

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-vs.-

PRATHEEPAN THAVARAJA, et al.,

Defendants.

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**06 CR 616 (S-1) (RJD)**  
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X

**DEFENDANTS' JOINT SENTENCING MEMORANDUM**

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## INTRODUCTION

This Joint Sentencing Memorandum is respectfully submitted on behalf of all defendants in this case – Thavarajah Pratheepan, Murugesu Vinayagamoorthy, Vijayshanthar Patpanathan, Karunakaran Kandasamy, and Nachimuthu Socrates – and presents certain historical and political information and events, including recent developments, regarding Sri Lanka that are relevant to defendants’ sentencing, and apply to all of them in some fashion.<sup>1</sup> As a result, the information is provided in a joint submission in order to avoid repetition. The information provided below is relevant to the sentencing mandate generally, *i.e.*, imposition of a sentence “sufficient, but not greater than necessary” to achieve the goals of sentencing. The information is also relevant to specific factors enumerated in 18 U.S.C. §3553(a), including “the nature and circumstances of the offense and the history and characteristics of the defendant[.]” §3553(a)(1), and three of the purposes of sentencing listed in §3553(a)(2), including “the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; [and] (C) to protect the public from further crimes of the defendant.”<sup>2</sup>

The present conflict and crisis in Sri Lanka is not of recent vintage. Rather, it represents an inexorable devolution dating from the creation of the Sri Lankan state following the end of British colonial rule. Only in the broader context of the complete history of Sri Lanka, and the suffering its Tamil population has endured at the hands of the Sinhalese Buddhist majority, can the current situation, and defendants’ conduct, be fully understood and evaluated. Thus, it is necessary to trace from the beginning the nature and direction of the Sri Lankan polity, and the Tamils’ role in it.

The information presented here is an overview of the struggle between the Tamil people of Sri Lanka and the Sinhalese Government of Sri Lanka (“GOSL”), which has exercised majority rule since 1948. The Tamils of Sri Lanka reside primarily in the north and east of the country. As discussed below, the GOSL has systematically discriminated against and oppressed the Tamil minority, formally and informally, officially and unofficially, and violently and bureaucratically. The Liberation Tigers of Tamil Eelam (“LTTE”) were one of several Tamil organizations formed to seek equality for the Tamil people. However, after a particularly violent and murderous GOSL campaign in 1983, now commonly known as Black July, LTTE emerged as the most cohesive Tamil liberation group.

LTTE, which was eliminated in May 2009 by a massive offensive undertaken by the Sri Lankan Army (“SLA”), was created to address the horrors GOSL had perpetrated on the Tamil people, and only after GOSL had blocked or criminalized all peaceful avenues of redress. In

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<sup>1</sup> Bruce Fein, a constitutional and international lawyer with Bruce Fein and Associates and The Lichfield Group in Washington, D.C., made significant contributions to this memo. Mr. Fein served as Associate Deputy Attorney General under President Ronald Reagan. He has authored several volumes on the United States Supreme Court, the United States Constitution and international law. He is a frequent guest commentator on television news programs and has been published and quoted in major newspapers, magazines and periodicals. He has assisted dozens of countries on constitutional revision including Russia, Spain and South Africa. He has represented members of the Tamil Diaspora worldwide and has testified before the United States Senate on issues arising from the civil war in Sri Lanka and its aftermath.

<sup>2</sup> The particular application of the information in this Memorandum to specific §3553(a)(1) factors as they relate to the individual defendants will be presented separately by each defendant in his respective sentencing memorandum.

time, LTTE operated as the *de facto* government in North East Sri Lanka in lieu of the Colombo-based GOSL. LTTE featured security, social, judicial, economic and political institutions that better represented the interests of the Tamil people than did GOSL. Also, LTTE was exclusively a national liberation movement, in the manner of South Africa's African National Congress, without either an ideology hostile to the West or any territorial aspirations beyond traditional Tamil lands in Sri Lanka.

From 1983 through 2009, LTTE gradually increased its role in Tamil society in Sri Lanka. As GOSL reduced its governmental functions in the Tamil areas of the country, LTTE grew correspondingly in influence and power. LTTE provided the services that GOSL refused to provide in Tamil regions, and eventually gained control of the north and east. Throughout the period in the Indictment herein, 2003-2006, LTTE functioned as the *de facto* government in Sri Lanka's Tamil regions. Thus, in order for anyone – international aid organizations, governments, and private citizens – to provide support for Sri Lanka's Tamils, it was necessary to work with and through LTTE.

### **I. *Sri Lanka's History of Discrimination, Persecution, and Genocide Against Tamils***

Since Sri Lanka's independence in 1948, its Tamil minority has been subject to unrelenting and systematic ethnic cleansing by a succession of Sinhalese Buddhist governments. In addition to the outright genocide of Tamils, the Sinhalese Buddhist governments have destroyed the Tamil people through campaigns of rape, torture, displacement, and deprivation of food, medicine, and education. The incumbent Rajapaksa administration (November 2005 through the present) reflects the high-water mark of Tamil genocide.<sup>3</sup>

The culture of genocide against Tamils was spawned in part from paranoid imagining that the 70 million Tamils from Tamil Nadu state in India were perpetually plotting to overrun Sri Lanka's Sinhalese Buddhists by sheer numbers. This paranoia found justification in three dogmas: (1) the *Mahavamsa*, the Sinhalese Buddhist sacred writings, which teach that Sinhalese Buddhists are the sole rightful occupiers of Sri Lanka, and that the Tamils and all others are inferior interlopers who must be destroyed to honor Buddha; (2) the Buddhist monk dogma that religion and state were indivisible and that Sinhalese Buddhism and politics on the island should merge; and (3) the Sinhalese Buddhist supremacist doctrines of the venerated Sinhalese Buddhist monk Dharmapala, which exalted a pure Sinhalese Buddhist race in Sri Lanka to the exclusion of all others.

At the time of its independence, Sri Lanka's population was generally divided in two ethnic religious groups: the Sinhalese Buddhists and the Tamils. The Sinhalese Buddhists constituted approximately 77% of the voting majority, and resided predominately in the west and south. Tamil Hindus with a small number of Tamil Christians comprised approximately 18% of Sri Lanka's population. They resided primarily in the north and east. The remainder consisted of Tamil-speaking Muslims who resided largely in the east.

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<sup>3</sup> A comprehensive overview of the history of Sri Lanka, both before and after its independence, is provided in the British House of Commons Research Paper 09/51 (5 June 2009), entitled, "War and Peace In Sri Lanka," (hereinafter "*House of Commons Report*") available at [http://www.unhcr.org/refworld/category/COI\\_COUNTRYPOS\\_4a2cc67e2\\_0.html](http://www.unhcr.org/refworld/category/COI_COUNTRYPOS_4a2cc67e2_0.html). In addition, a detailed chronology, "Sri Lanka Timeline," prepared by BBC News in March 2010, is appended hereto (as Exhibit 1), as is a copy of a map included within the House of Commons Report (as Exhibit 2).

Sinhalese Buddhists promote a philosophy of ethnic and religious supremacy over Tamil Hindus evocative of Nazi Germany's philosophy of Aryan supremacy. The corresponding Sinhalese Buddhist objective has been to make Sri Lanka a mono-ethnic and mono-religious state free of Tamils in the Jaffna peninsula or North East – unless they accept vassalage without legal protections. Sinhalese Buddhists seek to accomplish their goal of a mono-religious, mono-ethnic state through formal and informal means of subjugating the Tamil people. For example, Tamils are excluded from service in the Sri Lankan armed forces, security services, and law enforcement agencies, and Tamils have been placed outside the law itself. In practice, they have no more legally enforceable rights in Sri Lanka than animals.

In the Jaffna peninsula and the North East, Tamils are subjected to living conditions intended to destroy them physically in whole or in substantial part. These conditions include but are not limited to: starvation; malnutrition; disease; chronic displacements; substandard housing, medical care, education, and communications; abject poverty; and permanent physical and economic insecurity. During the 60 years since Sri Lanka's birth, no atrocity perpetrated by the Sinhalese Buddhists against the Tamils has ever been punished, with one exception (because of unique circumstances of that incident), and no Tamil has ever been compensated for injuries inflicted by the Government of Sri Lanka ("GOSL") for its orchestrated riots or crimes. As Amnesty International reported in its June 29, 2009, publication entitled *Twenty Years of Make-Believe: Sri Lanka's Commissions of Inquiry*, "Sri Lanka's criminal justice system has critical shortcomings that obstruct justice for victims of human rights violations. It is subject to political pressure, lacks effective witness protection and is glacially slow. The system is so degraded that the majority of human rights violations over the past 20 years have never been investigated, let alone heard in court." As a result, the Amnesty International Report concluded, "[t]his is not simply a problem of inadequate resources or institutional capacity (although these too are obstacles); it is a problem of political will."

#### **A. *Formal Discrimination Against Tamils: Constitution, Legislation, and Regulation***

Sinhalese Buddhist discrimination against and oppression of Sri Lanka's Tamils has assumed many forms. From the outset of Sri Lanka's existence, an important and enduring element of GOSL policy has been formal legislation designed to marginalize the Tamil population. The GOSL has accomplished this goal through a continuing series of constitutional provisions, legislation, and subsequent regulation.

##### **1. *Denial of Citizenship, Discriminatory Flag, and Language Discrimination***

Sri Lanka's first Constitution, ratified in 1948, left undefined the key concept of citizenship—the touchstone of first-class status and protection from predation in any nation. The Sinhalese Buddhist majority instantly exploited that omission. It wielded its political dominance in parliament to enact a statute that disqualified one million Tamils, 50% of the Tamil population, from citizenship because their fathers had not been born in Sri Lanka. Those one million Tamils stripped of citizenship were instantly disenfranchised by a companion law that denied them voting rights. As a result, Tamils were rendered politically powerless to block tyranny or worse by the Sinhalese Buddhist majority.

In 1951, the Sinhala-Buddhist dominated parliament passed a law that prescribed the sword-wielding lion for the Sri Lankan flag. That emblem symbolizes Sinhala-Buddhist

supremacy. It recaptures the flag of Sri Wickrema Rajasingha, the last Sinhala King of Sri Lanka, and contains a leaf symbolic of Buddhism. The Hindu, Christian, and Islamic religions are denied any representation.

In 1956, Sri Lanka's Sinhalese-Buddhist majority enacted the "Sinhala Only Act." It made Sinhalese Sri Lanka's exclusive official language, and stripped the Tamil language of equal dignity or respect. The exaltation of Sinhalese severely compromised the ability of Tamils to compete professionally, academically, and politically, and handicapped their legal protection because all complaints or testimony must be in Sinhalese.

## **2. *Formal Ethnic Discrimination In Education***

Prior to 1970, merit governed university admissions. Tamils were enrolled in numbers substantially greater than their proportion of Sri Lanka's population. That tradition changed in 1970, when the Bandaranaike administration, driven by Sinhalese-Buddhist bigotry, fashioned a "standardization system" designed to depress Tamil enrollments by artificial means. The system accomplished that objective by admitting Sinhalese with lower "cut-off" scores than their Tamil counterparts. In 1974, district quotas based on ethnicity supplemented discriminatory "cut-off points" as a strategy designed to advance Sinhalese and exclude Tamils in education.

The Sinhalese plan to marginalize Tamils in universities succeeded. In 1969, Tamil enrollments in medicine, engineering, and agricultural programs approximated 50% of enrollment. By 1975, though, the corresponding figure had plunged to 17%. Those tumbling Tamil enrollments failed to satisfy the Sinhalese-Buddhist supremacists, however, inciting GOSL to raise even higher university entrance requirements for Tamils.

## **3. *A New, Illegal, and Oppressive Constitution***

In 1972, the Sinhalese-Buddhist government unilaterally, and without the consent of the Tamils, imposed a new supremacist Constitution—a violation of the universal democratic norm of government by consent of the governed. Buddhism was declared an exalted religion that the state was obligated to promote, making Sri Lanka a semi-theocracy. While the Sinhala Only Act had provided only a *statutory* foundation for elevating Sinhala above the Tamil language, the new constitution designated Sinhala the official language. In addition, the 1972 constitution both repealed the pre-existing Article 29 that had provided Tamils constitutional protection against ethnic or religious discrimination, and deprived Tamils of the right to appeal to the Privy Council in Great Britain to adjudicate alleged violations.

## **4. *Excluding Tamils from the Presidency***

In 1978, the 1972 Constitution was amended to establish a strong, independent President elected directly by the people and dominant over a weakened parliament. Among other designs, the amendment was calculated to insure that no Tamil would be elected President and that Tamils could no longer benefit from a fractured parliament or coalition government. The Sinhalese majority feared the latter circumstances might compel concessions by Sinhalese parliamentarians to Tamil aspirations in the pursuit of Tamil votes necessary to sustain a Sinhalese Buddhist government, and were determined to preclude that possibility.

## 5. *Criminalization of the Tamil People*

In 1979, GOSL enacted the Prevention of Terrorism Act (“PTA”), which officially placed Tamils outside the law. The act empowers Sinhalese police to arrest and detain Tamils for up to 18 months on police say-so alone for any act remotely capable of disturbing communal harmony with Sinhalese Buddhists, *i.e.*, peacefully protesting Tamil persecution or genocide. Complementing the act, GOSL promulgated emergency regulations authorizing the military to kill Tamils and to dispose of their bodies without autopsy—a virtual license to murder. Many thousands of Tamils have been killed and their bodies disposed without accountability. A continuous declared state of emergency, except for abbreviated intervals, has been in effect in Sri Lanka since 1983. Pursuant to the PTA, which provides legal immunity for all Sinhalese Buddhist police and other security personnel for any actions including crimes taken under its auspices, tens of thousands of Tamils have been arbitrarily killed, detained, or maltreated.

As one commentator has noted, after the PTA’s passage, “a substantial military force – made up overwhelmingly of Sinhalese personnel – was dispatched to the North[,]” and “[e]nsuing reports of human rights violations were widely publicized by international human rights groups ‘and frequently raised with the government by aid donors, particularly the Nordic countries and Canada.’”<sup>4</sup>

## 6. *Further Discriminatory Constitutional Amendments*

In 1983, the Sri Lankan Constitution was again amended to criminalize any support given to the Tamils for a separate state within Sri Lanka, whether the support originated from within or outside Sri Lanka. The amendment was adopted to render mainstream Tamil politics criminal.<sup>5</sup> At the time the amendment was ratified, virtually all Tamil politicians and parties had advocated separate statehood through peaceful means as the only viable vehicle for de-escalating Sinhalese-Buddhist repression and genocide.

## 7. *Additional Regulations Institutionalize the Concealment of Violence Against Tamils*

In June 1983, Emergency Regulation 15a authorized Sri Lanka’s security forces to dispose of dead bodies in secret without inquest, proceedings, or post-mortem autopsies. The regulation was tantamount to licensing the all-Sinhalese security forces to murder Tamils with a guarantee of non-detection. In June 1985, superseding Emergency Regulation 55B-55G provided that custodial deaths would be investigated by the Assistant Superintendent of Police and reported to a magistrate. But the omission of a reporting deadline made the regulation a virtual dead letter. With one exception, no investigations have ever been completed. No prosecutions or punishment of a Sinhalese Buddhist for murdering a Tamil have occurred.

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<sup>4</sup> See Suthakaran Nadarajah & Dhananjayan Sriskandarah, “Liberation Struggle or Terrorism? The Politics of Naming the LTTE,” *Third World Quarterly*, Vol. 26, No. 1, 87, 91 (2005) (hereinafter “*Liberation Struggle*”), available at <http://www.jstor.org/pss/3993765>. At the time they wrote the article, both authors were doctoral candidates at the University of London and University of Oxford, respectively.

<sup>5</sup> The Amendment provides: “157A. (1) No person shall, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within this territory of Sri Lanka. (2) No political party or other association or organization shall have as one of its aims or objectives the establishment of a separate State within the territory of Sri Lanka.”

In November 1988, Regulation 55FF authorized the all-Sinhalese police to bury or cremate dead bodies without inquest. According to Amnesty International, the regulation was employed to conceal extra-judicial killings of Tamils. In February 1990, Emergency Regulations 55FF and 55B-F were amended to permit only urgent disposal of bodies without a post-mortem autopsy. In 1993, the People's Alliance assumed power and promulgated new Emergency Regulations – Regulations 44 and 45 – that authorized the disposal of *all* bodies *without* inquest.

In July 1994, Emergency Regulations authorized the all-Sinhalese security forces to destroy physical evidence of crimes and to hold secret inquest procedures to safeguard against public disclosure of evidence incriminating the police and security forces.

## **B. *Government and Popular Violence Against Sri Lanka's Tamils***

Violence has also been a consistent element of GOSL's campaign against Tamils. Such violence is not only state-sponsored – performed by the SLA and state security forces – but also by the Sinhalese Buddhist majority, which, encouraged by governmental policy and ethnic and religious hatred, also participates in organized violence directed against Tamils.

