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ECCHR Dossier

Major General Jagath Dias

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*Allegations of War Crimes committed by the 57 Division of Major
General Dias in Northern Sri Lanka between April 2008 and May 2009*

Berlin, January 2011

Introduction

On 19 May 2009 the decades-long armed conflict between the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE) officially ended with the complete military defeat of the LTTE. The last phase of the armed conflict (so called Eelam War IV) began on 26 July 2006, when the Sri Lanka Air Force attacked LTTE positions near Mavil Aru. The last months of the conflict, during which the Sri Lanka Army Divisions and Task Forces advanced in formerly LTTE-held territory, beginning with the battle at Kilinochchi in December 2008, were particularly damaging to the remaining civilian population. Civilians were subjected to indiscriminate shelling attacks, enforced displacement, shortage of water, food and medical materials and no adequate shelter. UN Secretary General Ban Ki-moon spoke about the “unacceptably high” numbers of civilian casualties in the conflict on 1 June 2009.¹ In a secret cable sent by the US Embassy Colombo on 15 January 2010, responsibility for the commission of war crimes is given to “the country’s senior civilian and military leadership, including President Rajapaksa and his brothers and opposition candidate General Fonseka”.²

Soon after the end of the conflict, the Sri Lankan Government began to send several senior military commanders to its representations worldwide: Major General Shavendra Silva was dispatched to the permanent mission to the UN in New York, Major General Prasanna Silva to London, Major General Udaya Perea to Malaysia, Major General Nanda Mallawarachchi to Indonesia, Major General Amal Karunasekara to Eritrea. The General Officer Commanding of the 57 Division, Major General Jagath Dias was appointed a role at the Embassy in Germany, which also represents Sri Lanka in Switzerland and the Vatican State.

Confronted with the allegations of Jagath Dias’ responsibility for the commission of war crimes, the German Government stated the following on 27 April 2010 in response to questions posed by Members of German Parliament:

Q: How many new diplomats did the Sri Lankan Government send to the Federal Republic of Germany after the official cessation of the civil war, and according to which criteria were they accredited?

A: Since the official end of the civil war the Sri Lankan Government has sent one new diplomat to its embassy in Berlin.

When accrediting foreign diplomats, the Government follows first and foremost the basic principles of the Vienna Convention on Diplomatic Relations. The Convention generally grants all States the right to choose the diplomatic corps of its foreign representations freely – with the exception of e.g. the ambassador and citizens of the receiving state – and to request their accreditation by the receiving state or, respectively, to notify his or her appointment at its representation in Germany. In case the receiving state obtains information in relation to the diplomatic corps of foreign

¹ UN News Centre, Civilian casualties in Sri Lanka conflict ‘unacceptably high’ – Ban, 1 June 2009, <http://www.un.org/apps/news/printnewsAr.asp?nid=30984>

² WikiLeaks Staff, Sri Lanka - Ambassador reports Sri Lankan President responsible for "alleged war crimes", 1 December 2010, <http://www.wikileaks.ch/Ambassador-reports-Sri-Lankan.html>; Cable 10COLOMBO32, <http://www.wikileaks.ch/cable/2010/01/10COLOMBO32.html>

representations which are incompatible with the appointment or the continuation of his or her diplomatic occupation at the foreign representation respectively, the state has the right to declare the relevant diplomatic staff member a persona non grata before his or her arrival in the receiving state or to give this declaration in cases where these facts only become known after his or her occupation has already started at the foreign representation.

Q: To what extent did the Government research allegations of possible participation in war crime levelled by international prosecution offices and media, when accrediting Sri-Lankan diplomats and what was the conclusion of such research?

A: When accrediting the aforementioned new Sri-Lankan diplomat, allegations were followed up in relation to the diplomat's former work as Major General of the Sri-Lankan armed forces during the civil war. However, these allegations could not be substantiated.

(„(...)“)

33. Wie viele neue Diplomatinen und Diplomaten hat die Regierung Sri Lankas nach offizieller Beendigung des Bürgerkriegs in die Bundesrepublik Deutschland entsandt, und anhand welcher Kriterien erfolgte ihre Akkreditierung?

Seit der offiziellen Beendigung des Bürgerkriegs hat die Regierung Sri Lankas einen neuen Diplomaten an seine Botschaft in Berlin entsandt.

Bei der Akkreditierung ausländischer Diplomatinen und Diplomaten lässt sich die Bundesregierung vor allem von den in dem Wiener Übereinkommen über Diplomatische Beziehungen (WÜD) enthaltenen Grundsätzen leiten. Dieses gewährt allen Staaten grundsätzlich das Recht, das diplomatische Personal seiner Auslandsvertretungen – mit Ausnahme z. B. des Botschafters und von Staatsangehörigen des Empfangsstaats – frei auszuwählen und um dessen Akkreditierung beim Empfangsstaat nachzusuchen bzw. ihm die Tätigkeitsaufnahme an seiner Vertretung in Deutschland zu notifizieren. Sollten dem Empfangsstaat in Bezug auf das diplomatische Personal ausländischer Vertretungen Tatsachen bekannt werden, die mit der Aufnahme bzw. Fortsetzung einer diplomatischen Tätigkeit an einer Auslandsvertretung unvereinbar sind, bleibt es ihm unbenommen, das betroffene diplomatische Personal noch vor der Einreise in den Empfangsstaat zur Persona non grata zu erklären oder diese Erklärung auszusprechen, wenn diese Tatsachen erst nach der Tätigkeitsaufnahme an der Auslandsvertretung bekannt werden.

34. Inwiefern ist die Bundesregierung bei der Akkreditierung sri-lankischer Diplomatinen und Diplomaten Hinweisen nach einer möglichen Beteiligung an früheren Kriegsverbrechen durch internationale Strafverfolgungsbehörden und Medien nachgegangen, und zu welchem Ergebnis ist sie dabei gekommen?

