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Secretary-General's Panel of Experts on Sri Lanka  
United Nations  
NY 10017

**War Crimes in Sri Lanka**  
**The available evidence establishes an urgent need for a properly resourced and supported international investigation process**

Dear Secretariat,

**Introduction**

1. ALHR welcomes the opportunity to make a submission in relation to the modalities, international standards and comparative experience with regard to accountability processes, taking into account the nature and scope of any alleged violations in Sri Lanka.

**About ALHR**

2. ALHR was established in 1993, and incorporated as an association in NSW in 1998 (ABN 76 329 114 323).
3. ALHR is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 1700 lawyers, with active National, State and Territory committees.
4. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.
5. ALHR is a member of the Australian Forum of Human Rights Organisations. It is a member of the Commonwealth Attorney General's NGO Forum on Human Rights, and the Department of Foreign Affairs Human Rights NGO Consultations.

**Thesis**

6. ALHR submits to the Tribunal that there is a plethora of evidence indicating that both sides in the Sri Lankan civil war engaged in war crimes. These acts in breach of IHL followed a long history of illegal and oppressive behaviour by Sri Lanka's State institutions. There is no likelihood that the Sri Lankan government will, itself, establish a credible or effective process. This evidence should be gathered by a properly resourced investigative body with

power to recommend criminal prosecution before an appropriate international legal tribunal where that is found to be appropriate.

### The Evidence

7. A number of independent and credible organisations have published reports indicating the existence of evidence showing that war crimes were committed on a very significant scale during the final months of the Sri Lankan civil war.
8. A briefing paper by the *Minority Rights Group International* in 2007, noted that while the majority Sinhalese community had been subjected to human rights violations, under both domestic law and International Humanitarian Law (IHL) there had been a highly disproportionate impact on the Tamil and Muslim minority communities.<sup>1</sup> Since the end of the civil war in May 2009, there is no identifiable peace dividend as per the daily life of the minority communities, particularly the Tamils of the northeast of the island who according to numerous international human rights bodies and NGOs such as the *International Crisis Group* continue to withstand sustained abuse at the hands of the Sri Lankan State and its public officers, the overwhelming majority of whom happen to be ethnic Sinhalese.<sup>2</sup> Since the defeat of the LTTE (whose officers were also culpable in breaching IHL) the exodus of Tamils (and now increasingly Muslims), leaving the island either legally or as asylum seekers has increased.<sup>3</sup>
9. Australia has been directly affected by this increase in Tamil asylum seekers from Sri Lanka. The impact on Australia was best summed by *The Age* which noted in an editorial "Australia has major interests in Sri Lanka, not least because the country is the main source of asylum seekers willing to risk the perilous journey by boat to Australia. The war and instability in Sri Lanka affect all the countries of South Asia - and by extension, Australia, as an Indian Ocean power. If the Rudd government genuinely seeks a reputation for an 'activist' foreign policy, Australia should take a stand against Sri Lanka's slide from democracy" (12-02-10).<sup>4</sup> The day before this appeared the *Sydney Morning Herald* noted in an editorial that the "descent into dictatorship must be watched with alarm by the democratic world, especially fellow members of the Commonwealth.... Until now Canberra has treated Rajapaksa gingerly, intent on getting co-operation in stopping the outflow of boat people refugees. Now it appears more and more that Rajapaksa is the cause, not the solution" (11-02-10).<sup>5</sup>
10. In early 2010 Sri Lanka, along with Afghanistan, was the subject of Prime Minister Rudd's recent policy shift to re-introduce indefinite and mandatory detention by refusing to process application for asylum from people coming from those two countries. While the Minister for Immigration and Asylum recently announced a recommencement of processing of asylum applications from both Sri Lanka and Afghanistan, he anticipated that as the situation in Sri Lanka was returning to *normality*, many such applicants would be unsuccessful. However the

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<sup>1</sup> Minority Rights Group International, 'One year on: counter-terrorism sparks human rights crisis for Sri Lanka's minorities', December 2007.

<sup>2</sup> International Crisis Group, 'Sri Lanka: A Bitter Peace', *Crisis Group Asia Briefing N°99*, Brussels, 11-01-10; U.S. Department of State, *Report to Congress on Recent Events in Sri Lanka*, October 2009 ([a report](#)). The report was mandated by the 2009 *Supplemental Appropriations Act*.