Also, the label of “terrorism” has been used by GOSL to domestic and international political advantage. For example, as noted in *Liberation Struggle*, “[e]ven before the advent of Tamil militancy, the term ‘terrorism’ had entered Sri Lanka’s political discourse in the wake of the brief but bloody insurgency launched by the Marxist Janatha Vimukthi Perumana (JVP) against the state in 1971.”<sup>6</sup>

Later, in response to Tamil resistance to persecution, which was manifested in calls for independence and “the sporadic violence of armed groups,” the “United National Party (UNP) government of President Jayewardene conflated [those] two [Tamil responses] through an ‘incremental reframing of secessionist protest in Jaffna as terrorism,’ and, in turn, ‘terrorism in the late 1970’s and early 1980’s became cojoined with Tamil ethnicity.’”<sup>7</sup>

According to *Liberation Struggle*, GOSL’s “deploying the rhetoric of terrorism had three distinct benefits[:]. . . it de-legitimised (Tamil) agitation for political independence (with which terrorism had been conflated) thereby enabling the ‘securitisation’ of the issue; it mobilized Sinhala sympathy for the regime and its actions; and international criticism of rights abuses notwithstanding, accomplished the same abroad.”<sup>8</sup>

### **1. *Peaceful Tamil Protests Evoke Violence by Sinhalese Buddhists***

Inspired by Mahatma Gandhi’s *satyagrahas*, two hundred Tamils peacefully assembled June 5, 1956, on Galle Face Green, which faces the Sri Lankan parliament, to protest the Sinhala Only Act. Led by junior minister Rajaratna, Sinhalese mobsters attacked the Tamils and pelted the protestors with stones while the Sinhala police did nothing. Rioting against Tamils soon spread nationwide, including in the major cities of Colombo, Batticaloa, Trincomalee, and Gal

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<sup>6</sup> *Id.*, at 89.

<sup>7</sup> *Id.*, at 90-91, quoting R. Herring, “Making Ethnic Conflict,” in M.J. Esman & R.J. Herring (eds.), *Carrots, Sticks and Ethnic Conflict*, Ann Arbor, MI; University of Michigan Press, 2001, 140, 161-162.

<sup>8</sup> *Id.*, at 91.



Oya. When the rioting ended, approximately 150 Tamils were dead. The GOSL neither attempted to prosecute the Sinhalese attackers nor compensated the Tamil victims. The Sinhala Only Act and its aftermath signaled to Sinhalese Buddhists that Tamils were fair game for destruction.

In 1957, a power-sharing arrangement between Sinhalese and Tamils collapsed. In an episode with more symbolic than practical significance (but plenty of the former), and which illustrates GOSL's provocative behavior intended to inflame ethnic divisions and conflict, GOSL decided to change license plates from English to the letter "Sri." However, GOSL used the "Sri" from the Sinhala alphabet exclusively, and rejected requests that Tamil language substitutes be utilized for vehicles in Tamil areas. Aggressively flaunting its decision and authority, the Sinhalese-Buddhist GOSL dispatched to the Tamil-dominated north 40 state-owned buses flashing the Sinhala letter "Sri" on their license plates. In protest, Tamils began painting over the Sinhalese "Sri," which was met initially with reciprocal painting-over by Sinhalese monks, and then by an anti-Tamil program the following year.

Tamil delegates to a Federal Party convention in Vavuniya were beaten May 23, 1958, after their train derailed. Anti-Tamil riots erupted in Colombo and other areas. Between 300-2,000 Tamils were murdered, and thousands more displaced. Again, there were no criminal investigations, prosecutions, or punishment for these anti-Tamil crimes. Nor did the victims receive any compensation.

During this time period, politically potent Sinhalese nationalists, including Buddhist monks, distributed leaflets calculated to incite genocide. Exemplary was the exhortation: "Sinhalese men in whose veins run Aryan blood must stand united to defy and exterminate our common enemy—the Tamil. These wretched and ungrateful blood suckers who have been and are living on our charity from time immemorial are even scheming to destroy us."<sup>9</sup>

Other political developments further introduced violence as a means of anti-Tamil political and social expression in Sri Lanka. In 1959, a Buddhist monk, Tuldewe Somarama, assassinated Sri Lankan Prime Minister S.W.R.D. Bandaranaike. The killing constituted retaliation for Bandaranaike's perceived weakening in pursuit of the Sinhalese-Buddhist genocide of Tamils -- though Bandaranaike had proclaimed himself as the leader of the Sinhalese. However, Bandaranaike had flirted with power-sharing and the Tamil Language Special Provisions Act, which would have conferred on the Tamil language official status in Tamil provinces or regions. The monk's assassination of the head of state loudly communicated to the Sinhalese Buddhist community that moderation in accommodating the Tamils would not be tolerated.

In January 1961, the Tamil Federalist Party launched a *satyagraha* peaceful protest campaign against the implementation of the Sinhala Only Act in the North East. This prompted the SLA to dispatch forces to Jaffna in mid-April, and GOSL to decree emergency regulations. As a result, Tamils were detained without accusation, trial, or bail, and their areas were occupied by the military for two years. Harassment, beatings, and rape of Tamils with impunity became commonplace. Federalist Party Tamils were detained for six months and banned from politics for more than one year.

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<sup>9</sup> This reference to "Aryan blood" in this context ostensibly relates to the original Indo-Aryan tribes, and not the concept of Nordic lineage later (mistakenly) hijacked by Europeans such as the Nazis. Nevertheless, the underlying objective is the same: racial purity at the expense of the perceived and declared "enemy."

## 2. *Anti-Tamil Riots and Massacres Continue Through the Decades*

In 1963, N.Q. Dias, Permanent Secretary of Defense and External Affairs under Prime Minister Mrs. Srimavo Bandaranaike, appointed Neville Jawayeera Government Agent (“GA”) of Jaffna District, which then included the Kilinochchi District.<sup>10</sup> Jawayeera described the task assigned him by the Prime Minister as follows:

[a]s for my role as the GA of Jaffna, while enabling the construction of the proposed military camps girdling the Northern Province, I should be unrelenting towards Tamil demands, and wherever possible, force confrontations with them and establish the government’s undisputed ascendancy. [Permanent Secretary Dias] emphasized that the Sinhala Only Act must be enforced at any cost, and was of the view that the government had failed so far to deal with the Tamils forcefully enough and saw me as the answer to the problem! Obviously, [Permanent Secretary Dias] was seeing me as an administrative Rottweiler to be let loose within the sheep pen of protesting Tamil *satyagrahis*!<sup>[11]</sup>

In 1977, anti-Tamil riots again erupted, resulting in the destruction of sixteen Hindu and Christian places of worship. When elections were held amidst inflamed ethnic tensions, Tamil parties adopted platforms endorsing a separate Tamil state, a decision derived from their political powerlessness and victimization by the Sinhalese-Buddhist government. President Julius Jayawardane threatened war against Tamils unless they renounced their peaceful campaigns for a separate state. In August, government-endorsed rioting against Tamils spread across the Jaffna peninsula. More than 100 Tamils were killed. Many more were persecuted, beaten, and raped by the police and security forces. The United National Party (UNP) prevailed in the elections.

In 1981, anti-Tamil rioting returned. GOSL forces burned the Jaffna Library while the Sinhalese Buddhist police did nothing. That arson destroyed more than 100,000 ancient and rare documents venerated in Tamil culture. In the attendant rioting, Tamils were harassed, beaten, raped, and killed with impunity. As pointed out in *Liberation Struggle*, GOSL “played a crucial role in this [ethnic antagonism] by publicly adopting a partisan role as leaders of the Sinhalese in their conflict with the Tamils.”<sup>12</sup>

In July 1983, in what would thereafter be known as “Black July,” GOSL orchestrated massacres and grisly persecutions of Tamils that have earned prominence in the annals of savagery. Tamils were removed from buses and cars to be beaten, hacked, and burned alive. In Colombo alone more than 2,000 Tamils were slaughtered and 70,000 displaced. Elsewhere, more than 1,000 were slain and 150,000 displaced and driven into refugee camps. When the rioting concluded, 18,000 homes had been damaged, and 20,000 Tamil businesses and more than 100 Tamil industrial plants had been destroyed. In Jaffna alone, 175 homes had been set ablaze by policemen. Thirty-nine Hindu and Tamil places of worship were destroyed.

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<sup>10</sup> In 1964, derived from an idea rooted in the Mahavamsa, the GOSL began a 15-year process of deporting more than 500,000 Tamils to further the Sinhalese Buddhist ambition of a racially pure nation.

<sup>11</sup> Permanent Secretary Dias was no doubt reacting to the perception, noted *ante*, at 9, that the previous Prime Minister, S.W.R.D. Bandaranaike, had been assassinated because he was perceived as too conciliatory toward the Tamils. The administration of Bandaranaike’s successor (his widow) obviously was not going to make the same mistake.

<sup>12</sup> *Liberation Struggle*, at 92.

The anti-Tamil crimes had been perpetrated by Sinhala-Buddhist civilians, police, and military, none of whom was investigated or punished. Moreover, rather than apologize or express regret, President Jaywardene instead sneered to a British reporter in an interview republished July 17, 1983, in the government-run *Sunday Observer*, that “I am not worried about the opinion of the Tamil people . . . now we cannot think of them, not about their lives or their opinion about us. . . the more you put pressure in the north, the happier the Sinhala people will be . . . Really if I starve the Tamils out, the Sinhala people will be happy.”<sup>13</sup>

## II. *Formation of LTTE and LTTE Ideology*

### A. *The Formation of LTTE*

Since Sri Lanka’s independence in 1948, the Tamil equivalent of sit-ins or voting rights marches during the Civil Rights Movement in the United States were invariably answered by the Sinhalese Buddhists with government-orchestrated or condoned violence. LTTE was formed after all peaceful avenues of protest over Sinhalese Buddhist persecution of Tamils had been blocked.

The 1972 constitution, which the Tamil United Liberation Front (“TULF”) viewed as highly biased against Tamils, spiked violence in Sri Lanka and the creation of two new separatist groups, the Tamil Eelam Liberation Organization (“TELO”) and a small rebel group called Tamil New Tigers (“TNT”). The two were splinter groups from the original militant Tamil Students Movement.<sup>14</sup> As described in *Liberation Struggle*, “[w]hen several Tamil armed groups emerged in the late 1970’s and early 1980’s to mount a violent challenge to the Sri Lankan state, they did so in a context of acute ethnic polarisation and in the island’s politics and a sense of victimization among Tamils.”<sup>15</sup>

TNT’s founder was 17-year-old Velupillai Prabhakaran. At that time TNT was one of several separatist Tamil groups operating in northern Sri Lanka. Prabhakaran gained notoriety in 1975 when he shot the Mayor of Jaffna outside a Hindu temple in northern Sri Lanka.<sup>16</sup> In 1976, Prabhakaran redubbed the Tamil New Tigers as the Liberation Tigers of Tamil Eelam (“LTTE”). Yet, LTTE did not rise to dominance until July 1983. In fact, “LTTE’s own ‘diary of combat’ lists only a handful of small-scale attacks in the years before 1983,” and had been blamed (by GOSL) for one political assassination (that had occurred in 1974).<sup>17</sup>

As noted *ante*, at 10, in July 1983, now commonly known as “Black July,” the GOSL engaged in a violent pogrom against ethnic Tamils. Over the course of seven days GOSL sanctioned and engaged in violence against Tamils that resulted in the deaths of 3,000-4,000 Tamil civilians and prisoners.<sup>18</sup> Thousands more were forced to flee their homes, and many sought refuge abroad.

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<sup>13</sup> *Liberation Struggle*, at 92 (emphasis added).

<sup>14</sup> South Asia Terrorism Portal, <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/LTTE.HTM>

<sup>15</sup> *Liberation Struggle*, at 90.

<sup>16</sup> “Tamil Tiger Leader Velupillai Prabhakaran,” *Time.com*, “April 8, 2009,” <http://www.time.com/time/world/article/0,8599,1889902,00.html>

<sup>17</sup> *Liberation Struggle*, at 91.

<sup>18</sup> *Black July ‘83*, Canadian Tamil Congress, <http://www.blackjuly83.com>

From the events of Black July, LTTE rose to dominance as the leading militant Tamil separatist group. From the outset LTTE sought a separate sovereign homeland, “Tamil Eelam,” for Tamils in Sri Lanka. GOSL responded by adopting the Sixth Amendment to the Constitution in 1983, which states:

(1) No person shall, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within this territory of Sri Lanka. (2) No political party or other association or organization shall have as one of its aims or objectives the establishment of a separate State within the territory of Sri Lanka.

The Sixth Amendment did not curtail Tamil desire for a homeland. Instead, in response to the violence against Tamil civilians and the perceived oppression codified in the Constitution, membership in LTTE increased dramatically.<sup>19</sup> By 1984, membership in LTTE was sufficient to allow for creation of the armed naval unit known as the Sea Tigers. *Id.* Thus, over the course of several years LTTE developed from a militant student group into a full-fledged military with an army, navy, and special operations unit. Additionally, as discussed **post** at 13-18, LTTE operated as the *de facto* government in the north and east of Sri Lanka.

## **B. *Formal Expressions of LTTE Ideology***

Since its inception, LTTE had sought “Tamil Eelam.” Tamil Eelam refers to the territorial claims of several Tamil national liberation movements in the Northern and Eastern provinces of Sri Lanka. LTTE sought to establish a separate sovereign nation in these areas. After three civil wars and six decades of anti-Tamil discrimination, there is now a Sri Lankan Tamil saying: “*The map of Tamil Eelam is everywhere the Sri Lankan Army has bombed.*”

LTTE’s commitment to Tamil self-determination was consistent since independence. LTTE’s ideology of national liberation and self-determination is demonstrated by consistent policy over 30 years of political history, including at least from the Vaddukoddai Resolution to the Oslo Communique.

The following chronology of agreements and declarations to which LTTE was a party, demonstrates this principle:

### **1. *The May 1976 Vaddukoddai Resolution***

The TULF, of which LTTE was a member, issued the Tamil Declaration of Independence. In this resolution TULF formally declared its intent to form a sovereign state of Tamil Eelam. The Tamil Declaration of Independence, similar to the United States Declaration of Independence, stated in part:

The first National Convention of the Tamil United Liberation Front meeting at Pannakam (Vaddukoddai Constituency) on the 14th day of May, 1976, hereby

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<sup>19</sup> “The Formation of the Liberation Tigers of Tamil Eelam (LTTE),” Rajput Brotherhood, <http://www.rajputbrotherhood.com/knowledge-hub/history/the-formation-of-the-liberation-tigers-of-tamil-eelam-ltte.html>

declares that the Tamils of Ceylon by virtue of their great language, their religions, their separate culture and heritage, their history of independent existence as a separate state over a distinct territory for several centuries till they were conquered by the armed might of the European invaders and above all by their will to exist as a separate entity ruling themselves in their own territory, are a nation distinct and apart from Sinhalese and this Convention announces to the world that the Republican Constitution of 1972 has made the Tamils a slave nation ruled by the new colonial masters, the Sinhalese, who are using the power they have wrongly usurped to deprive the Tamil Nation of its territory, language citizenship, economic life, opportunities of employment and education, thereby destroying all the attributes of nationhood of the Tamil people.

And, while taking note of the reservations in relation to its commitment to the setting up of a separated state of TAMIL EELAM expressed by the Ceylon Workers Congress as a Trade Union of the Plantation Workers, the majority of whom live and work outside the Northern and Eastern areas,

This convention resolves that restoration and reconstitution of the Free, Sovereign, Secular, Socialist State of TAMIL EELAM, based on the right of self-determination inherent to every nation, has become inevitable in order to safeguard the very existence of the Tamil Nation in this Country.<sup>20</sup>

## **2. *The July 1985 Thimpu Declaration***

In July 1985, the Indian government organized peace talks between the GOSL and several Tamil separatist groups (including LTTE) in Thimpu. During those talks the Tamil delegation produced a declaration with four demands: (1) recognition of the Tamils of Ceylon as a nation; (2) recognition of the existence of an identified homeland for the Tamils in Ceylon; (3) recognition of the right of self determination of the Tamil nation; and (4) recognition of the right to citizenship and the fundamental rights of all Tamils in Ceylon.<sup>21</sup>

## **3. *October 2003: LTTE's Interim Self-Governing Authority ("ISGA")***

In 2003, LTTE set forth a formal proposal for interim self-governing authority. In the proposal LTTE declared it was "[d]etermined to establish an interim self-governing authority for the north-east region and to provide for the urgent needs of the people of the north-east by formulating laws and policies and, effectively and expeditiously executing all resettlement, rehabilitation, reconstruction, and development in the north-east, while the process for reaching a final settlement remains ongoing."<sup>22</sup>

## **4. *October 2005: Northeast Secretariat of Human Rights (NESOHR)***

As part of the 2002 Cease Fire Agreement ("CFA"), LTTE's community leaders who controlled areas of Sri Lanka formed the North East Secretariat on Human Rights ("NESOHR") in 2004. The stated goals of NESOHR were: (1) protecting and promoting human rights; (2)

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<sup>20</sup> The full text of the Declaration is available at [http://www.sangam.org/FB\\_HIST\\_DOCS/vaddukod.htm](http://www.sangam.org/FB_HIST_DOCS/vaddukod.htm)

<sup>21</sup> The full text of the declaration is available at <http://www.tamilnet.com/art.html?catid=74&artid=9279>

<sup>22</sup> The full text of the proposal is available at [http://news.bbc.co.uk/2/hi/south\\_asia/3232913.stm](http://news.bbc.co.uk/2/hi/south_asia/3232913.stm)

educating about human rights; and (3) providing expert advice.<sup>23</sup> In October 2005, NESOHR issued a charter which set forth the basic human, civil, social, political, cultural and economic rights that required enforcement in Sri Lanka.<sup>24</sup>

The U.S. State Department's *2008 Human Rights Report: Sri Lanka* ("2008 U.S. DoS Report") noted that "[s]ince its inception, NESOHR received hundreds of complaints ranging from land disputes to child recruitment complaints."<sup>25</sup> The *2008 U.S. DoS Report* adds that "[t]he government continued to refuse the request by UN High Commissioner for Human Rights for an expanded mission and an independent presence in the country." In fact, GOSL's "Ministry of Defense, government officials, and diplomatic missions abroad regularly accused human rights [non-governmental organizations] and UN bodies of bias."<sup>26</sup>

## **5. June 2006: LTTE's Oslo Communique**

Most recently, in June 2006, as part of the CFA, LTTE issued the Oslo Communique. In the Communique LTTE reaffirmed its "policy of finding a solution to the Tamil national question based on the realisation of its right to self-determination."<sup>27</sup>

### **C. LTTE Functioned as a De Facto Government in Tamil Areas of Sri Lanka**

#### **1. The Evolution of LTTE's Governmental Function in the North East**

Starting in the 1990's, LTTE evolved from "guerillas to government" and from "armed resistance to state-building."<sup>28</sup> That trend, which began in the 1990's, accelerated during the 2002-2006 CFA period. Over the course of two decades, LTTE had created a civil infrastructure in the North East in an effort to fill an administrative and governmental vacuum created by GOSL's persistent policy of violence, discrimination, underdevelopment, and neglect of Tamil areas.

