

Paras 1 to 22

[N. B.: In May 2009, Sri Lankan governmental forces defeated the LTTE, ending the conflict after 25 years. However, the situation of the internally displaced persons, described in this report, did not change after the conflict, and thousands of Sri Lankan were still living in IDP camps at the end of 2009, awaiting resettlement.]

[Source: Human Rights Watch, “War on the Displaced, Sri Lankan Army and LTTE Abuses against Civilians in the Vanni”, Report, February 2009, available at <http://www.hrw.org>. Footnotes omitted]

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

War on the Displaced

Sri Lankan Army and LTTE Abuses against Civilians in the Vanni

[...]

February 2009

[...]

1. After 25 years, the armed conflict between the Sri Lankan government and the separatist Liberation Tigers of Tamil Eelam (LTTE) may be nearing its conclusion. But for the quarter of a million civilians trapped or displaced by the fighting, the tragedy has intensified.

[...]

III. Violations of the Laws of War

1. During the ongoing fighting in the Vanni, both the Sri Lankan armed forces and the LTTE have committed serious violations of international humanitarian law with respect to the conduct of hostilities. The high civilian casualties of the past months can be directly attributable to these violations. [...]

Violations by the LTTE

Preventing Civilians from Fleeing the Conflict Zone

1. The LTTE has deliberately prevented civilians under its effective control from fleeing to areas away from the fighting, unnecessarily and unlawfully placing their lives at grave risk. As the LTTE has retreated in the face of SLA [Sri Lankan Army] offensive operations, it has forced civilians to retreat with it, not only prolonging the danger they face, but moving them further and further away from desperately needed humanitarian assistance. And as the area that the LTTE controls shrinks, the trapped civilian population has become concentrated, increasing the risk of high casualties in the event of attack and placing greater strains on their living conditions.
2. More than 200,000 civilians, some already displaced more than 10 times, are believed to be trapped inside the Vanni war zone. Among those trapped are more than 250 national staff members of international organizations, most of whom currently serve as volunteers for local government agents.
3. The LTTE has long placed restrictions on freedom of movement of those living in LTTE controlled areas. Movement in and out has been sharply regulated, not only for security, but as part of forced recruitment efforts and for "taxation" purposes. Since 2008, the LTTE pass regime granting permission to individuals to leave the Vanni has grown increasingly strict. [...]
4. As civilians have become more desperate and the LTTE has increasingly lost control, more and more people have tried to flee LTTE-controlled areas. The LTTE has forcibly tried to block these efforts, including by deliberately firing on civilians. [...]
5. In several cases, the LTTE has deliberately attacked civilians in an effort to prevent them from fleeing. [...]
6. Displaced persons in Pampaimadu camp in Vavuniya reported that because the government declared "safe zone" was no longer safe and SLA forces were advancing, on February 6 a group of about 80 people began walking towards the front line in Visuamadu. The LTTE did not have any fortified positions in Visuamadu, just a few hundred meters from the government lines, but there were several LTTE cadres there. When the group tried to cross, the LTTE cadres opened fire, wounding one or two people. And on February 4 and 5, LTTE cadres fired upon civilians who tried to cross the front line in the Moongkilaaru area.

[...]

Putting Civilians at Unnecessary Risk

1. The LTTE practice of forcing civilians to retreat with its forces, rather than allowing them to flee to safer areas, has meant that LTTE forces are increasingly deployed near civilians in violation of the laws of war. When military forces deliberately use civilians to protect their positions from attack, it is considered to be "human shielding," which is a war crime.

[...]

1. The LTTE has also continued to place civilians at serious risk by forcibly recruiting civilians for untrained military duty and for labor in combat zones. The LTTE also has a long history of using children under 18 in their forces, including in armed combat, and the UN has reported that it continues to do so. These practices violate international humanitarian law. Since September 2008, the LTTE has increasingly forced people with no prior military experience to fight or perform supportive functions on the front lines, a practice which has led to many casualties. [...]
2. On February 17, the UN Children's Fund, UNICEF, issued a statement expressing grave concern for the safety of children in conflict areas. "We have clear indications that the LTTE has intensified forcible recruitment of civilians and that children as young as 14 years old are now being targeted," said Philippe Duamelle, UNICEF's representative in Sri Lanka. "These children are facing immediate danger and their lives are at great risk. Their recruitment is intolerable."

