



## International Crimes Evidence Project

ICEP Sri Lanka

# ISLAND OF IMPUNITY?

Investigation into international crimes in  
the final stages of the Sri Lankan civil war

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PIAC provides this report to you for the purpose of assisting in the process of deliberating on and discussing the need for accountability for alleged international crimes and related events that took place in the final stages of the Sri Lankan civil war, including through the UN Human Rights Council process. PIAC authorises you to use this report only for that purpose.

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# 1 EXECUTIVE SUMMARY

## Background

- 1.1 The International Crimes Evidence Project (**ICEP**), a project of the Public Interest Advocacy Centre (**PIAC**), was established to provide key decision-makers with independent and credible analysis of alleged violations of international law committed in the final stages of the Sri Lankan civil war (September 2008 to May 2009). ICEP's investigation is independent of all parties to the conflict, and has been guided solely by the evidentiary material uncovered with expert advice and assistance from ICEP's independent Committee of Experts.<sup>1</sup>
- 1.2 This report is the product of ICEP's investigation, and gives a picture of grave violations of international law committed in the final stages of the Sri Lankan civil war. With no adequate form of accountability emerging from within Sri Lanka, this report also highlights the need for a full international investigation.
- 1.3 ICEP's investigation relies on two sources of information: open-source material and confidential information provided to ICEP by witnesses and others. Evidentiary material collected by ICEP includes: witness statements; documentary evidence such as correspondence, photographs and videos; and satellite imagery analysis. ICEP also relies on United Nations (**UN**), government, non-government organisation (**NGO**), and media reports – in particular, the Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (UN Expert Panel Report) and the Sri Lankan Government's Lessons Learnt and Reconciliation Commission Report (**LLRC Report**).
- 1.4 ICEP has assessed the reliability and probative value of material to distil an account of key events in Sri Lanka during the investigation period. In addition to presenting new evidentiary material, the approach taken by ICEP is unique in that it has rigorously analysed the events under IHL, international human rights law and international criminal law. In respect of each event considered, ICEP's standard of proof is that there are 'reasonable grounds to suspect' that serious violations of international humanitarian law (**IHL**) and international human rights law took place. Where ICEP has determined that the reliability and probative value of evidentiary material are particularly strong, the report says that 'it is reasonable to conclude' that the event in question took place. The report also identifies priority areas for further investigation.

## Key findings

- 1.5 This report presents an evidentiary platform for an international investigation into war crimes and crimes against humanity. Although violations were committed by both sides, the evidentiary material indicates that members of the Sri Lankan Security Forces (**SFs**) perpetrated the vast majority of alleged crimes during the investigation period.
- 1.6 It is reasonable to conclude that members of the SFs and the Liberation Tigers of Tamil Eelam (**LTTE**) are responsible for serious violations of international humanitarian law and

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<sup>1</sup> The Committee of Experts comprises John Ralston (Chair); Professor Paola Gaeta; Professor William Schabas; Colonel (retired) Desmond Travers and Gordon Weiss. ICEP has also benefited from the input of advisors, all similarly respected for their expertise in international criminal justice.

international human rights law. Reasonable grounds exist to suspect that many of these violations amount to war crimes. These include:

- Violence to life and person (such as murder, cruel treatment and torture).
- Intentionally directing attacks against the civilian population (for example, through the indiscriminate use of artillery).
- Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions (for example, through the indiscriminate use of artillery).
- Intentionally directing attacks against personnel, installations, material, units or vehicles involved in humanitarian assistance in accordance with the United Nations Charter (for example, through the indiscriminate use of artillery).
- Intentionally directing attacks against hospitals (for example, through the indiscriminate use of artillery).
- Rape and sexual violence.
- Taking of hostages.
- Use of human shields.
- Conscripting of children into the LTTE.

1.7 There are also grounds to suspect that the alleged crimes include the following crimes against humanity:

- Murder.
- Extermination.
- Torture.
- Rape and other forms of sexual violence.
- Persecution.
- Enforced disappearance of persons.
- Other inhumane acts.

1.8 Certain alleged crimes committed during the final months of the war involved such flagrant and reckless disregard for the laws of war, which strongly suggests there was intent to commit those crimes. For example, with effective control of all land, sea, and air approaches, the disciplined, well-trained and well-armed Sri Lankan SFs conducted indiscriminate artillery bombardments of areas of known civilian concentrations, also striking hospitals and humanitarian sites.

