/sfhq-wanni-greets-new-year>
<https://www.army.lk/news/agriculture-fishing-equipment-distributed-among-newly-resettled-civilians>
<https://www.army.lk/news/sf-wanni-commander-meets-inmates-victory-hospital>

¹²⁶ For more see <http://www.itjpsl.com/reports/joseph-camp> report detailing cases there.

¹²⁷ Construction pipes.

army soldier inviting them to watch and those women also seemed to be in a good mood and enjoying watching the torture.”

W79 IN 2009 (AFTER 20 JULY)

W79 was striped down to his underwear on arrival and beaten with pipes and batons, had barbed wire rolled on his back, was beaten on chest and cheek and on the soles of his feet. His hands were bound behind his back and he was blindfolded and pinched with pliers, slapped simultaneously very hard on both ears causing severe pain, punched in the face, beaten with sticks, kicked with knees in the chest, and every time he fell over they pulled him up and made him kneel again. He heard male voices sobbing and moaning in pain in the underground cell.

W112 (AFTER JULY) 2009

W112 was held by military intelligence in an underground cell sleeping on a bare floor in his underwear only. He saw wooden sticks, plastic pipes and electric wires in the room and was beaten with these while sitting or kneeling on the floor.

“They also told me to lie face down on the metal bed and they beat me with wires, plastic pipes filled with sand, wooden sticks, and a soft plastic hose filled with metal balls. On a few occasions they put a petrol soaked plastic bag over my head which caused severe difficulties in breathing. Sometimes I had to sit in the metal chair and put my hands down each side where the chair had a handcuff mechanism used to lock my wrists... While I was interrogated I heard sounds of women and men screaming and shouting. In the holding cells I could hear voices of Sinhalese soldiers talking, knocking on doors, and choppers quite often, but otherwise it was a fairly quiet place... They mostly beat me on the leg wound or used a forceps to pick in the wound. They made me put my hands on the table and beat me on my knuckles.”

During this period W112 says high ranking officers came to interrogate him, with their bodyguards arriving first:

“...the interrogators got up from their chairs and saluted the officer and called him ‘Sir’. On those occasions they made me kneel facing the wall and handcuffed me with one hand over my shoulder and the other under my shoulder blade behind my back and they told me to only look at the wall. They put a chair behind me and the high-ranking officer sat on it and asked me questions.”

W211 IN 2009

W211 heard screams of others being tortured. Men in army uniforms questioned him and tortured him:

"...they beat me and tied a polythene bag over my head. They tightened it around my neck and left it open over my head. They held up the bag and poured water from the top and my face was covered with water. I held my breath as long as I could and when I was wiggling my body, pulling my arms and turning my head, they let the bag go limp and I got soaked on my body. They did this about 2-3 times that day."

W32 IN 2009 (AFTER JULY)

Military Intelligence arrested W32 from her house when they failed to find her husband and held her at Joseph Camp. While detained she heard Tamil voices, male and female, screaming. The men who interrogated her wore green uniforms and had Sinhalese name tags. At times she was interrogated by men while she was naked and she was sexually abused. She was asked where her husband was, which she herself did not know. She was tortured by being slapped, her hair pulled, beaten with a metal tipped wooden baton on her back, thighs and shoulders and her toes crushed with boots. Her head was submerged in water repeatedly and banged against the wall. A toe nail was removed. Water was thrown on the floor to stop her sleeping in the cell.

"For them it was like a joke to give pain to someone like me".

After release she was required to sign in regularly opposite the camp and was sexually abused while doing that.

W73 IN 2010

W73 was held in a cell together with four very young women, aged 16 or 17 years old. They were in the cell naked with their hands and feet tied. Several times a day the men would take a woman out of the room. W73 was raped repeatedly by many men. She was burned and beaten with wires.

W82 IN 2010

"In the camp I was interrogated by people wearing army uniform speaking Sinhalese and the people who asked questions were in green T shirts. They were close shaven, with short haircuts. They tortured me physically. They also tortured me sexually. There was a small toilet there and when I asked for water they said you drink this water and urinated in my mouth."

W107 IN 2010

W107 was held for months, and heard male and female voices screaming and was herself petrol bagged, kicked in the stomach, slapped and pushed on ground on her knees, her hair pulled and she was beaten with a stick. She was raped on two occasions.

W75 IN 2010

W75 was tortured by men in army uniforms in Joseph Camp and threatened with execution on multiple occasions.

W129 IN 2010

W129 was kept in a dark from for more than a month, tortured and raped:

"I heard male and female voices crying. I was physically tortured with plastic pipes that were heavy, sticks and batons, wires to tie my hands and legs, they did not use petrol bags but put my head in water. They made me take my clothes off. I was raped. More than once, by more than one man.. They made me masturbate them."

4. MANIK FARM

“I personally checked up on the facilities at Manik Farm to ensure their basic needs were met”.¹²⁸

(Kamal Gunaratne)

4.1 THE COMPETENT AUTHORITY

Kamal Gunaratne was appointed the “Competent Authority for IDPs” from at least November 2009 if not earlier until the end of 2010. This role put Gunaratne in overall charge of camps like Manik Farm which illegally detained hundreds of thousands of people¹²⁹. He took over from Major General G.A. Chandrasiri who was the first person to be appointed to the new post by Gotabaya Rajapaksa, according to Gunaratne, after he’d complained to him about poor facilities and slow processing of civilians¹³⁰.

Speaking at the 2012 Defence Seminar in Sri Lanka, Gunaratne said the situation at the end of the war was not conducive for immediate resettlement and so civilians were put in “well organised Manik Farm relief villages”. He confirmed he was the Competent Authority for IDPs, whose job it was to take care of IDP’s in the Northern Province and house them properly¹³¹.

This dossier does not focus on the appalling conditions in Manik Farm which the UN has reported on in detail (OISL §1081-1105) and which the domestic commission known as the Lessons Learned and Reconciliation Commission (LLRC), described as “deplorable” even as late as August 2010, when people had been detained there for more than a year.

¹²⁸ Page 708, ‘Road to Nandikadal’.

¹²⁹ “The militarized nature of the Government’s approach to IDPs was highlighted by the appointment of Major General Chandrasiri as the Competent Authority in charge of IDPs in the Northern Province, in April 2009. He was subsequently replaced by the Commander of the 53rd Division of the SLA, which had been involved in the final offensive, Major General Kamal Gunarathne.” OISL §1074.

<https://www.amnestyusa.org/pdf/unlockthecamps.pdf>

Visit of High Commissioner H.E. Shri Alok Prasad to IDP camps in Manik Farm, Vavuniya

<https://hccolombo.gov.in/press?id=eyJpdiI6IjNoeGFYS3E4ZFJaOERWMGNZEdFamc9PSIsInZhbHVlIjoiajJMdzkzUXpWUG5nYWJQclhSQOVNdzo9IiwibWJlIjoITUxNDNmOTA4NDYwNzZlZDg4NGZiNzkyMTYyMmIwZjdjMjZlNjE2YjE2MjA2MmIzODI5MjYzMWVlZmM1YTdmNyJ9> Also

In office in Dec 2009: <http://archives.dailynews.lk/2009/12/25/news21.asp>

In office in Nov 2009: <http://archives.sundayobserver.lk/2009/11/15/new21.asp> and Wikileaks

https://wikileaks.org/plusd/cables/09COLOMBO1054_a.html

And in 2010 27 Sep 2010 adaderana.lk <http://sinhala.adaderana.lk/news.php?nid=11113>

10 Oct 2010 Divaina <http://www.divaina.com/2010/10/10/feature25.html>

Not in office on 8 Aug 2009: <http://archives.dailynews.lk/2009/08/08/bus45.asp> (but Chandrasiri appointed Governor of Northern Province on or around 17 July 2008. <http://archives.dailynews.lk/2009/07/17/sec03.asp>

¹³⁰ Page 708-9, ‘Road to Nandikadal’.

¹³¹ <https://www.youtube.com/watch?v=5mQ4AoEHbMI>

4.2 THE ROLE OF THE MILITARY

The UN describes Sri Lanka's approach to IDPs as militarised (§1074) with army commanders in charge of each zone of Manik Farm, and military personnel present throughout the camps to regulate the everyday life of the IDPs. This is corroborated by survivor testimony.

4.3 FREEDOM OF MOVEMENT

Kamal Gunaratne justified the restrictions on movement of IDPs in Manik Farm and elsewhere on the grounds that the military needed to screen war survivors for ex LTTE cadres (OISL § 1065 quoting LLRC testimony¹³²). Mahinda Samarasinghe, the Minister of Disaster Management and Human Rights at the time¹³³, justified the internment on the grounds that it was protecting the detainees:

“the IDP sites are a temporary measure to keep these people, our people in safety and security...”¹³⁴”

By March 2010, 92,000 people were still confined to camps, including 88,198 in Manik Farm (OISL §1111). By the end of February 2011 there were still 17,701 IDPs in Manik Farm.

4.4 SCREENING

The UN investigation said:

“The screening and interrogation processes - the main official justification for not allowing IDPs to leave the camps - continued inside the camps throughout 2009 and into 2010. Military Intelligence officers operating in civilian clothes, and CID personnel were present as part of the strategy to search for LTTE cadres and fighters. Members of paramilitary groups and former LTTE fighters who worked as informants regularly entered the camps with Military Intelligence officers to identify LTTE members. They would walk amongst the IDPs and point out individuals, who were taken away for questioning. Some IDPs were dragged and beaten in the presence of other IDPs when they were being taken, while others were taken away at night.”
(§1075-6).

¹³² We had to keep them under certain movement restrictions for about two-three months¹³² because we knew that there was a huge amount of fighters who were hiding behind this population and we had to employ all our intelligence agencies to identify them.”

¹³³ As of 2019 Minister of State for State Administration. Also see ITJP Dossier on Mahinda Samarasinghe - <http://www.itjpsl.com/assets/press/6-march-press-release-corrected.pdf> “Sri Lanka sends war crimes denier to Geneva as part of official delegation.”

¹³⁴ https://www.parliament.lk/uploads/documents/hansard/PUBDOC2258_document.pdf



Photo: Col.Karuna (pink shirt, ex LTTE), Shavendra Silva (centre in cap) Kamal Gunaratne (right).

Tamil informants regularly entered the camps with the military to identify their former comrades (OISL §365). ITJP testimony indicates there were at least 60 Tamil informers based in Joseph Camp post war to identify ex LTTE cadres. They routinely visited Manik Farm and “rehabilitation” camps. These informers would have operated under Kamal Gunaratne and they lived inside the camp so he would have been aware of them. The ITJP has dozens of photographs of informers and military intelligence operatives who worked inside the SFHW-W (also known as Joseph Camp) and has corroborated their identity with hundreds of survivors over many years.

Kamal Gunaratne has admitted he was involved in the screening process, telling the Lessons Learned and Reconciliation Commission (LLRC):

“...we identified more than 2500 ex-combatants who were hiding behind the IDP population. So we identified those dangerous people also and took them out and put for rehabilitation under the Commissioner General of Rehabilitation”.

This means he was in command of the screening process in the so called IDP camps. In the name of “screening” Tamils were tortured and raped, subjected to enforced disappearance and arbitrary detention¹³⁵.

¹³⁵ OISL §366 “...some of those who surrendered were reportedly extrajudicially executed. In the case of those who disappeared, the relatives are still seeking the truth.”

Furthermore the “rehabilitation” process itself had no legal basis for indefinitely detaining what were prisoners of war, let alone torturing them.

4.4 SEXUAL ABUSE IN MANIK FARM

The UN investigation into Sri Lanka (OISL) has a whole chapter on “*Sexual harassment and other forms of sexual violence during screening processes and inside Manik Farm*”. It cites the case of a woman raped by soldiers in Manik Farm (OISL §617-8) but highlighted that, at the time they wrote in 2015, more work needed to be done on the issue, noting the lack of medical care and the atmosphere of fear made reporting unlikely.

The ITJP has continued to document cases of rape in Manik Farm since the OISL process ended. These include the case of a 14 year old Tamil child, forced to join the LTTE in the final weeks of the war, who says she was then repeatedly sexually abused for ten months after the war by military intelligence in Zone 4 of Manik Farm:

“The soldiers were all Sinhalese, some spoke broken Tamil, I don’t know their names, they were very rough guys, some were very fit, sometimes they put some sort of black paint on their faces to terrorize me. Sometimes they wore army uniforms and sometimes the same guys were wearing civilian clothing. They were all around 30-35 years I would say. All of them carried weapons...If I started screaming sometimes they tied a piece of cloth around my mouth and sometimes they just held a hand over my mouth. I have bitten their hands many times. Then they would get very angry and push me to the floor and beat me with their hands or with sticks and they kicked me. They spat on me. Sometimes they tore my clothes off. Some of them took off their trousers and they would take turns to put their penis on my face and inside my mouth.”

This girl was later vaginally raped in 2010 in Manik Farm, aged 15 years old:

“A group of soldiers came in the early evening wearing facemasks and took me to another tent. They seemed drunk and I could smell alcohol. They tore my clothes off and started filming me with a small camera. They beat me, put their penis in my mouth and then one soldier forced a piece of cloth inside my mouth and he raped me. After he finished I was raped again twice. The soldiers left me there in the tent and my mother found me there and helped me put my clothes back on.”

An adult Tamil woman described being raped on two occasions in Manik Farm in 2009 by soldiers in one of four interrogation rooms. She was in a queue of women and noticed those coming out in front of her were “young girls ahead of were crying

and very upset; their clothing and hair was messy.” This is a description of the second incident of gang rape she experienced:

“He rolled me over on my back. I kicked him. He then stomped down on my bare feet. He lifted up my blouse and bra up over my chest exposing my stomach. One man held down my legs and the other man was biting my neck. I struggled to no avail. They started to get angry and started slapping me and kicking me in my legs and hips and were using bad words to me. One of them pulled my skirt and panties down on my thighs. He then started touching my vagina. He was touching my breasts. The other man took a lit cigarette and started burning me on the outside of my vagina. He did this two times. He forced my legs open and raped me. By rape I mean that he put his penis in my vagina. He had intercourse with me for a few minutes. I do not know if he ejaculated in me. When he was finished the other man raped me. He then rubbed his penis on my face. He ejaculated all over my face. .. They started laughing at me.”

This woman, W103, identified one of the men who raped her on the first occasion; he is a military intelligence officer from Joseph Camp whose name, rank and entire career history is known to the ITJP. Were there a credible investigation process he is someone who should be investigated.

Another witness W67 is aware of several women raped and men tortured in the camps by Tamil informers and Sinhalese military intelligence officers post-war. He heard the perpetrators boast about their actions and in one case saw a victim shortly after the rape:

“I heard some MIC men bragging about raping Tamil women in the camps. They would say that they raped fifteen each or more.”

This witness also saw torture in the Manik Farm Camp, including of men and women:

“I saw him torture a male prisoner in the torture investigation room in Anandakumarasamy Camp. Manik Farm. I saw him kick him all over and slap him on the face. I saw him do this to many prisoners. ..I have seen him torture detainees in various camps on many occasions”.

OISL (§602) says: “One individual close to the SLA told OISL that often they were instructed to fetch girls from Manik Farm and bring them to Joseph camp, where the women would then be raped”.

5. OTHER POST-WAR ALLEGATIONS

5.1 BRAZIL ALLEGATIONS

Kamal Gunaratne was reported in 2017 to be under investigation over the murder of an employee, Nimal Rupasinghe, at the Sri Lankan embassy in Brazil¹³⁶. Media said he had been called to the police to give a statement¹³⁷. The then foreign minister told parliament two others involved in the murder had been given promotions and sent to the United States from Brazil.

5.2 2016 STUDENT ASSAULT

On 14 December 2016, Kamal Gunaratne was alleged to have squeezed the throat of a student at DS Senanayake College and threatened to pulverize him – a charge he initially denied on the grounds he was not in Sri Lanka at the time. The student was accused of bullying his nephew. Later on 22nd December, he admitted at Cinnamon Gardens police station that he had become involved in a dispute at the request of a relative¹³⁸. The case was settled out of court.

5.3 2019 ROYAL INSTITUTE

Kamal Gunaratne became Administrative Director of the Royal Institute, a private school and is reported to have terminated two children whose families hadn't paid the fees: "Several children were earlier left humiliated when they were incarcerated in classrooms and not permitted to attend classes by the war veteran Gunaratne, who employed guerrilla like war tactics to force parents to pay their pending school fees.¹³⁹" Parents started a petition and the National Police Commission confirmed receiving a complaint made by a parent regarding the abuse of students by Retired Major General Gunaratne and that a B Report bearing number M/U B3219/18 had been filed with the Nugegoda Magistrates court pending advice from the Attorney General¹⁴⁰. One report alleged Gunaratne used his brother in the

¹³⁶ <https://economynext.com/sri-lanka-embassy-war-general-faces-investigation-over-embassy-murder-7508/>

¹³⁷ Kamal Gunaratne to go to CID Wednesday, 10 Jul 2018, <https://lankanewsweb.net/news/special-news/30622-kamal-gunaratne-to-go-to-cid-wednesday>

¹³⁸ Top teachers union Ceylon Teachers Union confirms the incident. <http://old.radiogagana.com/?p=29922>

The National Police Commission confirmed in a letter dated 29th January 2019, that they had concluded the complaint made by a parent bearing entry number WCIB II 96/80 regarding the child abuse of students at Royal Institute by Retired Major General Kamal Gunaratne and that a B Report bearing number M/U B3219/18 has been filed with the Nugegoda Magistrates court pending advice from the Attorney General.