Bei der Akkreditierung des in der Beantwortung zu Frage 33 erwähnten neuen sri-lankischen Diplomaten ist Hinweisen, die im Zusammenhang mit der vormaligen Tätigkeit des Diplomaten als Generalmajor der sri-lankischen Streitkräfte während des Bürgerkriegs standen, nachgegangen worden. Diese ließen sich jedoch nicht substantiieren.“³

In breach of its obligations under international law, in particular those outlined in the Geneva Conventions and its Additional Protocols, the German Government failed to investigate and accordingly prosecute allegations of war crimes. Instead, it granted a suspect of war crimes a diplomatic passport. As such, one of the main suspects has now been in residence in Berlin for almost one and a half years, allowing him to threaten members of the Tamil diaspora whenever they contact their embassy, e.g. for a passport renewal. Moreover, Major General Dias is not only accepted by German authorities, but also involved in their work. Major General Dias has actively collaborated with the German security authorities, the German intelligence service in particular, to observe and investigate the Tamil community in Germany.⁴ Similar actions are reported in Switzerland.

This Dossier seeks to substantiate allegations concerning the commission of war crimes by Major General Dias' 57 Division. If one follows the movements of the offensive Divisions of the Sri Lanka Army as described on official websites of the Sri Lankan Government, examines reports by governments and international NGOs, and talks to eye-witnesses who were present in the area in the beginning of 2009, it becomes clear that both the Sri Lankan armed forces and the LTTE committed numerous crimes under international law, especially war crimes. As identified by the US Embassy, the most senior military commanders and civilian leaders were responsible for these crimes. On the LTTE-side however, almost all the high-ranking leaders who would have borne the greatest responsibility for their crimes were killed in the last days of the conflict.

During the last stage of the armed conflict ECCHR began to focus its attention on accountability for the commission of crimes under international law in Sri Lanka by all parties to the conflict. This work contained the publication of a study on criminal accountability in Sri Lanka, a submission to the UN Committee on the Elimination of Discrimination against Women (CEDAW) on sexual violence in the armed conflict in Sri Lanka as well as submissions of two eyewitness statements to the UN panel of experts.⁵ ECCHR continues to work on this issue.

ECCHR asks the German Government to take the allegations levelled against Major General Dias' 57 Division seriously, and to seriously investigate his individual criminal responsibility. The German Government must react and withdraw the diplomatic visa of Major General Dias as well as declare him a *persona non grata*.⁶ Further, the German Government and the competent German law enforcement agencies should consider opening investigations into

³ Deutscher Bundestag, Drucksache 17/1530, available at: <http://dip21.bundestag.de/dip21/btd/17/015/1701530.pdf>

⁴ Reliable sources told ECCHR; see also Sunday Island Online, Sujeeva Nivunhella, Lankan Mission gave sensitive info to German intelligence, <http://www.lankamagazine.com/2010/03/06/lankan-mission-gave-sensitive-info-to-german-intelligence>

⁵ See www.ecchr.de/sri-lanka.404.html

⁶ See Article 9, Vienna Convention on Diplomatic Relations, 1961, http://treaties.un.org/doc/Treaties/1964/06/19640624%2002-10%20AM/Ch_III_3p.pdf

alleged war crimes committed in Sri Lanka. Numerous eyewitnesses and experts are available in Europe to establish the first well-substantiated account of these allegations. ECCHR would be happy to pass on details of these contacts.

MAJOR GENERAL JAGATH DIAS



1) MG Dias

Nanayakkara Agarage Jagath Chulanaga DIAS, called Jagath Dias, is an officer of the rank Major General (MG) of the Sri Lanka Army. Since 18 September 2009 he has held the post of Deputy Ambassador of the Sri Lankan Embassy in Berlin, Germany.⁷ In Sri Lanka, he was an Officer attached to the Gajaba Regiment. In February 2007 he was appointed General Officer Commanding (GOC) of the newly created 57 Division. The 57 Division was composed of the 571, 572, 573 and 574 Brigades. MG Dias served as most senior GOC in the last stages of the conflict.⁸

Sri Lanka Army

The 1949 Army Act gave birth to the Ceylon Army. The armed forces are divided into the Sri Lanka Army, the Sri Lanka Navy and the Sri Lanka Air Force. The Army is composed of operational Divisions, which in turn comprise Brigades. During the final stage of the armed conflict with the Liberation Tigers of Tamil Eelam (LTTE) there were thirteen battle field commanders in total, four of them of ranked Major General (3rd highest rank in Sri Lanka Army).

⁷ According to the Embassy Berlin official website: <http://www.srilanka-botschaft.de/>

⁸ Sri Lanka Army Website, Commander Salutes His Troops in Wannai, 22 May 2009, <http://www.army.lk/detailed.php?NewsId=524>; see also Daily News, through the lens – a triumphant march from Mavil Aru to Mullaitivu, 20 February 2009, <http://www.dailynews.lk/2009/02/20/Through%20the%20lens%20-%20Page%202.pdf>

2) Positions of the 57 Division and Incidents in the respective area

In the chapter, the movement and the positions of the 57 Division are described. We will present the alleged war crimes committed at the time the 57 Division held position in the vicinity of the crime scene. ECCHR chose individual incidents carefully, taking into consideration the reliability of the material available. As such, most of the incident descriptions come from serious and reliable sources such as International Crisis Group, Human Rights Watch or the BBC. Moreover, ECCHR interviewed a number of eyewitnesses to get a first-hand impression of the scale of the atrocities and the allegations. Various incidents reported by other sources have not been included in this Dossier.