Violations by the Sri Lankan Armed Forces

[...]

Attacks on the "Safe Zone"

1. Many of the civilian deaths reported in the past month have occurred in an area that the Sri Lankan government has declared to be a "safe zone." On January 21, the Sri Lankan armed forces unilaterally declared a 35-square-kilometer "safe zone" for civilians north of the A35 road [...]. The Sri Lankan Air Force dropped leaflets appealing to civilians to move into the safe zone as soon as possible.
2. During the next days, several thousand people gathered in a large playground located just north of the A35 in the safe zone. The playground also functioned as a food distribution center for the local government agent (GA) and international organizations. Several people located in or around the GA food distribution center told Human Rights Watch that, despite the army declaration of a safe zone in the area, the area was subjected to heavy shelling from SLA positions in the period January 22-29, which killed and injured hundreds of people.
3. Around 11:45 a.m. on January 22, "Premkumar P." was traveling on his bike on the road parallel to the playground when shelling started. He told Human Rights Watch:

[...]

We could hear where the shelling was coming from. It was coming from the other side of the A35 road [from the area where government forces were located]. We also heard shelling from behind us, but these did not land in the safe zone. They landed on government forces. The LTTE positions were too close to the distribution center. It was impossible for shells from these [LTTE] positions to land in the safe zone. [...]

1. It is not a violation of international humanitarian law for LTTE forces to enter safe zones unilaterally declared by the Sri Lankan government. (Because the "safe zones" were not established by agreement with the LTTE, they cannot be formally considered as "protected zones" as set out in the First and

Fourth Geneva Conventions, Protocol I, and in customary humanitarian law.) Several sources told Human Rights Watch that LTTE forces maintained positions in the safe zone (although about two to four kilometers north of the playground), from which they fired on SLA positions. And as LTTE forces retreated, they moved heavy artillery eastward through the northern part of the safe zone.

2. The SLA is not prohibited from attacking LTTE forces inside a safe zone. At the same time, having declared the area a safe zone for civilians, the SLA encouraged civilians to go to the area, increasing the vulnerability of civilians in the event of an attack. By creating the zone, government forces took on a greater obligation to ensure that they spared civilians from the effects of attacks. Given this civilian presence, attacks on valid military targets in the safe zone should only have been carried out after issuing an effective advance warning that the area was no longer a zone protected from attack.

Attacks on Hospitals

1. During the fighting in 2009, the few hospitals that exist in LTTE-controlled areas have repeatedly come under artillery attack. [...]
2. Human Rights Watch has gathered information from aid agencies and eyewitnesses on more than two dozen incidents of artillery shelling or aerial bombardments on or near hospitals. Hospitals are specially protected under international humanitarian law. Like other civilian objects, they may not be targeted. But under the Geneva Conventions, hospitals remain protected unless they are “used to commit hostile acts” outside their humanitarian function. Even then, they are only subject to attack after a sufficient warning has been given, and after the warning has gone unheeded.
3. A witness to a PTK hospital attack in mid-January expressed to Human Rights Watch a broader belief that a perceived LTTE presence explained the attack:

When I was in PTK, waiting for the bus to get out – on January 14 or 15, I saw heavy shelling in the hospital area. The bus stop was nearby and I could see shells landing there. People were saying that the SLA was shelling the hospital because there were some LTTE cadres there.

1. The presence of wounded combatants in hospitals does not turn them into legitimate targets. Deliberately attacking a hospital is a war crime.

[...]

1. After PTK hospital had been shelled over several days in February, its patients were transferred to a makeshift hospital in a school and community center in Putumattalan village, on the coast. [...]
2. The International Committee of the Red Cross (ICRC) reported that even this makeshift hospital had repeatedly come under artillery attack. ICRC spokeswoman Sophie Romanens said, “They say shelling is coming close and there are some patients dead because the place was hit by shells on Monday [February 9].”

[...]

Paras 23 to 46

IV. Humanitarian Access

[...]

1. International aid agencies have had very limited access to the Vanni since the Sri Lankan government ordered the UN to leave the region in September 2008. The government has permitted food relief to be delivered, but it has not allowed international aid workers to remain on the ground to ensure that the aid is reaching the population at risk. [...]
2. A source indicated to Human Rights Watch that one of the main reasons for the difficulty in organizing convoys in and out of the Vanni was that the SLA and the LTTE were unable to agree on the route to be used. Seeking to use the humanitarian convoys to advance their military positions, both sides insisted on different routes, blocking the delivery of much-needed aid to thousands of civilians.