<https://www.colombotelegraph.com/index.php/royal-institute-retired-major-general-kamal-gunaratne-muscled-his-way-to-terminate-children/>

¹³⁹ Royal Institute: Retired Major General Kamal Gunaratne Muscled His Way To Terminate Children, 7 Mar 2019, <https://www.colombotelegraph.com/index.php/royal-institute-retired-major-general-kamal-gunaratne-muscled-his-way-to-terminate-children/>

¹⁴⁰ Royal Institute: Viyathmaga Kamal Gunaratne's Child Abuse Saga Continues, 20 Mar 2019, <https://www.colombotelegraph.com/index.php/royal-institute-viyathmaga-kamal-gunaratne-child-abuse-saga-continues/>
<https://www.stopchildcruelty.com/News-Detail/Royal-Institute-Kids-Suffer-As-War-Veteran-Kamal-Gunaratne-Thuggery-Continues/52>

police emergency services, A.S.P Amith Gunaratne, to take four parents in for inquiry as a pressure tactic. The report quoted a parent saying:

"These are our own Sinhala kids that he is harassing in this manner. They are not LTTE terrorist child brigade soldiers. This is a school and he has now made this his own battle ground. He must wake up. The war is over. It is almost ten years since it ended. His crimes committed during the final stages of the war must be definitely investigated, because if he is behaving like this now, I can imagine how he must have behaved during the last stages of the war"¹⁴¹.

¹⁴¹ Ibid.

6. OPPOSING ACCOUNTABILITY

6.1 INVESTIGATING HIMSELF

Unbelievably in the post war period, Kamal Gunaratne was appointed to a Board of Inquiry to examine the Army's conduct in the final phase of the war. He was investigating himself.

The Board included¹⁴² Brigadiers Suraj Bansajaya and Sumedha Perera (also Gajaba Regiment), who were also involved in the final phase of the War in 2008-9¹⁴³. In addition the Board included Brigadier Aruna Wanniarachchi, who was Director of Military Intelligence from Nov 2009 – Oct 2012¹⁴⁴ and who had been Director of Operations for the Army from 11 April – 25 June 2009¹⁴⁵.

Perhaps unsurprisingly this Board concluded that “the Army had taken all precautions to avoid civilian casualties” [though it says only 1128 soldiers were killed in the 3 months]¹⁴⁶. Its conclusion, however, refers to a decision by the Rajapaksa brothers “to wipe out the LTTE from the face of the Earth” while also talking about a “Humanitarian Operation” “launched on a ‘Zero Civilian Casualty’ footing”. Some of the report's comments are extraordinary – it reproduces large chunks of the LLRC report on disappearances in Sri Lanka only to comment in a section entitled “Action Plan Proposed by the Army Board” that the disappearance issue is part of a relentless campaign by the LTTE and Tamil Diaspora to discredit the country and that the best antidote is to increase tourism to the northeast, using the Army to develop the tourism sector. In response to the Channel 4 videos¹⁴⁷ the Board simply recommended appointing another Board.

¹⁴² THE BOARD COMPRISED MAJOR GENERAL KAMAL GUNARATNE, BRIGADIER SENAKA WICKRAMARATHNE, BRIGADIER ARUNA WANNIARACHCHI, BRIGADIER G.V. RAVIPRIYA, BRIGADIER SURAJ BANSAJAYA AND LIEUTENANT COLONEL PIYAL WIJESIRIWARDHANE. THEIR VOLUMINOUS REPORT WAS NOT MADE PUBLIC BUT A THREE-PAGE NOTE DISTRIBUTED TO THE MEDIA ON THAT OCCASION GAVE SOME SELECTED HIGHLIGHTS.' 27 JAN 2013, *International battle ahead; possible questions from Commonwealth*, The Sunday Times Lanka, <http://www.sundaytimes.lk/130127/columns/international-battle-ahead-possible-questions-from-commonwealth-30452.html>

¹⁴³ Also Brigadier Senaka Wickramarathne, Brigadier Aruna Wanniarachchi, Brigadier G.V. Ravipriya, and Lieutenant Colonel Piyal Wijesiriwardhane.

¹⁴⁴ <http://www.parliament.lk/uploads/documents/paperspresented/performance-report-srilanka-army-2011.pdf>

¹⁴⁵ Army reports to parliament.

¹⁴⁶ “The board comprised Major General Kamal Gunaratne, Brigadier Senaka Wickramarathne, Brigadier Aruna Wanniarachchi, Brigadier G.V. Ravipriya, Brigadier Suraj Bansajaya and Lieutenant Colonel Piyal Wijesiriwardhane. Their voluminous report was not made public but a three-page note distributed to the media on that occasion gave some selected highlights. It said the task of the board was to “study the LLRC report and identify areas that are relevant to the Army and to formulate a viable Action Plan to address the specific areas so identified. The board's recommendations, made public, projects differing viewpoints to that of the LLRC report.” *International battle ahead; possible questions from Commonwealth*, 27 Jan 2013, Sunday Times Lanka, <http://www.sundaytimes.lk/130127/columns/international-battle-ahead-possible-questions-from-commonwealth-30452.html>

¹⁴⁷ <https://www.channel4.com/news/sri-lanka-execution-video-new-war-crimes-claims> Showing naked men being executed by soldiers.

6.2 2012 DEFENCE SEMINAR¹⁴⁸

These controversial annual defence seminars promoted Sri Lanka's method of ending terrorism despite the allegations that it involved widespread violation of international humanitarian law. Speaking at these events, Gunaratne corroborated the pivotal role that the Security Force Headquarters-Wanni (under Jagath Jayasuriya¹⁴⁹) played in administration of the war in 2009. Gunaratne said arrangements were put in place to receive civilians leaving the war zone "with utmost care". This is not consistent with the accounts given by survivors or national and international observers who described appalling conditions in the camps, diseases spreading, and widespread violations of human rights.

6.3 BRAZIL

As Deputy Head of Mission in Brazil, Major General Kamal Gunaratne, was active in propaganda justifying the way the final war was conducted and the detention of Prisoners of War in the now discredited "rehabilitation" programme¹⁵⁰.

6.4 2018 COMMENTS ON DISAPPEARANCES

Kamal Gunaratne gave a speech on 28 March 2018 in Sinhala in Kuliyaipitiya in the North-Western Province. We reproduce a translated extract here as it reveals his lack of respect towards senior United Nations officials working on human rights, his attitude towards accountability for the past, including enforced disappearances, and his opposition to a political settlement or any concessions to Tamils.

"During the recent past, two acts were brought to the parliament. The first one was the Act to establish the Office on Missing Persons. It got passed through the parliament in the midst of a commotion. Then, President Sirisena kept it on his table for almost one year. But after the UN guy Ben Emmerson paid a visit and made a scene, on the following day it was signed by the president. Afterwards, it was silently held back without gazetting. Then that 'Prince' in Jordan - that human rights commissioner - he made a threat during one of his speech, and the following the gazette notification was released. That means the first step to tighten the screws on us. The second one was the Enforced Disappearance Act. But after some prominent monks went to meet the president and marked their opposition, it was again held back. But it was delayed like a beach-ball held under the

¹⁴⁸ <https://www.youtube.com/watch?v=5mQ4AoEHbMI>

¹⁴⁹ For more on him see: <http://www.itjpsl.com/reports/the-case-against-jagath-jayasuriya>

¹⁵⁰ <http://www.asiantribune.com/node/64778> 29 Sep 2013

"The presentation further explained the manner in which the Humanitarian Operation was conducted and the way which the Policy of Zero Civilian Casualties was implemented, the way in which the humanitarian assistance was carried out when handling internally displaced people, the method in which the Sri Lankan Government carried out the demilitarization of over 12, 000 ex-combatants and the facilitation of their re-integration into society after rehabilitation, the process of the implementation of the recommendations by LLRC and the development of the Road Map for 5Rs (Reconstruction, Resettlement, Rehabilitation, Reintegration and Reconciliation) by the Government of Sri Lanka."

water.....But when there were recent communal riots, even the armed vehicles belonged to the 53rd Division which I led were brought on to the streets. You may have seen them. By doing so, they made us feel about a greater evil and while we all were watching in astonishment, they got the act on Enforced Disappearances passed through the parliament. So, what will happen as a result?

You know Brazil, where I too served as a diplomat, was one of the countries which has become a signatory to this convention. You all may remember, when Jagath Jayasuriya was returning after serving as the Ambassador to Brazil, a lawsuit was filed in a Brazilian court. If the Brazilian court had taken up the case while he was there, there wouldn't have been much choice for the government of Sri Lanka. If they had asked Sri Lanka to send Jagath Jayasuriya, we would have been compelled to send him to Brazil. So, why are they doing this? Why are they taking revenge on us? What offence did we commit?

Dear friends, whenever the tiger terrorist attacked, it was we who got killed. Whenever there was peace, it was we who suffered insult. Once the peace ended, it was we who became victims of deadly attacks. When a peace treaty was signed and the Indian troops arrived, it was we who came back to south like homeless gypsies. And then it was again we who suffered at the hands of southern terrorists, who destroyed our houses and killed our parents. Nevertheless, it was we who went to North again when we were ordered to go and fight in the north. When it was told that 'now peace has come, it was we who had to stop the war and got insulted again. But when asked to fight back, it was we who had to resume attacks. Finally, when his government (*he says this pointing at Gotabaya who seemed to be on the same platform*) asked to finish it, it was we who finished them off. I am not crying here, but saying this with pride. Now all this treatment is meted out to us, after making all those sacrifices to let the people of this country to live with dignity.[...] Why do they bring a new constitution? To solve the problems of the minorities. What problems do the minorities have? If Sarvananda and Sri Pawan can become the Chief Justices, Shiva Pasupathy can become the attorney general, Admiral Travis Sinnaiah can become the Navy Commander, Amirthalingama and Sambanthan can become the opposition leaders, what problem is there to solve? What is the problem? To give them what?"¹⁵¹

6.5 2019 SUPPORT FOR BRIGADIER PRIYANKA FERNANDO

Brigadier Priyanka Fernando was the Sri Lankan defence attache in London and on 4 February 2018 made three throat slitting gestures aimed at Tamil protestors in front of the Sri Lankan High Commission. He is being privately prosecuted in the Westminster Magistrate's court in London for Section 5 Public Order offences; judgement is due on 6 December 2019.

¹⁵¹ <https://www.facebook.com/viyathmagaPBF/videos/2162293243798820/>

Kamal Gunaratne said he commanded Brigadier Fernando in the 2009 war¹⁵². In March 2019, well aware of the controversy over the throat slitting gesture, Kamal Gunaratne repeated the gesture himself on camera, indicating his support for Brigadier Fernando by saying the whole incident made his blood boil¹⁵³.

6.6 HATE SPEECH

Kamal Gunaratne has been recorded saying those who want a new constitution (which devolves more power to Tamils) are traitors and should be killed:

"...There are several dangers of this new constitution. One is gaining a two thirds majority. The other is holding a referendum. Just as the previous speaker said, you need to extend maximum support to block this two thirds majority, which is needed to pass the constitution.....You must explain to Buddhist monks, if somebody raises his hand in support of the constitution, he should never be blessed and they should not even attend their funerals to observe funeral rites. I am speaking from my heart. I have no political ambitions. I came here because I love my country. Those who are born into this nation and then try to betray our nation, are traitors. As [Rear Admiral] Sarath Weerasekera says, traitors only deserve death. You may also remember those posters put up by Peoples' Liberation Front (JVP) during their 1987-89 insurrection, which read "death to traitors". If there are traitors who betray the country and divide the country, they deserve to be killed. Also, during the days of JVP terrorism, JVP denied proper funeral rites for those who were killed as 'traitors' and when their coffins were carried to the cemetery, the JVP did not allow to lift those coffins more than six inches above the ground. And we should treat these traitors in the same way."¹⁵⁴

¹⁵² Translation: "This is an officer whom I know very well...he is an officer who used to work under me for a while. When I was serving as the commander of the air mobile brigade, one of its units was 5th Gemunu Watch. Priyanka Fernando was the second in command of that unit. At the time the air mobile brigade was stationed in Muhamalai. Muhamalai was the most dangerous place in Sri Lanka at the time. The air mobile brigade was there as an auxiliary force... Priyanka Fernando served as a major at the time."

<http://www.divaina.com/sunday/index.php/visheshanga1/2297-2018-02-09-13-22-12> - heading "This is blood boiling. It should not be mixed up with diplomacy. I would have done the same if I was there".

¹⁵³ Video 2'29"- 3'28" - throat slitting gesture - https://www.youtube.com/watch?time_continue=9&v=wB3sXNm-PDU&feature=emb_logo
<https://www.youtube.com/watch?v=-6A7vco9pPo> with subtitles.

You would all remember that officer making a frightful (mimes) gesture and leaving the place. A day after the incident the 'Divaina' newspaper editor - a classmate of mine, Mr Anura Solomons - called me and asked, "Kamal mate, what have you got to say about this?" My pat answer was, friends, "this is what you call blood boils". So, at that point, Anura Solomons said that he is sending his deputy editor to my home to get an interview about it. After that, the next Sunday there was a whole page of my analysis about it. So, friends, this is what blood boils really is. The best example for that is, the emotion you and I would have when the national flag is being trampled. 31 March 2019

¹⁵⁴ 21 October 2017 - 'Viyath Maga' meeting in Gampaha.

7. LEGAL ANALYSIS

7.1 LEGAL FRAMEWORK APPLICABLE TO SRI LANKA

Under international law, Sri Lanka is obliged to protect, respect, promote and fulfil the rights of all persons within its territory or under its control, without discrimination.¹⁵⁵ This includes the duty to investigate and prosecute gross violations of human rights law and serious violations of international humanitarian law, as well as the right of victims to the truth about the violations and the right to an effective remedy, including the right to adequate, prompt and effective reparations.¹⁵⁶ States are further obliged to prevent the recurrence of violations.¹⁵⁷ Both international human rights law and international humanitarian law applied¹⁵⁸ to the non-international armed conflict in Sri Lanka.¹⁵⁹

At the time of the armed conflict, Sri Lanka was a State Party to a number of international human rights treaties including: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (accessed in 1994); the Convention on the Prevention and Punishment of the Crime of Genocide (accessed in 1950), the International Covenant on Civil and Political Rights (ICCPR) (accessed in 1980); the International Covenant on Economic, Social and Cultural Rights (ICESCR) (accessed in 1980); the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) (accessed in 1982); the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW) (accessed in 1996); the Convention on the Rights of the Child (ratified in 1991); the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (ratified in 2000) or the Optional Protocol to the Convention on the Rights of the Child on the Sale of Child Prostitution and Child Pornography (ratified in 2006).

¹⁵⁵ Article 2(1), International Covenant on Civil and Political Rights. See also United Nations Human Rights Committee (UN-HRC), General Comment No. 31 [80] adopted on 29 March, CCPR/C/21/Rev.1/Add.13, 26 May 2004, § 10.

¹⁵⁶ 'Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.' See Principle 2, The Updated Principles to Combat Impunity. Also, the right to justice is part of the right to an effective remedy and entails a victim's right to a fair trial by an independent and impartial court. See Principles VII-IX, UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 16 December 2005.

¹⁵⁷ General Comment No. 31 [80], § 7, 17 as explained in Mayer-Rieckh, 'Guarantees of Non-Recurrence: An Approximation', 39 *Human Rights Quarterly (HRQ)* (2017) 416.

¹⁵⁸ ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons from 1996 para 24.

¹⁵⁹ The duration and intensity of the violent incidents described, and the apparent level of organisation of the LTTE, allows concluding that the conflict in Sri Lanka was of an internal character. It was not simply domestic disturbances or tensions or criminal acts. Consequently, the majority of violent attacks and other incidents described in this report are the result of armed conflict.

Moreover, Sri Lanka ratified the 1949 Four Geneva Conventions in 1959¹⁶⁰ and is also bound by Common Article 3 to the Four Geneva Conventions which have been recognized as customary international law applicable to non-international armed conflicts. All parties to the conflict in Sri Lanka were also bound by other rules of customary international law that apply to non-international armed conflicts, in particular the principles of distinction, precaution and proportionality. Sri Lanka is not a State Party to the three Additional Protocols to the 1949 Geneva Conventions.¹⁶¹

Sri Lanka ratified the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED) only in 2017.

Sri Lanka is not a State Party to the Rome Statute of the International Criminal Court (“ICC”) but the ICC still may exercise jurisdiction over the crimes committed in Sri Lanka during the conflict either through a declaration accepting jurisdiction by Sri Lanka,¹⁶² or a UN Security Council referral¹⁶³ or in case of a crime committed by a national of a signatory State to the ICC Rome Statute or on the territory of a Member State.¹⁶⁴ Accordingly, Sri Lankans who are dual nationals and whose second nationality is that of the State Party to the ICC Rome Statute can still be tried before the ICC if the concerned State refers the case to the ICC or the ICC Prosecutor acts *propriu motu*.¹⁶⁵ Moreover, the individual criminal responsibility of an alleged perpetrator can be engaged by those States that have included provisions on universal jurisdiction in their national law¹⁶⁶ or before a special or hybrid-court that could be potentially established to try those responsible for international crimes committed in Sri Lanka during the war.

The Government of Sri Lanka committed itself to the establishment of a special judicial mechanism to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, in terms of Resolution A/HRC/30/1 by the UN Human Rights Council in 2015.¹⁶⁷

The principle of universal jurisdiction is a “a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator

¹⁶⁰ Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field, 1949; Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea, 1949; Geneva Convention (III) on Prisoners of War, 1949; Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949;

¹⁶¹ In particular, it has not ratified Protocol Additional to the Geneva Conventions of 12 Aug 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

¹⁶² Article 12(2) and (3) ICC Statute

¹⁶³ Article 13(b) ICC Statute

¹⁶⁴ In this case, a State Party concerned can refer a case to the ICC or the Prosecutor can act *propriu motu*, see Article 12(2), 13(a) and (c) of the ICC Statute.