According to the official website of the Sri Lankan Ministry of Defence, different locations of the 57 Division of MG Dias can be determined as follows (for all detailed locations please use the UN OCHA map in ANNEX #1 to this Dossier):

- The Final Countdown: www.defence.lk/new.asp?fname=20090117_03
- Battle Progress Map: www.defence.lk/orbat/Default.asp
- The Battle Progress: www.defence.lk/new.asp?fname=20080623_02
- Timeline of the 57 Division Battles:
www.defence.lk/new.asp?fname=20080822_Ob_MWest

The incidents referred to in the following paragraphs are only exemplary. In general it must be noted that numerous eye-witnesses (doctors, humanitarian workers, journalists, internally displaced persons (IDPs), residents) who were present in the area between Kilinochchi and Mullaitivu from January to May 2009 report consistently about the constant shelling of this area.⁹ Shelling attacks into this area came from Sri Lanka Army positions, while the LTTE fired from within the area in the direction of the Sri Lanka Army positions. Furthermore, the Sri Lankan Air Force conducted countless attacks in the area. Most striking are reports from government-run Puthukkudiyiruppu Hospital as well as several makeshift hospitals concerning the daily arrival of wounded and dead civilians.¹⁰ Human Rights Watch reports about 5.150 civilian casualties in the short period of 20 January to 13 February (1.123 deaths and 4.027 injured).¹¹ A list of patients of Puthukkudiyiruppu Hospital only shows 573 injured patients as the result of the conflict, of whom 75 died, for the period of 1 to 26 January.¹² In January 2009, there were two Divisions of the Sri Lanka Army leading the operation from the West towards Mullaitivu: the 58 Division and the 57 Division of MG Dias. Using multi-barrel rocket launcher (MBRL), 40 rockets could be fired at the same time, destroying the targeted area completely. The range of such rockets is between five km and 20km plus.¹³ As such, the 57 Division were able reach the entire area between the east of Kilinochchi and Mullaitivu from its positions.

⁹ Witness statements given to ECCHR; Human Rights Watch, War on the Displaced, 19 February 2009, pp. 10-18.

¹⁰ Human Rights Watch, War on the Displaced, 19 February 2009, p. 3 and 17.

¹¹ Human Rights Watch, War on the Displaced, 19 February 2009, p. 3; there were more than 300.000 persons present in the area.

¹² Human Rights Watch, War on the Displaced, 19 February 2009, p. 3.

¹³ International Crisis Group, War Crimes in Sri Lanka, crisis report no 191, 17 May 2010, p. 13.

A) April 2008: Madhu

The 57 Division was operating in the area of Madhu in April 2008. The Army confirmed that troops captured the Madhu area on 25 April 2008.¹⁴



During the battle at Madhu,¹⁵ the BBC and Sri Lankan newspapers reported the following incident in the first days of April 2008. At Madhu, there is a Christian church compound including the shrine of Our Lady of Madhu. Refugees often seek shelter within the church property.¹⁶ On Tuesday 1 April 2008 the Bishop of Mannar, Most Rev. Dr. Rayappu Joseph, made the following complaint: “Shells are falling within the church premises several times and many of those staying there have been compelled to leave, while priests and the other church workers who are still remaining, live in fear and are being forced to seek shelter in bunkers.”¹⁷ Church officials said, ‘Shells were exploding near the shrine of Our Lady of Madhu as the SLA (Sri Lanka Army) continued to fire shells from Periya Pandivirichchaan and Chinna Pandivirichchaan areas since noon Wednesday. The shelling ceased for only two

¹⁴ Sri Lanka Army Website, Holy Madhu Church liberated by Security, 28 April 2008, <http://www.army.lk/opdetail.php?id=31>; see also Daily News, through the lens – a triumphant march from Mavil Aru to Mullaitivu, 20 February 2009, <http://www.dailynews.lk/2009/02/20/Through%20the%20lens%20-%20Page%209.pdf>

¹⁵ Sunday Observer in: Lanka Times, Recapture of Madhu Church from LTTE a big victory for Forces <http://www.lankatimes.com/fullstory.php?id=22641>

¹⁶ BBC news, 8 April 2008, http://news.bbc.co.uk/2/hi/south_asia/7336855.stm

¹⁷ Open letter by the bishop of Mannar, <http://omiusajpic.org/files/2008/06/madhu-appeal-by-mannar-bishop-01apr08.pdf>

hours from 3:30 a.m. till 5:30 a.m. on Thursday.”¹⁸ The Sri Lankan government’s claim that the church area was being used by the rebels could not be verified by an independent source.¹⁹ Instead, the Bishop of Mannar urged both parties to the conflict to respect the church grounds as zone of peace.²⁰

Rule 40 of the Customary Humanitarian Law Study of the International Committee of the Red Cross (ICRC) obliges all parties to a conflict to respect institutions dedicated to religion, such as churches.²¹ This Rule also applies in non-international armed conflicts. Violations of this Rule are criminalized as a war crime in international and national laws.²² Article 8(2)(e)(iv) of the Rome Statute states that “intentionally directing attacks against buildings dedicated to religion (...), provided they are not military objectives”, constitutes a war crime. It has to be noted that even the presence of rebels on the church ground would not have permitted attacks on the church as such. In such a case, both parties to the conflict would have committed a war crime under international law – on the one hand by intentionally directing attacks against the church building, and on the other hand by seizing an institution dedicated to religion. It is established that shells were fired on the church ground from the direction of the Sri Lanka Army’s positions. Since it was the 57 Division commanded by MG Dias that conducted this operation, MG Dias is individually responsible for the shelling attacks on the church ground and thus for the commission of a war crime.