<sup>3</sup> The following report by Al Jazeera from November 2010 provides pictorial and video evidence, much of it already in the public domain, of the death in suspicious circumstances of both Tamil civilians and murder of Tamil LTTE cadres in the last days of the conflict: (<http://english.aljazeera.net/video/asia/2010/11/2010111010021857352.html>). The report concludes that many Tamils (although actual figures from the GOSL are difficult to ascertain) are voting with their feet and migrating to countries such as Australia.

<sup>4</sup> <http://www.smh.com.au/opinion/editorial/sri-lankas-ripples-go-far-beyond-the-island-20100211-nv19.html>.

<sup>5</sup> <http://www.smh.com.au/opinion/editorial/is-this-how-43b-will-be-managed-20100210-ns8z.html?skin=text-only>.

Gillard Government did not anticipate the unanimous judgement of the High Court in *Plaintiff M61/2010E v Commonwealth of Australia; Plaintiff M69 of 2010 v Commonwealth of Australia* (2010)<sup>6</sup> in which it was held that two Sri Lankan (Tamil) boat people subject to the offshore processing regime introduced by the Howard Government were denied [procedural fairness](#) in having their refugee claims denied. The court established that inquiries into the refugee status of offshore entrants were subject to the Commonwealth [Migration](#) Act 1958. Accordingly then the rules of procedural fairness applied as per their application for a temporary protection visa, which under the excision regime had been denied them. The court found that procedural fairness had not been granted to the two applicants whose applications were the subject of the court's considerations. It is anticipated that procedural fairness has not been granted to a large number of other applicants many of whom may have been repatriated to Sri Lanka at severe risk to their safety and well-being.

11. The decision in the High Court offers the promise that refugee applicants will now receive elementary procedural fairness from those charged with administering Australia's asylum system. The judgement while not directly engaging with the legal environment of the civil war in Sri Lanka has the effect of placing into sharp focus both the conduct of the civil war, as well as the Sri Lankan state's post-war conduct, particularly the on-going and sustained assault on the institutions of civil society.<sup>7</sup> Before summarising the *prima facie* evidence of war crimes committed by both the Sri Lankan state and the LTTE, a few words about the international legal context of Sri Lanka's recently concluded civil war.
12. Under the terms of IHL, Sri Lanka's conflict was characterised as a state of armed conflict of a non-international character. It was governed by Common Article 3 of the *Geneva Conventions* to which Sri Lanka is a party. On the relationship between domestic human rights protection, International Human Rights Law and International Humanitarian Law, the UN Human Rights Committee, which was established under the *International Covenant on Civil, and Political Rights* (ICCPR) to which Sri Lanka is a State Party to has ruled that the ICCPR applies "in situations of armed conflict to which the rules of international humanitarian law are also applicable."
13. Numerous Human Rights and conflict analysis reports since Mahinda Rajapakse became President in November 2005 have pointed out how and why the State systematically violated its obligations under the principals of IHL.<sup>8</sup> These reports have also drawn attention to violations by the LTTE, the principal non-State actor in the conflict. However the LTTE is not bound to the same standards as a State party. The 2008 country report on Sri Lanka by the *US State Department* opened by stating that the State's:

"respect for human rights continued to decline due in part to the escalation of the armed conflict. While ethnic Tamils composed approximately 16 percent of the overall population, the overwhelming majority of victims of human rights violations, such as killings and disappearances, were young male Tamils. Credible reports cited unlawful killings by government agents, assassinations by unknown perpetrators, politically motivated killings and child soldier recruitment by paramilitary forces [Pillaiyan/Karuna Group and the Eelam Peoples Democratic Party in Jaffna] associated with the government, disappearances, arbitrary arrests and detention, poor prison conditions, denial of fair public trial, government corruption and lack of

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<sup>6</sup> [http://mia.org.au/media/File/HCA\\_v\\_M61\\_and\\_M69.pdf](http://mia.org.au/media/File/HCA_v_M61_and_M69.pdf)

<sup>7</sup> International Crisis Group, 'Sri Lanka: A Bitter Peace', *Crisis Group Asia Briefing N°99*, Brussels, 11-01-10; International Crisis Group, *War Crimes in Sri Lanka*, Report N°191, Brussels, 17-05-10.

