



A DECADE OF IMPUNITY: UNLOCKING ACCOUNTABILITY FOR THE VICTIMS OF SRI LANKA'S KILLING FIELDS

November 2019



Survivors of the Sri Lankan civil war, in their own words, on the final stages of the armed conflict, and what is needed to bring about a just and lasting peace following ten years of impunity for serious war-time human rights violations.

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Cover photo credit: Suren Karthikesu, a Tamil journalist who bore witness to the final stages of the civil war in Mullivaikkal in 2009. A collection of his photos were released to the public in July 2018 and can be accessed [online](#). Many of the images are extremely distressing and viewer discretion is strongly advised.

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Introduction

“They didn’t show us the respect humans deserve. They treated us like animals. They treated us with rage.” - Sakthi, Tamil war survivor.

On 18 May 2009, twenty-six years of civil war in Sri Lanka came to an end, as the last surviving members of the Liberation Tigers of Tamil Eelam (LTTE) emerged from an embattled strip of shorefront on Sri Lanka’s north-eastern coastline to concede defeat.

For many Sri Lankans, particularly those from the majority Sinhalese community, it was a moment of celebration. The vanquishing of the ruthless and highly organised militant group had seemed for many but a distant dream over the course of several decades in which the LTTE (or ‘Tamil Tigers’ as they are more commonly known) had led a campaign of terror in the name of Tamil independence – and during which efforts to bring about a negotiated solution to the conflict had repeatedly failed. As news of the military victory from the frontline arrived, thousands of people flooded the streets of Sri Lanka’s capital, Colombo, to wave the national flag and to hoist placards bearing the image of their victorious President, Mahinda Rajapaksa.

Yet further north in the island lay not a scene of celebration, but one of devastation, despair and destitution. In its bid to reclaim rebel-held territory, the government of Sri Lanka’s military offensive left a trail of destruction that claimed (at least) tens of thousands of civilian lives, with many more – numbering in the hundreds of thousands – rendered internally displaced. Despite the government’s claim to have mounted the “largest hostage rescue mission in the world,” underpinned by a policy of “zero civilian casualties,” later investigations by the UN would not only disprove this narrative, but indicate that the Sri Lankan armed forces were engaged in a “systematic attack on the civilian population”.¹ So too, culpability would be laid at the door of the LTTE, whose charge sheet included forcibly recruiting civilians, using them as ‘human shields’, and shooting those who sought to flee the shrinking area under their control.

The events that took place in Sri Lanka from mid-2008 to the early part of 2009 constitute one of the worst mass atrocities to have occurred in the first decade of the 21st century, second only to the genocide in Darfur in terms of death toll. Yet despite the well-established and widely corroborated accounts of how Sri Lanka’s civil war came to an end, and the repeated pledges by successive governments to address allegations of grave human rights violations, no one has been held accountable for what took place. Indeed, while the government has made major strides in rehabilitating its image on the world stage – including positioning itself as a champion of human rights – many alleged perpetrators have been promoted.

As we surpass ten years since the end of the war on 18 May 2009 – and amid a Presidential election campaign in which critical discussion of that war’s enduring legacy has been notably absent – this report seeks to provide a platform for victims and survivors from the Tamil community to make their voices heard, and to express their expectations, hopes and fears about the future. Part one contains a summary of the final stages of the civil war and its aftermath, grounded in the experiences of a small sample of those most affected by it. In part two, victims and survivors reflect on recent efforts to obtain justice and accountability in Sri Lanka - reflections which we draw upon to inform our analysis of the key challenges and options for policy-makers.

¹ Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (March 2011), para 251.

Methodology

The testimony in the report was gathered during ten semi-structured interviews with members of the Tamil community in Sri Lanka's Northern Province between January and March 2019, all of whom lived through, bore witness to, and were directly affected by the government's military offensive in the north of Sri Lanka from September 2008 onwards. It is supplemented by desk research across a range of sources detailing the final stages of Sri Lanka's civil war and its aftermath.