1.9 This report illustrates violations perpetrated by both parties to the conflict and in particular, widespread torture, sexual violence and enforced disappearance, which continue in part today, perpetrated by the SFs on the civilian population. The Sri Lankan Government has not initiated an effective investigation or prosecution of such credible allegations. There are

also allegations of collusion and other acts by the Sri Lankan state, which inhibit accountability for wartime crimes and protect perpetrators.

- 1.10 This report describes command and control structures so well-established that criminal responsibility for certain crimes if proven at trial could lead to convictions of senior military commanders and Sri Lankan Government officials, as well as senior surviving members of the LTTE.
- 1.11 ICEP is in the process of collecting new evidentiary material. Early analysis suggests that the Sri Lankan Government may have sought systematically to exhume and destroy evidence of mass civilian deaths.

### ***Perpetrators***

- 1.12 ICEP has analysed the structure of the SFs and the LTTE (Annex II), and it has received some evidentiary material concerning perpetrators of specific crimes. Together this assists in identifying who may be responsible for the crimes allegedly committed. An independent international investigation would be the most effective mechanism for compiling a comprehensive list of persons for whom prosecution is, or may be, warranted.

## **Key issues covered in this report**

### ***Attacks in and around civilian areas (section 6)***

- 1.13 Between January and May 2009, the Sri Lankan Army established three successive No Fire Zones (**NFZs**) in the north-east of Sri Lanka. The declaration of the NFZs marked a turning point in the SFs' military strategy: hundreds of thousands of Tamil civilians were displaced by the intensifying hostilities, and the conflict zone contracted sharply. The Army's 'guarantee' that the NFZs would be protected from attack encouraged civilians to concentrate in areas where the LTTE was already conducting operations, thereby substantially increasing the risk of heavy civilian casualties. The evidentiary material gathered by ICEP calls into question why the Sri Lankan Army selected these areas to be NFZs given their proximity to the LTTE's defensive lines and the existence of LTTE targets in those areas.
- 1.14 The large and dense civilian population in villages and internally displaced persons (**IDP**) camps within and in the vicinity of the NFZs would have been obvious to the SFs, even though the Government disputed estimates of their size. Notwithstanding its extensive surveillance of the Vanni, and the presence of the civilian population, the SFs used indirect fire weapons, such as artillery, mortars and multiple barrel rocket launchers (**MBRL**), in densely-populated areas. This is quite apart from the Army's repeated commitments not to use heavy weapons on the NFZs from 25 February 2009. Moreover, the engagement of the NFZs with indirect fire weapons, especially those with greater-than-usual dispersion capabilities such as MBRL, mortars and air-burst munitions, are indicative of a failure to program artillery fire control systems with the coordinates of these NFZ and therefore suggests an intention, or at least recklessness, regarding the actual target.
- 1.15 The Government and SFs have stated that any attacks were conducted on the basis of military imperatives. However, the attacks analysed in this report reveal an intensified

practice of indiscriminate artillery area bombardment. These attacks killed and wounded scores of civilians who were attempting to take shelter from the sustained shelling, or trying to perform basic activities like collecting food or accessing medical treatment. For example, a local NGO worker interviewed by ICEP described a shell attack on a line of people queuing to collect milk powder:

When I got there I could see that two artillery shells had fallen within 10 feet of the line. There were dead bodies everywhere. I remember seeing a pregnant woman lying on the ground with a fetus coming out of her. We registered approximately 78 people as dead on this occasion, including 38 children. I believed that more than 150 people were injured. Most of the dead and injured were women.<sup>2</sup>