<sup>8</sup> See reports published since November 2005 by *Human Rights Watch*, the *Minority Rights Group*, Report of the UN Special Rapporteur, Philip Alston, the U.S. State Department Country Report on Sri Lanka for 2007 and the International Crisis Group Reports of 2006 and 2007.

transparency, infringement of religious freedom, infringement of freedom of movement, and discrimination against minorities. There were numerous reports that the army, police, and pro-government paramilitary groups participated in armed attacks against civilians and practiced torture, kidnapping, hostage-taking, and extortion with impunity. The situation deteriorated particularly in the government-controlled Jaffna peninsula. By year's end extrajudicial killings occurred in Jaffna nearly on a daily basis and allegedly perpetrated by military intelligence units or associated paramilitaries. There were few arrests and no prosecutions as a result of these abuses, although a number of older cases continued to make slow progress through the judicial system. Government security forces used the broad 2005 emergency regulations to detain civilians arbitrarily, including journalists and members of civil society."

14. In 2006 the *Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations* widened the definition of terrorism to include "acts of political or governmental change." By implication, the regulations could be directed against civil society groups and individuals critical of government and its agents. Clause 15 of the new Regulations also provided substantive immunity to police officers and armed forces personnel or "anyone else acting in good faith in terms of the regulations" (Minority Rights Group International 2007, 4). The regulations provided *carte blanche* for a sustained indiscriminate campaign against Sri Lanka's minority communities.<sup>9</sup> The abiding image of 2007 was Tamils been evicted from their temporary lodgings in Colombo on spurious counter-terrorism grounds. In a rare instance the Supreme Court intervened and suspended the evictions, following a petition by the Colombo based NGO, the *Centre for Policy Alternatives*. This was a rare moment of judicial independence, given that for much of Sri Lanka's postcolonial life since 1948 the domestic courts have failed when given the opportunity to uphold constitutional provisions precluding discrimination on the grounds of race or religion.<sup>10</sup>
15. The compromised manner in which the State deals with human rights violations (principally against Tamil and other ethnic and religious minority citizens) has received further reiteration in the final report (April 2008) by the *International Independent Group of Eminent Persons* (IIGEP). The latter was appointed by President Rajapakse in February 2007 to oversee the work of the *Commission of Inquiry to Investigate and inquire into Alleged Serious Violations of Human Rights* (the Commission). In their final report the IIGEP pointed to the conflict of interest in the way in which the Commission conducted its inquiries (with the Attorney General's office assisting the Commission), the absence of an effective witness protection program, the lack of transparency in its proceedings, the failure of the State to comply with requests for documentation by the Commission and the lack of financial independence of the Commission.
16. At war's end, and given the nature of the lack of credibility of Sri Lanka's judicial system, there is, as the recent report from the [International Crisis Group](#) (*War Crimes in Sri Lanka*, 17-05-2010) advocates, a need for Australia and the international community to take an active and principled approach with respect to holding both the Sri Lankan State and the LTTE to account under IHL. The suggestions that war crimes were committed during the closing five months of civil war are not new. Despite attempts by the Sri Lankan Government to prevent outside access to the areas of conflict, reports appeared in the media of violations of IHL throughout the period from January to May 2009, such violations diminishing only when the fighting came to an end.

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<sup>9</sup> ICG, *Sri Lanka's Human Rights Crisis*, 14-06-2007 ([www.crisisgroup.org/home/index.cfm?id=4896](http://www.crisisgroup.org/home/index.cfm?id=4896)).

<sup>10</sup> ICG, *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, 20-06-09.

17. The October 2009 U.S. State Department, (*Report to Congress on Recent Events in Sri Lanka*) brought together and catalogued, virtually, on a day by day basis, the generally publicly available reports of death and injury caused by attacks on civilian areas including hospitals, which it appears were deliberately targeted by the Sri Lankan military once their coordinates had been handed to them by the International Committee of the Red Cross (ICRC). In a key passage this report noted that:-

“The State Department has not received casualty estimates covering the entire reporting period from [beginning of] January to [end of] May 2009. However, one organisation, which does not differentiate between civilians and LTTE cadres, recorded 6,710 people killed and 15,102 people injured between January 20 to April 20. These numbers were presented with a caveat, supported by other sources, actually killed and injured are probably higher. This is because the majority of casualty statistics were based upon the deaths of people transferred to medical facilities or reported by eyewitnesses to attacks.”<sup>11</sup>