Within the limitations of a small sample, efforts were made to seek a diverse and broadly representative range of voices among those who lived through this period of violence. Interviews were conducted in Mannar, Jaffna and Mullaitivu with individuals who had been displaced from their homes at the beginning of the war, and who entered into government territory as it came to an end. Eight of the interviewees were female and two were male.

Interviews were conducted in Tamil by experienced human rights researchers who need to remain anonymous for security reasons. Facilitators took audio recordings of the interviews, conducted as semi-structured discussions, which were later translated and transcribed into English. Transcripts were then processed by the Sri Lanka Campaign into this public report. All interviewees were informed of, and consented to, the handling and use of their oral statements in this manner. All the names used in this paper have been changed to protect anonymity.

Throughout this report, we have sought to interpret and summarise the testimony of interviewees in a fair, balanced and responsible way. We have also supplemented these findings with our own analysis; much of which is anchored in the views expressed in the testimony, but some of which is independent of it. While we attempt to make clear the distinction between the views of interviewees and those of the Sri Lanka Campaign, the latter should be presumed where any ambiguity arises.

The approach taken in this report – and in particular our focus on members of the Tamil community – stems from a belief that those most affected by war and human rights abuses should have the greatest say in how to bring about peace and reconciliation. At the same time, we acknowledge the fact that no community in Sri Lanka has been left untouched by the island's history of impunity and violence, and that the Tamil community is but one of several constituencies whose voice must be brought to bear on that conversation.

We take this opportunity to thank those who agreed to be interviewed for this report, many of whom did so despite the ongoing risk of reprisals for those who speak out about what took place during the final stages of the war.

1. The final stages of Sri Lanka's civil war

1.1 SETTING THE STAGE FOR SRI LANKA'S WAR WITHOUT WITNESS

In the first week of September 2008, staff working for the United Nations (UN) and other humanitarian organisations in Sri Lanka began receiving written communications from the government stating that their safety in the Vanni – a large region in the Tamil-majority north of Sri Lanka – could no longer be guaranteed. It was a moment that many would later consider to be a key turning point in the government of Sri Lanka's campaign to re-take territory from the LTTE, a militant separatist group that had emerged in the mid-1970s following decades of discrimination and violence against minority ethnic Tamils by the largely Sinhala government in the South.

After many years of failed attempts to secure a negotiated peace, with ceasefires repeatedly breaking down following serious violations on both sides (including the use of terror tactics and widespread extra-judicial killings), it was the election of President Mahinda Rajapaksa in November 2005 that heralded a renewed effort on the part of the government to bring the conflict to an end by purely military means.

By the middle part of 2008, its forces had re-taken a number of Tiger strongholds in the east and north-west of the island. Its efforts were aided by the defection of a key LTTE faction in the East of the country, the provision of sophisticated military equipment from key allies, and an international community supportive of the attempt to reign in a brutal and unpopular rebel movement in the context of the global 'war on terror.'

The decision to effectively expel external observers from the war zone in September 2008 was both a reflection of the boldness which the government felt in that moment, and a chilling indication of what was to come. By removing international witnesses from the field of operations, the stage was set for a massive offensive in which the distinction between civilian and combatant would be blurred, and in which government accounts about the kind of war it was waging would be largely free from outside scrutiny.²

1.2 INTO THE 'NO FIRE ZONES'

By late 2008, the aim at the heart of the government's strategy appeared to be forcing the LTTE, along with hundreds of thousands of Tamil civilians, into ever-smaller areas of land in which independent scrutiny was limited.³ In January 2009, the government began to unilaterally declare a series of so-called 'No Fire Zones' (NFZs), dropping leaflets explaining that these were areas in which civilians would be safe.⁴

They were anything but. As people gathered in the first of these zones – where it was reportedly common knowledge that members of the LTTE had weaponry stationed at the time of being declared 'safe'⁵ – the attacks rapidly intensified.

² According to a report in the New York Times in May 2009, by the end of the war Sri Lanka had banned 837 journalists, human rights officials, and others from entering the country. As referenced in 'Cartography of Shame', Centre for Policy Alternatives (May 2009).