- 1.16 The impact of the attacks on civilians suggests that the use of military force was manifestly disproportionate to any anticipated military advantage. Even if LTTE cadres were present in some villages, the SFs did not take adequate precautions to protect civilians from attack.
- 1.17 Some of these attacks, including, in particular, indiscriminate attacks on the villages of Karaiyamullivaikkal and Vellamullivaikkal, and the third NFZ generally, could be evidence of a direct attack on civilians and as such could amount to the war crime of attacking civilians. Such acts could also amount to the war crime of attacking a military objective that causes excessive incidental civilian losses.
- 1.18 Taking into account the SFs' ability to plan military operations, their capacity to execute plans with advanced technology, and statements made by the Sri Lankan Government and SFs that almost no errors occurred, there are reasonable grounds to suspect that the incidents and patterns of incidents considered in this report are the result of deliberate planning and policy decisions. As such, in addition to the commission of war crimes, the killing of persons, when committed as part of a widespread or systematic attack on a civilian population, pursuant to, or in furtherance of a State policy, amounts to the crime against humanity of murder. It may also amount to the crime against humanity of extermination, persecution or other inhumane acts.
- 1.19 It is reasonable to conclude that the LTTE are also responsible for serious violations of IHL (and also possibly international human rights law), which may amount to war crimes. The LTTE was obliged to protect civilians under their control from the effect of attacks and not to use civilians as human shields. LTTE members launched attacks from within the NFZs, at times close to the civilian population. Witness accounts state that the LTTE stopped wearing uniforms and mingled with the civilian population. Where the LTTE launched attacks from areas close to civilians or protected sites, or continued to fight in the conflict while dressed as civilians, LTTE members unnecessarily exposed the civilian population to danger and this could amount to the use of human shields and, thus, the war crime of cruel treatment.

#### ***Restriction of civilian movement (section 7)***

- 1.20 In the final months of the conflict, the LTTE forcibly prevented civilians from leaving the conflict zone. Witnesses observed terrible scenes of civilians being shot as they tried to flee. For example, one witness stated:

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<sup>2</sup> WS-1509, [125].

The LTTE opened up on them with [a] lot of AK-47s. People started falling while others ran with their baggage, some ran past [the compound]. Many were screaming. More than 6-7 were taken to the hospital with serious injuries who later died in the hospital. Five or six were dead on the spot. I know this because I saw the bodies on the ground and I went to the hospital and saw the dead in the hospital [...] In all, 12 were killed and more than fifty were wounded. This included men, women and children.<sup>3</sup>

- 1.21 Such conduct, if proven, is a gross violation of the LTTE's obligations to the population under its control, and substantially increased the risk of mass civilian deaths as a result of SFs' shelling. There are reasonable grounds to suspect that, by shooting civilians who were attempting to escape the conflict zone, LTTE members committed murder both as a war crime and crime against humanity, and may have also committed the war crime of cruel treatment and/or the crime against humanity of inhumane acts. In respect of one incident, where members of a humanitarian convoy were forcibly prevented from leaving the Vanni, there are reasonable grounds to suspect that the LTTE cadres and police committed the war crime of hostage-taking.

***Denial of humanitarian assistance (section 8)***

- 1.22 Reasonable grounds exist to suspect that as the conflict intensified, the Sri Lankan Government deliberately understated the number of civilians in the conflict zone and the need for food and basic medical supplies. As a result, the amount of food provided was grossly inadequate. ICEP has compelling evidentiary material suggesting that civilians starved to death.
- 1.23 During this time, in addition to the Sri Lankan Government's understatement of population figures, humanitarian convoys were restricted and impeded. Senior Government doctors highlighted the urgent need for additional drugs and medical supplies. In a letter obtained by ICEP, in mid February a senior Government official informed the Ministry of Health:
- We were in total frustration when we had to re-amputate the limbs at higher levels in days after initial lifesaving amputations, just because of lack of IV penicillin and other antibiotics essential to prevent fatal sepsis.<sup>4</sup>
- 1.24 Humanitarian convoys eventually ceased due to the sustained shelling. Although the International Committee of the Red Cross (**ICRC**) continued to operate, it was given very limited access. Witness accounts also indicate that ICRC ships, which were trying to evacuate wounded civilians, were impeded by shelling that was directed either at or near them.
- 1.25 There are reasonable grounds to suspect that members of the Sri Lankan Government denied humanitarian assistance, in such a way as to amount to the war crime of cruel treatment and/or the crime against humanity of persecution or other inhumane acts. It should also be noted that attacks on persons, transports or objects lawfully using the distinctive ICRC emblem, such as ICRC personnel or vehicles, constitute war crimes.

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<sup>3</sup> WS-1403, [101].

<sup>4</sup> Letter from [name and title omitted] to Secretary, Ministry of Health, 'Situation Report for the current week', dated 15 February 2009.