18. The ICG report (*War Crimes in Sri Lanka*, Report N°191, Brussels, 17-05-10) provides an overview of allegations from the existing literature. Its detailed consideration, however, is restricted to a limited number of incidents. These are described in detail and the descriptions draw upon evidence taking, mainly, from eye witnesses. The evidence taking (and associated evidence preserving) process has not been restricted to the limited number of incidents in the report. However, by describing in detail those incidents, and confirming the availability of reliable evidence to support those incidents, the report is able to press the case (supported herein by ALHR) for a properly resourced international investigation and action to provide accountability for the perpetrators of war crimes committed by both sides during the period of January to May 2009.
19. The analysis is particularly effective in that it links the events on the ground, as described by witnesses, to actions of the Government and Government forces as described in their official communications at the time. In this way, the report is able to conduct a legal analysis to show knowledge and infer intention by those Government forces and personnel who ordered or carried out the particular actions. What emerges from this analysis is the particularly calculated nature of the actions taken. This can be seen from the example of the attack on civilians and United Nations personnel in the newly declared *No Fire Zone* (NFZ) in late January 2010.
20. On January 17, 2009, the Government declared, unilaterally, an NFZ, in an area 7km away from Puthukuddiyiruppu (PTK), the town where the United Nations was conducting its food distribution operations. The zone contained LTTE emplacements and its southern edge was not far from the LTTE front lines (and the advancing Government front lines). It was in range of Government heavy artillery. On 21<sup>st</sup> January, after receiving its latest and long delayed food convoy, the UN was ordered by Government local headquarters to relocate to the NFZ. By agreement with the Government and LTTE forces, the UN departed on 23<sup>rd</sup> January and

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<sup>11</sup> US State Department, 15.

relocated to an open sports field north of Suthanriapuram Junction which was to be used as a local food distribution area by the UN supervised by local Government officials.

21. Civilians and other non-government organisations had also been ordered to relocate to the NFZ. As a result national staff of a number of other NGOs set up close to the UN. Some ICRC staff also relocated and set up just south of the Junction. Civilians were moving into the area in their thousands and many pitched their tents nearby, for the safety of the location, and accessibility to the food and shelter distributions.
22. The UN staff constructed bunkers for themselves and conducted a GPS survey allowing for a 200m buffer zone. A number of people sighted Unmanned Aerial Vehicles (“UAVs”) overhead. These UAVs would have allowed Government forces to see clearly the nature of the location and the presence of thousands of civilians as well as the UN and other NGOs. The coordinates of the location were communicated to the Government’s Joint Operations Headquarters (JOH) in Colombo and SFHQ – Vanni (the Vavuniya or regional headquarters of the Government Forces). The area was identifiable by sight by the 7 white UN lorries and a large UN flag.
23. There were 4 LTTE cadres armed with rifles camped just outside the distribution centre. At the corner of the site was an LTTE radio station in a shipping container. A few LTTE gun emplacements were within 500m of the centre. However, most of the LTTE cadres were located at the front lines and, accordingly, there was no justification or excuse based on “collateral damage” occurring as a result of attacking “legitimate” military targets located close to the UN position.<sup>12</sup> One might have thought that camping next to a UN food distribution centre, in a NFZ declared by the Government, in an area agreed to by Government officials and whose GPS coordinates had been conveyed to military headquarters and which had been clearly confirmed visually by the presence of UAVs would be safe. Not so as it turned out.
24. At about the time the UN staff was marking out their perimeter on 22<sup>nd</sup> January 2009, Sri Lankan security forces fired shells into the NFZ which they had declared days earlier, striking near the main (A35) road. Suthanriapuram Junction is a junction between the A35 and a smaller road. Many civilians were killed and wounded. UN staff and others contacted the Government and requested the bombardment to cease. The next paragraph of the report which details the series of events is quoted verbatim:-

“At around 3.00 am on 24 January the security forces shelled in and around the distribution centre. A shell landed between 5m and 8m from the UN bunkers, in the middle of some [Internally Displaced Persons’] shelters. At least eleven civilians were killed and more wounded in this attack, including women and children. A [World for Food Programme] driver was hit in the back of the head with shrapnel. The decapitated body of a young woman landed in front of the UN bunker. A UN vehicle was damaged by shell fragments and covered with pieces of flesh and other debris from the explosion ...”