³ This was the perception of at least one independent witness, an experienced aid worker, who suggested that the government's plan had been to "close the LTTE in Mullaitivu" whilst also "push[ing] back the civilians." See: David Keen, 'Compromise or Capitulation? Report on WFP and the Humanitarian Crisis in Sri Lanka', (June 2019), p. 60. This population movement appears to have been largely consistent with LTTE's own desire to keep civilians within the areas under their control (discussed in further detail below on pp. 10-11 of this report).

⁴ The three 'No Fire Zones' were declared as follows: NFZ-1 (20 January 2009); NFZ-2 (12 February 2009); NFZ-3 (8 May 2009). For a useful set of maps detailing the locations of the No Fire Zones, see 'War Crimes in Sri Lanka', International Crisis Group (May 2010).

⁵ 'Island of Impunity? Investigation into international crimes in the final stages of the Sri Lankan civil war', International Crimes Evidence Project (February 2014), para 6.22.

One interviewee, Malathi, from Mannar, described the sense of fear, shock and dismay that unfolded after she entered the first NFZ with her family in early February 2009:

“We all went there because it was declared a safe zone ... but [after the first two days] there were shell attacks all the time. These safe zones were not big areas ... it was all close by. Everything was directed towards us. There were also air strikes. We believed that we might die any time. This is the fear everyone had.”

“The people were in these areas because they trusted that they had been declared safe and nothing will happen. But the trust was shattered when they attacked the very same places.”

Others described appalling scenes of violence during government attacks on densely populated and largely open areas, including the many severe injuries caused by shrapnel and exploded munitions. Sakthi described the moment at which her mother-in-law and another person unknown to her were killed just metres from the makeshift bunker in which her family, including several children, had sought shelter:

“When the children said they were hungry, [my mother-in-law] said she was going to fry some peas. I told her that there were shell attacks still occurring. She convinced me that she had to do something ... she got out and immediately an artillery shell struck. It struck her on the back and split her in half. She fell dead on the spot.”

“There was another woman [too]. There were no body parts left of hers. Only flesh. Her children identified her by the bits and pieces of her clothing and confirmed she had died. They screamed and cried. There was no body...”

As underscored by the abundance of testimony gathered in the aftermath of the war, such scenes appear to have been commonplace for those who lived through the onslaught. Detailed analyses by civil society groups would later confirm that as each NFZ was declared, and as the populations which they contained became more even more tightly packed, attacks by the government in fact seemed to increase in intensity rather than abate. According to the International Crisis Group, the ten days after the final NFZ was declared on 8 May “saw some of the most intense shelling and fighting of the entire conflict [with witnesses describing] scenes of immense devastation and civilian suffering.”⁶

One UN official would later relay to a journalist his belief that “the government had declared a safe zone only to concentrate civilians in one place and kill as many as possible.”⁷ It was a view shared by Malathi:

“I see [the firing on the NFZs] as a planned move. That’s my opinion. They could have sent the people out first, or they could have come to some sort of agreement with the LTTE and then done the fighting. I see this as a planned activity to kill the people.”

While a full criminal investigation is needed to establish the extent to which such attacks were deliberate (as opposed to reckless) in nature, it is clear under international humanitarian law that indiscriminate or disproportionate attacks can amount to direct attacks on a civilian population.⁸

⁶ ‘War Crimes in Sri Lanka’, International Crisis Group (May 2010), p. 23.

⁷ Frances Harrison, ‘Still Counting the Dead: Survivors of Sri Lanka’s Hidden War’ (September 2012), loc 560.

⁸ Hence the conclusion of a UN Panel of Experts that “credible allegations point to a violation of the ban on attacks directed against civilians insofar as the [Sri Lankan Army], whether deliberately or recklessly, attacked civilians situated in the NFZs”, Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (March 2011), para 200. For further discussion on this legal point, see paras 196-199.