### ***Killing (section 9)***

- 1.26 By mid-May 2009, it became clear that the SFs had defeated the LTTE. As a result of this defeat, negotiations brokered by various Sri Lankan Government officials, international officials, and other neutral parties led to several senior LTTE leaders and members surrendering to the SFs, and other LTTE members being captured and held in SFs' custody. There are reasonable grounds to suspect that some of these surrendees and captured civilians were subsequently killed unlawfully by members of the SFs, thereby amounting to the war crime or crime against humanity of murder.
- 1.27 ICEP has documented five cases where civilians or persons *hors de combat* in SFs' custody were killed: the LTTE Political Wing leaders, Nadesan and Pulidevan; senior LTTE military commander, Colonel Ramesh; Tamil newsreader, Isaipriya; and the 12-year-old son of the LTTE's leader Prabhakaran, Balachandran.
- 1.28 ICEP's analysis reveals that senior Government officials, including the Sri Lankan President and Secretary to the Ministry of Defence, accepted the terms of surrender in respect of Nadesan and Pulidevan and guaranteed their safety. Moreover, multiple witnesses observed Nadesan and Pulidevan being personally taken into SFs' custody. Shortly after, another witness saw their dead bodies in Wadduvakal.
- 1.29 In respect of Colonel Ramesh's death, ICEP has relied on a series of photographs and videos of Colonel Ramesh in SFs' custody and of him being interrogated by members of the SFs. Photographs taken less than three hours later depict him dead in the same general location as the interrogation.
- 1.30 ICEP has relied primarily on a series of photographs, video footage and a witness account that locate the Tamil newsreader, Isaipriya, alive, unarmed and in SFs' custody on the same day as other photographs and footage show her lying dead on the ground, partially naked with blood on her face and left breast.
- 1.31 In the case of the 12 year old, Balachandaran, ICEP has relied on photographs and video footage that show Balachandaran in the custody of the SFs. The evidentiary material shows Balachandaran dead less than two hours after being taken into custody, having been killed by what appears to be five bullets shot at close range.

### ***Using, conscripting and enlisting children (section 10)***

- 1.32 At various stages of the conflict, UN representatives and bodies, as well as NGOs, reported a large number of cases of child recruitment by the LTTE. While some witnesses have attributed this to Colonel Karuna, the evidentiary material shows that after Colonel Karuna split from the LTTE in 2004, the LTTE continued to recruit people under the age of 18, and possibly even under the age of 15 despite making representations and commitments to the contrary. Colonel Karuna similarly continued to conscript and enlist children into the so-called Tamil Makkal Viduthalai Pulikal (**Karuna Group**). ICEP's report analyses an incident of forced recruitment at Valayanmadam Church in respect of which further investigation is required.

- 1.33 The age limit for enlisting or conscripting varies under the different sources of international law. Insofar as a non-state actor can be expected to comply with international human rights law, there are reasonable grounds to suspect the LTTE was in breach of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. However, further investigation is needed to determine whether members of the LTTE conscripted, enlisted or used children under the age of 15, in violation of customary international humanitarian law so as to constitute the war crime of enlistment or conscription of child soldiers.<sup>5</sup>

***Rape and other forms of sexual violence (section 11)***

- 1.34 The Sri Lankan Government has denied or ignored credible allegations of rape and sexual violence committed by SFs members in the final months of the conflict and the post-conflict period. Second-hand witness accounts obtained by ICEP are consistent with cases reported by Human Rights Watch (**HRW**) and the UN Expert Panel. These indicate that SFs members committed rape and sexual violence in the context of the Sri Lankan Army's screening process, in IDP camps and surrendee detention facilities, during interrogations and at Government hospitals. Such conduct could amount to war crimes and crimes against humanity.
- 1.35 It is likely that many cases have so far gone unreported due to the sensitivity and stigma associated with sexual and gender-based violence.

***Torture and other forms of cruel treatment (section 12)***

- 1.36 Throughout the conflict (as well as post-conflict), there have been allegations of torture and cruel treatment perpetrated by members of the SFs. There are reasonable grounds to suspect that suspected LTTE members, LTTE sympathisers and critics of the Sri Lankan Government were subjected to torture or cruel treatment by the SFs. One witness described his treatment as follows:
- As soon as the bottle was in my mouth, I realised that it contained petrol and it was burning my mouth so I spat it out and it fell to the floor. [The soldier] was very angry and he screamed that if I did that again, he would make me drink the whole bottle... I was gagging and choking from the fuel and felt very sick. However, I did not spit the bottle out as I was fearful he would make me drink the petrol which I knew would kill me. I was made to stand there with the bottle in my mouth for about four hours.<sup>6</sup>
- 1.37 ICEP's evidentiary material points to the commission of war crimes during interrogations at IDP camps, screening sites and in Sri Lankan Police custody. Moreover, torture appears to have been a prevalent practice by the various branches of the SFs, at all levels of the SFs' hierarchy. Torture also may have been committed as a crime against humanity.
- 1.38 ICEP has analysed in detail the account of a civilian witness who reports being tortured while in the custody of the Sri Lankan Police's Terrorist Investigation Department (**TID**) in 2008. The witness reports being repeatedly beaten on the body and head, handcuffed and painfully suspended between two tables, deprived of sleep for up to 10 days, and forced to