As Kristian Stokke, a Norwegian author, has explained,

[i]n general terms, it can be observed that functional state failure, *i.e.*, the inability of the state to fulfill its security, welfare and representation functions, is at the core of the conflict and also the attempt to build a new state apparatus in the North East. The state building project of the LTTE is also closely linked to their political project of representing the Tamil nation and delivering self-determination for the Tamil nation.<sup>29</sup>

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<sup>23</sup> <http://www.nesohr.org/goals/>

<sup>24</sup> The full text of the charter is available at <http://www.nesohr.org/charter/Charter-English.pdf>

<sup>25</sup> *2008 U.S. DoS Report*, at 14. Available at <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119140.htm>. The *2008 U.S. DoS Report* also notes that "[s]ome groups questioned NESOHR's credibility because of its close ties to the LTTE." *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> The full text of the communiqué is available at <http://www.tamilnet.com/art.html?catid=13&artid=18454>

<sup>28</sup> Suthaharan Nadarajah and Luxshi Vimalarajah, *The Politics of Transformation: The LTTE and the 2002-2006 Peace Process in Sri Lanka*, (hereinafter "*Politics of Transformation*"), published in Berghof Transitions Series No. 4(c), Berghof Research Center for Constructive Conflict Management 2008, at 10, 13.

<sup>29</sup> Kristian Stokke, "*Building the Tamil Eelam State: Emerging State Institutions and Forms of Governance in LTTE-controlled Areas in Sri Lanka*" (hereinafter "*Tamil Eelam State*"), Department of Sociology and Human

Regardless the reasons or rationale, the fact remains that between 1990 and 2006, a period characterized by the three Eelam Wars, the battlefields of which were situated primarily in Tamil-majority areas in the Northern and Eastern provincial territories of Sri Lanka, LTTE developed a functioning *de facto* state. It was observed that, “[w]ithin the areas they control, LTTE runs a *de facto* state administration.”<sup>30</sup> Eventually centralized in Kilinochchi of the Vanni Region, the regional civil administration structure included a police force, judiciary, hospitals, schools, temples, churches, welfare system, and customs.<sup>31</sup> LTTE also operated a taxation system, both in the territory under its control and in government-held areas, and controlled its physical “borders.”

The LTTE’s 16-year (1990-2006) state-building project continued during the Eelam Wars and the CFA period. According to commentators, throughout that process the Tamil people faced latent and significant external threats from the Sri Lankan military, a factor which influenced the provision of security, welfare and representation to Tamil civilians residing within LTTE’s civilian administrative structure.<sup>32</sup>

An important contextual element is that LTTE’s state-building project was initiated and conducted for the most part during times of intense fighting. The project began in the mid-1980’s in the northern Jaffna peninsula, and accelerated after much of the region came under LTTE control in the early 1990’s. The experience gained during that period, and the mixed results accomplished, subsequently contributed to the evolution of LTTE’s civil administration.

The advent of the CFA in 2002 enabled LTTE to “strengthen[] and expand[] the civil administration structure, while also engaging in Sri Lanka’s political system to mobilize and demonstrate popular support amongst the Tamil people.”<sup>33</sup> For example in 2001, before the cessation of hostilities, Sri Lanka’s four largest Tamil political parties formed a coalition, the Tamil National Alliance (“TNA”), which by 2005 “united into an alliance backing the LTTE as ‘sole representatives of the Tamil people’ – and ha[s] subsequently enjoyed considerable electoral success in Tamil areas.”<sup>34</sup>

## **2. *LTTE’s Provision of Social and Administrative Services***

### **a. *Police and Judiciary Functions***

In LTTE-controlled areas, law and order were provided by the Tamil Eelam police and a Tamil Eelam judiciary. LTTE’s police force operated through police stations throughout LTTE-controlled territories. Such stations were located in areas suitable for civilian habitation and insulated from the on-going low-intensity SLA-LTTE conflict near the borders. There were also police training schools, administrative offices, and forensic laboratories. LTTE police also

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Geography, University of Oslo, at 7.

<sup>30</sup> *Tamil Eelam State*, at 3.

<sup>31</sup> *Tamil Eelam State*, at 2-3, 8,9, 10-11, 14.

<sup>32</sup> *Politics of Transformation*, at 32.

<sup>33</sup> *Politics of Transformation*, at 24; *Tamil Eelam State*, at 21, “...it can be observed that the 2002 Ceasefire Agreement has yielded a conditional shift in LTTE’s struggle for self-determination from militant to political means, with the Political Wing emerging in a coordinating role in regard to both the peace process and the local state building.”

<sup>34</sup> *Liberation Struggle*, at 93.

provided security for the Tamil fishing industry.

The judiciary structure, which had evolved from village mediation boards, was comprised of district courts, two high courts, a court of appeals and an apex Supreme Court. The Tamil Eelam Penal Code and the Tamil Eelam Civil Code enacted in 1994 were based on pre-existing (*i.e.*, Sri Lankan) criminal and civil laws, but extended to address Tamil social issues such as women's rights and caste-based discrimination. LTTE's judiciary, though criticized by some for lacking autonomy,<sup>35</sup> was considered legitimate amongst the civilian population of the North East, and in that region was preferred to the Sri Lankan courts.<sup>36</sup> Both the police force and judiciary were paid by LTTE, and operated as civil service employees.

As Mr. Stokke concluded, "the manner in which these institutions operate seem to give them a degree of legitimacy among the Tamil civilian population, thus also contributing to LTTE hegemony in the northeast."<sup>37</sup> Others commentators have pointed out that "[t]he Tamil Eelam Police has received a limited amount of institutional and capacity-building assistance from international actors towards enhancing effective community policing. These included a study tour in 2003 for two dozen police officers to Ireland."<sup>38</sup>

#### **b. *LTTE's Interaction With International Entities***

Indeed, LTTE's formal interaction with governmental and other international entities both within and outside Sri Lanka demonstrates its status as a *government* charged with service responsibilities to its populace, and not merely as a terrorist organization engaged in violent confrontation with its adversary. As reported in *Politics of Transformation*, "[a]fter 2002, the Tamil Eelam state sought the development of institutional capacity to address relief and rehabilitation needs and to coordinate development initiatives resulting in a substantial expansion of state capacity to provide welfare and development locally, by engaging internationally with donors, humanitarian agencies and the diaspora."<sup>39</sup>

That same article added that "[t]he post-2002 expansion of the LTTE's Political Wing, the movement's engagement with elections through the TNA, its encouragement of the formation of a human rights secretariat (NESOHR) as well as its emerging experiments with decentralisation and community participation in the planning and implementation of reconstruction and development . . . are key indicative efforts in this regard."<sup>40</sup>

Nor did LTTE's status as a designated terrorist group dissuade governments from engaging it as the opposing party to GOSL in an effort to halt the strife in Sri Lanka. As

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<sup>35</sup> The U.S. State Department's 2008 Human Rights Report, 6, acknowledged that LTTE "continued to operate its own 'court system[.]'" but noted that LTTE's judiciary was "composed of judges with little or no legal training. LTTE courts operated without codified or defined legal authority and essentially as agents of the LTTE rather than as an independent judiciary."

<sup>36</sup> *Tamil Eelam State*, at 9 (Stokke 2006:1028).

<sup>37</sup> *Tamil Eelam State*, at 10 (Stokke: 2006:1028)

<sup>38</sup> *Politics of Transformation*, at 32.

<sup>39</sup> *Politics of Transformation*, at 32 (*citing Tamil Eelam State*).

<sup>40</sup> *Id.* at 33 (*citing Tamil Eelam State*).



*Liberation Struggle* related, LTTE was “banned in several countries, but negotiations with the Sri Lankan government brokered by Norway [proceeded] on the basis that [LTTE] represent[ed] Tamil political interests. The USA and the UK [were] actively promoting the negotiations between the LTTE and the Sri Lankan state, implicitly recognising the LTTE as the appropriate party to negotiate the terms of the Tamil region’s autonomy.”<sup>41</sup>

The CFA constituted a watershed event for LTTE with respect to international recognition. In fact, as *Liberation Struggle* noted in 2005, “[m]any important states (such as the UK, China, Germany, Italy and Japan) and international organisations (such as the World Bank, Asian Development Bank and several United Nations agencies) have, since the 2002 ceasefire, established diplomatic contacts with the previously ostracised LTTE.”<sup>42</sup> Even GOSL, was “compelled – especially through economic conditionality – to negotiate with the LTTE and hence recognise it in a political arena.”<sup>43</sup>

In addition, during the CFA period, the United States remained “neutral” with respect to GOSL and LTTE. In 2005, the U.S. State Department “describe[d] Sri Lanka as [a] ‘democratic republic with an active multiparty system’ – even as it admit[ted] that ‘institutionalized ethnic discrimination against Tamils remains a problem.’”<sup>44</sup> Also during that period, LTTE was engaged in international activities preceding and during the CFA until the 2003 Washington Donor Conference (which LTTE representatives could not attend because of its designation as a terrorist organization), including prisoner exchanges and six rounds of internationally mediated peace talks.<sup>45</sup> As Mr. Stokke discussed in his article,

[t]here was a series of ‘goodwill measures’ between both sides from February, including the release of prisoners and the lifting of government blockades on LTTE-controlled areas. The government lifted the ban on the LTTE and despite bouts of acrimony (often about the lack of implementation of the wide-ranging terms of the CFA), the LTTE and GOSL entered into direct (*i.e.*, face-to-face) Norwegian-brokered talks. Delegations met once a month for six months from September 2002 in Thailand, Norway, Germany and Japan for talks chaired by senior Norwegian officials. In December 2002, barely three months after talks began (and less than a year since the cessation of hostilities), the two sides reached a landmark agreement to ‘explore’ federalism as a permanent solution to the conflict.<sup>46</sup>

Within the context created by the 2002 CFA, the U.S., through its multimillion-dollar aid commitments through the United States Agency for International Development (“USAID”) and a

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<sup>41</sup> *Liberation Struggle*, at 97.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*, at 95.

<sup>44</sup> *Id.*, at 97.

<sup>45</sup> Those six sessions were:

1. September 16-18, 2002: Sattahip Naval Base, Chonburi, Thailand;
2. October 31-November 3, 2002: Rose Garden Hotel, Nakhorn Pathom, Thailand;
3. December 2-5, 2002: Radisson SAS Plaza Hotel, Oslo, Norway;
4. January 6-9, 2003: Rose Garden Hotel, Nakhorn Pathom, Thailand;
5. February 7-8, 2003: Norwegian Embassy, Nordic Embassy Complex, Berlin, Germany; and
6. March 18-21, 2003, Prince Hotel, Hakone, Japan .

<sup>46</sup> *Tamil Eelam State*, at 35.

pattern of public statements by U.S. government officials, projected support for the CFA and parity between GOSL and LTTE.<sup>47</sup> Nor did the U.S. treat LTTE as an inalterable terrorist entity that could not be part of Sri Lanka's future polity. For example, in November 2002, Deputy Secretary of State Richard Armitage declared, "the United States is greatly encouraged that the LTTE has agreed to settle this conflict through peaceful means."

Through six rounds of peace talks, U.S. and international aid was provided to both GOSL and LTTE premised on each entity meeting conditions regarding respect for human rights. During 2003, the international community pledged approximately \$4.5 billion to support GOSL's efforts to address the immediate and long-term needs of the war-affected North East, which was under LTTE control. Such funds and aid provided to Tamils in the North East would ineluctably have been distributed through and by the LTTE.

Among the myriad international NGO's and government agencies invested in development and post-conflict reconciliation initiatives in North East Sri Lanka, USAID aimed to establish economic growth, promote inclusive and peaceful approaches to politics and governance, improve the social and economic status of disadvantaged groups, and support the peace process.

The U.S.'s direct support for the CFA, replicated by other governments, the UN, and a multitude of NGO's, served to legitimize LTTE as a negotiating partner with GOSL. That, of course, created an inconsistency in the U.S.'s treatment of LTTE, which remained a designated Foreign Terrorist Organization ("FTO"). However, during the CFA period, the U.S. did not treat LTTE as a pariah organization, as it has other FTO's that are wholly dedicated to terrorism and do not pretend to peaceful coexistence, limited objectives, or governmental social service functions.

Upon examination, there are valid reasons for such a distinction. In addition to LTTE's position as the *de facto* government in Sri Lanka's woefully underserved Tamil regions, which, as noted **post**, at 19, 29-30, was of particular importance after the catastrophic December 2004 *tsunami*, LTTE lacked other terrorist groups' global horizons or animus toward the West generally and the U.S. in particular. In contrast, LTTE was exclusively a national liberation movement in the manner of South Africa's ANC. Its ideology was *not* hostile to the West, and its focus was limited to its stated objectives in Sri Lanka.

Moreover, LTTE did not form alliances with other foreign terrorist organizations (whether formally designated FTO's or not). Indeed, GOSL itself has insisted that its clash with the LTTE was purely a domestic issue. Similarly, the Council on Foreign Relations reported May 20, 2009, that "[e]xperts say that the secular, nationalist LTTE has no operational connection with Al Qaeda, its radical Islamic affiliates, or other terrorist groups." Confirming that conclusion, Mia Bloom of *The Washington Post* reported May 24, 2009, that "[w]hen Al Qaeda made inquiries in 2001 into whether the [LTTE] would share its advanced technology and [Improvised Explosive Device] blueprints, [*al Qaeda*] was told in no uncertain terms, as my sources said, 'No, we don't want to kill Americans.' The leaders whom I interviewed in

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<sup>47</sup> *Liberation Struggle*, written in 2005, recognized the anomaly of LTTE's position (especially during the CFA period) as both an FTO and as provider of social services and governmental functions in Tamil areas: "[t]he undertaking of humanitarian activities to deliver the 'peace dividend' to the people of the Northeast – something universally recognised as necessary to build support for the peace process – is problematic because the interactions between donor agencies and the LTTE's civil administration may be seen to constitute 'economic transaction' with a proscribed terrorist organisation." *Liberation Struggle*, at 98.

December 2002, all dead now, looked down on Islamic suicide bombers. ‘We don’t go after kids in Pizza Hut,’ one high-ranking Tiger told me in a clear reference to Hamas’ 2001 Sbarro attack in Jerusalem, which killed 15 civilians (including six children) and wounded 130.”

Thus, LTTE never presented a genuine threat to U.S. national security. Currently, LTTE does not present a threat at all to *anyone*, even GOSL. As detailed post, the SLA’s 2009 offensive dispositively defeated LTTE, which no longer exists. Nor are there even Tamil regions to protect at this point. GOSL 2009 offensive effectively converted the entire Tamil population into refugees who were herded into detention camps in which they remain confined. As GOSL further devolves into authoritarianism – witness the 2010 post-election arrest of President Rajapaksa’s rival, and the subsequent dissolution of parliament – the Tamils remain disenfranchised, powerless, denied their land and their livelihoods, and completely at the mercy of the Sinhalese Buddhists who have for decades pledged and plotted their annihilation.

### c. *LTTE’s Social Welfare Administration*

As explained in *Politics of Transformation*, “[s]ocial welfare has been afforded a ‘central place’ in the LTTE’s state-building project, albeit a subordinate one to maintaining external and internal security. Welfare is provided by a range of institutions, including, notably, NGOs providing humanitarian assistance welfare-oriented LTTE institutions.”<sup>48</sup>

For Tamils in the North East, LTTE was responsible for providing essential day-to-day services that ordinary modern societies take completely for granted, but which were lacking in the North East. For example, LTTE provided medical clinics that offered free health care, including in remote rural locations that previously did not offer such care. LTTE also operated elderly care centers that functioned like nursing homes in U.K, and orphanages. LTTE maintained roads and a public transportation system composed of buses. In addition, during those portions of the day when GOSL cut off power to Tamil regions, LTTE made auxiliary power available. The same was true with respect to disruptions in telephone service.