B) December 2008 to 2 January 2009: Kilinochchi

The 57 and the 58 Divisions attacked Kilinochchi in December 2008. While the 58 Division came from the northwest, the 57 Division was operating from the southwest. On 31 December 2008 the 58 Division seized control of Paranthan, a town 4,5km north of Kilinochchi. One day later, on 1 January 2009, the 57 Division captured Iranamadu, a town 6km south of Kilinochchi.²³ On 2 January 2009, the 57 Division and the Task Force I of the 58 Division entered Kilinochchi.²⁴ MG Dias can be seen flying a flag in pictures on the Sri Lanka Army website,²⁵ or commenting on the operation in interviews with the BBC.²⁶

¹⁸ The Island Online, Satheesan Kumaaran, „Sri Lankan civil war and *Our Lady of Madhu*“, 9 April 2008, <http://www.island.lk/2008/04/09/midweek5.html>; <http://www.infolanka.com/news/IL/718.htm>

¹⁹ Sri Lanka High Commission, Canberra, Australia, „Government denies unfounded allegations regarding the Madhu Shrine“, 9 April 2008, <http://www.slhcaust.org/human-rights/46-press-releases/158-government-denies-unfounded-allegations-regarding-the-madhu-shrine.html>

²⁰ Open letter by the bishop of Mannar, <http://omiusajpic.org/global/asia/sri-lanka/madhu-shrine/>; <http://omiusajpic.org/files/2008/06/madhu-appeal-by-mannar-bishop-01apr08.pdf>

²¹ ICRC Rules accessible under <http://www.icrc.org/customary-ihl/eng/docs/v1>

²² See, e.g., Art. 8 (2)(e)(iv) of the ICC-Statute; Art. 11 (1) para. 2 of the German Code of Crimes against International Law (CCIL).

²³ Sri Lanka Army Website, Terrorists loss Iranamadu, 1 January 2009, <http://www.army.lk/opdetail.php?id=78>

²⁴ Sri Lanka Army Website, Prabha Thambi’s Utopian Kilinochchi ‘Eelam’ Capital Falls, 2 January 2009, <http://www.army.lk/opdetail.php?id=79>; see also pictures at Daily News, through the lens – a triumphant march from Mavil Aru to Mullaitivu, 20 February 2009, <http://www.dailynews.lk/2009/02/20/Through%20the%20lens%20-%20Page%2016.pdf>

²⁵ Sri Lanka Army Website, Prabha Thambi’s Utopian Kilinochchi ‘Eelam’ Capital Falls, 2 January 2009, <http://www.army.lk/opdetail.php?id=79>.

²⁶ BBC, Roland Buerk, Ruined remains of rebel ‘capital’, 5 January 2009, http://news.bbc.co.uk/2/hi/south_asia/7811360.stm; BBC, Army closes in on key Jaffna pass, 5 January 2009, http://news.bbc.co.uk/2/hi/south_asia/7810911.stm



Kilinochchi 26 December 2008



Kilinochchi 2 January 2009

Witness statements and newspaper reports describe uninterrupted constant heavy shelling of Kilinochchi in December 2008. In particular, the shelling of the General Hospital on Christmas Day (25 December) is reported by several sources. The attack caused damage to the newborn nursing section, outpatient department, and the reception.²⁷ One witness describes the situation as follows: “On Christmas day though many people have deserted Kilinochchi including myself I wanted to visit Dr Sathiamoorthy whom I came to know, because a pregnant lady who was related to him wanted medical consultation. Thinking that it will be safe from shell attacks we went around 8 pm. We went through back roads thinking that will be safer. There had been a shell attack around 7 pm and the hospital staffs fortunately have survived the attack. But the hospital was heavily damaged. The doctor advised us not to stay too long and after consultation came back to Visuvamadu.”

Other shelling attacks on the Kilinochchi General Hospital reportedly took place on 22 December (6:20 a.m.) and 30 December (4 p.m.), causing damage to the building.²⁸

Journalists, having been denied access for more than one year, were taken through the city on 4 January 2009. BBC reports “in Kilinochchi there was hardly a building with a roof. Shops were in ruins or pockmarked with bullets, a huge water tower was lying on its side.”²⁹ Hardly any people were present in the streets and the sound of artillery fire could be heard steadily.³⁰ Reports about the final offensive describe non-stop artillery, mortar and air attacks.³¹

Rule 30 of the ICRC Customary Humanitarian Law Study prohibits intentional attacks directed against medical personnel and objects. The shelling of a hospital constitutes a war crime according to international and national laws.³² Although the location of the Kilinochchi hospital was widely known, it was not spared in the attacks. The shelling of hospitals, either regular or makeshift ones, is one of the common patterns of war crimes committed both in Kilinochchi and in numerous other areas towards Mullaitivu during the last phase of the conflict.³³ In the incidents regarding the Kilinochchi General Hospital, the 57 Division was operating from the southwest of the city. MG Dias as GOC of the 57 Division is responsible for all shelling attacks on the city by his troops. The intentional shelling of the General Hospital, in particular, constitutes a war crime.

²⁷ Witness statement at ECCHR, 05 November 2010; see also Human Rights Watch, <http://www.hrw.org/en/news/2009/05/08/sri-lanka-repeated-shelling-hospitals-evidence-war-crimes>; Human Rights Watch, War on the Displaced, 19 February 2009, p. 18, http://www.hrw.org/en/reports/2009/02/19/war-displaced-0#_Toc222803896

²⁸ Human Rights Watch, War on the Displaced, 19 February 2009, p. 18, http://www.hrw.org/en/reports/2009/02/19/war-displaced-0#_Toc222803896

²⁹ BBC, Roland Buerk, Ruined remains of rebel ‘capital’, 5 January 2009, http://news.bbc.co.uk/2/hi/south_asia/7811360.stm;

³⁰ *Id.*

³¹ The Bottom Line, Army tsunami hits LTTE heartland, 7 January 2009, http://www.thebottomline.lk/2009/01/07/defence_col.htm

³² See, e.g., Article 8(2)(e)(ii) ICC-Statute; Article 10 (1) para. 2 German CCIL.