The infographic below illustrates the various credible estimates that have been offered of the total number of civilians killed and unaccounted for in the final stages of Sri Lanka's civil war.

Infographic one:



1.3 INDISCRIMINATE FIRE

Further reinforcing the view that government forces were engaged in a policy of attacking civilians in the NFZs was their choice of weaponry, which included artillery shells, multi-barrel rocket-launchers, and rocket propelled grenades (fired at long range). These were, the UN would later conclude, the very kinds of weapons that “when used in densely populated areas, are likely to have indiscriminate effects,” effects which “may qualify as direct attacks against civilians” under the law of armed conflict.⁹

Contrary to suggestions that the government may not have fully appreciated the impact of the offensive on the civilian population – for example, due to limited information about the ground situation – one of the men leading the military operation, Brigadier Shavendra Silva (now Army Commander), later testified to a government inquiry that, “at the last stages of the operation we [did not just] go blind. Everything was planned through UAV [unmanned aerial vehicle] pictures.”¹⁰

In addition were the many reports from within the NFZs of the use of cluster bombs, a type of weapon designed to maximise death and injury to those within the wide range of the hundreds of small ‘bomblets’ released by the bomb casings prior to impact.

Nalini, from Mullaitivu, described just one example of the devastating and indiscriminate effect of these weapons in the NFZ:

“A bunker which was near to ours came under a cluster bomb attack. 29 people died. Two children survived and their aunt is now raising them. The entire rest of the family died. They [the government forces] didn’t even consider that there were children.”

The government has consistently denied its use of cluster munitions. Nonetheless, a 2015 UN report urged further investigations “given the persistent nature of the allegations.”¹¹ Shortly afterwards, the Guardian newspaper released a series of photos, leaked by a former employee of a mine clearance agency, that showed a cluster bomb delivery missile and sub-munitions being dug out of an area in the war zone.¹² Despite this evidence, and the government’s failure to address or even acknowledge it, Sri Lanka was granted the Presidency of the international Convention on Cluster Munitions in September 2018.¹³

Senthil, from Jaffna, expressed his outrage at the government’s continued denial:

“They were firing cluster bombs. A piece of [one] became lodged in a woman’s thigh ... but didn’t explode. I saw it directly! How can they question [it] when I saw it myself? They kept saying they didn’t use cluster bombs. But we saw it all. We saw everything.”¹⁴

1.4 HOSPITALS UNDER ATTACK

Perhaps among the most disturbing set of incidents to take place in the final phase of the war were the repeated attacks on hospitals, both inside and outside the declared NFZs, in contravention of international

⁹ ‘Report of the OHCHR Investigation on Sri Lanka’ (the ‘OISL Report’), Office of the UN High Commissioner for Human Rights (September 2015), paras 1153-1154.

¹⁰ ‘OISL report’, para 875.

¹¹ ‘OISL report’, para 751.

¹² ‘Cluster bombs used in Sri Lanka’s civil war, leaked photos suggest’, The Guardian (June 2016).

¹³ For further evidence regarding the use of cluster munitions by the Sri Lankan army, see: ‘President of the Convention on Cluster Munitions, Sri Lanka, Must Come Clean on Past Use’, ITJP (September 2018).

¹⁴ A similar incident was reported in ‘Let Them Speak: Truth about Sri Lanka’s Victims of War’, University Teachers for Human Rights – Jaffna (UTHR-J) (December 2009), p. 53.

humanitarian law. In one interview on 3 February 2009, former Defence Secretary Gotabaya Rajapaksa stated to a reporter that he believed hospitals operating beyond the NFZs were a legitimate target.¹⁵ Human Rights Watch recorded dozens such attacks in the last few months of the war, with hospitals nearest to the frontlines being targeted in successive waves, and patients and medical staff being repeatedly forced to evacuate to increasingly overcrowded makeshift facilities.¹⁶

One of the worst hit hospitals was that located in Puthukudiyiruppu,¹⁷ which by January 2009 was the only permanent hospital with an operating theatre left in the Vanni. Adjacent to the hospital lay a UN hub. The coordinates to both of the complexes had been made known to senior members of the government security forces. For nearly the whole of January up until the beginning of February, the hospital and hub were repeatedly attacked by shells and rockets, killing and injuring scores of patients, including many children and elderly civilians.