LTTE also organized banking services, and investment in economic development that employed Tamils in soap factories and the textile industry. LTTE also managed a chain of groceries and dry goods staples, as well as restaurants, all of which boosted employment in Tamil areas. LTTE representatives also served as community problem-solvers, and was particularly active after the *tsunami*, during which time it provided telephone lines for persons anxious to learn the status of relatives in Sri Lanka.

The ultimate effect was that during the relevant time period, the “political-territorial division” that existed Sri Lanka had “a *de facto* dual state structure with LTTE also exercising considerable influence on state institutions and officials in the government-controlled parts of the North East province.”<sup>49</sup>

These elements of LTTE demonstrate that it was a multifaceted organization, and not simply a terrorist organization bereft of legitimate goals, but an entity determined to obtain freedom from a government it believed was oppressive and genocidal. LTTE struggled against

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<sup>48</sup> *Politics of Transformation*, at 32 (citing *Tamil Eelam State*).

<sup>49</sup> *Tamil Eelam State*, at 3.

GOSL's "long train of abuses and usurpations" for more than 25 years. LTTE's narrow and discrete objective was Tamil self-determination and territorial independence. That limited goal, and the civil war in Sri Lanka between LTTE and GOSL did not have any articulable impact on the United States or its interests.

### **III. *The Three Principal Sri Lankan Ethnic Civil Wars, a/k/a, "The Eelam Wars"***

Three ethnic civil wars, known as the Eelam Wars, were fought in Sri Lanka between 1983 and the advent of the February 2002 Cease Fire Agreement ("CFA"). Each served as a pretext for continuing the Sinhalese Buddhist genocide of Tamils. Among other devastating effects the Eelam Wars wrought on Tamils, between 1983 and 1995, in the North East including the Jaffna peninsula, 1,224,000 Tamils were displaced; 469,000 children were orphaned; and approximately 1,500 non-Buddhist places of worship were damaged, looted, bombed, or shelled.

#### **A. *Eelam War I***

Eelam War I ("Eelam I") began in April 1983 and continued, albeit with some periods of de-escalation, until June 10, 1990, when truce talks collapsed and Eelam War II commenced. During Eelam I, more than 18,438 Tamils were killed, more than 1,931 were tortured, more than 1,115 were "disappeared," and more than 4,470 were disabled, injured, maimed or arrested by Sinhalese Buddhists in the North East, including Jaffna.

The overarching pattern of GOSL attacks was twofold: targeting civilian areas on or near the coastal areas of Jaffna, Trincomalee, and Batticaloa, while also creating civilian displacements en masse throughout the North East Province. In the early months of the war, government killings and massacres were executed by either pulling Tamils off buses and murdering them, usually by machete; or killing, raping or disappearing villagers (those disappeared are widely assumed to have been tortured and killed). As the war progressed, the methods of genocide expanded, although the predominant tactics remained murder and displacement. In 1985-86, to achieve displacements, GOSL, in addition to the routine killings, abductions, and rapes, also resorted to the mass burning of homes, markets, and stores.

GOSL utilized violence to funnel internally displaced Tamils into common areas to achieve economies of scale in killings. By creating oppressive living conditions through curfews, killings, and the burning of homes, Sinhalese Buddhist soldiers forced displaced Tamils to congregate in schools, churches, temples, and refugee camps. In some cases, GOSL dropped pamphlets instructing Tamil populations to seek safe haven in these common areas. Once there, the Sri Lankan Air Force ("SLAF") and SLA bombed and shelled them.

#### **B. *Eelam War II***

Eelam War II, which commenced in 1990, inherited and escalated all the displacement and destruction of Eelam I, and was particularly devastating to the Tamil population on a variety of essential levels. By Eelam II's conclusion, much of any remaining infrastructure in Tamil areas had been destroyed, and Tamils had been systematically denied any ability to sustain themselves economically or physically (as education, medical, electric, and other necessary attributes of modern society were eliminated from Tamil areas).

The Sinhalese Buddhist program of repression and subjugation in the Tamil North East area had matured. It combined an economic blockade that strangled the Jaffna peninsula with military attacks on civilian settlements from ground, sea, and air. The death toll from village massacres climbed from the tens to the hundreds. During Eelam II, the economic blockade and military attacks worked in tandem with a media blackout. Confinement of Tamil civilians in the North East intensified. GOSL continued its strategy of killing Tamils in concentrated locations and imposing shortages of food, medicine, energy, or housing to destroy Tamils through starvation, malnutrition, disease, and exposure to the elements.

At the start of Eelam II in June 1990, more than 350,000 displaced Tamils were present in Jaffna peninsula, and more than 120,000 had fled to Tamil Nadu in India, pushing the number of Tamil refugees there to more than 220,000. By the conclusion of Eelam II, GOSL had committed 63 acts of genocide in the North East and Jaffna. GOSL had killed more than 11,404 Tamils; tortured more than 599; disappeared more than 10,000; and disabled, injured, or inflicted severe mental trauma upon 2,481. From 1988-1992, GOSL forces destroyed more than 150,000 homes, created 6,000 widows, orphaned thousands of children in the North East, damaged more than 700 temples through bombings, and removed various icons or holy Hindu images from 63 temples.

During the second half of 1990, GOSL disappeared or killed more than 5,000 Tamils. In 1991, GOSL killed more than 1,000 North Eastern Tamils, and detained more than 1,080. According to the United Nations Working Group on Enforced or Involuntary Disappearances, more than 1,000 Tamils disappeared in 1991. In 1992, the government arrested more than 13,414 Tamils (predominantly males) in the Colombo district alone, while the SLA and government-sponsored paramilitary attacks and extra-judicial killings in Tamil civilian areas became commonplace. In 1993, Sinhalese Buddhist security forces arrested 22,950 Tamils under the PTA and its attendant Emergency Regulations. Village massacres (in complete darkness, due to curfew and the absence of electricity) became routine, consistent with the methods of Eelam I.

### **1. *Economic Elements of GOSL's Anti-Tamil Program***

The blockade of Tamil civilians in the North and East was imposed in August 1991 pursuant to Emergency Regulations No. 1. Money circulation in the North ceased, reducing Tamils to a barter economy characteristic of pre-colonial times. Restrictions on food supply to the north resulted in malnutrition: 5.7% of the children were 60% below the weight of well-fed children their age (third degree malnutrition) and 58% were 80% below the weight of children their age (second degree malnutrition). Also prevalent was rampant disease, including rabies, typhoid, dysentery, cholera, and malaria. Other indicia of worsening living conditions and medical care also appeared: increased infant mortality, premature birth, suicide ideation, and Post-Traumatic Stress Disorder.<sup>50</sup>

GOSL's economic blockade effected a slow strangulation of the Jaffna peninsula, where death, disease, malnutrition, displacement, a media blackout, and war, all worked in combination to create ideal conditions for "genocide by attrition." As the violence in Jaffna spiraled, so did

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<sup>50</sup> A sampling of items banned as of August 1991 included batteries, surgical instruments, bandages, petrol and diesel, printing machines and equipment (including paper), candles, electric cookers, motorcycles, cement, sanitary towels, soap, umbrellas, and match boxes.

regulations at checkpoints and limitations on civilian movement, both inside the peninsula and from the peninsula to the southern non-Tamil areas. GOSL sought via the economic blockade to destroy in substantial part the Tamil population by decimating the North East's infrastructure (roads, hospitals, temples, churches, camps, and schools), detentions of trucks and individuals at military checkpoints, and the establishment of government machinery designed to ration and crimp the delivery of food and medical aid to the north.

The Sinhalese Buddhist tactics combined various elements, including a media blackout that isolated Tamils, leading them to believe they had been abandoned. GOSL stopped planes and trains into Jaffna, further isolating the Tamils and deepening not only their material deprivation, but also their despair. Also, medicine, food, and fuel were denied or rationed to ensure and sustain shortages that induced physical and mental suffering. Similarly, electricity, phone and fax lines were cut to curtail communications needed to maintain health, safety, and welfare. Ambulance service, even for the International Commission of the Red Cross ("ICRC"), was discontinued and was replaced by bullock carts.

Consequently, disease in the Tamil communities became epidemic, with its customary toll on the vulnerable. Moreover, productivity in paddy and fishing sectors came to a halt, denying Tamils a livelihood by restricting agricultural inputs, fishing gear, outboard motors, and fuel. In addition to the economic strangulation of the Tamils, rape, aerial bombardment, shelling, and extra-judicial killings continued without surcease.

## **2. *The Effects of GOSL's Blockade of Tamil Areas In the North and East***

### **a. *The Effect on Medical Care and Conditions***

The blockade crippled health care for Tamils in the Jaffna peninsula. Before the blockade, there were 27 hospitals, 23 health centers, 139 doctors, four senior health officers, 20 dentists, 315 nurses, and 106 assistant health officers. However, due to the blockade, medicines and medical instruments in the North East were either completely banned, or rationed at a fraction of Tamil needs.

Government or private hospitals in the North East required on average 20 million rupees' worth of medicine to sustain monthly operations, but during the blockade they received from GOSL only a tiny percentage of that sum. In the ten months from June 1990 until April 1991, North Eastern hospitals required 220 million rupees to operate, but GOSL supplied only 7% – 15 million rupees – of the required amount, and did so irregularly.

In November 1992, GOSL's military Joint Operation of Command ("JOC") allowed only a fraction of the medicine requested by the Jaffna regional director. The JOC allowed 14,000 of the requested 58,000 Cloxacillin tablets, 2,000 of 535,000 Amoxicillin tablets requested, 585,000 of 1,970,000 Penicillin tablets requested, and *zero* Oxygen cylinders to be supplied to Jaffna hospitals. As a result of the blockade, drugs for the following diseases and conditions were not available in the North: typhoid, bone and joint infections, bronchitis, urinary tract infection, allergic and inflammatory disorders, hypertension, renal failure, and diabetes (insulin). The same was true for materials needed to provide intravenous nutrition, medicine used in prevention and treatment of bleeding after childbirth or abortion, anti-tetanus injections, polio vaccine, and

triple vaccine (for prevention of polio, diphtheria, and whooping cough). Moreover, drugs were in short supply for anti-bacterial injections, anti-microbial injections, anti-tuberculosis tablets, and drugs for anxiety or psychosis. Other medical items banned in the North during Eelam II included surgical instruments, life-support equipment, painkillers, bandages, and medicine to treat minor injuries.

Due to food shortages, the blockade also increased the number of rabies infections contracted from bites by infected dogs. In December 1990, ICRC reported 18 deaths from rabies in Manipay village. In 1991, 15 people died of rabies in two districts. Beginning in August 1991, 6-10 civilians died from rabies every month in Mannar Madhu refugee camp managed by the United Nations High Commission on Refugees (“UNHCR”). In 1992, in the districts of Jaffna and Kilinochchi, rabies-infected dogs bit 1,933 Tamils, killing ten. In circumstances in which medicine and food are not artificially withheld from a population, virtually no individuals die from rabies.

The combination of irregular supply of electricity, ban on fuel, bombed roads, and a complex bureaucracy governing delivery of medical aid and supplies from the south to the north, severely impaired North East health care institutions and their capacity to meet the demands of a war-ravaged Tamil community.

During Eelam II, several medical institutions in the North were bombed by the SLAF. In the Jaffna peninsula, for example, during SLA’s Operation Whirlwind in May 1992, SLA bombed eight hospitals and surrounding infrastructure.<sup>51</sup> Also, GOSL required non-governmental organizations (“NGO’s”) to follow complex, lengthy procedures to transport essential medicine to the North; however, JOC regularly refused to permit shipments even when procedures were scrupulously followed. JOC permitted only one private firm, which charged exorbitant rates, to make medicine crates for transportation by boat. Such procedures and limitations discouraged NGO’s, particularly Sri Lankan NGO’s, from transporting medicine.

#### **b. *Destroying Tamils Through Disease***

GOSL’s intentional creation of Tamil food shortages, rationing and banning of medicine, and the destruction of medical infrastructure in the North East caused a semi-epidemic among Tamils. North East Tamils suffered from rabies, typhoid, dysentery, cholera, malaria, tuberculosis, hepatitis, polio, infant mortality, premature birth, malnutrition, and suicide ideation.

In 1991, 800,000 Tamils sought treatment in Jaffna Hospital. Of that number, 590,000 were hospitalized. During the first three months of 1992, 542 persons admitted to Jaffna Hospital died of malaria, cholera, or diarrhea. From January-November 1992, 1,500 people died from malaria, tuberculosis, intestinal ulcers, hepatitis, and heart disease. In that same year, 200 children died from typhoid or dysentery. Due to the ban on fuel, hospitals lacked ambulance service, and had to rely on bullock carts.

The lack of medicine caused the deaths of many children from cholera or typhoid in hospitals and refugee camps, and from malaria in Mannar and Batticaloa. GOSL’s Health

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<sup>51</sup> Those institutions were Tellippalai Cooperative Hospital, Mallakam Rural Development Society (with clinics), Vigneswara Dispensary and Surgery in Chunnakam, Inuvil American Mission Hospital, Myliddy TB Hospital, Pannai Chest Hospital, and Tellippalai Cancer Hospital.

Department denied requests to chlorinate wells to control the spread of *E coli*, and to spray Malathion to control diseases spread by mosquito. The latter denial created 77,540 cases of malaria in Jaffna peninsula.

In April-October 1992, infant mortality climbed, with 238 children stillborn or dying after birth due to both the malnutrition of pregnant mothers and poor health facilities. Trauma caused by bombings, separation from families, and the violence and insecurity in the North and North East also caused many premature births. Suicide rates rose in the East for Tamils between 15 and 35 years of age. Counseling facilities in the North East were inadequate to handle the large number of patients in need of psychological treatment, or who were suffering trauma from violence, loss of property, grievous injury, and endless displacements.

In contrast to the predominantly Tamil districts of the North East (Jaffna, Kilinochchi, Vavuniya, Mannar, Trincomalee, Batticaloa), where but 7% of medical needs were satisfied, Amparai, whose Sinhala population had risen since independence due to state-sponsored colonization, received funding and treatment for 90% of its needs -- thirteen times greater than its Tamil counterparts.

### **c. *The Blockade's Adverse Impact on Food and Energy Security***

Restrictions on food delivery and production in the North began before the official blockade commenced in August 1991. GOSL deliberately reduced food supply to the North to starve the Tamil population. The majority of food aid allegedly sent never arrived. In December 1992, for instance, the SLN interdicted in mid-journey large quantities of food sent by sea from the south. SLA detention of food trucks routinely spoiled perishables before they entered Jaffna.

In 1991, of the 148,080 tons of essential foods needed in Jaffna, only 43,080 tons were supplied – a 71% shortfall. In 1991 and 1992, GOSL provided Mullaithivu with only 10% of its food requirements. Before Eelam II and the blockade, 700-1,000 tons of food were unloaded annually at Point Pedro Port in Jaffna; during Eelam II, that quantify fell to 100 tons.<sup>52</sup>

The war in Jaffna essentially halted food production there, aggravating food shortages. Jaffna peninsula sported 130,000 cattle, 96,370 goats, 15,000 sheep, and 581,700 chickens before the blockade. All had perished by the end of Eelam II in SLA-occupied areas, as they were killed either for meat or by displacement and war. Other indigenous food production suffered as well. The fishing sector provided subsistence and livelihoods for 200,000 Tamils. Yet annual fish production, hampered by national security restrictions, fell in this sector from 104,300 tons to 1,094 tons, a drop of 98.95%. Local consumption before the blockade annually required 6,605 tons of fish. Only 16.6% of that tonnage was caught after 1990. Similarly, paddy production plunged 83% during the blockade.

Energy is vital to sustain any modern society, but in June 1990 GOSL curtailed the electricity supplied to the North. The power grid that provided electricity to the North was cut

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<sup>52</sup> The difference between what Jaffna needed in 1991 and what was supplied that year is striking:

- Jaffna needed 70,800 tons of rice, but GOSL provided only 20,590 tons;
- Jaffna needed 42,800 tons of wheat flour, but GOSL provided only 14,330 tons;
- Jaffna needed 28,200 tons of sugar, but GOSL provided only 6,330 tons; and
- Jaffna needed 7,080 tons of dhal, but GOSL provided only 1,830 tons.



off, and that grid has never been restored. In an August 1990 bombing, the SLAF destroyed the main electricity generator in Chunnakam in the Jaffna peninsula. The SLAF JOC also banned petrol, diesel, batteries, candles, and matchboxes, and strictly rationed kerosene. The SLA regularly detained trucks carrying fuel at checkpoints for weeks, exacerbating shortages. For example, GOSL forces at Madawachchiya checkpoint, Eeratperiyakulam army camp checkpoint, and Thandikulam checkpoint routinely held trucks carrying petrol or food for over a month, destroying perishable goods. The SLA also removed the batteries from petrol trucks, and their petrol fuel was capped at 40 liters, thereby causing trucks to run out of gas far short of their destinations. Adding to the energy problems Tamils faced, in November 1992 GOSL slashed the kerosene quota for all five Northern districts.<sup>53</sup>

The energy crisis in the North affected many aspects of Tamil life. In addition to aggravating food and medical shortages, the lack of sufficient electricity, and even of substitutes such as kerosene, devastated Tamil educational opportunities. The SLA blockade and lengthy bureaucratic processes created shortages in Tamil areas in items such as writing paper, exercise books, school bags, school furniture, blackboard paint, typewriters, hand-operated duplicating machines, and sports materials and equipment. Also, science laboratory equipment, instruments, glassware, and chemicals were totally banned.