¹⁶⁵ 12(2), 13(a) and (c) of the ICC Statute.

¹⁶⁶ Belgium, Denmark, Germany, The Netherlands, the UK or Switzerland.

¹⁶⁷ Human Rights Council, *Promoting reconciliation, accountability and human rights in Sri Lanka*, UN Doc. A/HRC/RES/30/1, 14 October 2015, para 6.

or the victim”¹⁶⁸ and constitutes a derogation from the fundamental principle of criminal law, the principle of territoriality. Universal jurisdiction is based on the premise that certain crimes are so harmful to the international community and order, that it must be prosecuted regardless of the location of the crime or the nationality of the perpetrator or the victim.¹⁶⁹

Moreover, State Parties to the Convention against Torture (currently 164 States ratified) are required to prosecute the alleged perpetrators of torture in any territory within their jurisdiction, if such persons are not extradited to another State.¹⁷⁰ In 2012, Amnesty International found that at least 166 UN member states have included torture as a separate crime under national law (not as a war crime or crime against humanity) and at least 91 UN Member States have provided for universal jurisdiction over this crime.¹⁷¹

Similarly, the International Convention for the Protection of all Persons from Enforced Disappearance provides that State Parties shall take such measures as may be necessary to prosecute the alleged perpetrators of enforced disappearance in any territory within their jurisdiction, if such persons are not surrendered or extradited to another State or international tribunal.¹⁷² There are 98 Signatories to the Convention and 59 State Parties.¹⁷³

7.2 LEGAL ANALYSIS OF THE ACTS COMMITTED DURING THE FINAL STAGES OF CONFLICT

7.2.1 Introduction

On 16 September 2015, the OISL investigation reported to the Human Rights Council on its findings. The ITJP has in the aftermath of the conclusion of the OISL Investigation in 2015, amassed a massive archive of war crimes evidence which includes videos, photographs, SMSs, aerial photographs and testimony of eye-witnesses to the atrocities allegedly perpetrated by the Sri Lankan Army. The events covered in this report covers the final campaign in the north that lasted from early 2008 to the end of the war in May 2009 and its immediate aftermath. This report sheds light on the military offensives, strategies and tactics used during this campaign by the Sri Lanka Army, and focuses in particular on the role of the 53 Division under the command at the time of Major General Kamal Gunaratne. The 53 Division played a critical role in frontline combat, alongside the 58 Division. In his autobiography, Major General Kamal Gunaratne described the 53 Division as being the most powerful division in the army and its lifeblood.

¹⁶⁸ See eg Kenneth C. Randall, 'Universal jurisdiction under international law', Texas Law Review, No. 66 (1988), pp. 785-8 as cited in Philippe, 'The principles of universal jurisdiction and complementarity: how do the two principles intermesh?' 88 International Review of the Red Cross (2006) 375, at 377.

¹⁶⁹ Ibid

¹⁷⁰ Article 7(1) CAT.

¹⁷¹ Universal Jurisdiction: A Preliminary Survey of Legislation Around the World - 2012 Update (2012), at 13.

¹⁷² Article 9 of International Convention for the Protection of all Persons from Enforced Disappearance

¹⁷³ https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-16&chapter=4&lang=en

The conclusions in this report are based on evidence available in respect of the conduct of hostilities, means and methods of warfare, including in particular, the attacks by the Sri Lankan military directed against the civilian population and other protected persons as well as civilian and other protected objects.

The incidents covered in this report implicate the Sri Lanka Army in gross violations of international human rights and serious violations of international humanitarian law, and where reasonable grounds exist to believe that the violations in question if proven, constitute international crimes.

7.2.2 General Findings

Based on the evidence collected and reviewed, there are reasonable grounds to believe that the Sri Lankan Army, including the 53 Division, conducted targeted and indiscriminate attacks against the civilian population in Puthukuruiruppu and also conducted offensives in No Fire Zones 2 and 3, that is Putumattalan, Vellimullivaikkal and Kariyamullivaikkal areas, that resulted in extensive civilian casualties and extensive damage to civilian objects. The UN has confirmed that the 53 Division under the command of Major General Kamal Gunaratne was one of the main divisions involved in the fighting in the final phase of the Vanni offensive, which is corroborated by evidence in this report.

The attacks directed against the civilian population were targeted and deliberate as the civilian population was easily identifiable, as confirmed by Major General Kamal Gunaratne himself, and who said that he was in possession of the best intelligence from UAVs he had access to. Eye-witnesses and independent sources have corroborated that the Sri Lanka Army was in possession of UAVs and surveillance aircraft, which enabled the military to identify the objects of the attack and to observe that large numbers of civilians, including women, children and elderly were present in these zones.

The attacks were directed against easily identifiable civilian objects such as permanent and makeshift hospitals that were visibly marked with red cross emblems, food distribution points, densely populated areas in the No Fire Zones (NFZs), religious sites, as well as UN bases, where civilians were present. Attacks were targeted and directed against specially protected persons such as medical and religious personnel and persons *hors de combat*.

On the basis of the information set out in this report, there are reasonable grounds to believe that the attacks against the civilian population and civilian objects and specially protected persons were targeted and deliberate. In almost every instance, the Sri Lanka Army had access to intelligence and were in possession of the coordinates of the makeshift and regular hospitals which were communicated to the military by the International Committee of the Red Cross (ICRC) and doctors working in the said medical clinics.

Major General Kamal Gunaratne himself admitted in testimony to the Lessons Learnt and Reconciliation Commission (LLRC) that he had the luxury of being in possession of UAV footage which was used extensively by the military who at all times knew exactly where their troops were, as well as the LTTE reserves and where civilians were concentrated.

Based on the information in the possession of the ITJP, there are reasonable grounds to believe that the Sri Lanka Army and the 53 Division knew of the presence of the civilian population and civilian objects as well as the specially protected persons and nevertheless chose deliberately to target them employing means and methods of warfare that qualify as indiscriminate and disproportionate either by their nature or mode of use.

The OISL Investigation in 2015 named Major General Kamal Gunaratne as the 53 Division Commander in 2009 involved in attacks on hospitals and civilians in the three “No Fire Zones”, summary executions, torture and rape, stating that reasonable grounds existed to suggest that the 53 Division under his command was implicated in attacks on civilians, civilian objects including hospitals in the “no fire zones”, summary executions and torture¹⁷⁴.

Information in this report provides a basis to conclude that reasonable grounds exist to believe that Major General Kamal Gunaratne committed war crimes either by ordering attacks targeting the civilian population, civilian objects and protected persons, knowing that these persons constituted “protected persons” and “buildings” and launching indiscriminate and disproportionate attacks in the knowledge that the attacks will cause excessive civilian damage, injury or death; or by failing to control, prevent, or punish troops under his effective control from committing or attempting to commit these crimes.

Moreover, based on the information in this report, there are reasonable grounds to believe that Major General Kamal Gunaratne is responsible for crimes of torture, rape and enforced disappearance by failing to prevent the troops under his command, from having committed these crimes. There are reasonable grounds to believe that he knew, had reason to know, about the war crimes committed by his troops, or consciously disregarded information which clearly indicated that his troops were perpetrating crimes including enforced disappearances, and even then failed to act to prevent them or punish them accordingly. It is likely that Kamal Gunaratne had no qualms about torture being committed by his troops given his own admission that in the 1980’s he may have tortured prisoners in his custody. Major General Gunaratne can and should be held criminally accountable for these crimes domestically and in countries in which the principle of universal jurisdiction applicable to international crimes is accepted.

¹⁷⁴ OISL, §116

7.3 APPLICABLE LAW

A. Civilians and Civilian Population

Civilian populations and civilians who do not participate directly in hostilities enjoy protection from attack at all times during a non-international armed conflict. This includes members of armed forces who have laid down their arms and those *hors de combat* by sickness, wounds, detention or any other cause. Medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances, unless they become engaged in acts harmful to the enemy¹⁷⁵.

Immunity of civilians from an attack is closely related to the fundamental principle of international humanitarian law, namely the principle of distinction. The principle of distinction reflects the rule of customary international law and obliges parties to the armed conflict to distinguish at all times between lawful and protected targets¹⁷⁶.

In non-international armed conflicts persons who are not members of state armed forces or organized groups of a party to the conflict are civilians and therefore enjoy the protection against direct attacks unless they participate in hostilities¹⁷⁷. Article 50(3) of the Additional Protocol I provides: "The presence within the civilian population of individuals who do not come within the definition of civilians, including combatants does not deprive the population of its civilian character."¹⁷⁸

B. Civilian Objects and Military Objectives

Civilian objects are all objects that are not military objectives.¹⁷⁹ Military objectives "are limited to those objects which by their nature, location, purpose or use, make an effective contribution to military action and whose partial or total destruction, capture or neutralization in the prevailing circumstances at the time, offers a definite military advantage."¹⁸⁰ Civilian objects lose their protection from attack the moment they become military objectives¹⁸¹.

¹⁷⁵ First, Second and Fourth Geneva Conventions, 1949; Art 15 of the Additional Protocol 1. This Rule is implicit in common Article 3 of the Geneva Conventions and has been included in Additional Protocol II, Article 9(1). Recognized as norm of customary international law applicable during the non-international armed conflict. See ICRC Rule 25, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule25#Fn_E202BFDC_00011

¹⁷⁶ ICRC Customary IHL Database, Rule 1.

¹⁷⁷ 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts, Art. 51(3); 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, Art. 13(3).

¹⁷⁸ Similar provision was included in the draft of Additional Protocol II that was by consensus but ultimately removed from the final draft for the sake of simplicity. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule6_sectionb. Prosecutor v Pavle Strugar, Case No. IT-01-42-T, Judgement (TC), 31 January 2005, para 282. See also Tadic, Judgment, 7 May 1997, para 638. In its judgment in the Tadić case in 1997, the ICTY Trial Chamber stated: "It is clear that the targeted population [of a crime against humanity] must be of predominantly civilian nature. The presence of certain non-civilians in their midst does not change the character of the population."

¹⁷⁹ See ICRC Rule 9

¹⁸⁰ See ICRC Rule 8

¹⁸¹ ICRC Rule 10, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule10

International humanitarian law requires that the conflicting parties "take all reasonable precautions" to avoid or minimize the incidental loss of civilian life and damage to civilian objects,¹⁸² including doing everything feasible to verify that the objects of attack are indeed military objectives¹⁸³. The parties to the conflict must also give "effective advance warning" of attacks when circumstances permit¹⁸⁴. "Any bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are prohibited" under international humanitarian law and has been recognized as a rule of customary international law in the non-international armed conflict¹⁸⁵.

C. Intentional, indiscriminate and disproportionate attacks against civilians and the civilian population

Indiscriminate attacks are those: "(a) ... directed at a specific military objective; (b) which employ a method or means of combat which cannot be directed at a specific military objective; or (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction."¹⁸⁶ This principle prohibiting indiscriminate attacks has been recognized under customary international law as applicable to non-international armed conflicts.

The principle of proportionality also constitutes a fundamental principle of international humanitarian law that has been identified as a norm of customary international law applicable to non-international armed conflict. This principle prohibits all parties to the conflict from "launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."¹⁸⁷

"Making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack"¹⁸⁸ during a non-international armed conflict

¹⁸² Additional Protocol I, Article 57.

¹⁸³ AP I, Art. 52(3); Art. 57(2).

¹⁸⁴ Ibid

¹⁸⁵ ICRC Rule 13 https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule13

¹⁸⁶ ICRC Rule 12 https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule12

¹⁸⁷ ICRC Rule 14, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14/

¹⁸⁸ In order to determine whether the attack against civilian was deliberate the ICTY Trial Chamber ruled that inter alia the following criteria should be considered: "the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirement of the laws of war." ICTY,

is recognized as a serious violation of international humanitarian law¹⁸⁹. Similarly, “launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage” and “making non-defended localities the object of attack” have been cited as serious violations of international humanitarian law during the non-international armed conflict¹⁹⁰. During a non-international armed conflict any of the following acts constitutes a serious violation of international humanitarian law if committed against the civilians: “Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”; committing outrages upon personal dignity; taking hostages or passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable¹⁹¹. When committed with criminal intent these violations can constitute war crimes¹⁹². Violations of the laws of war by one side to a conflict do not justify violations by the opposing side¹⁹³.

D. Torture, Rape and other Forms of Sexual Violence, Enforced Disappearance

Torture

There is an absolute and clear prohibition of torture under international law which has been recognized as a norm of customary international law¹⁹⁴. The crime of torture has been recognized as a separate crime¹⁹⁵ and is also a material element for crimes against humanity, war crimes, and genocide¹⁹⁶. Several international tribunals and bodies have also recognized rape and sexual violence as a form of torture¹⁹⁷. The Elements of Crimes for the ICC provides that the war

Prosecutor v. Kunarac, Kovac and Vukovic, "Appeals Judgement", IT-96-23-T and IT-96-23/1-A, 12 June 2001, para 91.

¹⁸⁹ See ICRC Rule 15, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule156#refFn_5496F07B_00026. Moreover, under the Statute of the International Criminal Court, “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” constitutes a war crime in international armed conflicts. ICC Statute, Article 8(2)(b)(i), eg Article 8(2)(e)(ii) of the ICC Statute provides that, “directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law” during the non-international armed conflict, when committed with criminal intent, constitutes a war crime; see also Additional Protocol II, Articles 9 and 11.

¹⁹⁰ Ibid

¹⁹¹ Common Article 3 to the Four Geneva Conventions has crystalized into customary international law.

¹⁹² ICTR Statute, Article 4; Statute of the Special Court for Sierra Leone, Article 3; ICC Statute, Article 8(2)(c). For other serious violations of international humanitarian law applicable during non-international armed conflict see ICRC Rule 156 https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule156#refFn_5496F07B_00026

¹⁹³ ICRC Rule 140, citing Common Articles 1 and 3 to the Geneva Conventions.

¹⁹⁴ e.g. ICRC Rule 90

¹⁹⁵ e.g. section 7 No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, June 6, 2000, UN. Doc. UNTAET/REG/2000/15; Article 3 of Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, January 15, 2001, as amended by NS/ RKM/1004/006, October 27, 2004 (hereinafter “ECCCSt”).

¹⁹⁶ See e.g. article 6 ICC Statute, article 7(1)(f) ICC Statute, article 8(2)(a)(ii) ICC Statute.

¹⁹⁷ Rape and sexual violence have been recognized as forms of torture by several international human rights mechanisms including the international criminal tribunals, Committee Against Torture and by independent special rapporteurs. See for example: Prosecutor v. Akayesu, ICTR-96-4-T, Trial Judgment, 2 September 1998; ICTY

crime of torture consists of the infliction of “severe physical or mental pain or suffering” for purposes such as “obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind”¹⁹⁸.

RAPE AND SEXUAL VIOLENCE

The prohibition of rape and other forms of sexual violence has been recognized as a norm of customary international law applicable to non-international armed conflict¹⁹⁹. In the Akayesu case in 1998, the ICTR defined rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive”²⁰⁰. “Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence” also amounting to a serious violation of Article 3 common to the four Geneva Conventions constitutes a war crime under the ICC Statute²⁰¹.

ENFORCED DISAPPEARANCES

The ICRC study on customary international law considers that the prohibition of enforced disappearance has been recognized as a norm of customary international law applicable to non-international armed conflict²⁰². The International Convention for the Protection of All Persons from Enforced Disappearance defines the crime of enforced disappearance as: “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”²⁰³.

OUTRAGES UPON PERSONAL DIGNITY

The prohibition of mutilation of dead bodies has been recognized as a rule of customary international law applicable to non-international armed conflict²⁰⁴. The prohibition of “outrages upon personal dignity” is recognized in Additional Protocols I and II as a fundamental guarantee for civilians and persons *hors de*

Prosecutor v. Kunarac, No. IT-96-23, Trial Judgement, 22 February 2001; Committee Against Torture, General Comment No. 2, Implementation of Article 2 by State Parties (CAT/C/GC/2), 24 January 2008.

¹⁹⁸ Elements of Crimes for the ICC, Definition of torture as a war crime (ICC Statute, Article 8(2)(a)(ii) and (c)(i)).

¹⁹⁹ For detailed explanation see ICRC Rule 93, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule93

²⁰⁰ ICTR, Judgment, *The Prosecutor v Jean-Paul Akayesu*, ICTR-96-4-T, 2 September 1998, par. 598.

²⁰¹ Article 8(e)(vi)

²⁰² ICRC Rule 98, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule98

²⁰³ Article 2, The International Convention for the Protection of All Persons from Enforced Disappearance

²⁰⁴ ICRC Rule 113, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule113

*combat*²⁰⁵. Under the ICC Statute, the prohibition of mutilating dead bodies in non-international armed conflicts is covered by the war crime of “committing outrages upon personal dignity”²⁰⁶. The Elements of Crimes for the ICC further clarifies that “The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons”, while the footnote explains that “persons include dead persons”²⁰⁷.

E. No Fire Zones

The First and Fourth Geneva Conventions provide for the possibility of setting up of hospitals and safety zones²⁰⁸ and the Fourth Geneva Convention provides for the possibility of setting up neutralized zones²⁰⁹. These zones are intended to shelter the wounded, the sick and civilians during the conflict. However, hospital and safety zones should be located outside the military operations, while neutralized zones are typically established in the areas where military operations are taking place²¹⁰. As found by ICRC in the study on the Customary IHL, directing an attack against a zone established to shelter the wounded, the sick and civilians from the effects of hostilities is prohibited under international humanitarian law and constitutes a norm of customary international law applicable to non-international armed conflict²¹¹.