We got to the last SLA checkpoint near Oddusuddan from where the ICRC was supposed to accompany us through no-man's land to the LTTE checkpoint 13 kilometers south of PTK. As soon as we passed the SLA checkpoint, military vehicles joined the convoy and followed the convoy on both sides. LTTE saw it and started firing. The army returned fire and the convoy had to stop for one hour. At this time nobody was injured, but when the same thing happened to the GA [government] convoy the next day, their driver was injured in crossfire.

[...]

1. Similar problems have prevented international organizations from evacuating patients and medical staff from the war zone. This has included evacuating patients from the PTK hospital, which came under repeated shelling from Sri Lankan forces. [...]
2. The ICRC was finally able to escort 226 sick and wounded patients requiring urgent medical attention from PTK hospital on January 29. Despite repeated requests from the ICRC, government forces and the LTTE did not grant safe passage to evacuate additional patients and medical staff for nearly two weeks, forcing patients and medical staff to evacuate to the Putumattalan make-shift hospital on February 4. Finally, on February 10 and 12, the ICRC evacuated more than 600 patients by boat from Putumattalan to the district capital of Trincomalee, far away from the fighting.
3. Under international humanitarian law, the government is responsible for meeting the humanitarian needs of the war-affected population. Parties to an internal armed conflict – in this case the Sri Lankan government and the LTTE – must allow humanitarian relief to reach civilian populations that are in need of food, medicine, and other items essential to their survival. If the government is unable to fully meet this obligation, it must allow the humanitarian community to do so on its behalf. Parties to a conflict must ensure the freedom of movement of impartial humanitarian relief personnel – only in cases of military necessity may their activities or movements be temporarily restricted.
4. The UN Guiding Principles on Internal Displacement provide authoritative standards on the obligations of governments to internally displaced persons. Under the principles, the authorities are to provide displaced persons “at a minimum” with safe access to essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation. [...]

V. Plight of the Internally Displaced

[...]

1. The government has arbitrarily detained people during screening procedures; subjected all internally displaced persons, including entire families, to indefinite confinement in military-controlled camps; and failed to provide adequate medical and other assistance to displaced persons. The government has directly restricted the efforts of relief agencies seeking to meet emergency needs, and has deterred agencies from offering greater support through policies that the agencies rightly perceive as unlawful.
2. The LTTE's attempts to prevent civilians from fleeing the conflict zone remain the main reason why tens of thousands of people remain trapped. Various sources told Human Rights Watch, however, that many civilians who are able to flee have been reluctant to cross over to the government side because they fear for their life and safety in the hands of the government forces. [...]

Screening procedures and unknown fate of the detainees

1. Sri Lankan security forces subject people fleeing from LTTE-controlled areas to several stages of screening, ostensibly to separate those affiliated with the LTTE from displaced civilians. While the government has legitimate security reasons for screening displaced persons to identify and apprehend LTTE cadres, the screening procedures need to be transparent and comply with the requirements of international humanitarian and human rights law. So far, none of these requirements have been met and dozens of individuals, perhaps many more, have been detained during the screening process. The fate of such detainees remains unknown, raising fears of possible enforced disappearances and extrajudicial killings.
2. [...] Most displaced persons are initially screened during their first encounter with military forces after they have crossed the front line. The army currently transports the displaced persons to one of the hospitals in Kilinochchi where they spend up to 36 hours, being questioned by the security forces. In Kilinochchi, the security forces encourage people to reveal any affiliation that they have with the LTTE voluntarily.
3. According to several sources, at the Omanthai checkpoint, the main screening point for displaced persons on the main A9 roadway before their arrival in camps in Vavuniya, the army conducts a more thorough screening process. During this screening process, the army has separated dozens of men and women aged 18 to 35, as well as some teenage children, from their families, allegedly for further questioning.
4. Very little information is available regarding the first two stages of screening and it is not possible to verify whether and to what extent detentions occur in these locations. The government provides no information on who has been arrested. [...]
5. [...] The government initially agreed to allow the ICRC and the UN High Commissioner on Refugees to monitor the screening process there. In practice only the ICRC was allowed at the checkpoint, and since February 7, 2009, it too has been barred from monitoring the screening procedure. [...]
6. Meanwhile, dozens if not hundreds of people – mostly young men and women – appear to have been detained at the Omanthai checkpoint as of early February 2009. Some have been released within days and transferred to the IDP camps in Vanunya, but the fate of numerous others remains unknown.