The SLA overran many of Jaffna's 561 schools. Of that number, the SLAF bombed 212 schools in Batticaloa and 79 schools in Jaffna, and rendered inoperative another 100 more located in SLA-occupied territory. The ban on electric generators, fuel, candles, and matchboxes prevented students from studying after the 6:00 p.m. curfew. In addition, students avoided studying at night to preserve kerosene for essential household use. Yet students in the North East, handicapped by all these restrictions, nevertheless still had to take the Grade 5, Grade 10, and Grade 12 national examinations, competing with those who were able to study without any restrictions. During its numerous armed operations, GOSL conducted virtually no educational examinations in the North, which tests were a necessary requirement to Tamils' continued education beyond Grade 10 and for university admissions (to compete for limited spaces).

As the U.S. State Departments 2008 Human Rights Report stated, “[b]oth local and Indian origin Tamils maintained that they suffered longstanding systematic discrimination in university education, government employment, and in other matters controlled by the government. According to the [Sri Lankan Human Rights Commission], Tamils also experienced discrimination in housing.”<sup>54</sup>

Tamils throughout the country, but especially in the conflict-affected north and east, reported frequent harassment of young and middle-aged Tamil men by security forces and paramilitary groups.

#### **d. *The Blockade's Isolation of Sri Lankan's Tamils***

GOSL trapped the Tamil population in the war-ravaged north, isolating it through a

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<sup>53</sup> Again, the divergence between the previous amounts and what was provided after November 1992 is dramatic. All five Northern districts had been allotted a base of 450 barrels of kerosene a month, but that amount was reduced to 225 barrels/month for Vavuniya, 135 barrels/month for Kilinochchi, 90 barrels/month for Mullaithivu, 45 barrels/month for Mannar, and *zero* barrels/month for Jaffna.

<sup>54</sup> U.S. State Department 2008 Human Rights Report, at 17.

combination of restricting civilian mobility and limiting communications in and out of the region. Train service beyond Vavuniya ended. The one civilian airport in Jaffna – in Palaly – was used as an SLAF base (in contravention of the Geneva Conventions, which prohibit the military from using or sharing civilian airports), and was transformed into a High Security Zone (“HSZ”) closed to civilians. In February 1992, the SLA banned government officials from travelling to the North. Conversely, the SLN blocked ships in the North from sailing South, and the SLA occupied the islets to the west of the peninsula. Elephant Pass, connecting the peninsula to the island, became a conflict zone. Thus, the sole avenue of departure from the peninsula to the South was crossing Jaffna lagoon by boat, from Kilali to Nallur, which created ripe opportunities for Sinhalese Buddhists to kill Tamils. During Eelam Wars II and III, many Tamils were killed at ‘Kilali Crossing’.

In December 1992, the Sri Lankan Army banned the transport of new bicycles and spare parts to the north beyond Thandikulam checkpoint in Vavuniya. All work, including agriculture extension work, slowed, and teachers and students who used bicycles had to walk long distances. The physical isolation of the Tamils in the north and east fostered psychological despair, aggravated shortages of food, medicine, and fuel, and generated fears of physical insecurity.

The Tamils’ physical isolation was rendered even harsher by the restrictions on communications GOSL imposed. Beginning in 1986, GOSL cut telefax and telephone connections to the north. A media blackout of the peninsula expanded and suppressed all forms of media in use at the time. Newspapers and journalists from the North were blocked from traveling to the South. Newspapers, magazines, and books from the South were prohibited from entering the North. In addition, radios and televisions were useless without the banned batteries and curtailed electricity. The ban on paper and newsprint paralyzed the Tamil printing presses in Jaffna. New printing equipment and spare parts for older machines were banned. After June 1990, postal service within northern areas, and between north and south, was completely disrupted. The SLN began checking letters in October 1992. Consequently, the North East was effectively severed from the rest of the island, and from the Tamil Diaspora.

### **3. *The Impact On the Tamil Diaspora***

The Tamil diaspora has been fueled by the persecution of Tamils in Sri Lanka, both in numbers – as many fled Sri Lanka as refugees – and in solidarity with their brethren who remained in Sri Lanka. In the aftermath of 1983’s Black July, a Tamil exodus ensued. While the Tamil population in Sri Lanka in 1981 was estimated at two million, by 1995, “almost three quarters were displaced either as direct or indirect consequence of war[,]” and “[o]ver 500,000 fled abroad.”<sup>55</sup>

The absence of alternatives has also led to a grudging tolerance, if not support, of LTTE. As ICG reports, “[a]lthough many had mixed feelings about the LTTE, it was widely seen as the only group that stood up for Tamils and won them any degree of respect.”<sup>56</sup> As a result, “[t]he complex interaction between the LTTE, Tamil nationalism and Tamil diaspora politics has

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<sup>55</sup> International Crisis Group (“ICG”), *The Sri Lankan Tamil Diaspora After the LTTE* (hereinafter “*Tamil Diaspora*”), available at [http://www2.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MINE-82XPSQ-full\\_report.pdf/\\$File/full\\_report.pdf](http://www2.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MINE-82XPSQ-full_report.pdf/$File/full_report.pdf), February 23, 2010, at 3. The ICG describes itself as “an independent non-profit, non-governmental organization . . . working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.” *Id.*, at 26.

<sup>56</sup> *Tamil Diaspora*, at Executive Summary., i.

blurred the distinction between the diaspora's sociocultural practice and its political support for the LTTE."<sup>57</sup>

That is not surprising given the dynamic of watching from afar with relative helplessness at the bleak plight of ethnic brethren. Robert Templer, Asia program director for the ICG, suggests that the effect of "the deaths of tens of thousands of innocent Tamil citizens – while their family members watch from afar" must be counteracted by GOSL working toward a lasting solution of inclusion, which GOSL has been unable or unwilling to attempt thus far.

Diaspora Tamils have also assumed substantial responsibilities with respect to rudimentary infrastructural elements in Tamil-controlled areas of Sri Lanka. For example, ICG quoted a "Western development official" who remarked that "It's absurd that diaspora has to fund things like basic health care, when it is clearly the government's responsibility."<sup>58</sup> In fact, Canadian Tamil "[c]ommunity organizations formed in the 1980's and 1990's to assist new [Tamil] immigrants with the resettlement process . . . would later start a trend throughout the global Tamil diaspora by sending funds to rebuild schools and colleges in the north east of Sri Lanka that were destroyed or damaged by the war."<sup>59</sup>

Looking forward, ICG reports that "[m]ost of the pro-Tiger elements in the diaspora have acknowledged – albeit reluctantly – that militancy has failed and the struggle for an independent Tamil state should proceed non-violently." The ICG quotes "[a]n influential American Tamil" as follows: "We tried *satyagraha*, we tried party politics, and we tried armed struggle. The sad truth is that they all failed. Although we are back to the drawing board, it is clear the next phase will be political rather than violent struggle."<sup>60</sup>

Regarding continued commitment to a Tamil state, the aspirational Tamil Eelam, ICG states that "[m]any leaders believe that the diaspora is not wedded to separatism itself, but rather to a state where their collective identity is recognized and their physical security guaranteed."<sup>61</sup> Thus, ICG adds, "[i]f [GOSL] could guarantee equal treatment for its minorities within a united Sri Lanka, then the diaspora would be willing to abandon Tamil Eelam."<sup>62</sup>

### C. *Eelam War III*

Eelam War III began April 19, 1995 with the collapse of negotiations to terminate the armed conflict, and ended with the February 22, 2002 Cease-Fire Agreement. Eelam War III featured 184 discrete violent acts or events committed against Tamils. While killing, maiming, indiscriminate shelling and aerial bombardment remained widespread, during this period GOSL preferred imposing punishing living conditions rather than overt massacres to achieve the physical destruction of Tamil groups. The brutal and notorious atrocities that marked the predecessor wars had provoked international condemnation against GOSL, and demands for

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<sup>57</sup> *Liberation Struggle*, at 95 (footnote omitted).

<sup>58</sup> *Tamil Diaspora*, at 7 (footnote omitted).

<sup>59</sup> *Id.*, at 3-4. ICG reports that "[d]uring the 1990's Canada granted asylum to roughly 80 per cent of all Tamils who applied." *Id.*, at 3 (footnote omitted).

<sup>60</sup> *Id.*, at 12 (footnotes omitted). *Satyagraha* is a Sanskrit word that literally means the "force born out of truth," and was "the doctrine of non-violent resistance originated by Mohandas Gandhi and used in the opposition to British rule in India." *Id.*, at 12 n. 99.

<sup>61</sup> *Id.*, at 12.

<sup>62</sup> *Id.*

international watchdogs. International eyes and ears made the diplomatic costs of mass killings in single incidents prohibitive. Thus, GOSL reverted to an increased number of violent events, but fewer casualties per event.

Eelam War III's signatures were gang rape, displacement, torture, arbitrary detention, disappearance, and continued deprivation of food, agricultural production, and medicine. The period witnessed the largest Tamil exodus in Sri Lanka's history. During a five-month period in 1995, more than one million Tamils were displaced, and approximately 700,000 fled the Jaffna peninsula due to SLA's "steam rolling" the area, killing civilians and flattening infrastructure. The all-Sinhalese Sri Lankan forces hoped to capture the historic heartland of Tamil culture and the ancient heart of the Jaffna kingdom. These acts were either unreported or unpunished because of an impotent judicial system, a Sinhala-only security establishment, and chronic media blackouts or self-censorship by Sinhala-dominated Sri Lankan media in the South.

In the aftermath of Operation Riveresa by the Sri Lankan military, the Jaffna peninsula was virtually depopulated of Tamils, unprecedented in the history of Sri Lanka. Massacres were superseded by displacements and blocking of resettlements, routine rapes, and denial of food, medicine, and school supplies. SLA forces began extending their occupation of historic Tamil lands. Displacements were effectuated by indiscriminate shelling and bombardments from air, land, and sea. Blocking resettlement was also achieved by continued shelling and aerial bombardment, or by bureaucratic delays compounded by a spreading network of SLA camps throughout the North East, including Jaffna.

In addition, by 2001, an estimated 20,500 Tamil men had been either arrested or detained under broadened Emergency Regulations. Education for Tamils virtually ended. Approximately 400 churches, 299 in the north, were damaged or destroyed by SLA forces. Journalists, priests, children, civilians, and parliamentarians were all routinely killed during Eelam III.

#### **IV. *The Period of the Cease Fire Agreement (2002-2008)***

The Cease Fire Agreement ("CFA") became effective in February 2002. It was marked by the signing of a Norwegian-mediated cease-fire agreement between GOSL and LTTE. The Sri Lankan peace process, based on the 2002 Norwegian-mediated CFA between GOSL and LTTE, demarcated a shift from Eelam War III. The CFA featured development, rehabilitation, reconstruction, relief, capacity building, multi-ethnic peace building, and post-conflict confidence building measures. Removal of restrictions on civilian mobility between the North East and the South, and institutionalization of North East-focused development and normalization mechanisms such as the Co-Chairs Donor Body of the Tokyo Conference on Reconstruction and Development of Sri Lanka (including the U.S., European Union ["EU"], Japan, and Norway), and the majority Nordic Sri Lankan Monitoring Missions ("SLMM") contributed to the progressive renormalization of Tamil civilian life in the Northeast.

Internationalization of the ethnic conflict featuring the involvement of the U.S., EU, and Norway emerged during Eelam III and continued during the CFA. It was characterized by international monitoring and observation of GOSL's oppression of the Tamils, which in turn compelled GOSL to develop less blatantly incriminating and overt tactics. Attrition became the preeminent method, *i.e.*, creating living conditions so harsh, severe, and traumatic that the physical destruction of Tamil groups in the Jaffna peninsula or the North East would be inevitable. Eelam III ended with the Krishanthi Rape case, and the 600-700 bodies discovered in

Chemmani Mass Graves. Both events transpired in the Jaffna district and attracted international attention.

Another crucial event during the CFA period was the December 2004 *tsunami* that devastated the North and East of Sri Lanka. See **post**, at 30-35. The Tamils' concentration in those regions had a double effect: it devastated an area already in crisis, and already suffering from critical shortages, and it made more difficult the ability of international aid organizations to reach and assist those areas and their inhabitants. Yet many of those organizations, including from the U.S., the United Nations ("UN"), and the EU, did reach the North and East to dispense aid, and did so under the auspices of the governing authority in those areas – *LTTE*. See **ante**, at 16-19.

Although the GOSL's formal withdrawal from the CFA was delayed until January 2008, it withdrew *de facto* with the election of President Mahinda Rajapaksa in November 2005. Although still formally a party to the CFA, after President Rajapaksa's election GOSL returned in earnest to its policy of depredations against the Tamils. Also during the CFA, there occurred a rise in Sinhalese colonization, militarization, and Sinhalization of the North East, including Jaffna. Concurrently, though, the SLMM, whose co-chairs were the U.S., EU, Japan, and Norway cast some sunlight on the activities of GOSL's military, security, paramilitary, and police personnel. The SLMM's eyes and ears were supplemented by an enhanced international media presence.

#### **A. *GOSL's Methods of Oppressing Tamils During the CFA***

During the six-year period the CFA lasted, GOSL continued to deny Tamils in the Northeast and Jaffna Peninsula access to Hindu worship, schools, medicine, hospital care, tsunami relief aid, reconstruction assistance, or resettlement. It also neglected homes, wells, and temples, which in many villages had been demolished. GOSL dehumanized Tamils by creating pervasive and acute fear of gang-rape among Tamil women, and, by constant harassment, never-ending relocations, and denials of the means of livelihood (or economic independence) in farming and fishing communities.

Also during this period, the SLA built at least 15 new military camps in the North East, each displacing surrounding civilian areas for a radius up to 10 km. It also occupied civilian homes and institutions. In addition, GOSL-sponsored paramilitaries murdered the most celebrated Tamil journalist and defense analyst, Dharmaratnam Sivaram, a/k/a Taraki, a few months after the December 2004 *tsunami*, and prior to President Rajapaksa's election.

After Eelam III, as Tamil Internally Displaced Persons ("IDP") populations attempted to resettle, they discovered in the territories near the A-9 Road, in the Vavuniya District north of Omanthai through the Elephant Pass area, that approximately 64 Tamil villages (each including 100-1,000 homes with an aggregate population exceeding 10,000) had effectively disappeared, and Temples had vanished without a trace. Houses had been overrun by shrubs and trees. A "state of nature" had returned. All that remained as village artifacts were mango or coconut trees, and a water well. GOSL reduced the village of Thiriyai to near-extinction, destroying a Hindu temple and over 1,000 houses, while a Buddhist temple remained untouched. The SLN later built a camp there.

## B. *The December 2004 Tsunami*

The *tsunami* caused by the earthquake that struck the Indian Ocean December 26, 2004, caused unprecedented devastation in Sri Lanka. The brunt of the *tsunami* struck the island on the north and east coasts – the Tamil-populated and -controlled areas. In the North East alone the *tsunami* caused between 22,000 and 30,000 deaths, displaced between 282,790 and 616,000 people, injured at least 15,000 people, destroyed 200,000 livelihoods, and resulted in approximately \$600 million in damage and financial loss. Tamil children constituted 40% of the death toll.

Following the tsunami, approximately 120 representatives from 45 countries and agencies, including the U.S., EU, India, Japan, the World Bank, and the Asian Development Bank, attended the May 16-17, 2005, *tsunami* aid conference held in Kandy, Sri Lanka. The conference resulted in a promise of approximately \$3 billion in aid. The primary needs in the North East were the disposal of bodies; supplies such as shelter, food, clean water, and medicine; and health-related services.

In the immediate aftermath of the *tsunami*, gross asymmetries marked GOSL's distribution of aid. GOSL favored Sinhala areas outside the North East, and in some situations aid was denied entirely to Tamil areas. In other areas, Tamil refugees from the *tsunami* were forced to take shelter in GOSL run military camps. Thus, the Tamil population, already devastated by two decades of war, was further oppressed in its time of greatest need.

A majority of the Tamil community, blacked out from the media during the aftermath of the tsunami, languished in temporary shelters. After being displaced by the *tsunami*, these communities were displaced again by the escalation of war, particularly in the Eastern province. In contrast, after the *tsunami*, Sinhala areas were swiftly restored to habitability, while majority-Tamil regions in the East were denied *any* post-*tsunami* aid.<sup>63</sup>

Confronted with the devastation of the North East and the mounting needs of the Tamil people, LTTE and GOSL agreed to a Memorandum of Understanding (“MOU”) for the Establishment of a Post-Tsunami Operational Management Structure (“P-TOMS”).<sup>64</sup> The MOU was arranged between LTTE and the GOSL “in recognition of this urgent humanitarian need and in the spirit of partnership.”<sup>65</sup> The MOU established joint committees with LTTE and GOSL representatives that would collect and disburse funds to the tsunami disaster zones.<sup>66</sup>

Unfortunately, two Sinhala nationalist groups, Janatha Vimukthi Peramuna (“JVP”) and the Sinhala-Buddhist group JHU, filed suit to block the P-TOMS from taking effect. In July 2005, the Supreme Court of Sri Lanka granted a stay of the P-TOMS.<sup>67</sup> The stay effectively

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<sup>63</sup> See, Brian Walters, “Tormenting the Tamils With Our Terror Laws,” March 31, 2010, ABC.net.au (“[m]ajor aid organizations defied the instructions [that all post-*tsunami* aid be funneled through GOSL] and delivered aid directly to the LTTE, which they found to be far more efficient than the government. Indeed, in the Tamil-controlled parts of Sri Lanka, aid agencies dealt exclusively with the LTTE”).