The ICRC has indicated that the following rule has been recognized as a norm of customary international law applicable to non-international armed conflict: “The parties to the conflict must take all reasonable precautions to protect the civilian population and civilian objects under their control against the effects of attacks.”²¹² Parties to the conflict must avoid locating military objectives near densely populated areas²¹³ and endeavour to remove a civilian population from the vicinity of military objectives²¹⁴. This obligation is considered especially relevant “where military objectives cannot feasibly be separated from densely populated areas”²¹⁵.

F. The use of prohibited and indiscriminate weapons

In its Nuclear Weapons Advisory Opinion, the International Court of Justice ruled that States must never use weapons that are incapable of distinguishing between

²⁰⁵ Additional Protocol I, Article 75(2); Additional Protocol II, Article 4(2).

²⁰⁶ Article 8(2)(c)(ii), ICC Statute read together with the elements for this crime in ICC Elements of Crimes, on p27 footnote 49.

²⁰⁷ ICC Elements of Crimes for Article 8(2)(c)(ii), on 27 footnote 49.

²⁰⁸ First Geneva Convention, Article 23; Fourth Geneva Convention, Article 14.

²⁰⁹ Fourth Geneva Convention, Article 15 § 3.

²¹⁰ See ICRC Rule 35, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule35

²¹¹ Ibid

²¹² ICRC Rule 22, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter6_rule22

²¹³ Additional Protocol I, Art. 58(b).

²¹⁴ Additional Protocol I, Art. 58(a)

²¹⁵ ICRC Rule 23, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule23

civilian and military targets²¹⁶. The ICJ based its reasoning on the rule that civilians should never be an object of the attack. While the use of weapons which are by nature indiscriminate is prohibited in all circumstances,²¹⁷ the prohibition of indiscriminate attacks also includes weapons which, “in the circumstances ruling at the time of their use, including the manner in which they are used”, cannot be directed at a specific military objective or whose effects cannot be limited as required by IHL²¹⁸. “The use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is prohibited” has been recognized as a rule of customary international law applicable to non-international armed conflict²¹⁹. Moreover, if “incendiary weapons are used, particular care must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects” as recognized by a rule of customary international law applicable to non-international armed conflict²²⁰. The use of prohibited weapons during the non-international armed conflict has not been included as a separate war crime under the ICC Statute but has been explicitly criminalized under several national legislations²²¹.

7.4 VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

A. Indiscriminate and Intentional Attacks conducted against the Civilian Population Civilian Objects and Medical Personnel at PTK

Information in this report confirms the repeated attacks by the Sri Lankan Army using heavy artillery and shelling on a number of easily recognizable and well-marked hospitals²²² as well as other civilian objects. The protracted nature of such shelling and bombardment, despite the fact that the security forces were aware of the exact location of hospitals, suggests that these attacks were not random occurrences but deliberate and intentional. The attack against the PTK hospital is emblematic of attacks on hospitals with PTK being one of the most heavily hit medical facilities²²³. A private hospital in PTK was also attacked twice in February 2009²²⁴.

²¹⁶ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, para 78.

²¹⁷ ICRC Rule 71.

²¹⁸ See also ICTY, Prosecutor v Milan Martić, Case No. IT-95-11-A, Appeals Chamber Judgement, 8 Oct 2008, para 247 (Martić Appeal Judgment) that recalled the Trial Chamber's finding that the M-87 Orkan “was used as an indiscriminate weapon” and that “by virtue of its characteristics and the firing range in the specific instant” it was “incapable of hitting specific targets” (emphasis added) as cited in International Institute of Humanitarian Law, Fernando Greppi (ed), Conduct of Hostilities: The Practice, the Law and the Future (2015)

²¹⁹ ICRC Rule 70, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule70

²²⁰ ICRC Rule 84, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule84

²²¹ ICRC Rule 156

²²² See evidence describing attacks against two hospitals in Kilinochchi, p8 of this report; evidence describing two attacks against hospitals in PTK, p9-13 of this report; evidence describing the attack against Putumattalan hospital, p26-28 of this report; attack against the church and hospital in Valayanmadam, p37-40; attack against hospital in Mullivaikkal, p43 of this report.

²²³ OISL, para 822

²²⁴ OISL, 2015, op cit, para 801.

In the course of the battle for control of PTK, the PTK hospital came under attack and experienced heavy bombardment by the Sri Lankan military between 10 January - 6 February 2009²²⁵. The targeted attack and bombardment of the PTK hospital by the Sri Lankan military led to medical staff and patients being forced to evacuate the hospital and move to Putumattalan on the coast. The lives of patients were severely endangered by having to be moved precipitously to a makeshift hospital without any proper medical equipment or facilities. Evidence before the UN investigation confirmed that PTK hospital suffered a number of attacks with its medical facilities severely hit and damaged. Relying on satellite imagery, the OISL report found that at least 10 primary buildings and 20 auxiliary buildings of PTK hospital were either severely damaged or destroyed²²⁶.

The 53 Division under the command of Major General Kamal Gunaratne, was sent to take charge personally of the battlefront south of PTK, which is corroborated by the MOD Situation Reports and his own autobiography. While, the operation was "spearheaded by Gajba Regiment veteran, Brig. Shavendra Silva" heading the 58 Division, the 53 Division led by Major General Kamal Gunaratne commanded not just his own 53 Division but also the 59 Division, Task Force 4 and two battalions of Special Forces²²⁷. He describes giving orders to the commanding officers of the Special Forces and Commando regiments and the Artillery Brigade²²⁸. As reinforcements arrived, he describes reorganising the command structure better to manage all these men in battle, dividing the six battalions into two brigades and asking for a Task Force Commander to manage the two brigades. This was how Task Force 8 was formed under the command of the 53 Division. Gunaratne describes the officers, including the 57 Division commander, Jagath Dias²²⁹, and Task Force commanders all operating out of what he calls "my headquarters", in February 2009²³⁰. His forces played a pivotal role in the shelling and bombardment of Puthukkudiyirippu hospital.²³¹ Information in the possession of the ITJP includes eye-witness testimonies and a sizable collection of video footage and photographs confirming the attacks and bombardment.

The Sri Lanka Army knew that this was a civilian hospital as it was visible from the air and from across the lagoon and because they were in possession of the GPS coordinates as well as UAV footage which enabled them to identify the PTK hospital

²²⁵ See Annexure 2. See also testimonies of W59, W155, W102, W42 on p34-35 of this report.

²²⁶ para 822, OISL 2015

²²⁷ "I quickly contacted the senior officers of 59 Division and Task Force 4 and instructed them to secure their areas..", Page 661, Road to Nandikadal',

"..by then the troops of the 59 Division under my command were extremely weakened..", Page 688.

²²⁸ Page 662, 'Road to Nandikadal'.

Page 682, he says Lt Col Thilak Hangilipola commanded the Air Mobile Brigade, Lt Col Jayanath Jayaweera commanded the 533 Brigade and Brig. Lalantha Gamage commanded the 681 Brigade and Lt Col Subhashana Welikal the 682 Brigade under him. Page 688 he adds Col. Athula Kodippili, Special Forces Commander, and Col Priyantha Napagoda of the Artillery Brigade.

²²⁹ See ITJP Dossier at <http://www.itjpsl.com/reports/jagath-dias-dossier> on Dias.

²³⁰ Page 679, 'The Road to Nandikdal'.

²³¹ *P'karan suffers irrevocable loss at Anandapuram*, The Island, 11 Dec 2012, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=68084

as a civilian object. The latter was well marked with the Red Cross emblem on the roof²³². The UN also indicated that they had informed the Sri Lankan Army on multiple occasions that the hospital was under attack²³³. Moreover, there was no indication that the hospital lost its protected status as a civilian object as there were no reports of armed LTTE elements in its surroundings. A UN employee testified that he never saw LTTE defensive positions near PTK hospital²³⁴. Despite being in possession of intelligence, the hospital was intentionally and indiscriminately attacked. After the UN and ICRC left the PTK Hospital on 29th January the shelling of PTK intensified. The Sri Lankan army ordered the local administration to close PTK hospital by 3 February given the intensity of the shelling and bombardment but chose to ignore that there were more than 500 injured patients in the hospital.

In particular, the use of unguided weapons like Multi-Barrel Rocket Launchers (MBRLs) indicates that the attacks were indiscriminate as they have not been designed for hitting accurate targets. Kamal Gunaratne in his book confirms he gave orders to fire MBRLs in February 2009 from the front south of PTK. He describes the weapon as “the most powerful and lethal weapon of the Artillery Regiment” which “usually wreaked enormous damage to the enemy heralding the deaths of many in one go”. He elaborated that an MBRL shoots 40 rockets of 122 mm caliber shells within 18 to 22 seconds. He said “the first rocket falls on one spot, the next rocket can fall anywhere up to 800 metres in front or behind the location of the first rocket.” This confirms he knew the indiscriminate nature of this weapon used by the Sri Lankan Army. He was also willing to put the lives of his own men at risk and makes the admission in his book that on one occasion he knowingly ordered the MBRLs to be fired so close to the frontline that he risked his own men being hit, and indeed some died and were injured when he fired close to them²³⁵. Attacks using MBRL are prohibited in densely populated areas under international humanitarian law given the potential for loss of civilian life. The subsequent loss of civilian life as well as injuries was thus entirely foreseeable²³⁶. The targeted attacks against the PTK hospital by the Sri Lankan military resulted in the destruction of hospital buildings, hospital equipment, and the death and injury of civilians.

Under customary international law applicable to non-international armed conflict, intentional and indiscriminate attacks against the civilian objects such as

²³² para 782, OISL 2015

²³³ Witnesses described multiple rounds falling sequentially on the hospital within a very short period of time, indicating the possible use of MBRLs by SLA, OISL, 2015, op cit, para 825.

²³⁴ OISL.

²³⁵ Pages 764-5, ‘Road to Nandikadal’.

²³⁶ Similar patterns could be observed during the two bomb attacks at the private Ponnampalam Memorial Hospital in PTK that occurred on 5 and 6 February 2019. Similarly, as with the PTK hospital, its coordinates were well known to the Government, the hospital was well marked with Red Cross emblems and white flags, and witnesses say that the LTTE did not mount attacks from inside or near the hospital. The Government corroborated this attack by releasing its drone video of the hospital and the destruction of the building. The Government claimed that the hospital was the Sea Tiger Commander’s secret hideout – an assertion that was refuted by survivors and not substantiated by the Government. While the death toll was difficult to establish with certainty, two witnesses estimated that 60 were killed during the attack, while another one later heard that the death toll reached 85 people.

hospitals and special protected persons such as medical personnel that are also disproportionate given the concrete and direct military advantage anticipated, are prohibited.

The practical application of the principle of distinction requires that those who plan or launch an attack take all feasible precautions to verify that the objectives attacked are neither civilians nor civilian objects, so as to spare civilians as much as possible. IHL requires that constant care be taken to spare civilians and civilian objects in the conduct of military operations, attackers must take precautionary measures, which include choosing means (weapons) and methods of attack with a view to avoiding (and at any rate minimizing) civilian harm.²³⁷ Furthermore, there is very little civilians and medical personnel can do to protect themselves and patients in their care against the effects of shelling and bombardment.

Once the military character of a target has been ascertained, commanders must consider whether striking this target is “expected to cause incidental loss of life, injury to civilians, damage to civilian objectives or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” If such casualties are expected to result, the attack should not be pursued²³⁸. The basic obligation to spare civilians and civilian objects as much as possible must guide the attacking party when considering the proportionality of an attack. In determining whether an attack was proportionate it is necessary to examine whether a reasonably well-informed person in the circumstances of the actual perpetrator, making reasonable use of the information available to him or her, could have expected excessive civilian casualties to result from the attack²³⁹. Certain apparently disproportionate attacks may give rise to the inference that civilians were actually the object of attack²⁴⁰. To effectively protect civilians in populated areas, a clear boundary must be drawn against the wide area effects of explosive weapons. There is no evidence to suggest that this was done by the 53 Division.

Given the available evidence, there are reasonable grounds to believe that the Sri Lanka Army, and the 53 Division in particular, were responsible for serious violations of international humanitarian law by intentionally directing attacks against civilian objects and incurring serious damage to these objects as well as by making medical personnel and medical objects the subject of the attacks. Moreover, there are reasonable grounds to believe that the Sri Lanka Army, including the 53 Division, were responsible for killing and injuring civilians, including the wounded. Launching an indiscriminate attack resulting in death or

²³⁷ 1977 AP I, Art. 57; Customary IHL study, Rule 15

²³⁸ *Prosecutor v. Dusko Tadic (Appeal Judgement)*, IT-94-1-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 15 July 1999, available at: <https://www.refworld.org/cases,ICTY,40277f504.html> [accessed 30 November 2019]

²³⁹ *Ibid*

²⁴⁰ *Ibid*

injury to civilians, or an attack on a civilian object, in the full knowledge that it will cause excessive incidental civilian loss, injury or damage, when committed with intent, can if proven amount to a war crime²⁴¹.

B. Attacks in No Fire Zones

On January 21, the Sri Lankan Armed Forces unilaterally declared a 35-square-kilometer NFZ for civilians north of the A35 road between the Udayarkattu junction and the Manjal Palam (Yellow Bridge) in Mullaittivu district.²⁴² Leaflets distributed by the Government encouraged civilians to congregate in the NFZ.

The second No Fire Zone was unilaterally declared by the Government of Sri Lanka from 12 February 2009 and consisted of a narrow spit of sandy land 14km² on which 300,000 Tamil civilians congregated thinking they would be safe there. The attack and capture of Putumattalan in the second No Fire Zone occurred from 18-21 April 2009 and resulted in the narrow spit, where civilians and the LTTE remained, being severed in two. On the 8 May 2009 the Sri Lankan Army unilaterally announced the Third No Fire Zone (NFZ-3), less than 2km² in size.²⁴³ Tens of thousands of civilians were squeezed into this tiny area.²⁴⁴ According to the ICRC, because the "safe zones" were not established by agreement with the LTTE, they cannot be formally considered as "protected zones" as set out in the First and Fourth Geneva Conventions, Protocol I, and in customary humanitarian law.

According to the report of the UN Panel, there are credible allegations that from 6 February 2009 the Army in a protracted military operation, continuously shelled the area known as the NFZ-2, where according to the estimation of the Panel, 300,000 – 330,000 civilians were living on 14km² of land, an area the size of Hyde Park. This is corroborated by information in this report and confirms that the Sri Lanka Army conducted military operations against a number of sites located in NFZ-2 (Pokkanai, Putumattalan, Valayanmadam) and in the NFZ-3 (Mullivaikkal) which deliberately targeted the civilian population and civilian objects such as hospitals and a church. The UN reported that NFZ-3 came under "intense daily bombardment by SLA artillery, the air force and the navy" between 8-12 May 2009.²⁴⁵ The NFZs were densely populated areas, where it was "difficult to bury the bodies"²⁴⁶ and was so crowded that people were forced to sleep on top of corpses.²⁴⁷ It is against this background, that the Sri Lanka Army conducted a series of

²⁴¹ eg Article 8(2)(e)(ii) of the ICC Statute provides that, "directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law" during the non-international armed conflict, when committed with criminal intent, constitutes a war crime; See also Additional Protocol II, Articles 9 and 11.

²⁴² Sri Lanka Army, "Army Declares New Safe Zone for Vanni Civilians," 21 Jan 2009, <http://www.army.lk/morenews.php?id=19769> (accessed 15 Feb 2009) as cited in the HRW, War on the Displaced Sri Lankan Army and LTTE Abuses against Civilians in the Vanni (2009) available at <https://www.hrw.org/report/2009/02/19/war-displaced/sri-lankan-army-and-ltte-abuses-against-civilians-vanni#page>

²⁴³ para 873, OISL.

²⁴⁴ para 874, OISL.

²⁴⁵ para 878, OISL.

²⁴⁶ W280

²⁴⁷ W288

attacks on the NFZs, including continued artillery shelling and bombardment. Sri Lankan Foreign Secretary Palitha Kohona in an Al Jazeera interview admitted there had been shelling of NFZs²⁴⁸.

The attacks on Putumattalan Hospital are considered to be emblematic of the violations by the Sri Lankan military against hospitals and other civilian objects located in NFZs, as it was repeatedly attacked between 8 February 2009 and late April 2009²⁴⁹. The UN's 2015 OISL investigation found that "Security forces present in the vicinity of Putumattalan Hospital included the 53 and 58th Division and Task Force 8 of the SLA."²⁵⁰ According to the OISL report and corroborated by ITJP, by mid-April 53 Division troops moved towards Vellamullivaikkal²⁵¹ and by late in the month were attacking south of Valayanmadam. By the second week of May 2009, the 53 Division was attacking Karaiyamullivaikal and the last "No Fire Zone"²⁵².