[...]

Confinement in internment camps

1. Upon arrival in Vavuniya, all displaced persons apparently without exception are subjected to indefinite confinement in de facto internment camps, which the government calls transit sites, “welfare centers,” or “welfare villages.” Those requiring immediate medical attention are first taken to the hospital, and then to one of the camps [...].
2. [...] Local authorities were not prepared for the large influx of displaced persons and did not allow international agencies to adequately prepare the sites. As a result, the government started putting newly arriving displaced persons into schools and colleges, interrupting the educational process for hundreds of schoolchildren and students, many of whom had to vacate the facilities.
3. At the same time, relief agencies were struggling to set up additional shelter, water, and sanitation facilities at the last moment, as the displaced persons were being brought to the sites.
4. Sri Lankan authorities have ignored calls from the international community to ensure the civilian nature of the camps. The perimeters of the sites are secured with coils of barbed wire, sandbags, and machine-gun nests. There is a large military presence inside and around the camps.

[...]

1. Several sources reported to Human Rights Watch the presence of plainclothes military intelligence and paramilitaries in the camps. A UN official in Vavuniya told Human Rights Watch that she and colleagues have seen members of paramilitary groups in different camps. In particular, local staff members recognized several members of the People’s Liberation Organization of Tamil Eelam (PLOTE), a pro-government Tamil paramilitary organization long implicated in abuses, present at one of the camps.
2. While officially the camps are run by civilian authorities, in reality the military remains in full control, ensuring, as one relief worker put it, that “nobody gets in or out.” [...]
3. Displaced persons confined in the camps enjoy no freedom of movement and are not allowed any contact with the outside world. [...]
4. Several relief workers working with displaced persons told Human Rights Watch that many are devastated because they have been separated from their family members and have no information about their relatives [...]. International agencies have been trying to assist with family reunification at least for those who made it to Vavuniya, but since the authorities have not provided them with IDP registration lists from different camps, so far it has been virtually impossible.

[...]

1. Sri Lankan authorities maintain that detention at the camps is a security measure to protect displaced persons from possible LTTE reprisals. While the government has an obligation to protect internally displaced persons, it cannot do so at the expense of their lawful rights to liberty and freedom of movement.
2. The Sri Lankan government’s treatment of displaced persons violates their fundamental rights under international law. International human rights and humanitarian law during internal armed conflicts prohibit arbitrary detention. The UN Guiding Principles on Internal Displacement, an authoritative framework for the protection of displaced persons derived from international law, provides that, consistent with the right to liberty, internally displaced persons “shall not be interned in or confined to a

camp.” The principles recognize that “exceptional circumstances” may permit confinement only for so long as it is “absolutely necessary,” but the Sri Lankan government has not demonstrated that such circumstances exist.

[...]