A UN investigation would later describe in detail the terror and pandemonium faced by patients during that time:

“Over 500 patients were inside the hospital, including people injured in earlier attacks on the first NFZ, as well as other civilians who had taken shelter in the hospital compound believing it to be a safe place. The hospital was overcrowded and many patients were on the floor due to a lack of beds, as well as in hallways and outside, on the ground. Witnesses told investigators that as shells fell, people ran to take cover, including several patients who ran towards bunkers located outside the hospital, carrying their intravenous drips with them.”

“One hospital worker described the situation in the hospital by 4 February as “carnage”, the likes of which she had never seen before. Medical staff members were struggling to provide care to hundreds of injured patients, who continued to arrive, with medical infrastructure in ruins, and hospital personnel forced to hide in bunkers due to the ongoing shelling.”¹⁸

Many of these hospitals were clearly marked with red cross emblems¹⁹ easily visible to the numerous aerial surveillance vehicles flown by the government forces over the war zone. Despite claims by the government that it was solely interested in targeting the LTTE, the same UN investigation concluded that it did not “have reasonable grounds to believe that there were legitimate military targets inside the hospitals at the time of the attacks.”²⁰ As a number of independent legal analyses have since clarified with regard to the Sri Lankan context, the mere presence of LTTE military equipment nearby these hospitals – itself a likely violation of humanitarian law – did not relieve government forces of their obligation to protect civilians.²¹

Aside from the immediate impacts, such attacks had the further effect of decimating the capacity of medical professionals to address the worsening needs of those inside the war zone. Referring again to PTK hospital, a report by the International Crisis Group highlighted the scene by late January:

¹⁵ Ryan Goodman, ‘Sri Lanka’s Greatest War Criminal (Gotabaya) is a US Citizen: It’s Time to Hold Him Accountable’, *Just Security* (May 2014).

¹⁶ ‘Sri Lanka: Repeated Shelling of Hospitals Evidence of War Crimes’, Human Rights Watch (May 2009).

¹⁷ Commonly referred to as ‘PTK’, in Mullaitivu.

¹⁸ ‘OISL report’, paras 825 and 829.

¹⁹ Thereby indicating their status as protected objects under international humanitarian law.

²⁰ ‘OISL report’, para 772.

²¹ ‘The Last Stages of the War: Clarifying the Application of IHL’, South Asian Centre for Legal Studies (November 2015).

“Medical staff were overwhelmed and there was a shortage of supplies. A strong smell was coming from the many open wounds, and patients were overflowing onto floors, into hallways and in the driveway.”²²

Later, in the final four weeks of the war, the situation for the remaining two hospitals in the shrunken area of LTTE-held territory was even worse:

“By late April, conditions were terrible. Supplies were grossly inadequate with no means of sterilisation, no gloves, no blood for transfusions, hundreds of patients lying in the sand or on tarps, and many unclaimed bodies. The smell was overwhelming.”²³

Indra, whose family had been trapped in the third NFZ, witnessed first-hand the inability of families to access medical care. She described the desperation she felt at being unable to help those in need around her:

“One pregnant woman was about to deliver. The [firing] was intense at that time. The husband was shouting for help, but there was no one to help. Everyone was running to save their lives. We don’t know what happened to people like that...”

Conditions were further compounded by the government’s continued refusal to send adequate supplies of both food and medical facilities to the NFZs. This policy was given a degree of cover by the repeated gross under-estimations by government officials in Colombo of the total number of people in the NFZs.²⁴ As early as March 2009, the first of many reports began to emerge of civilians dying of starvation.²⁵

1.5 CAGED ON BOTH SIDES

While attacks by government of Sri Lanka forces were the principal cause of the immense human suffering that took place during the war’s end, the dire situation for civilians was further exacerbated by the actions of the LTTE, some of which, according to the UN, could constitute war crimes and/or crimes against humanity if established in a court of law.²⁶

Chief among these was the LTTE’s policy of preventing civilians from leaving areas under its control in the final stages of the armed conflict. The policy appeared to be motivated by the belief that the presence of large numbers of non-combatants would force the government to act with restraint and increase the chance of the international community intervening to broker a ceasefire.