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<sup>12</sup> Certainly, the presence of the riflemen and the radio station in a NFZ chosen by the government forces and imposed on the UN would not justify the murderous attacks which ensued.

25. There was more shelling on 24 January and the next day. The UN and others continued to contact the Government to request the shelling to cease. The UN negotiated with the Government and LTTE to allow their staff members to depart the NFZ and return to Puthukuddiyiruppu. The shelling subsided allowing this to occur at around 11.30 am on 25 January. The departing staff members observed along the 7 kilometres of the A35 main road many dead and injured civilians, destroyed bicycles and motor cycles and dead animals. In Puthukuddiyiruppu, the hospital was full of injured and dying people.
26. The ICG report analyses the facts of this series of attacks in light of *Article 8(2)(iii)* of the *Rome Statute of the International Criminal Court* and *Customary International Law* and concludes that there is sufficient *prima facie* evidence to reach the conclusion that war crimes were committed. The following conduct is attributed with respect to sections of the Sri Lankan security forces:-
- (a) the perpetrator directed an attack;
  - (b) the object of the attack was personnel, installations, material units or vehicles involved in a humanitarian assistance mission;
  - (c) the perpetrator intended that such personnel, installations, material units or vehicles to be the object of the attack;
  - (d) such personnel, installations, material units or vehicles were entitled to that protection given to civilians under the International Law of Armed Conflict (IHL);
  - (e) and the perpetrator was aware of the factual circumstances that established that protection.
27. The report recommends that the full investigation the need for which is established by the evidence available to the ICJ should extend to the Commander in the area, General Jayasuriya, and his military and civilian superiors, the head of the armed forces, General Fonseka, and the Sri Lankan Defence Secretary, Gotabhaya Rajapaksa who happens to be both an American citizen and the President's brother. There are many other incidents described in the reports containing similarly horrific detail.<sup>13</sup> ALHR similarly points to the need for the proper investigation of the described incidents and the bringing to account of those whom the investigation indicates were responsible for the events. However, noting the fact that the report only details a sample of the events in respect of which the ICG has received evidence, the international community must respond with an investigation that can deal with all such acts occurring across the areas of the fighting and at least during the whole of the five month period.
28. For the Panel's purposes, it is significant that these events have happened. It is further significant that the Government of Sri Lanka has categorically denied the possibility that any of its personnel might have engaged in attacks on civilians. It will not even admit to likelihood of a collateral civilian death toll (<http://www.youtube.com/watch?v=YGQqwcxA6cg>). It has resisted all international efforts to investigate, and to retrieve and preserve evidence, or to assign responsibility for those events. Its *Commission on Lessons Learnt and Reconciliation* (LLRC) under the chairmanship of Chitta Ranjan de Silva, the former Attorney General, is, at best, a tactical delaying

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<sup>13</sup> Following the Presidential election in February 2010 General Sarath Fonseka was arrested on dubious grounds – that he breached the military code of conduct by engaging in political activity in the closing stages of the war.



mechanism designed to ward off criticism from the EU/US.<sup>1415</sup> The government of Sri Lanka has been adept at the use of such tactics.

29. The U.S. State Department Report appreciated that statistics such as “at least 6,700 people killed and over 15,000 injured” have a tendency to slip past our ability to feel the true horror of events. The authors realised that to set incidents out, page after page, might have a more intense and immediate impact. In that vein, the following three entries from as early as 29 January give some sense of what the inhabitants of the government declared (with no sense of irony) no fire zones were experiencing day after day:
- a. “An organisation reported that 226 sick and wounded civilians, 51 of them children, were evacuated from the Vanni region. Many of them had lost limbs due to shrapnel and shells.
  - b. A source in Puthukkudiyurippu reported to Human Rights Watch hearing very heavy shelling and rifle fire. Forty-seven civilians were killed and 176 injured by the shelling.
  - c. Human Rights Watch reported that the Sri Lankan government shelled Vallipuram, a town just outside the government-declared safe zone. A local source reported that there were no known LTTE positions in the vicinity at the time of the attack.”
30. The incidents flowed for the entirety of the conflict, for another four months. The report sets them out with almost every day for the entire five months involving similar incidents of civilian casualties in the declared no fire zones. The reports of shelling and bombing are interspersed with incidents where LTTE soldiers were reported as taking forcible action including firing on civilians to prevent people from crossing the front lines and “escaping the no fire zones”.<sup>16</sup> There are also reports that government soldiers also fired on escaping civilians as they approached their positions.<sup>17</sup> Many of the reports involved the shelling or bombing of hospitals even though the government had been made aware of the hospital positions.<sup>18</sup>