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<sup>5</sup> See section C, International legal framework.  
<sup>6</sup> WS-1001, [391]–[392].

watch others being interrogated and tortured.<sup>7</sup> There are reasonable grounds to suspect these acts constitute the war crime and crime against humanity of torture or cruel treatment.

### ***Enforced disappearance of persons (section 13)***

- 1.39 There have been numerous cases of enforced disappearances throughout the conflict in which the SFs, and paramilitary groups aligned to the Government, are implicated. Many of the people involved remain unaccounted for. In addition, there are specific allegations that LTTE members and civilians were targeted for enforced disappearances after surrendering to the SFs, at screening sites and IDP camps. The practice of enforced disappearance places the victim outside the protection of the law and often leads to other violations such as torture and other forms of cruel treatment, murder and extra-judicial executions.
- 1.40 ICEP has considered one case in particular, that of Father Francis Joseph who, according to multiple witnesses, surrendered to the SFs and has subsequently disappeared. In relation to this incident and others, there are reasonable grounds to suspect that these disappearances are a violation of international human rights law and IHL. If these allegations against members of the SFs and paramilitary groups are proven, they would constitute enforced disappearance as a crime against humanity. Such acts may also constitute the crime against humanity of persecution.

### **Post-conflict violations (section 14)**

- 1.41 ICEP has received reports of post-conflict violations. These relate to the alleged perpetration by SFs members of rape and sexual violence, and torture and cruel treatment and also in relation to those who have disappeared and whose fate remains unknown.
- 1.42 A witness, who was detained by the Sri Lankan Police's Criminal Investigations Department (CID) as recently as April 2012, reports being subjected to torture, sexual violence and multiple rapes. On one occasion, the witness reports being physically assaulted by another officer while she was being raped. The witness also stated that while in CID detention she heard other men and women crying and screaming out in pain every day.
- 1.43 Increasingly, women and men are willing to come forward to discuss their experiences of sexual violence, and new cases continue to be reported to ICEP. Although ICEP's focus is on the final stages of the conflict, the reports of post-conflict violations highlight that when perpetrators are not held accountable for gross violations of human rights, this can foster a culture of impunity that enables such violations to continue.
- 1.44 As this report was nearing completion, ICEP obtained new witness testimony that members of the SFs in Sri Lanka had destroyed forensic evidence in the post-conflict period. The allegations are that human remains from mass burial sites in the conflict zone were exhumed and were covertly destroyed. This highlights the urgent need for an internationally-mandated investigation.

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<sup>7</sup> WS-1003, [59]–[76].

## Conclusion

- 1.45 More than four years since the end of the Sri Lankan civil war, the Sri Lankan Government has failed to address serious and credible alleged violations of international law. The Sri Lankan Government has not complied with the UN Human Rights Council's March 2012 resolution on reconciliation and accountability. There is strong concern about the independence of Sri Lanka's judiciary and the inadequacy of other checks on executive and military power. Accordingly, there remains serious doubt that the Sri Lankan Government will establish a credible investigation into allegations of war crimes, crimes against humanity and breaches of international human rights law and IHL.
- 1.46 An independent and comprehensive international investigation is needed into these alleged violations of international law. Failure to do so can only damage the prospects of meaningful and enduring reconciliation in Sri Lanka. The absence of such an investigation will also ensure the ongoing impunity of those on both sides of the conflict who have committed violations of IHL and international human rights law, thereby emboldening those who may continue to abuse the civilian population.

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PIAC offers special thanks to the victims and survivors of the Sri Lankan civil war, who share their experiences in the hope that the international community will ensure that those responsible for breaches of international humanitarian law and international human rights law, committed on both sides of the conflict, are held to account.

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