The evidence set out in this report indicates that Mullivaikkal in NFZ-3 was subjected to heavy bombardment by artillery and the use of cluster munitions, white phosphorus and mortars, resulting in extensive civilian casualties and suffering. The makeshift hospitals were also attacked. This has been confirmed by UN satellite imagery²⁵³ and corroborated by witness' testimony provided to the ITJP.²⁵⁴

UN reports confirm that by 13 May, the 58th Division was pushing its way forward towards the coastline with the aim of advancing south from there, with the 53rd Division moving east along the A35 road towards the lagoon. From 14 May, senior LTTE cadres began to communicate their intent to surrender to several Sri Lankan and foreign intermediaries. On 16 May, the 58th and 59th Divisions of the SLA linked up on the coastline, while the 53rd Division continued to make its way south, along the Nandikadal lagoon.²⁵⁵

²⁴⁸ The full entry reads: "May 1 - [on this date] Al Jazeera aired an interview with Sri Lankan Foreign Secretary Palitha Kohona in which he admitted that the Government had shelled the NFZ despite earlier Government denials. The admission came after Al Jazeera showed satellite imagery with analysis that documented shelling and air bombing damage within the designated NFZ between February 15 and April 19. While admitting that the Government had shelled the NFZ, Kohona maintained that this occurred before any civilians had actually entered the safe areas. Al Jazeera [then] showed footage from an earlier interview with Kohona and with military spokesman Udaya Nanayakkara, which aired on April 19, the same day that the satellite images were taken, in which Kohona insisted that the Government was not shelling [these areas] due to civilian presence in them - a position inconsistent with the claim that the shelling occurred before civilians entered these areas."

²⁴⁹ W5.

²⁵⁰ OISL §840

²⁵¹ "Troops of 53 Division under Maj. Gen. Kamal Guneratna, were able to demolish two security bunds heavily laden with mines during the week leading into the New Year. Lt. Col. Rohan Palayangoda commanding 5 GW and Lt. Col. Ajantha Wijesuriya commanding 1 GW, coming under the Airborne Brigade commanded by Col. Thilak Hangilipola, took part in this operation. These troops were entrusted with the task of advancing from Nandikadal lagoon and penetrating an earthen wall built across the A-35 (Paranthan-Mulativu) road. After the capture of Pudukudyirippu, 53 Division and Task Force VIII, were given the task of capturing 2.5 km stretch of the A-35 road. Capturing this stretch to the NFZ, could result in the zone being split up into two parts. The Wellamullawaikal area, where the Tiger leadership is in, and the Pudumattalan area, where civilians are held.", Overcoming ditch-earth bunds, April 2009, LLRP blog.

²⁵² "The 58 Division and the 53 Division under Maj. Gen. Kamal Guneratne, had advanced to Vellamullawaikkal, north of the NFZ. By May 11, these two Units had entered the NFZ.", The Nation, SECURITY FORCES POISED FOR VICTORY.

²⁵³ At P.44 of the ITJP SHAVENDRA SILVA Dossier.

²⁵⁴ eg W280, W288, W292, W289, W60.

²⁵⁵ OISL §93, §94

The Government vehemently refuted the allegations of violations in the NFZs saying the attacks were lawful given the LTTE military presence in the area and the need to 'rescue civilians.' While the LTTE allegedly committed serious violations of international humanitarian law by establishing military objectives within the highly populated areas and by using civilians as 'shields'²⁵⁶ these actions do not justify the Government's deliberate and indiscriminate attacks against the civilian population in the NFZs. Violations of the laws of war by one side to a conflict do not justify violations by the opposing side²⁵⁷. Moreover, based on the evidence collected, there are reasonable grounds to believe that the Government not only encouraged displaced people to gather in NFZs but it also failed to give them the required warnings before the attacks. In some instances, the Sri Lanka Army deliberately misled civilians about the actual conduct of hostilities. Despite the announcement, the same person witnessed a shell falling on a number of people, killing all of them²⁵⁸. While planning to attack the NFZs the Sri Lanka Army should as a minimum precaution have warned the displaced civilians about the fact that they intended to bomb the so-called 'Safe Zones'. There is no indication that such warnings were ever issued.

The evidence in this report confirms that the Sri Lanka Army knew about the locations of civilians and intentionally and indiscriminately targeted civilians as well as civilian objects such as hospitals. The Sri Lankan Government established 'No Fire Zones' as safe places where civilians were encouraged to congregate and where they were subsequently shelled. The fact that in some hospitals the LTTE rebels might have been treated did not deprive them of their protected status, as those who are wounded *hors de combat* belong to the category of protected persons in armed conflict²⁵⁹.

C. The use of prohibited and indiscriminate weapons

There are reasonable grounds to believe that prohibited and indiscriminate weapons that also cause superfluous injury or unnecessary suffering were used during the Sri Lanka Army offensive in the Vanni. According to the OISL report, during the attack at the PTK hospital, unguided weapons and ammunition such as Multi Barrelled Rocket Launchers (MBRLs) were used²⁶⁰. Moreover, according to witness

²⁵⁶ Ibid

²⁵⁷ ICRC Rule 140, citing Common Articles 1 and 3 to the Geneva Conventions.

²⁵⁸ "This last period of the War, and especially at Pokkanai, I witnessed the Sri Lankan security forces using cluster bombs - explosive devices that had multiple explosions either before hitting the ground or after impact on the ground. I also witnessed the use of incendiary bombs whilst in Pokannai. I also witnessed what I and others thought were the use of chemical weapons. There were many fumes, and very hazy for two to three hours, that impacted our vision and made it hard to breath. During this period, I witnessed helicopter gunships also being used by the Sri Lankan military. At one stage, the Sri Lankan Army announced on loud speakers there would be no shelling for two days. This provided some relief and people were able to come out of their shelters; in one place close by there were a number of people who had come out of their bunker and were eating together. Out of nowhere, a shell fell on them, killing all of them. I witnessed the aftermath of this. We were living in conditions of total insecurity; incessant bombings and shooting. There were injured and dead all around. I don't think any of us expected to survive." W247

²⁵⁹ eg ICTY, *Lukić and Lukić*, Trial Judgment, 20 Jul 2009, para 870.

²⁶⁰ OISL, 2015, op cit, para 750; also para 825, OISL

testimony, the MBRLs were also employed by the Sri Lanka Army during the attacks at Putumattalan Hospital²⁶¹. As evidenced in this report, incendiary weapons that included white phosphorus as a fill were allegedly used in the late April 2009 by the Sri Lanka Army in Pokkanai, where according to the witness testimony a large number of civilians (approximately 100,000) congregated. The same witness reported that he registered approximately 5000 injured civilians at the hospital as a result of the white phosphorus attack.²⁶² Similarly, in the final week of the war several witnesses described seeing white phosphorous or another substance with effects and characteristics similar to white phosphorus being used against the tiny area still under LTTE control in and around Mullivaikkal, into which, according to the witness, tens of thousands of civilians were crammed²⁶³. Survivors also say they witnessed the use of cluster munitions against the densely populated NFZ-3²⁶⁴. As described in more detail in the ITJP's Dossier on Cluster Munitions, the use of this weapon was part of a deliberate pattern and strategy in 2009²⁶⁵.

According to the Convention on Cluster Munitions, "cluster munition" means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20kg and includes those explosive submunitions. Cluster munitions have a large surface area where bomblets are dispersed, and most versions are difficult to accurately target²⁶⁶. Moreover, cluster bombs can become *de facto* landmines in the case submunitions do not explode. White phosphorus is a toxic and incendiary substance used as a filling in the military weaponry. "As [white phosphorus] continues to burn when exposed to oxygen until the chemical substance is depleted (or the oxygen supply is cut off), remnants of [white phosphorus] munitions pose a continuing threat of injury for several days, even weeks, after the use of the munition"²⁶⁷.

The use of incendiary weapons and cluster bombs has been cited in practice as indiscriminate by nature²⁶⁸. The evidence indicates that the Sri Lanka Army

²⁶¹ W155 - see footnote 264.

²⁶² W155, "I also saw white phosphorous used in Pokkanai at the end of April 2009. By that stage, my family and I had moved from Valayanmadam and were living in Karaiyamullivaikkal. I remember that the white phosphorous incident occurred just after the Security Forces had taken over the Putumattalan area and rounded up all the civilians between 19 and 22 April 2009. There were no LTTE installations in the Pokkanai area at this time. The area was packed with civilians and there was not an inch of space to move around. I would estimate there were 100,000-150,000 civilians in this area at the time. I was in Pokkanai at the time the white phosphorous bombs were dropped. They were dropped in the vicinity of where I was and I believe there were several of them. I think the attack would have started around 5am. It was continuous and lasted for several hours. At the moment when everything started burning some of us ran to the beach and sat in the water to protect ourselves. The water was about 50m from where we were at the time. Although it was an open area next to the beach and there were not many trees, the whole area started burning. When a chemical bomb is dropped it burns for a very long time. For this reason, we just sat in the water and waited for the attack to stop as we felt that we could not save anyone at that time. In relation to those who were injured in the attack, we put them on the TRO [Tamil Rehabilitation Organisation] tractors, piled on top of one another, and took them to Karaiyamullivaikkal Hospital. There were around 5,000 people badly injured. I remember that this many people had been injured because we had to register them at the hospital when we arrived. We could not help the people who only had minor injuries, so they had to get to the hospital themselves. The TRO only had about 12 tractors left at this time so we had to put many people onto each tractor." W155

²⁶³ W292, W283, W280 on P35 Shavendra Silva Dossier.

²⁶⁴ See W280, W60, W63, W287, W158 on p65 of the Shavendra Silva Dossier.

²⁶⁵ <http://www.itjpsl.com/assets/press/28-sept-2018-cluster-munition-press-release-ITJP-final.pdf>

Also <http://www.itjpsl.com/reports/cluster-munitions>

²⁶⁶ Wiebe, "Footprints of Death: Cluster Bombs as Indiscriminate Weapons Under International Humanitarian Law", 22 Michigan Journal of International (2000) 87, at 88.

²⁶⁷ Weapons Law Encyclopaedia, <http://www.weaponslaw.org/weapons/white-phosphorus-munitions>

²⁶⁸ ICRC Rule 71, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule71#Fn_F4806E7_00040

including the 53 Division, used weapons that were indiscriminate. In particular, using the MBRLs and cluster bombs in the densely populated areas made it difficult for the Sri Lanka Army to accurately distinguish between the civilians and LTTE fighters. Similarly, employing MBRLs in areas with a high concentration of a civilian population (e.g. PTK hospital) amounts to the deliberate use of an indiscriminate weapon. Given the large number of sub-munitions that each cluster bomb releases, their use in such a densely populated area as eastern NFZ-3 amounts to the use of an inherently indiscriminate weapon.

The use of white phosphorus in NFZ-3, which was a tiny piece of land, caused injury and suffering to civilians beyond that necessary to decimate the LTTE, and was completely disproportionate²⁶⁹. Given the effects of white phosphorus, MBRLs and cluster munitions used in densely populated areas in NFZs and other locations, the Sri Lanka Army failed to take reasonable precautions in the choice of means and methods of attack in order to avoid and minimize incidental harm to civilians.

Lastly, taking into account the extremely densely populated area in which civilians congregated, the Sri Lankan Army must have known that the use of these type of weapons and bombardments would cause excessive incidental civilian injury, death and damage. For these reasons these attacks were disproportionate to the concrete and direct military advantage anticipated.

The use of cluster munitions and white phosphorus not only constitutes a serious violation of international humanitarian law in itself, but the use of this type of weaponry in an area with a high density of civilian population proves that the principles of distinction were violated by the Sri Lanka Army.

In light of the above, there are reasonable grounds to believe that by using indiscriminate weapons that have caused unnecessary suffering and superfluous injuries to civilians, the Sri Lanka Army violated international humanitarian law. The targeting of civilians and the launching of indiscriminate attacks on civilian populated areas may amount to war crimes if criminal intent is established. The Sri Lankan Army also violated the fundamental principles of international humanitarian law, namely the principles of distinction, proportionality and precaution.

7.5 Extra-Judicial Executions

A. Summary Executions of LTTE Cadres, civilians including women and children

The OISL report confirmed that reasonable grounds exist to believe that a number of LTTE cadres, who had laid down arms and were thus *hors de combat*, were unlawfully killed after having surrendered unarmed to the Sri Lankan security

²⁶⁹ W155, on P. 34 Shavendra Silva dossier.

forces. LTTE cadres belonging to the political wing, and individuals not or no longer taking direct part in hostilities, including women and children, also surrendered and were also executed. OISL confirmed from evidence in their possession that LTTE cadres had 'surrendered' to 53rd and 59 Div. and to the 58th Division near the Vadduvakal bridge.

Major-General Kamal Gunaratne confirmed in his autobiography that he had issued instructions to his troops to kill every 'terrorist' ²⁷⁰. In testimony to the Lessons Learnt and Reconciliation Commission in contradiction to his earlier evidence, he admitted that LTTE combatants had surrendered²⁷¹. Based on the information in this report, reasonable grounds exist to believe that that under his command the 53 Division was responsible for the killing of LTTE cadres who surrendered as well as members of the political wing, women and children. These acts amount to extrajudicial executions, in clear violation of the right to life. Furthermore, as these acts were linked to the armed conflict, these extra-judicial killings amount to a violation of Article 3, Common to the four Geneva Conventions of 1949 which prohibits violence to life, in particular murder of persons taking no active part in hostilities or of those placed *hors de combat* by detention. If proven, these killings amount to a war crime.

B. The killing of Isaipriya

Video and photographic images of the well-known LTTE news presenter, Isaipriya, indicate that she was taken alive and subsequently killed by the Sri Lankan security forces. Witnesses confirm having seen her on several occasions during the week before 18 May, and last saw her alive in the late morning on 18 May, when SLA soldiers pulled her out of the lagoon alone and unarmed and took her into custody in a muddy area of the Nandi Kadal Lagoon shore north of Vadduvakal bridge. Isaipriya was killed on 18 May 2009 by soldiers of the 53rd division, according to the official website of the security forces²⁷². The killing of Isaipriya by soldiers of the 53 Division under the command and control of Major General Kamal Gunaratne amounts to an extrajudicial killing in clear violation of the right to life. In addition, as the killing of Isaipriya was an act linked to the armed conflict, her killing amounts to a violation of Article 3 Common to the four Geneva Conventions of 1949 which prohibits violence to life, in particular the murder of persons taking no active part in hostilities or of those placed *hors de combat* by detention. If proven, it may amount to a war crime.

²⁷⁰ Page 721, Road to Nandikadal'.

²⁷¹ "I mean hundreds of LTTE combatants who surrendered, and we separated them from the other IDPs because when you are handling an IDP situation you have to separate the dangerous IDPs from other IDPs. But we considered everybody as IDPs so we separated the dangerous IDPs from other IDPs and we sent them for rehabilitation centres." LLRC Testimony.

<http://www.llrcarchive.org/2010/09/major-general-kamal-gunaratne/>

²⁷² http://www.defence.lk/new.asp?fname=20090621_02_TerrList

7.6 INDIVIDUAL COMMAND RESPONSIBILITY OF MAJOR GENERAL KAMAL GUNARATNE

7.6.1 Applicable Law on Modes of Liability

Under international law a commander can be held directly responsible for ordering his subordinates to carry out unlawful acts (a direct personal responsibility)²⁷³ or can engage his individual criminal responsibility by failing to act when the unlawful acts have been attempted or committed by his subordinates (ancillary responsibility)²⁷⁴. In the latter case, the crimes committed by the subordinates are not based on the commander's orders.

A. Direct Criminal Responsibility of a Commander

The statutes of international tribunals also contain a rule of a direct criminal responsibility of a commander, which provide for its applicability to non-international armed conflict.²⁷⁵ By way of example, Article 25(3)(B) of the ICC Statute stipulates "In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: [...] Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted."

Since international criminal law in the past has not sought to outline the general principles of law but has focused on substantive issues, the criteria of the mental element of international crimes was dealt with on a case by case basis by international tribunals. The ICC was the first one to include the relevant provision, which stipulates that "unless otherwise provided" the crime must be committed with "intent and knowledge".²⁷⁶ The ICC Statute provides further explanation on what "intent and knowledge" means:

"2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

²⁷³ Commanders are responsible for war crimes committed pursuant to their orders as stipulated in the Geneva Conventions and the Hague Convention for the Protection of Cultural Property and its Second Protocol, which require States to prosecute persons who order their commission of grave breaches and breaches. See ICRC, Rule 152, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule152;

²⁷⁴ Bassiouni, *Introduction to International Criminal Law*, 2013.

²⁷⁵ The Statutes of the International Criminal Court (Art.25(3)), the International Criminal Tribunals for the former Yugoslavia (Art.7(1)) and for Rwanda (ICTR Statute Article 6(1)) and of the Special Court for Sierra Leone (Art.6) and UNTAET Regulation No. 2000/15 for East Timor (Section 14(3)).

²⁷⁶ See ICC Statute, Article 30.

3. For the purposes of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly."²⁷⁷

B. Responsibility of Commanders for Failing to Act

Article 86(2) of the Additional Protocol 1 that applies to international armed conflict explicitly provides for command responsibility in cases where subordinates have attempted or committed war crimes. The Statutes of the ICC, the International Criminal Tribunals for the former Yugoslavia and for Rwanda and of the Special Court for Sierra Leone and UNTAET Regulation No. 2000/15 for East Timor have explicitly included this rule in the context of non-international armed conflict.²⁷⁸ This has been further confirmed by ICTY in the *Hadžihasanović and Others* case, in which the court found that the doctrine of command responsibility, as a principle of customary international law, also applies with regard to non-international armed conflicts.²⁷⁹ Based on a States and international practice, the ICRC found that this rule has been recognized as a customary international law applicable to non-international armed conflict.²⁸⁰

This norm of customary international law reads as follows: "Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible".²⁸¹

Similarly, the International Convention for the Protection of All Persons from Enforced Disappearance stipulates the following:

"1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(b) A superior who:

²⁷⁷ ICC Statute, Article 30.

²⁷⁸ ICC Statute, Article 28; ICTY Statute, Article 7(3); ICTR Statute, Article 6(3); Statute of the Special Court for Sierra Leone, Article 6(3); UNTAET Regulation No. 2000/15, Section 16.