### ***Killing of Captives or Combatants seeking to Surrender***

31. These incidents only cover two pages in the State Department report.<sup>19</sup> In some ways, however, such incidents are more culpable in that they are more obviously deliberate. Two LTTE political leaders,

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<sup>14</sup> The eight-member LLRC appointed in May 2010 has been recording evidence from the public to report on the lessons to be learnt from the events in the period from 21<sup>st</sup> February 2002 to 19<sup>th</sup> May 2009. The *Centre for Human Rights* in Colombo in a statement on November 23<sup>rd</sup> 2010 requested the LLRC ensure a free and secure environment where people can give evidence without fearing future persecution in its up-coming sessions in Trincomalee and Mannaar. This statement as prompted by what appeared to be evidence of intimidation directed at participants at the sessions held by the LLRC in Kayts Island off the Jaffna peninsula.

<sup>15</sup> When the *Independent Group of Eminent Persons* concluded their business in Colombo in 2008, they noted that as Attorney General, Chitta Ranjan de Silva had “played an inappropriate and impermissible role in the proceedings of the *Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights*, and in advising the *Commission* on the conduct of its proceedings.” In its final resignation statement the IIGEP said that it had “not been able to conclude...that the proceedings of the Commission have been transparent or have satisfied basic international norms and standards.” International Human Rights monitoring bodies such as *Human Rights Watch* and *Amnesty International* have refused to participate in the proceedings of the LLRC which they have characterised as a thoroughly compromised body. <http://www.hrw.org/en/news/2010/05/27/letter-secretary-clinton-sri-lankas-lessons-learnt-and-reconciliation-commission-llr>; <http://hrbrief.org/2010/11/accountability-in-sri-lanka-lessons-learnt-and-reconciliation-commission/>

<sup>16</sup> US State Department, 42, see entry for 12 May.

<sup>17</sup> US State Department, 34, entry for 8 April: this incident was particularly horrendous in that government broadcasts into the area encouraged civilians to leave because a government operation was about to take place and then shelled those civilians who responded to the warning.

<sup>18</sup> US State Department, 40, entry for 8<sup>th</sup> May.

<sup>19</sup> US State Department, pp. 45-46.



Nadesan and Puleedevan, had attempted to negotiate their surrender with some 300 other people. They had sought that a United Nations official attend to ensure their safety but, instead, received personal assurances by the President that they would be safe. Despite this, the eye-witness account reported by the State department is that, on 18 May, the two led another 12 people towards government lines waving white flags. They were greeted with machine gun fire and all were killed.<sup>20</sup> A semi-official confirmation of this type of incident was reported on 18 July when Army Chief General Sarath Fonseka was reported by the media as stating at a celebratory event in Ambalangoda that “the military had to overlook traditional rules of war and even kill LTTE rebels who came to surrender carrying white flags during the war against the LTTE”.<sup>21</sup>

32. Since the State Department report was published, more and more photographic evidence is becoming available which appears to confirm the occurrence of the execution of captives by the Sri Lankan Defence Forces during the closing stages of the war.<sup>22</sup> It would appear that soldiers who were present at the killing are circulating or, themselves, providing this evidence. A properly resourced inquiry would be able to obtain access to this evidence.

### **Disappearances<sup>23</sup>**

33. The reports of disappearances during the period concern internally displaced people either in camps or at government checkpoints. These appear to be people in government controlled areas and away from the conflict. The first report in the period involves a woman having been separated from her husband on 3<sup>rd</sup> February.<sup>24</sup> The last detailed report concerns family members at the big camps at Manik Farm being separated from their children.<sup>25</sup> Alarming, numerous organisations, including the *Coalition to stop the Use of Child Soldiers*, reported government affiliated paramilitary groups as abducting children from IDP camps and from Vavuniya.<sup>26</sup>

### **Food Restrictions**

34. These reports span 10 pages.<sup>27</sup> They cover the period from 30 January to 15 May and the incidents occur almost on a daily basis. Despite an infrastructure of humanitarian groups, including the International Committee for the Red Cross, being available to deliver food and medications, the reports indicate that the government forces refused to allow adequate amounts of food and medicine to the civilians who were trapped by the fighting.<sup>28</sup> In particular, many major operations had to be conducted without anaesthetic<sup>29</sup> because aid groups were forced to take such drugs from their shipments.<sup>30</sup>

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<sup>20</sup> US State Department, pp. 45-46.