<sup>64</sup> The full text of the MOU is available at [http://www.tamilnet.com/img/publish/2005/06/final\\_draft\\_of\\_jm.pdf](http://www.tamilnet.com/img/publish/2005/06/final_draft_of_jm.pdf)

<sup>65</sup> MOU, at 1.

<sup>66</sup> *Id.*, at 2.

<sup>67</sup> <http://www.tamilnet.com/art.html?catid=13&artid=15406>

blocked distribution of international aid to the North East. As a result, LTTE provided the only form of relief and aid in the North East. However, LTTE's ability to collect aid and distribute the needed funds was severely hampered by its classification as a "terrorist" organization. As a result, countless Tamils suffered unnecessarily from disease and hunger after the devastating *tsunami*.

Throughout the reconstruction and rehabilitation period following the *tsunami*, GOSL sought to block aid to the North East through use of the following tactics:

- (1) Politicization of post-*tsunami* aid; the imposition of SLA-enforced restrictions on the movement of building materials to the North East, which severely curtailed construction projects;
- (2) Channeling post-*tsunami* aid to Sinhala areas, and away from the Tamil-majority North East;
- (3) Closure of borders and roads, and interposition of checkpoints;
- (4) Militarization of post-*tsunami* aid and relief delivery;
- (5) Creation of an impenetrably complex aid bureaucracy and limiting accessibility through delays and road closures; and
- (6) Freezing assets of the largest humanitarian Tamil NGO in the North East, the TRO (Tamil Rehabilitation Organization).

### **1. *Politicization of Post-Tsunami Aid***

The MOU between GOSL and LTTE prescribed joint cooperation, making LTTE an equal partner with GOSL in the distribution of humanitarian aid. International aid poured into Sri Lanka in the immediate aftermath of the *tsunami*; indeed, the international community had promised approximately \$3 billion in aid. The MOU made consummation of the P-TOMS a precondition to the distribution of the aid.

Yet the Sinhala nationalist group JVP and the Sinhala Buddhist group JHU both strongly opposed the P-TOMS. The JVP so strongly opposed the P-TOMS that it left the United People's Freedom Alliance ("UPFA") over disagreement with the Sri Lanka Freedom Party ("SLFP") regarding the P-TOMS. In November 2005, to settle this disagreement the UPFA signed electoral alliance agreements with the JVP and JHU to secure support for its presidential nominee, Mahinda Rajapaksa.<sup>68</sup> The 12-point JVP-Rajapaksa agreement maintained that the P-TOMS should not be re-activated, enforced, or implemented, and that a new program for aid disbursement would be needed

The JVP filed suit in the Supreme Court on June 27, 2005, claiming that the P-TOMS were unconstitutional because they allegedly violated article 12(1), which guarantees fundamental

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<sup>68</sup> The name of Sri Lanka's current president is alternately spelled Rajapaksa or Rajapakse. For purposes of consistency, we have chosen the former for this Memorandum.

rights. The JVP further insisted that the P-TOMS infringed on fundamental rights guaranteed by Article 12(2) of the Constitution, which declares, “No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.”

The Supreme Court held the P-TOMS unconstitutional. The P-TOMS were signed six months after the *tsunami*, but held in abeyance while the Supreme Court deliberated. As a result of the Supreme Court decision, the P-TOMS were never implemented. None of the international funding the government received went to the “uncleared areas” in the North East because of the six-month delay and ultimate capsizing of P-TOMS.

## **2. Channeling Post-Tsunami Aid to Sinhala Areas**

GOSL channeled aid, relief, and reconstruction in the post-*tsunami* period *away* from the most heavily damaged areas in the North East, instead deliberately diverting that aid toward Sinhala-majority areas in the South. A UN report revealed that the southern and western provinces received 20% more than their required allocation, while aid to the North East provinces fell short by the same percentage. Moreover, local corruption and discrepancies in aid allocated and aid delivered compromised the accuracy of these metrics.

The following examples illustrate GOSL’s favoritism toward Sinhala-controlled areas:

### ***Komari Refugee Camp***

Reports state that GOSL provided food capable of feeding only 200 people, although there were approximately 2,000 *tsunami*-affected refugees residing at the Akkaraipatru Ramakrishna Mission school in the East. Eastern refugees in Komari frequently complained that GOSL denied them assistance. The Amparai Government Secretariat held large amounts of relief materials, but attempts to obtain them for camp residents proved futile.

### ***\$3.5 Billion Action Plan at Hambantota***

This plan re-directed island-wide *tsunami* aid to develop the south while ignoring the Tamil North East. GOSL had planned many of the southern development projects before the *tsunami*, yet used the *tsunami*-generated aid to fund and commence these pre-existing projects. President Kumuratunga launched the \$3.5 billion recovery Action Plan at Hambantota – the home town of then-Prime Minister-but-soon-to-be President Rajapaksa – on January 17, 2005, to be executed in three stages: Emergency Repairs, Reconstruction and Rehabilitation, and Improvement and Modernization. The Plan included reconstruction and re-planning of roads, rail tracks, bus transport, electricity, water supply and sanitation, telecom services, ports, education, culture and health facilities, industrial sector, social services, housing and township development, tourism, and environment and judicial institutions. The Action Plan also included the rebuilding of twelve major towns, 20 medium towns, and 30 small towns. Some towns, such as Hambantota, were slated for possible relocation. The plan also involved the completion of the 80-mile Colombo-Matara highway and a parallel rail-line. Some observers severely criticized the Action Plan as inadequate, lacking in proper detail and disconnected from the needs of the people. Many of the projects in the Action Plan were



planned before the *tsunami*. As a result, according to reports, donors are concerned that the plan has substituted general development for *tsunami* recovery.

### ***Mahinda Rajapaksa's "Helping Hambantota Initiative"***

Similarly, in another high-profile case, President Mahinda Rajapaksa, then prime minister, set up the "Helping Hambantota Initiative," which raised \$830,000 under the guise of supporting relief and reconstruction efforts in his home town. In fact, Rajapaksa merely diverted the funds into three private bank accounts. Nevertheless, he was exonerated because the accusation was perceived as an initiative intended to derail his presidential bid.<sup>69</sup> While little to no aid reached camps in the east and north, houses were rebuilt in Hambantota at double the prescribed number. According to statistics maintained by the district secretariat of Hambantota, the number of new houses built in the district for *tsunami*-displaced families was 6,028, while the number of homes damaged by the disaster was only 3,193 (according to separate sources). Many complained that persons not victimized by the *tsunami* not only received new homes, but also re-sold them for a profit. The re-sales were particularly evident in housing schemes such as Suchee, Maithreegama, and Subodha. The new homeowners had paid bribes of Rs15,000 to substitute on the housing beneficiary list the name of the new occupant for the name of the original owner.

That scenario stands in stark contrast to the lack of GOSL redevelopment aid directed at Tamil areas. Indeed, as the London *TimesOnLine* reported in December 2005, in "Tamil-dominated" Ampara, "the worst affected district on the east coast where more than 10,000 people died, a mere 3,136 houses are being built for the 18,800 families whose homes were destroyed."<sup>70</sup> As the *TimesOnLine* quoted a Tamil pharmaceutical salesman living in a temporary camp, "We have one well for 240 families. . . . We have sanitation problems, malaria and diarrhea in the summer. Why have they been able to build houses in Hambantota but not here? I think it must be because we are Tamils."<sup>71</sup>

### **3. Closure of Borders and Roads, and Interposition of Checkpoints**

In addition to the 15 bridges and nine main roads destroyed in the North East by the *tsunami*, GOSL closed the A-9 and A-15 highways, which are main roads going up from the south through the north and east, respectively. The closings, the broken bridges, and the military checkpoints operated in concert to deny aid agencies and others access to over one million civilians in desperate need of humanitarian relief. The SLA permitted convoys to proceed under special circumstances, but the convoys did not transport adequate quantities to satisfy the needs of the population. In fact, GOSL required the last convoy traveling to Vaharai, where 45,000 IDP's were stranded, to abandon 30 truckloads of food, leaving the area 40% short of essential requirements. As of December 26, 2006, GOSL had not allowed any convoy into Vaharai.

After the *tsunami*, the checkpoint procedures became increasingly onerous and delayed the delivery of aid to Tamil areas. One NGO reported that 12 weeks were required to transport

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<sup>69</sup> Such unconscionable corruption that deprives the most needy of aid provided by well-meaning donors from across the globe is by no means a new phenomenon. In the wake of the devastating 1972 Nicaragua earthquake that effectively leveled the capital city of Managua, that country's autocratic President, Anastasio Somoza Debayle, siphoned off massive amounts of the international relief supplies for his own and his cronies' profit.

<sup>70</sup> Dean Nelson, "Old Prejudices Keep *Tsunami* Aid From Tamils," *TimesOnLine*, December 18, 2005.

<sup>71</sup> *Id.*

building materials into LTTE-controlled areas. Others reported that imports such as VHF radios and fiber glass boats encountered protracted waiting periods, and occasionally were detained by state authorities, even though the items were officially unrestricted. According to agencies, some contractors had reported resistance to working in the east as a result of these problems.

In the North East, GOSL encouraged IDP populations to resettle where there had been no reconstruction, for instance, the resettlement of Pallikkudyirippu village in Trincomalee in the months after the *tsunami*.

#### **4. *Militarization of Post-Tsunami Aid***

Human rights agencies expressed concern over the “militarization” of relief aid operations, especially since military personnel were appointed as district co-coordinators, forcing government officers to work under military direction.

#### **5. *GOSL’s Creation of An Impenetrably Complex Aid Bureaucracy***

The majority of humanitarian assistance, particularly during the response to the December 2004 *tsunami*, was channeled through GOSL. In order to receive aid, the affected population was required to register with relevant local authorities. The Grama Naladhari (“GN”), the local village officer, collected information on households in the area both before and after the crisis, including household assets, income, livelihoods, number of dependants and subfamilies, demography, gender and age. Based on grim experience, Tamils feared that GOSL would use the information to target them for future Sinhalese Buddhist massacres, prompting many not to comply with the GN. The registration process also required bureaucratic efficiency, which was non-existent in the North East and Jaffna. Consequently, humanitarian assistance in those areas was significantly delayed.

Many *tsunami*-affected beneficiaries viewed the registration process as riddled with corruption. GOSL officials frequently stole assistance packages or allocated aid either to favor political loyalists or punish political enemies. Hambantota district, the home district of President Mahinda Rajapaksa, was emblematic of this corruption, as it enjoyed lavish humanitarian aid compared with the austerity of the Tamil districts.

#### **6. *Freezing Assets of the Largest Tamil NGO in North East***

TRO’s *tsunami*-related projects ceased because of the “security situation” and the August 28, 2006, freezing of its bank accounts (\$800,000) for an initial six-month period by the Central Bank of Sri Lanka (“CBSL”). The source of approximately 80% of TRO’s funds were NGO’s, the UN, GOSL, Asian Development Bank, World Bank, and various other multi-lateral and bi-lateral donors. TRO’s funds have since been seized by the CBSL.

### **V. *GOSL’s Eradication of the LTTE (2006-2009)***

#### **A. *Civilian Casualties as a Result of GOSL’s 2009 Military Campaign Against LTTE***

Following the 2005 election of current Sri Lankan president Rajapaksa, GOSL began to escalate the conflict with LTTE. Although GOSL remained technically a party to the CFA until

2008, GOSL's campaign of violence against the Tamils began again in 2006. The Rajapaksa administration engaged the full force of the Sri Lankan military causing levels of death and destruction theretofore unprecedented in the Sri Lanka conflict, eventually resulting in the total destruction of the LTTE in May 2009.

Between 2006 and 2009, GOSL had bombed LTTE-controlled areas as well as civilian areas, resulting in thousands of fatalities. In addition, as a result of GOSL's prolonged military and economic strangulation of the North East, as of January 2008 over 300,000 people were estimated to have been in a state of "protracted displacement" in Sri Lanka for more than two decades."<sup>72</sup>

GOSL's ultimate offensive, however, eclipsed the previous levels of collateral damage against civilians. Between January 1, 2009 and January 13, 2009, Sri Lankan military personnel or GOSL-sponsored paramilitaries systematically and indiscriminately fired artillery shells or Multi-Barrel Rocket Launcher shells and aurally bombarded, or systematically murdered by gunfire, 213 Hindu-Christian North East Sri Lankan Tamil civilians in the ethnically homogeneous, densely populated, Hindu-Christian North- East Sri Lankan Tamil areas east of the A-9 land route in the Vanni region.

At that time, the area was densely populated with approximately 350,000 Hindu-Christian North East Sri Lankan Tamil IDP's who had fled there from other areas of the Vanni region as a result of systematic attacks by Sri Lankan military personnel or government-sponsored paramilitaries targeting Hindu-Christian North East Sri Lankan Tamils before January 1, 2009. The areas targeted in the attacks between January 1, 2009 and January 13, 2009, included territories in the Kilinochchi and Mullaithivu districts, including the villages of Vaddakkacchi, Kanakaambikaikku'lam, and Murasumoadai.

The UN stated that the "[t]otal minimum number of documented civilian casualties since 20 January 2009, as of 7 March 2009 in the conflict area of Mullaitivu District: 9,924 people including 2,683 deaths and 7,241 injuries. The number of people killed each day has doubled in one month."<sup>73</sup> The situation worsened as GOSL's offensive intensified, and struck deep in Tamil territory. The *House of Commons Report* recounted that "[o]n 11 May [2009] there were media reports claiming that at least 378 civilians had been killed over the previous weekend by shelling and aerial bombs as the Sri Lankan army continued its operations in the conflict zone."<sup>74</sup> The *Report* added that, "[a] further 49 people were reportedly killed when a makeshift hospital in the conflict zone was hit by government shells on 12 May."<sup>75</sup>

*The Times of London* reported that its investigation revealed that "[m]ore than 20,000 Tamil civilians were killed in the final throes of the Sri Lankan civil war, most as a result of government shelling . . ."<sup>76</sup> That number of casualties was "three times the official figure."<sup>77</sup> While GOSL "insisted that [its] forces stopped using heavy weapons on April 27 and observed the no-fire zone where 100,000 Tamil men, women and children were sheltering[.]" and "blamed

<sup>72</sup> *House of Commons Report*, at 71.

<sup>73</sup> United Nations Office of the Resident Coordinator and Humanitarian Coordinator, "Civilian Casualties in the Vanni," United Nations, March 2009.

<sup>74</sup> *House of Commons Report*, at 22.

<sup>75</sup> *Id.*

<sup>76</sup> "The Hidden Massacre: Sri Lanka's Final Offensive Against Tamil Tigers," (hereinafter "*Hidden Massacre*") *TimesOnline*, May 29, 2008. Available at <http://www.timesonline.co.uk/tol/news/world/asia/article6383449.ece>

<sup>77</sup> *Id.*

all civilian casualties on Tamil Tiger rebels concealed among the civilians[.]”<sup>78</sup> However, *The Times* and others discovered that “[a]erial photographs, official documents, witness accounts and expert testimony tell a different story.”<sup>79</sup> As the *House of Commons Report* stated, “[o]n 13 May satellite images were made public that appeared to confirm that there had been heavy shelling of the conflict zone by the Sri Lankan military.”<sup>80</sup> In fact, the UK House of Commons Report stated that “[t]here were allegations, which the Sri Lankan authorities denied, but which were confirmed by the UN, that the armed forces had used cluster munitions to attack the last proper hospital in LTTE-held areas.”<sup>81</sup> Similarly, in April 2009, Human Rights Watch had reported that while rebels were preventing civilians from leaving the area where they were fighting the government forces, the government forces “repeatedly and indiscriminately shelled the area. U.N. satellite images suggested that the government shelled [the] ‘no-fire zone’ where more than 50,000 people were trapped.”