³³ Human Rights Watch, War on the Displaced, 19 February 2009, p. 18, http://www.hrw.org/en/reports/2009/02/19/war-displaced-0#_Toc222803896

C) 2 – 17 January 2009: Ramanathpuram

After the capture of Kilinochchi on 2 January 2009, the 57 Division advanced southeast towards Ramanathpuram. This town was taken by the 57 Division on 17 January.³⁴



Ramanathpuram 9 January 2009

³⁴ Sri Lanka Army Website, 57 Division Troops capture Ramnathpuram, 17 January 2009, <http://www.army.lk/opdetail.php?id=93>



Ramanathapuram 15 January 2009

There are also unconfirmed reports by Tamil sources of shelling incidents killing civilians in the area between Kilinochchi and Ramanathapuram in early January 2009. Several women were killed and injured.³⁵ At that time, the 57 Division led by MG Dias moved forward after capturing Kilinochchi on 2 January towards Ramanathapuram. Most likely, these shelling incidents are attributable to the 57 Division and thus to MG Dias. The indiscriminate shelling of densely populated areas violates international humanitarian law and amounts to a war crime under international and national laws.³⁶ Customary International Humanitarian Law prohibits “attacks by 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.” The constant shelling of populated areas to attack rebels’ firing positions is inadequate within international law and an illegal means of warfare.

³⁵ TamilNet, “Civilian wounded in shelling, air strike victim succumbs to injuries”, 6 January 2009, <http://www.tamilnet.com/art.html?artid=27936&catid=13>; TamilNet, “SLA shelling injures 3 civilians in Vaddakkachchi”, 7 January 2009, http://srilankatruth.com/news/newspublish/news.php?news_id=2751&start=0&category_id=35&parent_id=35&arcyear=&arcmonth

³⁶ Rule 11 – 13 ICRC Customary IHL Study; Article 8 (2)(e)(i) ICC-Statute; Article 8 (1) para. 1 and (6) para. 2 German CCIL.

D) 18 – 28 January 2009: Visuamadu

The 57 Division advanced from Ramanathapuram westwards south of the A-35 road towards the no-fire-zone, which was established at Thevipuram on 21 January 2009. At the same time, the 58 Division continued to move forward north of the road A-35, capturing Visuamadu on 28 January, together with the 57 Division.³⁷



Visuamadu 25 January 2009

³⁷ Sri Lanka Army Website, Troops enter Visuamadu smashing enemy defences, 25 (sic) January 2009 <http://www.army.lk/opdetail.php?id=94>; Sri Lanka Ministry of Defence Website, The Final Countdown, http://www.defence.lk/new.asp?fname=20090117_03; see also pictures at Daily News, through the lens – a triumphant march from Mavil Aru to Mullaitivu, 20 February 2009, <http://www.dailynews.lk/2009/02/20/Through%20the%20lens%20-%20Page%2020.pdf>



Visuamadu 5 February 2009

In the period between 17 January and 28 January numerous incidents were reported from the area at the A-35 between Ramanathapuram/Visuamadu and Puthukkudiyiruppu, a distance of about 20km.

In a letter sent to the Sri Lankan Government on 13 January 2009, the UN expressed its concern about reports of increasing numbers of civilian casualties, referring to two concrete incidents in Puthukkudiyiruppu and Visuamadu. In this letter, the UN urged the Sri Lankan Government to respect its obligations under common Article 3 of the Geneva Conventions to protect civilians.³⁸

Visuamadu was captured on 28 January by the 57 and 58 Division.³⁹ A witness reported: “Around 19 January there was a severe RPG (rocket-propelled grenade) attack at Redbana, a suburb next to Visuamadu area, where we were running one of our children classes. I was in the vicinity. Several shells struck a concentrated camping area; at least 8 people got killed and more than 20 got injured. I took about 5 wounded to Tharmapuram Hospital.”⁴⁰

On 21 January, a no-fire-zone was established at Thevipuram. Witnesses reported that they were told, inter alia by leaflets, to go to the no-fire-zone. However, witnesses remember the

³⁸ International Crisis Group, War Crimes in Sri Lanka, crisis report no 191, 17 May 2010, p. 21; see also Human Rights Watch, War on the Displaced, 19 February 2009, p. 11.

³⁹ See Sri Lankan Ministry of Defence, The Final Countdown, http://www.defence.lk/new.asp?fname=20090117_03

⁴⁰ Witness statement at ECCHR, 05 November 2010.

no-fire-zones (including the two that followed) as the areas under the most severe shelling attacks. Everywhere they were told to go, heavy attacks began. “From 21st to 29th January, this zone experienced intense shelling by the Army, which was then battling for Visuamadu three miles west, resulting in astounding levels of civilian casualties. Civilians who experienced intense shelling on 20th January said that it became even worse once the area was declared a safe zone the next day. It quickly became an international issue, prompting the Indian foreign minister’s hurried visit. It did nothing to stop the punitive retaliatory shelling. As though to appease Indian sensibilities, President Rajapakse announced a two day bogus ceasefire, asking the people to come out.”⁴¹