²⁷⁹ ICTY, *Hadžihasanović and Others case*, Decision on Joint Challenge to Jurisdiction (ibid. § 716). In this respect, the interlocutory appeal filed by the accused was unanimously dismissed by the Appeals Chamber, see ICTY, *Hadžihasanović and Others case*, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 Jul 2003, Case No IT-01-47-AR72, § 57 (Disposition on the first ground of appeal).

²⁸⁰ ICRC, Rule 153, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule153

²⁸¹ Ibid

- (i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;
- (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and
- (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution; [...]"²⁸²

7.6.2 Command and Control over the troops – Major General Kamal Gunaratne as a Commander

During April 2009, the 53 Division under the command of Major-General Kamal Gunaratne moved towards Iranapalai and the northern bank of the Nanthikadal Lagoon and then Valayanmadam²⁸³ and Mullivaikkal. Gunaratne testified that his men were under the Wannu Command reporting to General Jagath Jayasuriya and “took on Puthukuruiruppu and also the fighting that took place in the no fire zone area, that is Putumattalan, Vellimullivaikkal, Karimullivaikkal and Mullaitivu areas, with other Divisions²⁸⁴”. By mid-May 2009 they were present fighting in the last “No Fire Zone”, along with the 58 Division²⁸⁵.

The evidence in this report confirms that Gunaratne became 53 Division Commander from March 2008 to until the end of the war and that a chain of command existed between him and his troops. The 53 Division comprised the Air Mobile Brigade), the 533 Brigade and the Mechanised Infantry Brigade (150+ light battle tanks). Second in command of the 53 Division was Sudath Perera²⁸⁶. In his autobiography, Gunaratne described the 53 Division as “the most powerful division in the army...the 53 Division could be termed the very lifeblood of the Army.” His Division was one of the four main units involved in the ground battles of the 2009 war²⁸⁷. This Division was initially in Muhumalai, but from January 2009 his troops moved down

²⁸² Article 6.

²⁸³ “Col. Rohan Palayangoda commanding 5 GW under 53 Division commanded by Maj. Gen. Kamal Gunaratne and soldiers of 2 Special Forces commanded by Maj. Vipula Ihalage, after the battle, advanced from the lagoon towards the bund at Valayarmadam.” The Nation, <https://www.nation.lk/2009/04/26/defence.html>

²⁸⁴ “53 Division was shifted from Jaffna theatre and we came to Wannu theatre and kept as the Army Commander’s reserve for Wannu operations..”

<http://www.llrcarchive.org/2010/09/major-general-kamal-gunaratne/>

²⁸⁵ Page 721, Road to Nandikadal’.

²⁸⁶ Page 659, Road to Nandikadal’.

²⁸⁷ “There were three Army Divisions and one Task Force mainly involved in the ground battle. The 53 Division commanded by Major General Kamal Gunaratne, the Task Force 8 commanded by Colonel G.V. Ravipriya, which was again placed under the operational command of the 53 Division and the 58 Division commanded by Brigadier Shavendra Silva were the main offensive elements that fought the End Battle... Major General Kamal Gunaratne, General Officer Commanding [GOC] of the 53 Division was quick to identify the crucial role that his troops have to play in the end battle. He called the entire battlefield commanders to place their troops at red alert and briefed them how to deal with the last escape attempt of the LTTE. All possible escape routes were blocked, ambush teams were placed, and all counter penetration measures were taken.”

June 2009, LLRP blog.

to Elephant Pass²⁸⁸, Pallai²⁸⁹ and then helped capture the whole of the strategic A9 north-south highway. Then they moved to Mankulam. In February 2009, they were defended against the LTTE attack south of Puthukkudiyiruppu (PTK). Gunaratne has confirmed that he had independent access to intelligence and equipment which enabled him to command troops in real time as well as to send troops to locations where hostilities were taking place²⁹⁰. The ITJP has found no evidence that the regular military command and control structures had broken down or broken down to such an extent that Major General Kamal Gunaratne or his subordinate commanders would not have been exercising effective control over their forces.

7.6.3 Modes of Liability

As is evidenced by this report Major General Kamal Gunaratne's role in commanding the 53 Division was pivotal to frontline combat in the north from 2008 to the end of the War. The OHCHR Investigation into Sri Lanka (OISL) in 2015 named Kamal Gunaratne as 53 Division Commander in 2009²⁹¹. It found reasonable grounds to indicate that the 53 Division while commanded by Gunaratne was involved in attacks on hospitals and civilians in at least two of the "No Fire Zones", summary executions and torture.

There are reasonable grounds to believe that Major General Kamal Gunaratne committed war crimes either directly by ordering them or by failing to prevent his troops from committing them. In particular:

A. Puthukkudiyiruppu (PTK)

Early February 2009 saw the 53 Division under the command and direct control of Major General Kamal Gunaratne sent to reinforce troops around Puthukkudiyiruppu (PTK)²⁹² and reports say it remained there for the duration of the month²⁹³. PTK experienced significant bombardment from Government forces including the 53 Division with repeated attacks on the PTK Hospital²⁹⁴ which was clearly marked and visible from satellite imagery and drone footage. UN Reports confirm that PTK hospital was one of four hospitals attacked with unguided weapons and ammunition such as Multi-Barrelled Rocket Launchers (MBRLs)²⁹⁵. Having been the Commanding

²⁸⁸ Page 652, Road to Nandikadal'.

²⁸⁹ Also at https://www.youtube.com/watch?v=V_Gr6KWTCkQ

²⁹⁰ ICC Trial Chamber, Judgment, *The Case of The Prosecutor V. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, 21 Mar 2016, paras 422, 424, 428, 429.

²⁹¹ OISL, §116

²⁹² "Army Chief Lt. Gen. Sarath Fonseka immediately sent Brigade Commander 57 Brigade, Maj. Gen. Jagath Dias and Brigade Commander 53 Brigade, Brig. Kamal Gunaratne to assist Brigade Commander 59 Brigade, Brig. Nanadana Udawatta."

<https://www.nation.lk/2009/02/08/militarym.htm>

²⁹³ "Heavy fighting was reported yesterday from several parts of Pudukudiyiruppu, as the troops moved into the last bastion of the LTTE from several directions. The 14 Gajaba Regiment of the newly established Task Force VIII under the command of Col G.V. Ravipriya and the 14 Vijayaba Regiment of the 53 Division under Brig. Kamal Gunaratne were advancing from the south of this last major town held by the Tigers, while Brig. Shavendra Silva's 58 Brigade was moving in from other directions."

<https://www.nation.lk/2009/02/22/militarym.htm>

²⁹⁴ A full list of reported attacks on the hospital is given in the ITJP's Shavendra Silva dossier, Page 22.

²⁹⁵ OISL, 2015, § 750.

Officer, there are reasonable grounds to believe that Major General Kamal Gunaratne ordered the attacks at PTK which resulted in civilian casualties and extensive damage to the hospital. Moreover, patients that had to be evacuated were exposed to the high risk of injury or death. Furthermore, evidence in the possession of the ITJP indicates that Major General Kamal Gunaratne was in possession of the hospitals' coordinates as they were communicated to the Government, and he had access to drones and UAVs that surveyed the area. The hospitals had not lost their protected status. There are reasonable grounds to believe that Major General Gunaratne was fully aware that PTK hospital was being bombarded and shelled, as UN officials informed the Sri Lanka Army on multiple occasions that the hospital was coming under attack. Major General Gunaratne knew or must have known that subordinates under his effective control were committing serious violations of international humanitarian law in the predominantly civilian area and did not stop the attacks even though he was in command and it was in his power. Major General Gunaratne failed to take the necessary and reasonable measures in his power to prevent the violations by troops under his command.

B. Putumattalan

Putumattalan, in the second No Fire Zone, occupied by more than 300,000 Tamil civilians was finally captured in a very bloody battle which lasted from 18-21 April, resulting in very heavy casualties and an exodus of one hundred thousand civilians. Troops under the direct command of Major General Kamal Gunaratne were responsible for the continuous shelling of the area using "aerial bombardment, long-range artillery, howitzers and MBRLs as well as small mortars, RPGs [rocket-propelled grenades] and small arms fire, some of it fired from a close range²⁹⁶". Reasonable grounds exist to believe that Major General Kamal Gunaratne knew that these attacks were targeted at civilians, which occurred within the context of the military's widespread and consistent practice of bombardment of the No Fire Zones. Major General Gunaratne knew or must have known that subordinates under his effective control were committing serious violations of international humanitarian law in this area occupied predominantly by civilian's area and did nothing to stop the attacks even though he was in command and it was in his power. Major General Gunaratne failed to take the necessary and reasonable measures in his power to prevent the violations by troops under his command, and if proven constitute war crimes.

C. Karaiyamullivaikal and Vellamullivaikkal

Under the command of Major General Kamal Gunaratne, the 53 Division moved towards Vellamullivaikkal by mid-April²⁹⁷ and later that month attacked south of

²⁹⁶ UNPOE, para 100.

²⁹⁷ "Troops of 53 Division under Maj. Gen. Kamal Guneratna, were able to demolish two security bunds heavily laden with mines during the week leading into the New Year. Lt. Col. Rohan Palayangoda commanding 5 GW and Lt. Col. Ajantha Wijesuriya commanding 1 GW,

Valayanmadam. By the second week of May 2009, the 53 Division had attacked Karaiyamullivaikal and the last "No Fire Zone"²⁹⁸. UN reports confirm that the 53 Division under Major General Kamal Gunaratne continued to make its way south along the Nanthikadal lagoon. The 58 Division and the 53 Division under Maj. Gen. Kamal Gunaratne, had advanced to Vellamullawaikkal, north of the NFZ. By May 11, these two Units had entered the NFZ intent of victory. More than 100 000 civilians were trapped by the shelling and bombardment, unable to move or escape. Major General Kamal Gunaratne was in direct command and control of his troops and was also in possession of intelligence. He was fully aware that the shelling and bombardment targeted civilians, and occurred within the context of the military's widespread and consistent practice of bombardment of the No Fire Zones. Major General Gunaratne knew or must have known that subordinates under his effective control were committing serious violations of international humanitarian law in this area occupied predominantly by civilians and did not stop the attacks even though he was in command and it was in his power. Major General Gunaratne failed to take the necessary and reasonable measures in his power to prevent the violations by troops under his command, and which constitute war crimes.

D. May 2009 Surrenders

The OISL report states that the 53 Division was one of the units surrounding the final enclave during the final days of the war. Gunaratne has admitted that he issued special instructions to troops under his direct command to kill those who attempted to surrender whom he regarded as 'terrorists'. Major General Gunaratne was known to be present in the area when the political wing of the LTTE surrendered as well as hundreds of civilians and is said to be responsible for the summary executions of LTTE cadres who had surrendered as well as Isaipriya which amounts to war crimes. Evidence in the possession of the ITJP indicates that Major General Kamal Gunaratne knew of or consciously disregarded information which clearly indicated that the troops under his command were committing a crime of enforced disappearance and summarily executing those who had surrendered. Despite this, there is no indication that he tried to take all necessary and reasonable measures to prevent the violations or to punish those responsible.

E. Rape and other forms of Sexual Violence, and Torture

Members of the 53 Division under the command of Major General Kamal Gunaratne are also alleged by the UN to have been involved in torture and rape during or after

coming under the Airborne Brigade commanded by Col. Thilak Hangilipola, took part in this operation. These troops were entrusted with the task of advancing from Nandikadal lagoon and penetrating an earthen wall built across the A-35 (Paranthan-Mulativu) road. After the capture of Pudukudyirippu, 53 Division and Task Force VIII, were given the task of capturing 2.5 km stretch of the A-35 road. Capturing this stretch to the NFZ, could result in the zone being split up into two parts. The Wellamullawaikal area, where the Tiger leadership is in, and the Pudumattalan area, where civilians are held.", Overcoming ditch-earth bunds, April 2009, LLRP blog.

²⁹⁸ 'The 58 Division and the 53 Division under Maj. Gen. Kamal Gunaratne, had advanced to Vellamullawaikkal, north of the NFZ. By May 11, these two Units had entered the NFZ.', The Nation, SECURITY FORCES POISED FOR VICTORY.

the war²⁹⁹". Evidence in this report indicates that troops under the effective command and control of Major General Kamal Gunaratne committed war crimes including outrages upon personal dignity by violating the dead bodies of the LTTE fighters. Rape and mutilation of dead bodies are strictly prohibited under international law, and if criminal intent is established, can amount to war crimes. In light of the OISL report and evidence set out in this report, there are reasonable grounds to believe that Kamal Gunaratne knew or had reason to know about the violations committed by the troops under his effective control and even then he failed to prevent the violations and punish those responsible.

7.6.4 Alleged Crimes

Given the evidence in this report, there are reasonable grounds to believe that the 53 Division under the effective military command of Major General Kamal Gunaratne violated international humanitarian law by failing to distinguish between civilians and LTTE fighters as well as between civilian objects and military objectives. The evidence set out in this report suggests that the troops under his effective command failed to issue warnings in the NFZs, which at the time of events were under their control and that they employed indiscriminate and disproportionate means and methods of warfare such as extensive bombardment and shelling in areas with a high concentration of civilians as well as indiscriminate weapons such as white phosphorus, cluster bombs and munitions, and also MBRLs. It was foreseeable that in the normal course of events the employment of these means and methods of warfare would cause extensive damage, loss and injuries to civilians and civilian objects. Especially towards the end of the war where the NFZ was limited to 2km² and the LTTE cadres were almost completely obliterated, and did not constitute a real danger to the 50,000-strong Army, these attacks were disproportionate to the direct and concrete military advantage anticipated. Moreover, the evidence indicates that the 53 Division was intentionally attacking civilians as well and medical objects, which in a number of instances resulted in extensive civilian casualties and caused damage to the essential civilian objects i.e. hospitals. Major General Kamal Gunaratne can and should be held criminally responsible for ordering attacks in which civilians, and civilian and medical objects were the objects of attack; of launching indiscriminate attacks that resulted in death or injury to civilians or launching the attack knowing it would cause an extensive civilian casualties and extensive damage to civilian, medical or religious buildings such as hospitals and the UN bases and which amount to war crimes. Given the bombardment and shelling, the likelihood of extensive civilian casualties and damage to civilian objects was foreseeable and indeed materialized.

Major General Kamal Gunaratne can and should be held criminally responsible for failing to prevent his troops from indiscriminately, disproportionately and

²⁹⁹ OISL, §544

intentionally attacking civilians and civilian, medical and other protected objects, including civilians at food distribution points, hospitals and in the densely populated areas of the NFZs. Major General Kamal Gunaratne can and should be held criminally responsible for failing to prevent his troops from using indiscriminate weapons.

There are reasonable grounds to believe that Major General Gunaratne knew of or had reason to know of the actions of his subordinates toward civilians, especially that the attacks were not incidental but rather were part of the pattern of repeated attacks against the civilian population as well as civilian, medical and other protected objects. Moreover, a number of international organizations were calling on the Sri Lanka Government to cease operations³⁰⁰ in the densely populated areas where the distinction between civilians and combatants became increasingly blurred – reports about which Gunaratne must have heard and known about, given his position as the Commander of the 53 Division in the Sri Lanka Army. The ITJP has received no information about steps taken by Major General Gunaratne to prevent, or put a stop to the attacks on civilians or to punish those who perpetrated the crimes but has rather heard of continued denial that any violations of international humanitarian law were taking place. Major General Kamal Gunaratne should also be held criminally responsible for the war crime of failing to prevent the summary executions and arbitrary detentions of civilians and persons *hors de combat*, and separately for the crime of enforced disappearance that was committed by troops under his effective control or responsibility. Accordingly, there are reasonable grounds to believe that Major General Gunaratne knew of or had reason to know of the actions of his subordinates towards persons *hors de combat* and civilians, or consciously disregarded information which clearly indicated that his troops were committing a crime of enforced disappearance. The ITJP has received no information about steps taken by him to prevent or put a stop to the actions of his troops or to punish those who perpetrated the crimes.

Similarly, given the evidence set out in this report and the findings by the OISL, Major General Kamal Gunaratne can and should face charges of war crimes for rape, torture and outrages upon personal dignity, as well as torture as a separate crime, committed by troops under his effective command and control. There are reasonable grounds to believe that he knew or had reasons to know about these crimes and even then failed to prevent the crimes from occurring and punish those responsible.

³⁰⁰ See eg ICRC, *Sri Lanka: ICRC calls for exceptional precautionary measures to minimize further bloodshed in "no-fire zone"*, 21 Apr 2009, <https://www.icrc.org/en/doc/resources/documents/news-release/2009-and-earlier/sri-lanka-news-210409.htm>; Amnesty International, *Stop the War on Civilians in Sri Lanka: a briefing on the humanitarian crisis and lack of human rights protection*, 2009, <https://www.amnesty.org/download/Documents/48000/asa370042009en.pdf>; HRW, *Sri Lanka: Stop Shelling 'No-Fire Zone'*, 9 Apr 2009, <https://www.hrw.org/news/2009/04/09/sri-lanka-stop-shelling-no-fire-zone> .

7.7 JOSEPH CAMP

Major General Kamal Gunaratne was effectively in command and control of Joseph Camp in the period between July 2009, in the immediate aftermath of the war to December 2010. Joseph Camp was known as Sri Lanka's most notorious army torture site. Evidence in the possession of the OISL inquiry and the ITJP confirms that Illegal detentions, torture and sexual violence were systematic and widespread. The prohibition against torture and other ill-treatment is absolute and state officials, and other persons acting in an official capacity, must not themselves inflict, instigate, consent to or acquiesce in, or authorize, any act of torture or other ill-treatment. There are reasonable grounds to believe that torture and sexual violence was systematic and widespread.