GOSL’s insensitivity to the Tamils’ circumstances was calculated and intentional. The U.S. State Department’s 2009 Human Rights Report cited among GOSL’s “conflict-related abuses” the fact that it “consistently underestimated the number of civilians trapped behind LTTE lines, leading to severe shortage of food and medicine shipped into the no-fire zones over the final months of fighting.”<sup>82</sup>

The 2009 State Department Report adds that “[m]any international observers disputed the government’s population estimates at the time, and some accused [GOSL] of deliberately lowering their estimates in an effort to starve the civilians out from behind LTTE lines to cause more difficulties for the LTTE soldiers.” *Id.* As a result, GOSL “often prevented medicine, including all anesthetics, from being delivered to trapped civilians by ICRC, stating that it would instead be used by LTTE forces to treat wounded soldiers.”<sup>83</sup>

In addition, the ICG refers to the October 2009 report from the U.S. State Department that “offers a catalogue of reported violations of international humanitarian law, ranging from government shelling of hospitals and areas with heavy concentrations of civilians and of the LTTE killing Tamils who attempted to flee areas under their control.”<sup>84</sup>

The *House of Commons Report* provides a grim account of the ultimate stage of GOSL’s offensive: “[a]s the conflict entered its final days, UN officials said that the ‘bloodbath’ about which they had warned had become ‘a reality.’ The International Committee of the Red Cross (ICRC) described the situation as an ‘unimaginable humanitarian catastrophe.’ The UN estimates that at least 7,000 civilians have been killed since January. Combatant casualties have also been high on both sides.”<sup>85</sup> According to the U.S. State Department’s 2009 Human Rights

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<sup>78</sup> See also *House of Commons Report*, at 22 (“[t]he Sri Lankan Government disputed such claims, repeating that it was no longer using heavy weaponry, and accused the LTTE of shelling the area itself in order to gain international sympathy”).

<sup>79</sup> *Hidden Massacre*.

<sup>80</sup> *House of Commons Report*, at 22.

<sup>81</sup> *House of Commons Report*, at 20.

<sup>82</sup> U.S. State Department 2009 Human Rights Report, at 7.

<sup>83</sup> *Id.*

<sup>84</sup> “Sri Lanka: A Bitter Peace” (hereinafter “*Bitter Peace*”), International Crisis Group Update Briefing, January 11, 2010, at 22 n. 156, citing “Report to Congress on Incidents During the Recent Conflict in Sri Lanka”, U.S. Department of State, October 2009. Available at

<http://www.unhcr.org/refworld/country,,ICG,,LKA,4562d8cf2,4b4c32c12,0.html>.

<sup>85</sup> *House of Commons Report*, at 22.

Report, “[s]ome reports estimated that fighting in the last week of the conflict may have killed 1,000 civilians per day.”<sup>86</sup>

GOSL’s offensive culminated May 18, 2009, with GOSL declaring victory over LTTE. However, victory was not declared before the GOSL effectively eradicated LTTE by capturing or killing the vast majority of its leaders. GOSL “captured all remaining LTTE-controlled territory and killed its leader, Velupillai Prabhakaran.”<sup>87</sup> In May 2009, the Council on Foreign Relations concluded that “[t]he civil war has killed nearly seventy thousand, and watchdog groups have accused both the LTTE and the Sri Lankan military of human rights violations, including abduction, extortion, and the use of child soldiers.” When the war ended that month, an estimated 300,000 Tamils remained displaced. Schools, hospitals, and entire villages had been bombed or otherwise destroyed; and no political, social, or economic structure existed in the Tamil areas to support repatriation to these areas.

### **B. *The Humanitarian Crisis Created by GOSL’s 2009 Offensive***

GOSL’s elimination of military opposition (in the form of LTTE) did not alleviate the suffering of Tamils in Sri Lanka, or soften GOSL’s policies towards them. The U.S. State Department’s 2009 Human Rights Report on Sri Lanka described the conditions as follows:

[GOSL’s] respect for human rights declined as armed conflict reached its conclusion. Outside of the conflict zone, the overwhelming majority of victims of human rights violations, such as extrajudicial killings and disappearances, were young male Tamils, while Tamils were estimated to be only 16 percent of the overall population. Credible reports cited unlawful killings by paramilitaries and others believed to be working with the awareness and assistance of the government, assassinations by unknown perpetrators, politically motivated killings, and disappearances. The government was credibly accused of arbitrary arrests and detentions, poor prison conditions, denial of fair public trial, government corruption and lack of transparency, infringement of freedom of movement, harassment of journalists and lawyers critical of the government, and discrimination against minorities. Human rights observers alleged that pro-government paramilitary groups and security forces participated in armed attacks against civilians and practiced torture, kidnapping, hostage-taking, and extortion with impunity. During the year there were no indications or public reports that civilian or military courts convicted any military, police, or paramilitary members for human rights abuses. In some cases the military turned over military members to the civilian judicial system for processing. The executive failed to appoint the Constitutional Council, which is required under the constitution, thus obstructing the appointment of independent representatives to important institutions such as the Human Rights Commission, Bribery Commission, Police Commission, and Judicial Service Commission.

In addition to systematic and widespread campaigns of indiscriminate artillery shelling

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<sup>86</sup> “2009 Human Rights Report: Sri Lanka,” at 1, U.S. Department of State, March 11, 2010. Available at <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>.

<sup>87</sup> *Id.* at 1.

and aerial bombardments, and other conduct violative of the Laws of Armed Conflict as they relate to civilian targeting and casualties, GOSL also cut off Tamil food supplies, medical supplies, electricity, and fuel resulting in vast numbers of IDP's. As a direct consequence of GOSL's actions, more than 350,000 Hindu-Christian North East Sri Lankan Tamil civilian IDPs flowed into village enclaves of the Mullaithivu district.

A fundamental element of the problem is that, as Human Rights Watch ("HRW") explains, "[n]o attempt is made by Sri Lankan security forces to distinguish between persons with suspected LTTE links and ordinary civilians."<sup>88</sup> The HRW report adds, "[s]ince March 2008, Sri Lankan security forces have detained almost all ethnic Tamil civilians fleeing the Vanni, intercepting them when they approach government-controlled areas."<sup>89</sup>

In addition, civilians were vulnerable to "incursions by so-called Deep Penetration Units of the Sri Lankan army that have been blamed for a number of killings of civilians; and the widespread use of Claymore mines, often triggered by tripwires that do not distinguish between military targets and civilians."<sup>90</sup> Moreover, civilians were in acute "danger of extrajudicial killing and enforced disappearance by government security forces and allied paramilitary groups, and long-term detention in poor conditions in government camps."<sup>91</sup> As the U.S. State Department's 2009 Human Rights Report stated, "[p]ro-government paramilitary groups allegedly were used to identify, abduct, and kill suspected LTTE sympathizers immediately after the conflict and in the IDP camps."<sup>92</sup>

At the time of the HRW Report, there were "an estimated 230,000 to 300,000 displaced persons currently trapped in the Vanni conflict zone, as well as a smaller number of Vanni residents who remain in their homes."<sup>93</sup> The Report concluded that GOSL "claims that humanitarian agencies were not necessary because the government itself was able to meet the needs of the Vanni's population proved to be untrue, and reflect a failure to recognize that timely humanitarian assistance depends as much on efficient logistics and distribution systems as on simply delivering the necessary supplies."<sup>94</sup>

In fact, the HRW report comments that "the rosy picture [GOSL] seeks to paint of the humanitarian situation in the Vanni is directly contradicted by the reports of their own government officials on the ground and by the assessments of the United Nations and humanitarian organizations . . ."<sup>95</sup>

According to the June 2009 *House of Commons Report*, "the current humanitarian crisis involves an estimated 250,000–300,000 IDPs, most of them located in the 'welfare villages' – better described as internment camps – that have been established."<sup>96</sup> According to Amnesty

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<sup>88</sup> "Besieged, Displaced, and Detained: The Plight of Civilians in Sri Lanka's Vanni Region" (hereinafter "Displaced and Detained"), Human Rights Watch, December 2008, at 11. Available at <http://www.hrw.org/en/reports/2008/12/22/besieged-displaced-and-detained>.

<sup>89</sup> *Id.*, at 10.

<sup>90</sup> *Id.*, at 8.

<sup>91</sup> *Id.*, at 10.

<sup>92</sup> U.S. State Department 2009 Human Rights Report, at 6.

<sup>93</sup> *Displaced and Detained*, at 25.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*, at 26. See also *Tamil Diaspora*, at 10 (quoting a European law enforcement official as saying, "We do not always entertain the information we receive from the Sri Lankan government. It does not have much credibility because of its human rights record").

<sup>96</sup> *House of Commons Report*, at 71.

International, after the war ended in May 2009, GOSL interned 300,000 displaced Tamils fleeing the fighting in camps supervised by the military. As of December 2009, the number of Tamils interned remained as high as 120,000.<sup>97</sup> This number includes entire families, the elderly, and children. While GOSL calls these “welfare” camps, critics claim they are little short of “the world’s biggest open air prisons.”<sup>98</sup>

The HRW Report warns that “[c]onditions in the camps are in dire need [of] urgent attention.”<sup>99</sup> The interned have been denied basic human rights, such as freedom of movement, forced to live in overcrowded and unsanitary camps, and denied basic legal safeguards.<sup>100</sup> All interned within the camps are prevented from speaking with aid workers, “and at risk from enforced disappearances, abductions, arbitrary arrest and sexual violence.” According to one aid worker allowed access to the camps and interviewed by *Al Jazeera*, “There are cases of abuse by the army, some of the cases include girls and woman who have become pregnant.”<sup>101</sup>

In addition, the HRW Report adds that (even prior to the 2009 GOSL offensive) “humanitarian agencies ha[d] expressed concern that continual displacement and constant exposure to shelling, bombing, and ground-fire have caused large-scale psychosocial trauma among the displaced population, particularly children.”<sup>102</sup>

In its 2009 Human Rights Report, issued March 11, 2010, the U.S. State Department described the situation in Sri Lanka as follows:

[t]he country had a significant population of IDPs which was caused both by past and recent conflicts. Almost all IDPs were ethnically Tamil although approximately 80,000 were Tamil-speaking Muslims who had been displaced from Jaffna by the LTTE. Large-scale returns of IDPs began in the final three months of the year, in particular of the approximately 280,000 more recently displaced persons who had been held in IDP camps since the end of the war in May. Of that group, approximately 155,000 had been returned to their home districts by the end of the year. Many of these were not able to return to their actual homes due to significant damage from the war or uncleared land mines. An additional 108,000 remained mostly in the government-run Manik Farm IDP camps near Vavuniya by year's end. The Manik Farm camps had originally held approximately 250,000 IDPs, without freedom of movement, from the end of the war in May until late October. IDPs remaining in Manik Farm were not given freedom of movement until December, when a system of temporary exit passes was implemented for those who had not yet been returned to their districts of origin and remained in Manik Farm. Some observers said this exit pass system still did not qualify as freedom of movement.

In addition to this group of newer IDPs, there were an estimated 200,000 previously displaced Tamils. Most of these IDPs were displaced prior to the last

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<sup>97</sup> <http://www.amnesty.org/en/for-media/press-releases/sri-lankan-government-must-permanently-release-all-civiliansasia-2009120>

<sup>98</sup> <http://english.aljazeera.net/news/asia/2009/06/200961962329963252.html>

<sup>99</sup> *Displaced and Detained*, at 13.

<sup>100</sup> <http://www.amnesty.org/en/news-and-updates/news/unlock-camps-sri-lanka-20090807>

<sup>101</sup> <http://english.aljazeera.net/news/asia/2009/06/200961962329963252.html>

<sup>102</sup> *Detained and Displaced*, at 8-9.

big offensive in 2008, and were living either with relatives or friends. It was unclear at the end of the year how or when they might be returned to their places of origin, or if any would prefer to stay where they currently were after being displaced for many years.<sup>103</sup>

By August 2009, GOSL had erected 41 camps in the north and east of Sri Lanka, with the largest camp located in Vavuniya District. UN Secretary General Ban Ki-moon, after visiting some of the camps in May 2009, stated, “I have travelled around the world and visited similar places, but this is by far the most appalling scene I have seen.”<sup>104</sup> As of January 2010, 100,000 people remained in the camps. GOSL continues to deny journalists and human rights NGO’s access to them.<sup>105</sup>

### C. *International Reaction to GOSL’s 2009 Offensive Against Tamil Areas*

GOSL’s dismal human rights record has resonated with international aid agencies, and the governments and entities that administer and fund such relief. As the *House of Commons Report* recounts, GOSL’s “shift after December 2005, the increasing influence of chauvinist and militarist elements on government policy and the appalling human rights abuses that have become apparent in 2006, severely undermined any trust in the state to protect minority rights.”<sup>106</sup>

The resumption of hostilities between GOSL and LTTE in 2006 further eroded international trust and confidence in GOSL’s commitment to a peaceful and productive resolution to the Tamils’ predicament, even to the point of reconsideration of aid pledges made in the aftermath of the December 2004 *tsunami*. As the *House of Commons Report* explains, the UK’s “debt relief programme [extended to GOSL] was suspended in May 2007, after human rights problems stemming from the resumption of the conflict between the Government and the Tamil Tigers in 2006 did not improve after a six month period. These funds were then ‘re-programmed for humanitarian relief.’”<sup>107</sup>

The UK minister in charge of the Department for International Development (“DFID”) highlighted in May 2007 “specific concerns which need to be addressed before humanitarian agencies can provide the support needed. Visa restrictions are still being imposed on agencies, including those with surgical teams on stand by to assist the thousands of war wounded who await life saving treatment. Practical restrictions are also still being imposed on entry to the camps and on the supply of basic relief items like water and sanitation equipment. We encourage the Government of Sri Lanka to do everything possible to allow humanitarian agencies to operate effectively on the ground.”<sup>108</sup>

The DFID Minister also clarified that aid would not be provided through GOSL. Instead,

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<sup>103</sup> U.S. Department of State, 2009 Human Rights Report: Sri Lanka, at 9.

<sup>104</sup> <http://www.amnesty.org/en/news-and-updates/news/unlock-camps-sri-lanka-20090807>

<sup>105</sup> <http://www.amnesty.org/en/news-and-updates/sri-lanka-election-candidates-must-end-rights-violations-20100119>

<sup>106</sup> *House of Commons Report*, at 17.

<sup>107</sup> *Id.*, at 58. *See also id.*, at 18 (“[t]he fighting was accompanied by growing reports of violations of human rights and International Humanitarian Law. In early May it emerged that the UK had recently withheld 50% of an instalment of debt relief, worth £1.5m, pledged to Sri Lanka in 2005 following the Asian Tsunami. The reason for doing so was concern about the human rights situation in Sri Lanka”).

<sup>108</sup> *Id.*



he emphasized that, “[a]ll DFID funding is provided directly to impartial international agencies such as the International Organisation for Migration and United Nations High Commissioner for Refugees. None of the UK’s assistance is provided directly to the Government of Sri Lanka.”<sup>109</sup> Similarly, in 2007 the U.S. suspended military aid to GOSL due to human rights concerns, although the U.S. did award a five-year, \$12 million contract to support regional government in the eastern and northern provinces.

Nor did the situation improve in Sri Lanka as a result of such international resistance to aiding GOSL directly. As the *House of Commons Report* relates, “[a]mid growing concerns about human rights abuses, in October 2008 the European Commission announced it would investigate Sri Lanka for non-implementation of agreements upon which GSP plus is dependent. Specifically, concerns were expressed that Sri Lanka’s UN treaty obligation under the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child were not “being effectively implemented.” The Sri Lankan Government has to date refused a European Commission investigation mission entry to the country.”<sup>110</sup>

Indeed, GOSL’s response has been to target the NGO community for criticism and worse. As the *HRF Report* remarks, “[i]nstead of striving to provide a secure climate for humanitarian assistance, Sri Lankan civilian and military officials and pro-government newspapers have intensified their verbal attacks on the humanitarian community. Humanitarian organizations, particularly those that engage in advocacy and raise human rights concerns, are frequently accused of being pro-LTTE and supporting terrorism, charges that put the physical security of their staff at risk.”<sup>111</sup>

GOSL’s hostility toward NGO’s produced tragic results, as discussed **post**, at 44, as 17 local staff members of a French NGO, ACF (Action Against Hunger), were murdered in 2006. In addition, the *House of Commons Report* points out that at the time of GOSL’s 2009 offensive, “[a]id agencies expressed concern that they were being shut out of the area and feared a major humanitarian emergency. The International Committee of the Red Cross stated that the vast majority of civilians in the area were receiving no humanitarian aid. The Sri Lankan authorities stated that they were setting up ‘welfare villages’ for the internally displaced persons (IDPs) that would remain open for up to three years; critics claimed that they were more like detention centres or even concentration camps.”<sup>112</sup>

By the time GOSL’s 2009 offensive was underway, “[i]nternational concern about the growing humanitarian crises in the north grew significantly in February. US Secretary of State Hillary Clinton joined with UK Foreign Secretary David Millband on 4 February in calling, in the short-term, for a temporary ceasefire (subsequently more generally referred to as a ‘humanitarian pause’) and full access to the war zone by humanitarian organisations; and, in the longer-term, for an end to all hostilities and a resumption of political negotiations to bring about a permanent settlement. This position was also that taken by other key international stakeholders

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<sup>109</sup> *Id.*, at 58-59.

<sup>110</sup> *Id.*, at 60.

<sup>111</sup> *HRF Report*, at 39. *See also id.* (in November 2008, a Sri Lanka newspaper launched a propaganda assault on humanitarian agencies, and Defense Secretary Rajapaksa was quoted as stating “he would expel all international NGO’s from Sri Lanka if he could”).

<sup>112</sup> *House of Commons Report*, at 20.

such as the EU, Norway and Japan.”<sup>113</sup>

Notwithstanding that unified international position, GOSL “largely rejected international calls for greater action to protect civilians or for a ceasefire, although it did institute a brief unilateral pause in the fighting . . . so that civilians could flee the conflict zone.”<sup>114</sup> Yet, as demonstrated *ante*, at 38-40, fleeing did not represent a viable alternative if it meant internment in a detention camp.