Malathi, who was based in Mannar before the final stages of the war and had by the latter part of 2008 sought refuge in Madhu town, described her experience of being forced to retreat eastward with the LTTE as government forces moved in upon them, and the ultimate effect this policy had on the wider population:

²² ‘War Crimes in Sri Lanka’, International Crisis Group (May 2010), p. 16.

²³ Ibid, p. 19.

²⁴ Ibid, p. 5. The government’s claims about the total size of the population in the war zone sometimes amounted to less than one-third of reliable estimates.

²⁵ ‘OISL report’, para 982 and 992

²⁶ See, for example, ‘OISL report’, para 1139. It should be noted that the LTTE’s history of violating the rights of Tamils is not limited to its actions during the final stages of the war. As noted in a report by Human Rights Watch: “...the LTTE has brutally and systematically abused the Tamil population on whose behalf they claim to fight. The LTTE, which has been fighting for an independent Tamil state—Tamil Eelam—has a deplorable human rights record. The LTTE has frequently targeted civilians with bombs and remote-controlled landmines, killed perceived political opponents including many Tamil politicians, journalists, and members of rival organizations, and has forcibly recruited Tamils into its forces, many of them children. In the areas under its control, the LTTE has ruled through fear, denying basic freedoms of expression, association, assembly, and movement.” From ‘Trapped and Mistreated: LTTE Abuses against Civilians in the Vanni’, Human Rights Watch (December 2008).

“If they [the LTTE] had left us, many people wouldn’t have died ... They could have let us go into the [Sri Lankan government] military controlled areas when we said we wanted to. They didn’t have to drag us along with them all the way. Because of [what the LTTE did] our people faced big losses. We wouldn’t have faced this many losses if we stayed here [in Mannar] and had come into [Sri Lankan] army control.”

According to the UN, from early 2009, as the LTTE continued to lose ground, “measures to prevent people from leaving [its territory] became increasingly coercive.”²⁷ There are numerous reports that senior LTTE officials had ordered those under their command to shoot in the direction of those attempting to flee, as well as many eyewitness accounts that those orders were carried out.²⁸

As the Sri Lankan military pressed forward, and the situation grew more desperate, the LTTE also increasingly resorted to forcibly recruiting those left within their territory, including children. Three of the ten individuals whom the Sri Lanka Campaign spoke to reported that their own children had been recruited by the LTTE in this manner:

Malathi remarked of this policy:

“The LTTE made a mistake. OK, they could have had a mandate to require at least one person from each family. Their rationale was that they were fighting for [the Tamil people] and that they needed support from everyone, since we were all dying and it is justified to try to win the battle. But during the [last period of the war], taking small children forcefully was wrong. Even 18 years or above. If those people objected, taking them forcefully and putting them in battle without proper training and [allowing them to be killed] is wrong. [The LTTE] have to be accountable for this.”

The view that the LTTE ought to be regarded as culpable for the fate of its forcible recruits was shared by Nalini:

“The LTTE is accountable to those [people] whose children [the government forces] caught and are now missing. For cases like that the LTTE is also responsible.”

Others whom we spoke to expressed anger at the other ways the LTTE disregarded the welfare of those under their control. As Nivethika complained, for example:

“The LTTE gave their families rice and sugar in sacks. They gave their dogs biscuits and milk powder. There was a food storage centre run by LTTE. There were huge fights when we went there to buy food. They refused to give [us] the rations even if we were short of 10 rupees. Where is the justice in that?”