Other incidents were reported from the village at the northern end of the no-fire-zone, Suthanthirapuram.⁴² According to the International Crisis Group, “on 24 January UN and other NGOs relocated to an open sports field north of Suthanthirapuram Junction, the ICRC relocated to south east of Suthanthirapuram Junction. The UN constructed bunkers and gave the coordinates to both the SLA (Sri Lanka Army) and the LTTE. There were no LTTE emplacements within or near the UN settlement. Around this time the Sri Lankan security forces were firing shells into the NFZ (no-fire-zone) near the A35 road, where a lot of civilians were. Around 3:00 am the security forces shelled in and around the distribution centre, 5m from the UN bunker. A shell landed between 5m and 8m from the UN bunkers, in the middle of some IDP (internally displaced persons) shelters. At least eleven civilians were killed and more wounded in this attack, including women and children. A WFP (UN World Food Program) driver was hit in the back of the head with shrapnel. The decapitated body of a young woman landed in front of the UN bunker. A UN vehicle was damaged by shell fragments and covered with pieces of flesh and other debris from the explosion. The UN bunkers were also damaged. At some point, a family member of a UN staffer was hit in the head by shrapnel while sheltering inside a UN vehicle. Local government officials’ vehicles, which had been donated by the NGO CARE, were also destroyed. The shelling caused fear among the civilians who had sought safety in the centre. Communications were sent immediately to the Sri Lankan Authorities. The security forces’ response was that it was the LTTE who fired, but it was coming from the security forces locations. The rest of the 24th; security forces kept on shelling from positions in the south and south east.”⁴³

Another severe incident occurred on 28 January, “Rev. Anukoolan, the priest in charge of the American Mission Church at Suthanthirapuram reported that an air force bomb fell in the church premises with many displaced persons, killing 17 and injuring 39 persons, including a priest Rev. Anandarajah. The LTTE’s artillery point was quite some distance, in a jungle patch about a mile from Suthanthirapuram.”⁴⁴

⁴¹ University Teachers for Human Rights, Jaffna (UTHR(J)), Special Report No. 34, 13 December 2009, “Let them Speak, from Kilinochchi to Puthukkudiyiruppu”, see: <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>

⁴² See, e.g. UTHR(J), Special Report No. 34, 13 December 2009, “Let them Speak, from Kilinochchi to Puthukkudiyiruppu”, see: <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>

⁴³ International Crisis Group, War Crimes in Sri Lanka, crisis report no 191, 17 May 2010, p. 13; see also Human Rights Watch, War on the Displaced, 19 February 2009, p. 15; UTHR(J), Special Report No. 34, 13 December 2009, “Let them Speak, from Kilinochchi to Puthukkudiyiruppu”, see: <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>

⁴⁴ UTHR(J), Special Report No. 34, 13 December 2009, “Let them Speak, from Kilinochchi to Puthukkudiyiruppu”, see: <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>

The indiscriminate shelling of densely populated areas is a war crime under international and national laws.⁴⁵ Attacks on declared no-fire-zones intend to cause civilian casualties. The perpetrators must have known that civilians were present in large numbers in such areas. Furthermore, the intentional attack on humanitarian personnel and objects constitutes a war crime under international and national law.⁴⁶ The shelling of UN and humanitarian organizations installations within the no-fire-zone constitutes a further breach of international law which invokes individual criminal responsibility and has to be investigated. The same goes for the intentional shelling of a church premise, as already shown in the Madhu incident. This shelling is prohibited and criminalized under international law.⁴⁷ The 57 Division was part of the offensive operation. All targets were within the range of the mortars of the 57 Division. There are strong indications that the 57 Division of MG Dias participated in the shelling attacks on the civilian population, churches as well as humanitarian personnel and objects.

E) 28 January – 19 May 2009: Puthukkudiyiruppu (PTK)

In February 2009 the 53 Division and the Task Force IV attacked and finally captured Puthukkudiyiruppu (3 March 2009).⁴⁸ According to official websites, the 57 Division was present in the area of Puthukkudiyiruppu until the official end of the conflict on 19 May 2009.⁴⁹

MG Dias spoke to journalists at the frontline when they were invited by the Sri Lankan Government in early May 2009 in a rare opportunity for the media to enter the conflict zone. He appeared to still be in charge of the ground operation as the highest commanding officer in the field. The article mentions the overall Sri Lanka Army strategy of “maximum kills”.⁵⁰

⁴⁵ See, e.g., Art. 8 (2)(e)(i) of the ICC-Statute; Art. 8 (1) para. 1 and (6) para. 2 of the German CCIL.

⁴⁶ See, e.g., Art. 8 (2)(e)(iii) of the ICC-Statute; Art. 10 (1) para. 1 of the German CCIL.

⁴⁷ See, e.g., Art. 8 (2)(e)(iv) of the ICC-Statute; Art. 11 (1) para. 2 of the German CCIL.

⁴⁸ Sri Lanka Army Website, Puthukkudiyiruppu Junction falls in army hands, 3 March 2009, <http://www.army.lk/opdetail.php?id=98>

⁴⁹ Sri Lanka Army Website, Troops on Search Operations Find Terrorists' Useable RCL, 30 April 2009, <http://www.army.lk/detailed.php?NewsId=301>; Sri Lanka Army Website, Terrorist aircraft propellers, wheels & accessories unearthed, 13 May 2009, <http://www.army.lk/detailed.php?NewsId=416>

⁵⁰ The Sydney Morning Herald, Matt Wade, Inside Sri Lanka's devastated battleground, 4 May 2009, <http://www.smh.com.au/world/inside-sri-lankas-devastated-battleground-20090503-arg3.html>



Puthukkudiyiruppu 6 March 2009



Puthukkudiyiruppu 18 March 2009

Shelling incidents in this area continued after the capture of Visuamadu on 28 January. A witness told ECCHR: “By early February we have moved to Suthanthirapuram in a compound closer to the Suthanthirapuram Hospital. By this time Tharmapuram, Udayarkattu hospital has been evacuated and Suthathirapuram and Mathalan Hospital were getting busy. It was the same experience: very frequent Kfir (Militärflugzeugtyp) attacks, heavy shelling many times multi-barrel rocket launches and air shots. I too along with TRO (Tamil Rehabilitation Organization) Volunteers and other public volunteers were helping casualties to the hospitals, bring the dead bodies to homes and then to burial ground.”⁵¹