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Discussion

1. What was the nature of the conflict between the Sri Lankan Army (SLA) and the LTTE? Did IHL still apply after May 2009, when the LTTE was officially defeated? Does IHL stop applying as soon as the hostilities end? In the present case, did IHL still apply to the persons displaced as a result of the conflict? (P II, Art. 2(2))
2. (*Paras [3]-[9]*) Which rules of IHL does the LTTE violate when it prevents civilians from fleeing the conflict? Which rules of IHL does it violate when it forces civilians to retreat with it? May this be equated to deportation or forcible transfer? Do you agree with Human Rights Watch that the LTTE is thereby using civilians as human shields? (GC I-IV, Art. 3; P II, Art. 17; CIHL, Rules 15, 22-24, 97 and 129)
3. (*Para. [5]*) Under IHL, is the LTTE allowed to restrict the freedom of movement of persons living in LTTE-controlled areas? May it do so for security reasons? Is it really safer for civilians to be forced to stay among LTTE members?
4. (*Paras [10]-[11]*)
 - a. Is the forced recruitment of civilians prohibited by the IHL of non-international armed conflict? If the recruited persons are above 18 years of age? If they are between 18 and 15? If they are below 15? (GC I-IV, Art. 3; P II, Art. 4(3)(c); CIHL, Rules 136 and 137; UN Guiding Principles on Internal Displacement, Principle 13 [See UN, Guiding Principles on Internal Displacement])
 - b. Is there an obligation under IHL to give new recruits military training before sending them into combat?
5. (*Paras [12]-[16]*)
 - a. What was the purpose of the safe zone declared by the Sri Lankan government? Does the applicable IHL provide a legal basis for the establishment of such a zone? What is the difference between the safe zone established by the Sri Lankan government and the protected zones described in IHL? (GC IV, Art. 15; P I, Arts 59-60)
 - b. Does the fact that the safe zone was declared unilaterally entitle the LTTE not to respect it? Do you agree with Human Rights Watch that the LTTE was thus allowed to enter the safe zone? Even though it knew that civilians had gathered there in order to be protected? Is not its entry there a violation of the provision not to locate military targets in densely populated areas? Is the LTTE bound by this provision? (GC I-IV, Art. 3; GC IV, Art. 15; P I, Arts 58(b), 59 and 60; CIHL, Rule 23)
 - c. Did the SLA violate IHL when they shelled the safe zone? Was the SLA under the obligation to respect the safe zone that it had unilaterally declared? Do you agree with Human Rights Watch that the SLA was not prohibited from attacking LTTE forces inside a safe zone? Shouldn't it first have rescinded its declaration of a safe zone? In the present case, assuming that LTTE forces were present in the safe zone, how do you assess the legality of the shelling? (GC I-IV, Art. 3; GC IV, Art. 15; P I, Arts 51(5)(b), 52, 57, 59 and 60; CIHL, Rules 1, 11-12, 14-19)

6. (*Paras [17]-[22]*) Are hospitals protected against attacks during non-international armed conflict? Do you agree with Human Rights Watch that the presence of wounded LTTE members did not turn the hospitals into legitimate targets? Would the presence of LTTE members have turned a hospital into a legitimate target if they had not been wounded but were using it for military purposes? Is it a war crime to attack a hospital during a non-international armed conflict? (P II, Art. 11; CIHL, Rule 28; ICC Statute, Art. 8(2)(e)(ii))
7.
 - a. (*Paras [23], [27] and [28]*) Was Sri Lanka under an obligation to allow access by international aid organizations to all those in need? Is there an obligation to allow access at least to displaced persons? To allow access by the ICRC? To allow access to international aid organizations when the government is not able to meet the humanitarian needs of the population? (GC I-IV, Art. 3; P II, Art. 18(2); CIHL, Rule 55; UN Guiding Principles on Internal Displacement, Principles 3 and 24-27 [See UN, Guiding Principles on Internal Displacement])
 - b. (*Para. [24]*) May Sri Lanka restrict the movement of relief agencies? May armed Sri Lankan military personnel accompany them? May the LTTE fire at SLA vehicles accompanying humanitarian convoys? (GC I-IV, Art. 3; P II, Art. 18; CIHL, Rules 55-56)
 - c. (*Paras [25] and [26]*) Were the parties to the conflict under an obligation to ensure the safe passage of relief agencies when they are evacuating wounded and sick? If safe passage is not ensured, should the parties take into account the fact that wounded and sick are being evacuated? (GC I-IV, Art. 3; P II, Arts 7 and 18; CIHL, Rules 56 and 109-110)
8. (*Paras [29]-[46]*) When may civilians be held in confinement during a non-international armed conflict? Does the applicable IHL give any indication as to when a person may be confined? If IHL is unclear on the matter, how should confinement be regulated? May displaced persons be confined indefinitely? Would their need to be protected against LTTE reprisals be a valid ground for their confinement? (UN Guiding Principles on Internal Displacement, Principle 12 [See UN, Guiding Principles on Internal Displacement])
9. (*Paras [39]-[48]*) May displaced persons be confined in camps under military control? May they be prevented from leaving the camps? May families be separated? (UN Guiding Principles on Internal Displacement, Principles 14 and 17 [See UN, Guiding Principles on Internal Displacement])
10. (*Paras [31]-[36]*)
 - a. Which rules of IHL is Human Rights Watch referring to when it says that the screening procedures need to comply with the requirements of IHL (*para. [33]*)? Do the screening processes as described by Human Rights Watch violate IHL? Does IHL apply to the screenings carried out after May 2009? (P II, Art. 2(2))
 - b. Does the ICRC have a right of access to those being screened? Did Sri Lanka violate IHL when it barred the ICRC from monitoring the procedure? (GC I-IV, Art. 3)