Another element of GOSL’s repression, coordinated with its strategy for its 2009 offensive, consisted of stifling press freedom and lawyers who challenged the regime in court.<sup>115</sup> The U.S. State Department’s 2009 Human Rights Report stated that “[s]enior [GOSL] officials repeatedly accused critical journalists of treason and often pressured editors and publishers to run stories that portrayed the government in a positive light. Lawyers who defended journalists were also threatened and pressured by defense and government officials.”<sup>116</sup>

Elaborating, the State Department Report added that “[l]awyers who defended human rights cases sometimes were under physical and verbal threats. . . . In July the Defence Ministry’s official Web site called five lawyers, who were appearing for editors of *The Sunday Leader* in a case against the secretary ‘traitors.’”<sup>117</sup> In addition, GOSL imposed an embargo on journalists visiting or reporting from the North East during the offensive.<sup>118</sup>

## VI. *Continued Persecution of Tamils Following the Defeat of the Tamil Tigers in May 2009*

The post-LTTE era has vindicated the fears that many Tamils and others harbored about GOSL if it ever achieved military hegemony over the Tamil population and its territories. The U.S. State Department’s 2009 Human Rights Report, quoted *ante*, at 40, outlines how GOSL has increased rather than ameliorated Tamil suffering since the demise of LTTE. The State

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.*, at 21.

<sup>115</sup> GOSL’s harsh response to dissent extends to the political arena as well, as the opposition presidential candidate, General Fonseka, was arrested shortly after the election. As the ICG pointed out, “[t]he arrest of Fonseka on 9 February 2010 for conspiring against the government while still commander of the army is only the most spectacular of a broader clampdown by the Rajapaksa administration on those who challenged its power during the election campaign.” *Tamil Diaspora*, at 18.

<sup>116</sup> U.S. State Department 2009 Human Rights Report, at 7.

<sup>117</sup> U.S. State Department 2009 Human Rights Report, at 5.

<sup>118</sup> Ironically, last Fall, J.S. Tissainayagam, described by President Barack Obama as an “emblematic example” of an unjustly persecuted news reporter, was named by President Obama to mark World Press Freedom Day. Mr. Tissainayagam was convicted under the PTA and sentenced to 20 years in prison for writing two articles in the *North Eastern Monthly* magazine in 2006. The two statements in his articles that led to Mr. Tissainayagam’s arrest were:

**Providing security to Tamils now will define northeastern politics of the future.** It is fairly obvious that the Government is not going to offer them any protection. In fact it is the state security forces that are the main perpetrator of the killings.

**With no military options Government buys time by offering watered-down devolution.** Such offensives against the civilians are accompanied by attempts to starve the population by refusing them food as well as medicines and fuel.

Rhys Blakely, “J.S. Tissainayagam, Journalist Lauded By Obama, Is Jailed In Sri Lanka,” *The London TimesOnline*, September 1, 2009. Available at <http://www.timesonline.co.uk/tol/news/world/asia/article6815885.ece>.

Department's 2009 Report also cites numerous reports that the government or its agents committed arbitrary or unlawful killings, although reliable statistics delineating their full extent, are difficult to obtain since past complainants were killed and families fear reprisals if they file complaints.

Nevertheless, the 2009 Report was able to specify examples such as: "on August 13 [2009], police arrested M.B. Dinesh Tharanga Fernando and Dhanuska Udayanga Aponsu in Angulana. No formal charges were filed and the men's relatives were not allowed to see them. Their bodies were found the following morning with fatal gunshot wounds."<sup>119</sup> Nine members of the local police force were taken into custody as suspects for the two murders.

That account typifies and illustrates the rampant abuses committed by GOSL security forces and paramilitaries during and after the 2009 SLA offensive conclusively defeated LTTE. The State Department Report adds that "[a]ccording to official accounts, other deaths occurred when security forces took the suspects to the scenes of their alleged crimes, and shot and killed them while they allegedly were trying to escape."<sup>120</sup> In addition, following the death of a schoolgirl in the Trimcomalee area, the police arrested six individuals in relation to the death on March 13, 2009. The government later reported that two of the six were killed in the jungle near Kanniya by LTTE forces, another was shot while trying to escape, and a fourth suspect died in police custody.

The U.S. State Department Human Rights Reports have also addressed a related issue: the Sri Lankan Commission of Inquiry ("COI"), which is responsible for investigating high profile killings and disappearances. In June 2009 COI essentially disbanded without issuing a public report explaining the status or termination of its investigations. While COI reviewed only seven of the 17 assigned cases, it did investigate the 2006 massacre of 17 local staff—15 of which were Tamils—of the French NGO Action Against Hunger ("ACF"). Astonishingly, COI concluded that ACF was to blame for the slaughter by allowing its staff to work in a hostile zone. Conversely, and not surprisingly in light of its placing blame on ACF, COI also absolved government security forces of any culpability for or involvement in the slayings, instead blaming LTTE.

However, as the State Department Report points out, "COI's methods raised serious concerns about its fairness," and its findings were "contrary to many independent analyses of available evidence that pointed toward involvement in the killings by police, Muslim Home Guard, and Special Task Force members."<sup>121</sup> Following the announcement of COI's findings, GOSL security forces visited the victims' families and asked them to sign a letter blaming ACF for the deaths.

As the U.S. State Department's 2008 Human Rights Report recounted, "[c]redible evidence placed before the COI alleged that security forces were responsible for the 2006 execution-style killing of 17 members of the French NGO ACF (Action Against Hunger)."<sup>122</sup> Yet, "[b]y year's end, no arrests were made."<sup>123</sup> In addition, "[t]here was also no outcome of the

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<sup>119</sup> <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>

<sup>120</sup> <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>

<sup>121</sup> <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>

<sup>122</sup> U.S. State Department 2008 Human Rights Report, at 2.

<sup>123</sup> *Id.*

COI investigation into the case of five Tamil students killed in Trincomalee in 2006 despite testimony that implicated individual members of the security forces by name.”<sup>124</sup>

Moreover, the 2008 State Department Report continued, “[i]n 2007 President Rajapaksa invited an International Independent Group of Eminent Persons (“IIGEP”) to assist the COI and monitor its progress.”<sup>125</sup> Elaborating, the State Department reports states that “according to the IIGEP, the investigations were hampered by the lack of effective witness protection and the inappropriate role of the Attorney General’s Office in steering the inquiry.

The IIGEP terminated its mission in March 2008, citing an ‘absence of political and institutional will’ to identify the perpetrators and ‘uncovering the systematic failure and obstructions to justice that rendered the original investigations ineffective.’”<sup>126</sup> According to the *House of Commons* Report, the IIGEP “joined with others in calling for the sending of a UN human rights monitoring mission to the country. The Sri Lankan Government rejected these calls. Then, in October, Sri Lankan human rights activists who had been on the presidential Commission on Inquiry resigned, claiming that it was proving ineffective.”<sup>127</sup>

Amnesty International reported that several members of the COI and seven civil society groups serving as independent observers also resigned, “noting with particular concern the intimidation and exposure of vulnerable witnesses, disappointment over the suspension of video testimony, and the unlikely prospect of prosecutions. The message was clear: the Sri Lankan government was unwilling to protect its citizens and uninterested in securing justice.” Also, in March 2008, “the international panel invited by the Government to investigate alleged human rights abuses announced that it was leaving Sri Lanka, on the grounds that the authorities were obstructing its work, a claim that was denied.”<sup>128</sup>

The 2009 U.S. State Department Report further notes that a commission established by retired Supreme Court Justice Tillekeratne to investigate abductions, disappearances, killings, and unidentified bodies concluded in November 2009 that relatives of disappeared persons frequently did not file reports with local police due to their mistrust of the authorities.<sup>129</sup>

In its 2009 Report, the U.S. State Department stated that “[d]isappearances continued to be a significant problem,” although they had “declined from previous years, in particular after the end of the war.”<sup>130</sup> It is estimated that 300 to 400 individuals disappeared in 2009, with a majority occurring in the north and east. GOSL has essentially failed to act on these disappearances aside from releasing statistics, and it has failed to indict or convict anyone in relation to a disappearance case.<sup>131</sup>

One such disappearance (catalogued by the U.S. State Department’s 2009 Report) involved a Tamil, Stephen Sunthararaj, the project manager at the Center for Human Rights and Development. He had been detained by the police without charge since February 2009. Shortly

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *House of Commons Report*, at 18.

<sup>128</sup> *Id.*, at 19.

<sup>129</sup> <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>

<sup>130</sup> U.S. State Department 2009 Human Rights Report, at 2.

<sup>131</sup> <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>

after his court-ordered May 7, 2009, release, Sunthararaj was abducted by four individuals wearing SLA uniforms, and disappeared without a trace.<sup>132</sup>

The U.S. State Department has reported that the Sinhalese government in Sri Lanka is also complicit in torture. According to the 2009 State Department report, “[i]n the east and conflict-affected north, military intelligence and other security personnel, sometimes working with armed paramilitaries, carried out documented and undocumented detentions of civilians suspected of LTTE connections. The detentions reportedly were followed by interrogations that frequently included torture. There were cases reported of detainees being released with a warning not to reveal information about their detention. There were also reports of secret government facilities where suspected LTTE sympathizers were taken, tortured, and often killed.”<sup>133</sup> In fact, as the 2009 State Department Report states, “[f]ollowing a 2007 visit, UN Special Rapporteur (“UNSR”) on Torture Manfred Nowak concluded that ‘torture is widely practiced in Sri Lanka.’”<sup>134</sup> Also, as the 2008 State Department Report points out, “[t]he [GOSL] military denied holding detainees at its facilities and did not grant access to national or international monitors to investigate claims of torture by military forces[,]” even though the Report noted there were “credible reports of secret government facilities where suspected LTTE sympathizers were taken, tortured, and often killed.”<sup>135</sup>

Human rights groups estimated approximately 2,400 LTTE suspects were in regular detention centers in 2009, with another 1,200 being held at police stations, paramilitary or army camps, and other informal detention facilities.<sup>136</sup> However, a much larger proportion of the Tamil population, displaced by the war, found itself interned by GOSL even well after the conclusion of armed hostilities. The ICG concluded that “[t]he internment of so many people – all of whom had suffered greatly from the war and seen many of their family and friends killed – violated Sri Lankan and international humanitarian law.”<sup>137</sup>

*Tamil Diaspora* reports that “[t]housands of Tamils bribed their way out of overcrowded internment camps plagued by poor sanitation, insufficient bathing and drinking water, and inadequate food and medical care. Former insurgents reportedly escaped to avoid detection while civilian men fled out of fear of being labeled Tiger sympathisers by the army. Women also reportedly bought their freedom to avoid rape or other sexual abuses in the camps.”<sup>138</sup>

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<sup>132</sup> <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>

<sup>133</sup> <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>. The 2008 Report included a nearly identical finding.

See U.S. State Department 2008 Human Rights Report, at 3.

<sup>134</sup> U.S. State Department 2009 Human Rights Report, at 3.

<sup>135</sup> U.S. State Department 2008 Human Rights Report, at 4.

<sup>136</sup> <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>

<sup>137</sup> “*Bitter Peace*,” at 2.

<sup>138</sup> *Tamil Diaspora*, at 10. See also *id.*, at 11 (“[a]n American Tamil described how he sent money to friends and relatives to escape from the Manik Farm camp. He wired money to Colombo where it was collected by a friend and employee of an aid agency with access to the camps”).

## CONCLUSION

As ICG explained in 2006, the Sri Lankan “conflict is enormously complex, and the peace process ignored many of the hard questions. It was always going to be difficult to bring together a fictionalized Sinhalese polity with a semi-totalitarian armed movement in the north and produce a political settlement respectful of democracy and human rights.”<sup>139</sup>

Three years later, following GOSL’s 2009 offensive, the *House of Commons Report* states that “[a]ny prospect of an independent Tamil state, Tamil Eelam, appears to have disappeared. The LTTE has been eclipsed as a conventional military force and most, if not all, of its leadership appears to have been eliminated.”<sup>140</sup> The *Report* continues that “[f]or these reasons, some analysts argue that the moment represents a golden opportunity for meaningful political and constitutional reform in Sri Lanka. However, as already demonstrated, numerous previous opportunities have been missed.”<sup>141</sup>

Addressing GOSL’s responsibilities going forward, the *House of Commons Report* advises that “[t]o win the war overall [GOSL] must do more than merely regain the monopoly of force it has so unequivocally lost; it must also gain sufficient legitimacy and trust among the Tamil population to be seen as liberators, and the government is clearly much further from this goal than any other.”<sup>142</sup>

Yet the *House of Commons Report* acknowledges that “[t]here has yet to be any discernible redress to the state crisis on legitimacy that gave rise to the conflict in the first place[.]”<sup>143</sup> and ICG adds that “neither [Sri Lankan presidential candidate] has offered credible proposals for political reforms that would address the marginalisation of Tamils and other minorities[.]” and “[t]he resettlement process has failed to meet international standards for safe and dignified returns.”<sup>144</sup>

The ICG also chides the international community, offering the challenge that “UN officials and major world leaders must go beyond their regular pro forma statements about accountability. Instead, there should be a clear rejection of Sri Lanka’s brutal and illegal mode of counter-insurgency, which is already being viewed as a model by other states with restive minorities and ethnic insurgencies. Credible international investigations are necessary and

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<sup>139</sup> “Sri Lanka: The Failure of the Peace Process, International Crisis Group, November 2006, at 12-13. *See also House of Commons Report*, at 16. John Richardson, a Professor of International Development at American University’s School of International Service, lists in his book *Paradise Poisoned* (International Center for Ethnic Studies: 2005), at 576-77, a study of Sri Lanka’s ethnic conflict and civil wars, ten “development policy failures, which if avoided or corrected, could have prevented escalating deadly conflict and terrorism in Sri Lanka.” Interestingly, none identify terrorism. Four are economic in nature, one is political, and the other five are:

2. Polarising political rhetoric and tactics
3. ‘Winner take all’ official language policies
5. Half hearted reforms of secondary and higher education, coupled with discriminatory university admissions policies targeting Tamil youth
8. Inadequate funding, Sinhalisation and politicisation of the security forces
10. The attempt to restore order in the north and east (especially in volatile Jaffna province) with military forces that were clearly incapable of achieving that goal.

<sup>140</sup> *House of Commons Report*, at 63.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> “*Bitter Peace*,” at 1.

should help reestablish the rule of law within Sri Lanka. Only when political and legal reforms have begun will there be any chance at a true accounting for the terrible violence that all communities in Sri Lanka have undergone, and for any hope of genuine reconciliation between them.”<sup>145</sup>

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<sup>145</sup> *Id.*, at 22.

## EVIDENTIARY SOURCES

The information and facts detailing the specific acts of persecution in the territory of Sri Lanka targeting the Hindu-Christian North East Sri Lankan Tamil civilian population between February 1948 and November 22, 2005, and between November 22, 2005 and December 22, 2008, have been collected from the following sources:

### 1. Eyewitness Testimony<sup>146</sup>

Eyewitness accounts from individuals in the Tamil Diaspora displaced to Europe and America during Eelam Wars I-III, post CFA hostilities and GOSL's eradication of the LTTE.

### 2. Case Documents and Affidavits

Via third parties from:

- Kayts Magistrate Court
- Mannar Magistrate Court
- Jaffna Magistrate Court
- Vavuniya Magistrate Court
- Trincomalee Magistrate Court
- Jaffna Human Rights Commission
- United Nations cases

### 3. Contemporaneous News Sources

Reports from:

- English-medium Newspapers
- British Broadcasting Company (BBC) (International)
- *The Boston Globe* (United States)
- *Daily Mirror* (Sri Lanka)
- *International Herald Tribune* (International)
- *The Morning Leader* (Sri Lanka)
- *The New York Times* (United States)
- *The Sunday Leader* (Sri Lanka)
- *The Sunday Observer* (Sri Lanka)
- *The Sunday Times* (Sri Lanka)
- TamilNet (International)
- *The Nation* (Sri Lanka)
- *UK Telegraph* (Great Britain)
- *The Washington Post* (United States)
- Sri Lanka-based Tamil-medium Newspapers
  - a. Uthayan
  - b. Virakeseri
  - c. Suthar Oli

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<sup>146</sup> Countless Tamil, Sinhalese, and Muslim eyewitnesses to the Tamil genocide (which includes attempted genocide) in Sri Lanka have been silenced by GOSL by means of killing, torture, disappearances, imprisonment, assault, or threats of retaliation. GOSL has further suppressed evidence of the Tamil genocide through a media blackout in the North-East Province, including the Jaffna peninsula, which prevents observation or reporting by non-military persons of the genocidal atrocities against Tamil groups, including the creation of living conditions of life intended to destroy them.



d. Thinnakural

4. NGO Reports Covering Conflict Analysis, Human Rights, and Humanitarian Issues

- United Nations
- Amnesty International
- Human Rights Watch
- International Crisis Group
- The Asia Foundation
- Center For Protecting Journalism (CPJ)
- Center For Policy Alternatives
- Action Contra La Faim (ACF)
- Tamil Rehabilitation Organization (TRO)
- Tamil Information Center
- North-East Secretariat of Human Rights (NeSoHR)
- University Teachers for Human Rights (Jaffna), Sri Lanka

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