These acts are in breach of the absolute prohibition of torture, and Sri Lanka's international treaty and customary obligations. If proven, these acts of rape and torture may, depending on the circumstances, amount to crimes against humanity if committed as part of a widespread or systematic attack, and as war crimes given the nexus to the armed conflict

Major Kamal Gunaratne should face criminal charges for war crimes and crimes against humanity for crimes of rape, torture and sexual violence committed by officials at Joseph Camp under his effective command and control. There are reasonable grounds to believe that he knew or had reason to know about these crimes and failed to prevent these crimes and punish those responsible.

7.8 MANIK FARM

7.8.1 Internally Displaced Persons

According to principle 14 paragraph 1 of the UN Guiding Principles on Internally Displaced Persons (IDPs), 'every internally displaced person has a right to liberty of movement and freedom to choose his or her residence'³⁰¹. Under International law every person has the right to freedom of movement and choice of place of residence within the border of a State. According to the Principle 28 paragraph 1 of the Guiding Principles, this duty includes to 'establish conditions, as well as provide means, to allow internally displaced to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country'³⁰². Such authorities shall endeavour to

³⁰¹ N Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement*, 11 February 1998, E/CN.4/1998/53/Add.2, available at: <https://www.refworld.org/docid/3d4f95e11.html> [accessed 30 November 2019]

³⁰² Ibid

facilitate the reintegration of returned or resettled internally displaced person'³⁰³.

Major General Kamal Gunaratne was one of those in command of the Manik Farm, a detention centre in which hundreds of thousands of Tamil civilians were unlawfully detained in the immediate aftermath of the war in 2009. Humanitarian aid workers described Manik Farm as a place where people are being kept behind barbed wire and where conditions resemble internment or detention camps. Manik Farm held 230,000 people mainly civilians ie women and children and had become a a centre for mass arbitrary detention.

Those detained in Manik Farm were not treated in accordance with international law provisions in respect of IDPS as Manik Farm was completely militarized and under the command and control of the Sri Lankan military.

Those held at Manik Farm were subjected to unlawful screening processes by the military. These screening practices were defended by Major General Kamal Gunaratne who admitted that he had been involved in the processes. Inmates of Manik farm were subjected to rape, torture and other forms of sexual violence. This was confirmed by the OISL Inquiry which highlighted how rampant "*Sexual harassment and other forms of sexual violence during screening processes and inside Manik Farm*" had become. The ITJP has collected further evidence of rape and sexual violence in Manik farm including of children. Testimony collected indicates that sexual slavery was widespread and systematic in Manik farm.

Civilians unlawfully detained in Manik Farm had the following rights violated.

RIGHT TO LIBERTY AND FREEDOM OF MOVEMENT

Internally displaced persons had the right to leave the camps and the freedom to choose their residence (freedom of movement) and, for so long as they reside in camps, the right to move freely in and out of them (liberty). The rights to liberty, freedom from arbitrary detention and freedom of movement are guaranteed to all persons by the International Covenant on Civil and Political Rights (ICCPR, Articles 9 and 12). These rights as they apply to internally displaced persons are laid out in Principles 12 and 14 of the Guiding Principles on Internal Displacement.³⁰⁴

³⁰³ Ibid

³⁰⁴ Principle 14 of the UN Guiding Principles on Internal Displacement states that: "1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence. 2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements." Principle 12 states that: "1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. 2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances. 3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement. 4. In no case shall internally displaced persons be taken hostage. Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998).

Even if the Sri Lankan government had considered that it was not yet safe or economically feasible for some displaced persons to return to their homes or because their release constituted a security risk, many Tamil civilians interned in Manik farm had family members or friends in other parts of Sri Lanka they would have preferred to stay with. While states may in certain circumstances place certain limitations on the individual right to freedom of movement where the safety of the individual or of the general public is at stake, the onus is on the government to demonstrate in each case that any such restrictions are lawful, necessary and proportionate, and have been imposed for one of the listed legitimate purposes: national security, public order, public health or morals or to protect the rights and freedoms of others. An absolute prohibition on movement based on vaguely stated national security or public safety reasons is not acceptable.

SYSTEMATIC AND TRANSPARENT REGISTRATION FOR EACH DISPLACED PERSON

Article 16 of the ICCPR, the Guiding Principles on Internal Displacement (Principle 20) states that: “(1) Every human being has the right to recognition everywhere as a person before the law.” It further discusses the actions necessary to secure this right where displaced persons are concerned by stating that: “(2) to give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one’s area of habitual residence in order to obtain these or other required documents.” It also specifies that “(3) Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.”³⁰⁵ These rights of civilians interned in Manik farm were violated.

FAMILY REUNIFICATION

Principle 17 (3) of the UN Guiding Principles on Internal Displacement emphasizes the rights of families separated by displacement to be “reunited as quickly as possible,” and states that “all appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.” It also notes that “members of internally displaced

³⁰⁵ **Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998).**

families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.”³⁰⁶ Family members were separated in violation of their rights.

CIVILIAN ADMINISTRATION & HUMANITARIAN ACCESS

The Sri Lankan government had a duty to ensure that Manik Farm was administered by civilian authorities, and who had a legal obligation to guarantee the security and human rights of all occupants, was protected and that international human rights and humanitarian organizations had access to those detained purposes of humanitarian assistance and protection as well as to guarantee a free flow of information about conditions in the camps.

Principle 25 of the Guiding Principles speaks directly to the need to ensure unimpeded access for humanitarian assistance. While it emphasizes that, “The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities,” it also states that “international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.” It also states that all authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.”

Principle 27 requires that “international humanitarian organizations and other appropriate actors when providing assistance give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard.” Government restrictions placed on access and on communications regarding human rights conditions in the camps jeopardize the protection and human rights of displaced persons.

The UNHCR stated that camps were overcrowded and unsanitary and that the management of the camps was being done by military. Camps were guarded by armed personnel, camp managers were often retired military officers and the Ministry of Defence was actively involved in determining who got access. Displaced people were not permitted to leave - they were in fact detained without charge or trial. In many instances the civilians detained in Manik Farm had property and family members they could have returned to, Their unlawful detention is in violation of Sri Lanka's obligations under international law, which prohibits arbitrary detention.

³⁰⁶ *Ibid*

7.8.1.1 Crime of Persecution

The crime of persecution includes:

- (i) serious physical harm, loss of freedom, and other serious violations of basic human rights as defined by international human rights instruments³⁰⁷;
- (ii) (ii) discriminatory treatment which lead to consequences of a substantially prejudicial nature (for instance, serious restriction on the applicant's right to earn his or her living, to practice his or her religion, to access normally available education facilities)³⁰⁸; and
- (iii) (iii) a combination of numerous harms none of which alone constitutes persecution but which, when considered in the context of a general atmosphere in the applicant's country, produces a cumulative effect which creates a well-founded fear of persecution³⁰⁹.

Based on the evidence held by the ITJP and the OISL Inquiry, there are reasonable grounds to believe that the IDPs were treated as LTTE suspects and unlawfully detained because of their Tamil ethnicity and because they had come out of LTTE-controlled territory. This amounts to discrimination under international human rights law, and if proven may amount to the crime against humanity of persecution.

7.8.3 Prisoners of War

Under international humanitarian law, captured combatants ('prisoners of war' in international armed conflicts; 'persons who have taken direct part in the hostilities' in non-international armed conflicts) may be held pending the cessation of hostilities. Once active hostilities have ceased, prisoners of war must be released 'without delay or handed over to civilian authorities for investigation and prosecution'³¹⁰. According to the ICRC, in non-international armed conflict a similar, customary rule applies, namely that they "must be released as soon as the reasons for the deprivation of their liberty cease to exist"³¹¹. This rule does not prevent a state from detaining and prosecuting those suspected of crimes, including war crimes and offences under domestic law³¹². Evidence available indicates that LTTE prisoners of war were sent to rehabilitation centres in violation of their rights, protected status and their right to a fair trial.

³⁰⁷ Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, UNHCR, 1979, § 52.

³⁰⁸ Ibid., § 54.

³⁰⁹ Ibid., § 53.

³¹⁰ Article 118 of the Third Geneva Convention.

³¹¹ See Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume 1: Rules (Cambridge: Cambridge University Press & International Committee of the Red Cross 2005), pp. 451-6.

³¹² Ibid

7.9 CRIMINAL RESPONSIBILITY

Major General Kamal Kunaratne, second in command and control of Manik farm should be held criminally responsible for crimes against humanity for persecution, rape, torture and sexual violence committed by officers under his command at Manik Farm. There are reasonable grounds to believe that he knew or had reason to know about these crimes and failed to prevent these crimes and punish those responsible.

CONCLUSION

The appointment of Major General Kamal Gunaratne as the Defence Secretary in Sri Lanka represents a clear signal to victims and the international community that the newly elected government of Sri Lanka has no intention of realizing its domestic and international obligations to investigate and prosecute those responsible for war crimes, crimes against humanity and gross violations of human rights. It is instead intentionally and deliberately promoting im impunity by appointing alleged war criminals to positions of power.

ANNEXURES

ANNEXURE 1: MOD SITUATION REPORTS REGARDING 53 DIVISION.

ANNEXURE 2: REPORT TO CONGRESS ON INCIDENTS DURING THE RECENT CONFLICT IN SRI LANKA, PUTUMATTALAN.

Situation Reports on 22nd Nov 2008

“53 and 55 Divisions, continued effective military thrust against LTTE terrorists while further consolidating their positions on newly captured LTTE's first line of defence at Northern theatre of Battle.”³¹⁴

Situation Reports on 29th December, 2008

“Troops of 53 Division attacked at terror bunker in general area Ponnar and troops confirmed the bunker was destroyed.”³¹⁵

Situation Reports on 08th January 2009

Pallai liberated by 53 Division.

Situation Report on 16 February 2009

Troops of 5 Vijayabahu Infantry Regiment (5VIR) serving under 533 Brigade led by Lt Col Jayanath Jayaweera have found two 130mm artillery barrels from general area west of Puthukkudyiruppu.

Situation Reports on 17th Feb, 2009

“Troops of 533, 593 and 632 Brigades under command to 53 Division on consolidating operations in Puthukkudiyairippu have found more LTTE military items confronted with LTTE terrorists. Inflicting heavy damages to the enemy in several occasions yesterday, 16 February...Troops of 5 Vijayabahu Infantry Regiment (5 VIR) of 533 Brigade commanded by Lt Col Jayanath Jayaweera, who found two 130mm artillery barrels last morning (16 Feb), were able to locate The remaining accessories of one complete artillery gun including the wheels of the gun carrier by the evening, defence sources said.”

Situation Reports on 18th Feb, 2009

“Troops of 533 Brigade serving under 53 Division attacked at group of LTTE terrorists detected in general area Oddusudan last morning, 18 February.”

Situation Report on 20 February 2009

“Sri Lanka Army Task Force 8, currently operating under the Army 53 Division found a three storied underground bunker from the Puthukkudiyiruppu South area last evening (Feb 20).”

Situation Reports on 23rd February, 2009

“The Peninsula based 55 and 53 Divisions commanded by Brig. Prasanna de Silva and Brig Kamal Guneratna which captured the LTTE First Defence Line at Muhamalai last November after heavy fighting too, got activated once again and resumed a fresh drive at about 10:00 p.m. on Monday.”

<https://www.nation.lk/2009/01/11/militarym.htm>

³¹⁴ LRRP blog: Last week, the advancing troops of the 55 and 53 Divisions had to overcome an earth bund of 15 feet in Muhamalai.

³¹⁵ Fighting erupted when troops from SLA's 53 division

moved ahead of their positions in a fresh attempt to storm LTTE's second FDL in the national front.

<https://web.archive.org/web/20090209211105/http://lrrp2.wordpress.com/2008/12/16/casualties-in-kilali-fighting/>

“53 Div inflicts heavy damages to terrorists – Puthukkudiyiruppu. Infantrymen of 53 Division continued their offensive operations to fully liberate the Wannu region and the innocent Tamil civilians trapped by LTTE terrorists inflicting heavy damages to the enemy.”

Situation Reports on 24th February, 2009

“53 Div inflicts heavy damages to terrorists – Puthukkudiyiruppu. Infantrymen of 53 Division continued their offensive operations to fully liberate the Wannu region and the innocent Tamil civilians trapped by LTTE terrorists inflicting heavy damages to the enemy. 533 and 682 Brigades under command to 53 Division.”³¹⁶

Situation Reports on 04th March, 2009³¹⁷

“Troops of the Task Force- 8 operating under the overall command of 53 Division made further advances into the remaining terrorist resistance positions located further Northeast of Puthukkudiyiruppu junction yesterday (March 3).”³¹⁸

Situation Report on 12 March 2009

“Puthukkudiyiruppu hospital liberated from LTTE – Mullaittivu. Sri Lankan Army soldiers of the 53 Division and Task Force 8 entered the Puthukkudiyiruppu Hospital premises today (March 12) morning, driving away LTTE terrorists who had turned the hospital into a major LTTE hideout since the fall of Mullaittivu town on 25th January.”

Situation Reports on 16th March, 2009

“Sri Lankan soldiers continue fighting terrorists, rescue more civilians – Puthukkudiyiruppu.

Reports received from the battlefield so far indicate that the soldiers of Sri Lanka Army 53 Division, 55 Division and 58 Division are continuing on their noble mission to rescue Civilians forcibly held by the LTTE in the remaining terrorist hiding areas in Puthukkudiyiruppu. Despite all the restriction that the soldiers have to face due to terrorist use of human shield, Sri Lankan soldiers were able to rescue more than 400 civilians by the this afternoon (Mar 16), indicate the reports. Also, soldiers of Army 53 Division operating in Puthukkudiyiruppu East

³¹⁶ Also: Heavy fighting has been reported west of Puthukkudiyiruppu (PTK) where Sri Lanka Army (SLA) divisions 58 and 53 have suffered heavy casualties throughout the last 3 days, according to the sources close to the Liberation Tigers of Tamil Eelam (LTTE) Source: <http://www.tamilnet.com/art.html?catid=13&artid=28521>

³¹⁷ 1 Mar 2009, PTK, 58 Division, Task Force IV, Task Force, <http://archives.sundayobserver.lk/2009/03/01/sec03.asp>, 2/4

7/23/2018 Security News | Sundayobserver.lk - Sri Lanka, VIII and 53 Divisions; AA: Daily News-2009-03-01-(Sunday Observer) SIT REP- LTTE Confined to underground bunkers.

³¹⁸ 5 Mar 2009; AA: Daily News-2009-03-05-Tiger bodies, arms recovered (53, 55, 57 and 58 divisions).

6 Mar 2009; Task Force VIII and the 53 Division are heading towards the centre of Puthukkudiyiruppu from South to North direction. AA: Daily News-2009-03-06-(Sunday Observer) Troops marching on to LTTE's last terrain (military names)

battled the terrorists from morning to evening inflicting heavy damages to the terrorists.”³¹⁹

Situation Report on 18th March, 2009

“8 bodies of slain terrorists found at Puthukkudiyirippu. 53 Division troops operating in general area

Puthukkudiyirippu, Mullaittivu, have uncovered bodies of 8 terrorists killed in confrontations with security forces on Tuesday (March 17) along with 7 T-56 assault rifles, security sources reported.”

Situation Report on 21 March 2009

“Intense fighting in Puthukkudiyairippu; 5 LTTE bodies found. Infantrymen of 5 Gemunu Watch (5GW) and 6 Gajaba Regiment (6GR) serving under 53 Division continued their offensive gaining control over more area while strengthening the defences yesterday, defence sources in battlefront said.”

Situation Reports on 25th March, 2009

53 Div, TF -8 troops close-in-on last LTTE foothold: seize section of earth bund at Puthukkudiyirippu. Combined troops of the 53 Division and Task Force-8 continuing advances into the last LTTE foothold East of Puthukkudiyirippu, have seized control over a section of the LTTE built earth bund cum ditch across the A-35 main road, West of the Nanthikadal lagoon, yesterday (March 24).

Situation Reports on 28th March, 2009

Troops of the 53 Division and Task Force - 8 advancing further East from Puthukkudiyirippu have seized control over an LTTE supply route stretching towards Iranapalai following hours of Fierce fighting yesterday(March 28).

Situation Reports on 29 March, 2009

Troops of the 53 Division and Task Force -8 advancing further East from Puthukkudiyirippu have seized control over an LTTE supply route stretching towards Iranapalai following hours of Fierce fighting yesterday(March 28).

Situation Reports on 01st April, 2009

9 terrorists killed, military hardware recovered at Mullaittivu. Sri Lankan Army's 53 Division troops operating in general area East of Puthukkudiyirippu confirmed killing 9 terrorists, injuring 13 others and also recovering a cache of military hardware yesterday(March 31).

Situation Reports on 02nd April, 2009

³¹⁹ 15 Mar 2009, “In their `final kill`, the troops of the 59 Division is pushing the LTTE from Mullaittivu, 58 Division from North of Puthukkudiyirippu, 55 Division from the north of Puthumathalam, 53 Division from the west of Puthukkudiyirippu and Task Force-8 from the west of the lagoon.” AA: Daily News-2009-03-15-(Sunday Observer) Troops hands tied due to human shield - Army Chief(many divisions)

“According to the latest information received from the battlefield, fierce fighting ranged in northeast of Puthukudiyiruppu as troops of 53 (Task Force 8 also attached to 53 Div) and 58 Divisions surrounded the LTTE's remaining area in the offensive continued after capturing Pachchapulmudai junction by last evening, 1 April....Sri Lanka Army's 53 Division troops operating in general area East of Puthukudiyiruppu confirmed killing 9 terrorists, injuring 13 others and also recovering a cache of military Hardware yesterday (March 31).”