“Around the 5th Feb at about 10 am, I was not far (200 Metres) from Udayarkaddu Hospital, when the area came under heavy shelling by SLA (Sri Lanka Army). We took cover behind a building. I heard few explosions. When it stopped I heard crying and screaming everywhere. Three people were injured and I took them to the Hospital immediately to see even the hospital was hit by shells and several people there were injured. I saw even couple ambulances have been severely damaged and medicines scattered all over the place. I cannot even tell the number of casualties but there were many. I couldn’t bare the site. I left soon to complete my other commitments.”⁵² “The same evening around 4 pm the Suthanthirapuram the area where we were camping not far from the hospital came under heavy shell attack. Two people from our compound got injured not critically and I transported them to the nearby hospital to see the hospital was flooded with casualties from that day of shelling. I don’t know the numbers but it was many.”⁵³

On 7th February, two days after Muhunthan was discharged, a shell fell on the house next to his in Suthanthirapuram. The victims were a family from Skandapuram in Kilinochchi. The mother and two children died instantly. The father, whose legs were mangled, died later in Udayarkaddu Hospital. Many people left the area on that day.⁵⁴

“By this time the fighting had come closer. Although the LTTE did fire its mortars from isolated positions among the civilians, the Army responded with indiscriminate weapons such as MBRLs (multi-barrel rocket launchers) among the civilians. During one attack, some who were close to Muhunthan fell on his lap and died. By 10 February, with no prospect of the fighting easing, and the Army being very close, the people left en masse without any instruction from the LTTE. Muhunthan and Premila, who was to become his wife, told us that the people were shelled mercilessly while they were on the road with nowhere to escape. Once the exodus from Suthanthirapuram began, the A-35 was bulging with people and vehicles carrying their remaining possessions. But shelling continued targeting the road, leaving masses of corpses and damaged vehicles. Muhunthan’s group left for Thevipuram on 12 February. Like many others, they avoided the road and went through fields and houses, wading through channels. The shelling in Thevipuram too was unbearable. They left east for Iranapalai on 15 February.”⁵⁵

⁵¹ Witness statement at ECCHR, 05 November 2010.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ UTHR(J), Special Report No. 34, 13 December 2009, “Let them Speak, from Kilinochchi to Puthukkudiyiruppu”, see: <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>

Another emblematic incident has been the shelling of the Puthukkudiyiruppu hospital in the first days of February. Various witnesses and sources report about this incident.⁵⁶ First shells hit the hospital around midnight on the 1 February, killing at least nine patients. The shells landed at the east and south sides of the hospital. Multi-barrel rocket attacks were observed within 100 meters west of the hospital. At the same time there was gunfire from rebel forces from near the hospital. International ICRC staff was also present in the hospital at the time of attacks.⁵⁷

As already described above, the intentional shelling of the civilian population, hospitals and humanitarian personnel and objects constitute a number of war crimes according to international and national laws. The area of Puthukkudiyiruppu has been under heavy shelling attacks for a long period, although many internally displaced persons were in its vicinity. Witnesses report daily shelling attacks and the loss of relatives or friends who were hit by shrapnel and died on the spot or in a hospital. An uncountable number of war crimes were committed by shelling civilian areas, especially the no-fire-zones and hospitals at the small land strip north of Mullaitivu and east of Puthukkudiyiruppu.

F) 18 – 21 May 2009: Killings of POWs/ surrendered LTTE-Leader

In the final days of the conflict, between 18 and 21 May 2009, numerous high-ranking rebel members were killed by Sri Lankan armed forces. The Sri Lankan Ministry of Defence published a detailed list of all killed rebels on its website.⁵⁸ While it is lawful to kill members of armed groups in combat, it is prohibited under international humanitarian law to harm or kill surrendered or captured opponents. They must stand trial with all due process guarantees.

The magazine “The New Yorker” describes the mediation process, which leading LTTE-members initiated to inform the Sri Lankan government about their surrender.⁵⁹

According to several sources, it is possible that Jagath Dias was also involved in torturing and killing LTTE-leaders after they surrendered or were caught by Sri Lankan military forces. It should be noted that the body of LTTE leader Velupillai Pirabakaran was said to have shown several injuries that likely result from torture and willful killing. The Sri Lankan newspaper “Sri Lanka Guardian” reported the following, referring to a anonymous Senior Defense Ministry source,

“the LTTE leader was said to have suffered the sadistic attack of having a hot metal rod shoved up his anal tunnel and he met his ultimate death by having the upper portion of his skull chopped with an axe whilst he was alive and struggling with the pain of anal penetration. Former GOC of the 57 Division Maj. Gen. Jagath Dias

⁵⁶ International Crisis Group, War Crimes in Sri Lanka, crisis report no 191, 17 May 2010, p. 16; see satellite images in U.S. Department of State, Report to Congress on Incidents During the Recent Conflict in Sri Lanka, 2009, p. 67.

⁵⁷ International Crisis Group, War Crimes in Sri Lanka, crisis report no 191, 17 May 2010, p. 17.

