



# General Assembly

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## Human Rights Council

### Fortieth session

25 February–22 March 2019

Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

## **Written statement\* submitted by African Green Foundation International, a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 February 2019]

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\* Issued as received, in the language(s) of submission only.



## **Rebuttal to allegations of OISL report-Impact of hostilities on civilians and civilian objects.**

OISL Report described 11 allegations, ON Sri Lanka of which seven are for Sri Lankan government and three are for LTTE Tamil terrorists.

We would like to submit a Written Statement on one of the allegations “**Impact of hostilities on civilians and civilian objects**”, made against Sri Lankan Government under following sub-categories:

1. Indiscriminate shelling of civilians in the NFZ's, and
2. Shelling of hospitals.

### **A. Indiscriminate shelling of civilians**

OISL-Panel examines incidents of attacks on civilians and civilian objects occurred between January and May 2009. Further says that some of the alleged attacks occurred inside the three Government-declared No Fire Zones (NFZs). It says that At least four medical facilities – PTK, Mullaivaikkal, Udayarkaadu and Putumattalan – were shelled with unguided weapons and ammunition such as MBRLs according to witness testimonies.

What are the criteria that a normal and reasonable person could use to gauge or assess whether there was indiscriminate shelling of civilians during a given period of time?

Tens of thousands of civilians were killed during the last phase of the war. The figure of 40,000 is also usually given. If that figure is correct, so the first question is whether, in fact, 40,000 or some such large number of civilians was killed?

One can look at the testimony of outside observers. There is an impression in the outside world especially in the West that the Government simply expelled all foreigners including foreign correspondents from the conflict zone. This impression is wrong. Members of the Indian press were present throughout, and, as for international organizations, the ICRC was also present throughout. It is simply inconceivable that these persons would not have got some inkling if mass and indiscriminate killings of civilians were in fact being committed.

### **The numbers**

The Department of Census and Statistics of Sri Lanka completed a full census of the

Northern Province in Nov. 2011. There were a total of 22,329 deaths between the years 2005-2009, about half of which (11,172) occurred in 2009.

Of the above, 2,523 were due to natural causes,

7,934 are classified as other deaths; accidents, homicides, suicides, etc.

Census Department also say, —71% of deaths that occurred in 2009 are reported as due to extraordinary circumstances but majority of deaths prior to and beyond that are reported to be the results of natural causes. It should be recalled that, the conflict ended in late May 2009.

The above means that, roughly 8,000 terrorists died in the first five months of 2009 in the war. It is generally understood that around 5,000 LTTE terrorists died in the closing phase of the war.

That means that, at most the balance 3,000 can be concluded as civilians died in the last phases of the war.

There appears to be some independent corroboration for the Census Department's numbers.

1.0 The UN Country Report, completed in 2009 gives an estimate of the number of persons killed between August 2008 - May 13 2009, as 7,721. That number is very close to the one generated by the Census Department, 8,000.

2.0 There is a study by the American Association for the Advancement of Science of aerial photographs of the conflict-zone at the very peak of the fighting. The purpose of the study was to find out, among other things, if there was evidence of a rapid expansion of gravesites, or evidence of mass graves, which would indicate that large numbers of people were in fact being killed.

The study found little or no expansion of gravesites, and no evidence of mass graves, leading to the obvious inference that large numbers of civilians were not being killed.

It means that 40,000 or even 30,000 or 20,000 civilians did not die. The actual number is roughly 3,000.

The most important fact is that a reasonable person must understand about the conditions under which the last phase of the war was fought by the Sri Lankan military. 300,000 civilians as hostages was moving from place to place as the SLA began to close in on it. For instance, as early as 2011, the POE admitted that around 330,000 civilians were trapped into an ever decreasing area, fleeing the shelling but kept hostage by the LTTE.

Further, Panel of Expert (POE) headed by Mr. Darusman appointed by then Secretary General of UN confirmed that Tamil civilians were used as a human shield by the LTTE Tamil terrorists;

- Retaining the civilian population in the area that it controlled was crucial to *the LTTE strategy*.