Situation Reports on 02nd April, 2009

“According to the latest information received from the battlefield, fierce fighting ranged in northeast of Puthukudiyiruppu as troops of 53 (Task Force 8 also attached to 53 Div) and 58 Divisions surrounded the LTTE's remaining area in the offensive continued after capturing Pachchapulmudai junction by last evening, 1 April.”³²⁰

Situation Reports on 03rd April, 2009

“Troops of 53 Div and Task Force 8 extend their forward boundaries further into terror enclave-Puthukudiyiruppu. Troops of Army 53 Division and Task Force 8 yesterday (Apr 02) further extended their forward boundaries into the remaining LTTE enclave in Puthukudiyiruppu East.”³²¹

Situation Report on 06 April 2009

“Sri Lanka Army 53 Division soldiers now advancing beyond the eastern limits of the Puthukudiyiruppu today (Apr 8) had daylong clashes with the LTTE. Army 53 Div maneuvers towards northern bank of Nanthikadal Lagoon Sri Lanka Army 53 Division soldiers are now maneuvering towards the northern bank of the Nanthikadal lagoon which is still under terrorist hold.”

Situation Report on 08 April 2009

“Army 53 Div maneuvers towards northern bank of Nanthikadal Lagoon. Sri Lanka Army 53 Division soldiers are now maneuvering towards the northern bank of the Nanthikadal lagoon which is still under terrorist hold.”

Situation Reports on 13th April, 2009

“Sri Lanka soldiers of 53 Division today (Apr 12) successfully repulsed several LTTE attempts to breach own defence line in the Puthukkudiyiruppu.”

Situation Reports on 14th April, 2009

“53 Div seize control over LTTE built earth bund East of Puthukudiyiruppu.”

³²⁰ In PTK township: 53 and 58 - 11 slli and 5 VIR, TF8, 55, AA; Daily News-2009-04-02 Troops encircle 200 Tigers (divisions 53-58). “The troops of the 11 Sri Lanka Light Infantry Regiment attached to the 58 Division under the command of Brigadier Shavendra Silva and the 5 Vijayaba Infantry Regiment attached to the 53 Division under the command of Major General Kamal Gunaratne linked up, south of Pachchapulmudai junction encircling hundreds of Tiger cadres inside.” News Editorial Business Features Political Security Sport World Letters Obituaries . LTTE CONFINED TO NO FIRE ZONE: Troops encircle over 200 Tigers, 2 April 2009.

³²¹ PTK assault; The 12th Gajaba Regiment (GR) under the command of the 58 division, 1 GR and 4 Vijayabahu Infantry Regiment (VIR) under the command of the 53, AA: Daily News-2009-03-04-Troops capture Puthukudiyiruppu (53 and 58 divisions).

Situation Reports on 15th April, 2009

“53 Div uncovers dumped SAM missiles in Puthukkudiyirippu. 53 Division troops led by Major General Kamal Gunarathne have uncovered 4 surface to air missiles (SAMs) dumped by LTTE terrorists in general area East of Puthukkudiyirippu yesterday (April 14) evening.”

Situation Reports on 16th April, 2009

“53 Div seize control over LTTE built earth bund East of Puthukkudiyirippu.”

Situation Reports on 17th April

“53 Div advances towards Vellamullivaikkal. Troops of 53 Division continuing with its hostage-rescue operations made further advances towards Vellamullivaikkal from East of Puthukkudiyirippu amidst heavy Indirect fire launched by the LTTE terrorists from the government declared No Fire Zone, yesterday (April 16).”

Situation Reports on 19th April

“Troops manoeuvring to open main road access to NFZ; hostage rescue mission continues Sri Lankan soldiers of 53 and 58 Divisions were just 700m to 800m short of the bridge on the A-35 road (Paranthan - Mullaittivu) at Vellaimullaivaikkal last night (Apr 18), defence sources said.

Situation Reports on 20th April 2009

“A total of 24 civilians from 6 families including 7 children have fled from LTTE hostage and sought protection with 53 Division troops now flanked at the anterior of the government declared No Fire Zone, East of Puthukkudiyirippu this evening(April 20).”

Situation Reports on 22nd April, 2009

“Sri Lankan soldiers of 53 and 58 Divisions are continuing on their noble mission of rescuing civilians held hostage by LTTE terrorists in Wannii.”

Situation Report on 27 April 2009

“Separately another 107 civilians were rescued by 53 Division soldiers now operating in the Puthukkudiyirippu East area.”³²²

³²² Also: According to the defence.lk special correspondent on the field, troops of 58 Division rescued 3147 people when they liberated the Valayarmadam coastal village. The group included a large number of LTTE child soldiers. Separately another 107 civilians were rescued by 53 Division soldiers now operating in the Puthukkudiyirippu East area. Source: http://www.defence.lk/new.asp?fname=20090427_01

The 10 SLLI and 12 GW were entrusted with taking the final bund at Valayarmadam. The operation started around midnight of April 28 and continued up to 4.00 a.m (29). Tigers were ready with their suicide cadres. They even sent in a lorry laden with explosives toward the well secured security ring and blasted it. A cab packed with explosives was also blasted in similar fashion.

But such suicide attacks could not stall the forces onslaught on the Tigers.

On the night of April 27, the Air Mobile Brigade of the 53 Division, broke through the earth bund at Vallayarmadam, after heavy fighting.

CO Air Mobile Brigade, Lt. Col. Thilak Hangilipola, and CO 5 GW, of the same Brigade, Lt. Col. Rohan Palayangoda, were involved in this operation.

The 5 GW troops, amidst heavy fighting, broke through the earth bund and entered Vallayarmadam, after advancing about 400 metres.

<https://www.nation.lk/2009/05/03/defence.html>

Situation Report on 28 April 2009

“Humanitarian operations continue: 53, 58 Div troops advance through mined earth bunds LTTE terrorists suffered double blows losing two heavily fortified defence positions as 53 and 58 Division troops made predawn incursions at identified terror strongpoints located South of Valayanmadam today (April 28).³²³”

Situation Report on 04 May 2009

“The 58 and the 53 Divisions cleared their paths towards the remaining five km stretch of the No Fire Zone after 53 Division stormed another heavily fortified earthbund built across the Paranthan-Mullaitivu, A-35 road following close quarter fighting that continued for long in the early hours of yesterday (May3).”

Situation Report on 08 May 2009

“Troops of 58 and 53 Divisions continued their advances further into No Fire Zone amidst stiff resistance as LTTE terrorists made their maximum effort to hold the earth bund built to obstruct the security forces' advance.”

Situation Reports on 10th May, 2009

“53, 58 Divs advance further to rescue civilian hostage held by LTTE. Infantrymen of Air Mobile Brigade under command to 58 Division further advanced into the "No Fire Zone" capturing LTTE strong positions in general area Karaiyamullivaikal yesterday, 9 May.”³²⁴

Situation Reports on 11th May, 2009

“53, 58 Divs continue ground operation to rescue civilian hostages; LTTE suffers heavy damages

Troops of 58 Division operating in close proximity to the newly declared "Civilian Safe Zone (CSZ)" have further continued their ground advances to rescue the civilian hostages held by the LTTE terrorists yesterday, 11 May. 53 Div uncovers 2 LTTE used paddle guns and many other warlike items -Two paddle guns and a cache of military hardware left behind by the fleeing terrorists were uncovered by the troops of 53 Division in a clearing operation conducted at the newly liberated Karayamullivaikkal area yesterday, (10 May).”³²⁵

³²³ 30 April 2009: The 58 Division troops advancing South and the 53 Division flanking west of Vellamullivaikkal have been spearheading the rescue operations as an estimated number of 15,000- 20,000 civilians await liberation from LTTE clutches. Source: http://www.defence.lk/new.asp?fname=20090430_08

³²⁴ 58 Div & 53 Div - 7 SR, 6 GW, 9 VIR and 58 Division GOC Brigadier Shavendra Silva personally directed ground troops - also 59 Div; AA: Daily News-2009-05-10 (Sunday Observer) Troops advance into last Tiger terrain (military names)

³²⁵ “On Monday May 11, the Sri Lanka Army's 53 and 58 Divisions were able to capture the entire Karayamullivaikkal area. And as you are reading this column, Troops from 53 Division and 58 Division are entering Vellamullivaikkal, from the 58 Division, the 9 Vijayabahu Infantry Regiment (9VIR) under Lt. Col. Sisira Herath, gave the flank support along the coastal side, while the 11 Sri Lanka Light Infantry (11 SLLI) under Lt. Col. Kithsiri Ekanayake advanced with his troops from the lagoon side. The middle stretch of the sliver of land area in between, was left for the 9 Gemunu Watch (9GW) under Lt. Col. Lal Chandrasiri. The 10 Gemunu Watch (10GW) under Lt. Col. Lal Chandrasena was advancing from west of the A-35 Paranthan-Mullaitivu road. 53 Division Command by Major General Kamal Gunarathne, under his command Air Mobile Brigade Commander Lt Colonel Thilak Sangalipola and 5 GW Commanded by Lt Colonel Rohan Palayangoda with the highly regarded Air Mobile Division and 8(GR) Lt Colonel Mohan Rathnayake were advancing from south of the A-35 Paranthan-Mullaitivu road towards to south.” Army at doorstep of last Tiger, Stronghold (troops marching on LTTE's last stronghold), 13 May 2009

Situation Reports on 14th May, 2009

“Sri Lanka Army 53 and 58 Division are now sweeping around the new civilians safety zone, reveal latest reports from the battlefield. 18 LTTE bodies uncovered during search operations - Vellamullivaikkal.”³²⁶

Situation Reports on 17th May, 2009

“According to the battlefield sources, Army 53, 58 and 59 Division soldiers have entered into the area where LTTE leaders have been cowering among the civilians during last couple of weeks. Soldiers are now looking for sick and disabled people that may be left in the area as almost all the others held at hostage by the terrorists have been rescued.”

Situation Report on 18 May 2009

“53 and 58 Divs uncover over 350 LTTE bodies - 18th May 2009. Troops of 53 and 58 Divisions have uncovered over 350 bodies of LTTE terrorists killed while conducting the search and clearing operations in general area Vellamullaiwaikkal this evening, 18 May. Infantrymen of 53 Division have found uncovered 181 bodies of LTTE terrorists along with a large quantity of weapons and ammunition, latest military sources said. Over 10 Million rupees were also found in possession of killed top LTTE leaders, military sources added...Sri Lankan army elites and infantrymen of 53, 58 and 59 Divisions have foiled the LTTE's last attempt to evacuate its top leaders this morning (May 18).”³²⁷

³²⁶ 58, 53, 59 (59 moving north from Vadduvakkal); Daily News-2009-05-14 Tigers destroy own assets.

15 May 2009: The 1 and 6 Gajaba Regiment battalions, 5 GW and 5 Vinajayaba Infantry Regiment attached to the 53 Division are advancing from the West of A-35 Road. [Daily News-2009-05-15 Ground troops brave terrorists \(military leaders\)](#)

³²⁷ Also: Troops of 53 and 58 Divisions have uncovered over 350 bodies of LTTE terrorists killed while conducting the search and clearing operations in general area Vellamullaiwaikkal this evening, 18 May. Source: http://www.defence.lk/new.asp?fname=20090518_17

Annexure 2

PUTUMATTALAN: Report to Congress on Incidents During the Recent Conflict in Sri Lanka³²⁸

Incidents listed here refer to Putumattalan (also referred to as Mattalan) which included 6 attacks on Putumattalan Hospital:

February 8 - A local source in Mattalan reported to HRW [Human Rights Watch] that a shell landed approximately 10m from a hospital, and fragments hit the hospital.

February 9 - HRW: "In Mattalan shelling killed 16 people and injured 49."

February 9 - A source reported that the makeshift hospital in Putumattalan was hit by shelling, killing 16 patients.

February 12 - One person was killed in Mattalan by shelling along the coastal area at noon.

February 21 - An organization's local sources reported severe, continuous SLA shelling in the Mullivaikkal, Pokkanai and Mattalan areas (declared Safe Zones by the Government), killing 19 civilians. Other sources reported that 50 civilians were killed and 130 fatally injured due to heavy artillery shelling of the Safe Zones comprising the Mattalan, Ampalavanpokkanai, Mullivaikkal and Valayanmadam areas.

March 4 - According to an organization, an aid worker was killed by shrapnel while he was returning from assisting wounded patients moving from the Mattalan hospital to a ship in Mullaittivu District around 5:00pm local time.

March 5 - A source in Mattalan reported to HRW that 57 civilians were killed and 154 injured by cluster bombs in Valayanmadam and Mattalan. An organization's source in Valayanmadam reported that a shell hit a tarpaulin shed, completely burning it. Inside, eight people, including two children, were killed and 23 people were injured.

March 7 - A source in Mattalan reported to HRW that a cluster shell exploded in Valayanmadam, located in the No Fire Zone, and that two cluster shells exploded in another No Fire Zone area, Putumattalan. Fifty-two people were killed and 95 injured. Another organization's source seemed to corroborate this account in its report that 51 civilians were killed by shelling in the same area.

³²⁸ <https://www.state.gov/documents/organization/131025.pdf>

March 11 - Embassy Colombo reported that 72 people were killed and 91 injured by continued shelling in the No Fire Zone. The US Embassy was told that an MBRL (Multi-Barrel Rocket Launcher) sent 40 shells into the No Fire Zone in one barrage, and that 21 of the 72 deaths were of individuals who were in line to receive their food ration. Upon learning of the shelling, an organization spoke with the Government of Sri Lanka military in Vavuniya and requested that the shelling cease. An organization provided messages from a source in Mullaittivu with similar details about an MBRL attack in Mullivaikkal, wounding 93 people. A source near Mattalan reported to HRW very heavy shelling to the west. Many shells landed within 200m of the source.

March 12 - A source near Mattalan reported to HRW that a shell came from the direction of Thevipuram and hit Pokkanai, 400m from the Mattalan port, killing five civilians and injuring many more. Later in the day, the source reported, three artillery shells came in from the west and landed 400m from the bunker, south of Mattalan.

March 13 - An organization's source in Mullaittivu reported that 52 people were killed and 43 injured. Two other sources sent messages reporting the same number of people killed, noting shelling in Pokkanai, Mattalan and Mullivaikkal.

March 13 - Two artillery shells, which witnesses believed were from the SLA, hit Mattalan. The shelling reportedly killed a child and seven other civilians. Shelling was heavier later in the day.

March 15 - An organization's source said that shelling had started that morning in Mattalan. A source near Mattalan reported to HRW that 61 people injured by shells in the No Fire Zone were admitted to the hospital. Five people with severe injuries died after they were admitted.

March 16 - A source near Mattalan reported to HRW that a shell, perhaps a rocket-propelled grenade (RPG), hit the Mattalan hospital and killed 2 people.

March 16 - HRW reported that around 11am an RPG struck inside the Putumattalan Hospital compound, killing 2 people.

March 20 - An HRW source near Mattalan reported shelling about 100m west of the port in Putumattalan, a heavily populated area. HRW later reported the incident in more detail, noting that a source at the makeshift hospital in Putumattalan said a shell hit a shelter about 200m from a church in Valayanmadam, killing five people and injuring nine. A local source also reported that seven people were admitted to the Mattalan hospital. One source was critically injured.

March 22 - A foreign government reported shelling in the No Fire Zone at Putumattalan; the witness reported that two young children were killed.

March 23 - HRW reported a phone conversation with a source at the makeshift hospital in Putumattalan, inside the Government-declared No Fire Zone, which was interrupted by shelling, audible over the phone. Later in the day, the source said that the hospital had received 14 corpses and 98 wounded persons that day. He told HRW that the shelling appeared to come from the direction of Government positions 3km to the west. An artillery shell had struck approximately 250m from the hospital, killing two civilians and wounding seven others. Another shell struck about a kilometer from the hospital, also killing and wounding civilians. Another HRW source near Mattalan reported shelling in Putumattalan, Mullivaikkal, and Valayanmadam. One hundred and forty-two people were injured: 16 died in the hospital, and many people were killed on the spot. An organization's source in Valayanmadam reported that 102 people were killed in shell attacks.

March 24 - An HRW source near Mattalan reported that an RPG shell hit one of the entrances to the Mattalan hospital. Another shell landed 10m in front of the hospital, killing a child.

March 25 - An HRW source near Mattalan reported shelling near where hundreds of people were encamped. An RPG shell landed inside the encampment and injured one of the people hiding there.

March 27 - A foreign government reported shelling in the No Fire Zone at Putumattalan; the report indicated that one child had been killed and another injured.

March - A foreign government reported the eyewitness account of a woman whose two-year-old son was killed during an aerial attack by the SLA in March. The infant was asleep in his cradle at the Mattalan IDP site when he was killed.

April 19 - An organization reported that sources at Putumattalan Hospital confirmed that many shells hit the civilian area and the hospital compound. The hospital roof was also hit by small arms fire.

April 19-20 - Embassy Colombo reported that in a fairly large-scale operation Government forces penetrated into the No Fire Zone overnight. Sources reported a heavy offensive in which the Government took Mattalan junction and at least briefly reached the hospital in Putumattalan. The Government of Sri Lanka rejected calls by the United Nations, US Government and others for a continuation of the previous week's humanitarian ceasefire.

April 20 - A foreign government with representation in Colombo reported an eyewitness account of shelling at the Mattalan Hospital. Another witness reported

that her husband, her nine-year-old daughter and six others were killed during the attack.