⁵⁸ Website of the Sri Lankan Ministry of Defence, “Identified LTTE leaders who were killed during the Last Battle”, http://www.defence.lk/new.asp?fname=20090621_02_TerrList

⁵⁹ The New Yorker, Jon Lee Anderson, “Death of the Tiger”, 17 January 2011, p. 48, www.newyorker.com/reporting/2011/01/17/110117fa_fact_anderson

personally undertook the gruesome task after verbally abusing him in filth and manhandling him in anger.”⁶⁰

Other sources give detailed arguments on why the injuries one could see on photos of the dead body of Pirabakaran were caused by torture and targeted killing. They state that the official records on the death of the LTTE leaders, published by the Sri Lankan military, did not correspond to the truth.⁶¹

If this information is true, the killing of Pirabakaran would constitute a war crime and a breach of international humanitarian law, especially of common article 3 of the Geneva Conventions that applies particularly to non-international armed conflicts. Pursuant to this article it is prohibited to kill or harm members of an armed group while they are under capture by the military forces and are willing to surrender.⁶² Customary international law generally prohibits willful killing and torturing of prisoners of war or other persons taking part in the hostilities of a non-international armed conflict after they have been caught by members of the other party to the conflict.⁶³ If Pirabakaran was caught alive by the Sri Lanka Army, he should have enjoyed protection under common article 3 of the Geneva Conventions and customary international law.

Furthermore, the killing of a member of an armed group without previous judgment pronounced by a regularly constituted court is a breach of common article 3⁶⁴ and is also opposed to customary international law, which does not allow conviction without trial even for combatants or mercenaries, who do not enjoy the status of a prisoner of war.⁶⁵

3) Individual Criminal Responsibility of MG Dias

Under international criminal law, there are different grounds for criminal responsibility. MG Dias could be held criminally responsible for committing war crimes jointly with another person or by ordering war crimes.

The commission of war crimes jointly with another person is widely recognized as a form of individual criminal responsibility under international and national criminal law.⁶⁶ The key

⁶⁰ Sri Lanka Guardian, “Major Gen Jagath Dias butchered Pirabakaran”, 24 October 2009, <http://www.srilankaguardian.org/2009/10/major-gen-jagath-dias-butchered.html>.

⁶¹ Chennai Television, “Was Prabakaran tortured?”, 13 June 2009, <http://www.chennaitvnews.com/2009/06/was-prabakaran-tortured.html>; UTHR(J), Special Report No. 32, “A Marred Victory and a Defeat Pregnant with Foreboding”, 10 June 2009, 1.4.2, www.uthr.org/SpecialReports/spreport32.htm#_Toc232409729.

⁶² Common Article 3 (1)(a) Geneva Conventions.

⁶³ See e.g.: Article 8 (2),(a)(i), (ii) and (vi), and (c)(i) ICC-Statute and § 8 para. 1, no. 1, 3 and para. 2 (in relation with § 8 para. 6 no. 3) German VStGB.

⁶⁴ Common Article 3 (1)(d) Geneva Conventions; see also: Art. 8 (2)(c)(iv) ICC-Statute,

⁶⁵ ICRC, Customary IHL Database, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule107 and http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule108.

⁶⁶ See, e.g., Article 25(3)(a), second alternative of the ICC-Statute; Article 25(2) German Code of Crimes together with Article 2 German Code of Crimes against International Law; G. Werle, *Principles of International Criminal Law*, 2005 TMC Asser Press, The Hague, The Netherlands, para. 346.

element to joint commission is the common plan, design or purpose to commit the crime.⁶⁷ Considering all the evidence available regarding the intentional shelling of civilians, hospitals, religious buildings and no-fire-zones during the offensives against the LTTE, the organized and strategic use of shelling attacks conducted by the Sri Lanka Army, Navy and Air Force, shows a clear pattern of common planning, design and purpose. Within the system of the Sri Lankan armed forces, MG Dias was the most senior GOC on the battlefield: his authority was only topped by that of Army Commander General Sarath Fonseca, Vanni Security Forces Commander Major General Jagath Jayasuriya, and the other commanders of the offensive divisions of the Army, Navy and Air Force Commanders. While he occupied this role he jointly committed numerous war crimes with his units. Thus, MG Dias is individually criminally responsible for committing war crimes jointly with another person.

Furthermore, ordering a war crime is another well-established ground of individual criminal responsibility under international and national criminal law.⁶⁸ Ordering the commission of a war crime assumes the existence of a typically military relationship of subordination between the one giving and the one receiving the order.⁶⁹ MG Dias has been the GOC of the 57 Division, including four Brigades. He is therefore individually responsible for all shelling incidents which occurred during the offensives of the 57 Division. In particular, the shelling attacks on Madhu church complex, of Kilinochchi, of Ramanathapuram and of Visuamadu are all attributable to the 57 Division, because the operation was led by this Division. MG Dias ordered the shelling by his subordinates, knowing that civilians, churches and hospitals would be hit. He is therefore individually criminal responsible for the war crimes committed by members of the 57 Division.

Should the incident of the torture and killing of rebel leader Pirabakaran turn out to be true, MG Dias would also be criminally responsible as direct perpetrator of a war crime.

4) Recommendations to the German and Swiss Government

- revoke the diplomatic visa of MG Dias;
- declare MG Dias a 'persona non grata';
- seriously consider the initiation of criminal investigations.

⁶⁷ G. Werle, *Principles of International Criminal Law*, 2005 TMC Asser Press, The Hague, The Netherlands, para. 348.

⁶⁸ See, e.g., Article 25(3)(b), first alternative of the ICC-Statute; Article 26 German Code of Crimes together with Article 2 German Code of Crimes against International Law; G. Werle, *Principles of International Criminal Law*, 2005 TMC Asser Press, The Hague, The Netherlands, para. 357.

⁶⁹ G. Werle, *Principles of International Criminal Law*, 2005 TMC Asser Press, The Hague, The Netherlands, para. 357.

ANNEX #1

United Nations Office for the Coordination of Humanitarian Affairs (OCHA)

Map of the Safe Area Declared by the Government of Sri Lanka in Mullaitivu,
16 February 2009, OCHA/LK/COL/Nor. StrategicPlan/003/V4

www.unhcr.org/refworld/docid/49a661de2.html