The presence of civilians both lent legitimacy to the LTTE's claim for a separate homeland and provided a buffer against the SLA offensive.

To this end, the LTTE forcibly prevented those living in the Vanni from leaving.

Even when civilian casualties rose significantly, the LTTE trained recruits as well as civilians as —cannon fodder in an attempt to protect its leadership.

Finally, the following admission by the POE is also crucial:

From February 2009 onwards, the LTTE started point-blank shooting of civilians who attempted to escape from the conflict zone, significantly adding to the death toll in the final stages of the war.

It also fired artillery in proximity to large groups of internally displaced persons (IDP's) and fired from, or stored military equipment near, IDP's or civilian installations such as hospitals.

The above observations about the LTTE's strategy during the last phase of the war are corroborated by the OISL,

### **OISL Report stated that:**

[A] —Available information suggests that the LTTE put in place physical measures to prevent people from leaving its controlled areas, including the creation of checkpoints and sentry positions.

These positions together with LTTE mobile patrolling units were *seen stopping civilians attempting to cross into Government controlled areas*.

[B] —Witnesses described how LTTE cadres blocked their path as they tried to leave the conflict area, forcing them to retreat. There were allegations that some were threatened and subjected to intimidation.

[C] —On 9 February 2009, a female suicide bomber crossed over and blew herself up at an IDP registration point at Vishwamadu, Mullaitivu District, killing a number of soldiers and at least eight civilians, including a child.

The United Nations spokesperson in Sri Lanka at the time stated —the UN deplores the attack that killed and endangered the lives of innocent civilians by LTTE, especially those fleeing the fighting.

**Mr. John Holmes, (Briefing to the Security Council on the humanitarian situation in Sri Lanka 27th February 2009) :**

Many of these people have been displaced many times in recent months, and indeed over the years, but they now face very great danger from fighting between the Sri Lankan Government forces and the LTTE.

And there is strong evidence that the LTTE are preventing them from leaving.

**Thamilini Jeyakkumaran<sup>50</sup> (Under the Shade of a Sharp-edged Sword)**

I saw a group of fighters from the Malathi Brigade next to the fence of the Sunandipuram school, getting ready for battle. The Commander of the Malathi Brigade, Vidusha, was with them, and I went there to speak with her.

I have no answers to the questions these sisters pose, she said, with such frustration and anguish as I had never seen in her before. —The people are going to the SLA because there is nothing left to do.

The Organization has ordered that people so leaving be shot below the knee.

My God, how can I order these girls to shoot these people?

When combined with certain other details Thamilini mentions, they provide powerful confirmation of what outside observers, including in the passages quoted above, have said about the LTTE's conduct towards civilians during the last phase of the war.

## **Testimony of outsiders**

**Muralidar Reddy (Frontline)**

Reddy was part of a group of —embeddedll reporters in the battlefield.

Reddy say that,

*On May 11, the Tigers seemed to have deserted their sentry-points, dismantled their defense-lines, and destroyed everything they could. The exodus of the last batch of civilians started on May 12/13 and perhaps by the night of May 15 there were no civilians left in the 1.5 square-kilometer area the Tigers were boxed into.*

A number of important points can be highlighted from the above passages,

1. it is clear that he had an opportunity to speak to and interact with the civilians who were just coming out of the battle-zone.
2. It is also clear, from the prefatory note, that he had access to the internet, and therefore would have been generally aware of the increasing clamor being made internationally, particularly by *Tamilnet* and other LTTEfriendly sources, that Government troops were massacring civilians.

It is reasonable to presume, therefore, that as an experienced journalist he would have been on the lookout for any statements by the civilians that might corroborate that such massacres were in fact being carried out.

Meanwhile, since he had the opportunity to actually interact with the civilians, it is also reasonable to presume that he would have taken the opportunity to ask them directly what they knew of any such massacres.

There is not the slightest indication in the article (or in any of Reddy's other articles) that he heard the civilians say Government troops were carrying out massacres.

One can draw only one reasonable inference from the above: namely, his on-the spot observation and —sense was that no such massacres were in fact going on.