<sup>21</sup> US State Department, 46.

<sup>22</sup> See, for example, the photographs [at this link](#).

<sup>23</sup> US State Department, 47-49.

<sup>24</sup> US State Department, 47.

<sup>25</sup> US State Department, 48.

<sup>26</sup> US State Department, 49.

<sup>27</sup> US State Department, 50-59.

<sup>28</sup> See US State Department, 51 where the entry for 2<sup>nd</sup> February indicates that six internally displaced people died in Putumattalan hospital due to lack of food.

<sup>29</sup> See US State Department, 55, the entry for 17<sup>th</sup> March.

<sup>30</sup> See US State Department, 58, the entry for 8<sup>th</sup> May where a ship was forced back to Trincomalee and prevented from landing food or medicines.

## **Conclusion**

35. The reports of the US State Department and of the ICG show that there are many documented incidents which should be properly investigated both domestically and by international bodies. It is also abundantly clear that the re-elected President Rajapaksa and his brother Gotabhaya Rajapakse, the Secretary of the Defence Ministry will not allow an effective investigation without the international community acting to make that investigation occur. Even then, the Sri Lankan government will do its best to frustrate or prevent whatever investigation is put in place. The international community must not be intimidated or put off by such self-serving action.
36. ALHR readily acknowledges that we have drawn upon a very small portion of the credible voices raised internationally calling for an effective investigation into Sri Lankan war crimes.<sup>31</sup> What is clear, however, is that the evidence of war crimes is available and must be collected and acted upon before intimidation; further criminal acts; and the sands of time destroy it or cover it up.<sup>32</sup>

**Stephen Keim SC**

**President**

**Australian Lawyers for Human Rights**

**15 December 2010**<sup>33</sup>

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<sup>31</sup> See for example: "Call on the UN to Investigate War Crimes in Sri Lanka," *Amnesty International*, <http://www.amnestyusa.org/all-countries/sri-lanka/call-on-the-un-to-investigate-war-crimes-in-sri-lanka/page.do?id=1691063>; "Sri Lanka: Hague must insist on independent investigation into war crimes when he meets his Sri Lankan counterpart, says Amnesty," *Amnesty, UK*, 18 October 2010, [http://www.amnesty.org.uk/news\\_details.asp?NewsID=19046](http://www.amnesty.org.uk/news_details.asp?NewsID=19046); "Sri Lanka: Repeated Shelling of Hospitals Evidence of War Crimes: 30 Attacks Reported on Medical Facilities Since December," *Human Rights Watch*, 08 May 2009, <http://www.hrw.org/en/news/2009/05/08/sri-lanka-repeated-shelling-hospitals-evidence-war-crimes>; "Sri Lanka's disturbing actions met by 'deafening global silence'," *The Elders*, 02 August 2010, <http://www.theelders.org/media/mediareleases/sri-lankas-disturbing-actions-met-by-deafening-global-silence>; "Sri Lanka one year on from war," *The Elders*, 18 May 2010, <http://www.theelders.org/media/news/sri-lanka-one-year-war>; "Dublin Tribunal finds against Sri Lanka on charges of War Crimes," *People's Tribunal on Sri Lanka*, 18 January 2010, [http://www.ifpsl.org/index.php?option=com\\_content&task=view&id=24&Itemid=1](http://www.ifpsl.org/index.php?option=com_content&task=view&id=24&Itemid=1) and the latest input from the US State Department: U.S. Department of State, *Report To Congress on Measures Taken by the Government of Sri Lanka and International Bodies To Investigate Incidents During the Recent Conflict in Sri Lanka, and Evaluating the Effectiveness of Such Efforts*, 11 August 2010, <http://www.state.gov/s/wci/srilanka/releases/145884.htm>.

<sup>32</sup> ALHR is aware that the Australian chapter of the International Commission of Jurists has acted to take statements from Sri Lankan émigrés and asylum seekers in Australia and has been provided to the panel. ALHR commends the result of that work to the panel. ALHR anticipates that it would be able to obtain and provide volunteer lawyers to assist in expanding the ICJ exercise were that to become necessary or desirable.

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