1.6 ESCAPE

For many Tamils in the NFZ during the final stages of the war, the kinds of abuses described above presented them a grim choice between staying put and facing government shelling, or attempting to flee and facing the double risk of violence from the LTTE and the security forces as they tried to cross the front-lines.

Many did however attempt to leave, especially in the last few weeks of the conflict when conditions worsened dramatically. Some of those we spoke to described the terrifying and traumatic experience of

²⁷ ‘OISL report’, para 906.

²⁸ For example, see the list of incidents in ‘War Crimes in Sri Lanka’, International Crisis Group (May 2010), pp. 25-26.

crossing the stretches of shallow lagoon adjacent to the coastline that separated the second and third NFZs from government forces. In the words of Indra:

“When we came into the Army controlled area we came through the Nandikadaal lagoon. We saw people dead on the sides of the lagoon. We didn’t know who had attacked them. People were running and there were still attacks. We did not know whether it was the Army or the LTTE. But people were attacked.”

Maya spoke of similar scenes of horror while making the crossing:

“I thought of drinking the water, but there were things floating. They were corpses that were floating. We couldn’t drink the water. It was full of blood.”

After the government entered the second NFZ on 20 April, a manoeuvre designed to split the civilian population from rebel forces, it is estimated that as many as 100,000 began leaving the NFZ simultaneously.²⁹ Survivors have relayed harrowing accounts of the weak and injured being simply left behind, some killed by the surging crowds. Nivethika, to whom we spoke, recalled such scenes:

“When we were leaving there were female LTTE cadres who had lost their hands and limbs, shouting and asking us to take them along with us. We saw a lot of things like that. In some places we were trampling the bodies and jumping over them ... We couldn’t do anything about it. I prayed to God and made the crossing.”

The initial treatment of ‘surrendeers’ who reached government territory appears to have varied significantly, with a small number of those we spoke to describing their feelings of relief upon doing so, and two highlighting acts basic of humanity on the part of soldiers who met them.³⁰ As Maya explained, for example:

“It was the Army who saved me [from the water]. They said, ‘mother, go this way’. They even offered me water. They gave me biscuits. Later, they gave us clothing and other things.”

However, humane treatment of the kind described above appears more the exception than the norm. In multiple other accounts, survivors report being strip-searched, and held for lengthy periods in the sun without food and water, as roaming soldiers picked off suspected LTTE cadres for questioning.³¹

For many, the experience got worse once they entered further into the government’s administrative system for dealing with the hundreds of thousands of displaced persons exiting the war zone. The next stage of this involved the formal screening of IDPs who were bussed *en masse* to checkpoints further inland and inspected by officials with the assistance of masked LTTE informants.

The threshold for identifying those potentially involved in the LTTE appears to have been very low, and oftentimes based on entirely arbitrary factors. Many with the most threadbare affiliations to the LTTE, including individuals involved in the group’s civilian administration or those forcibly recruited in the last weeks of the war, were swept up by this process and separated from their families.³² Thousands were taken into the custody of the Sri Lankan security forces in this manner. Although many were sent for so-called

²⁹ ‘OISL report’, para 91

³⁰ While not featuring in discussions with those we spoke to, it should also be mentioned that there are many survivor accounts of members of the LTTE acting to assist Tamil civilians, including for example by ‘tipping off’ those at risk of forcible conscription, or facilitating escape from the NFZs in defiance of orders to prevent civilians leaving. See for example, ‘Let Them Speak: Truth about Sri Lanka’s Victims of War’, UTHR-J (December 2009), pp. 14, 58, 64, 66.

³¹ Frances Harrison, ‘Still Counting the Dead: Survivors of Sri Lanka’s Hidden War’ (September 2012), loc 928-957.

³² ‘OISL report’, para 1046.

'rehabilitation' and later released, the government of Sri Lanka's own inquiry, the Lessons Learnt and Reconciliation Commission (LLRC), documents multiple incidents in which individuals were alleged to have disappeared after being identified at these checkpoints.³³

1.7 SURRENDER

For those unwilling or unable to leave the NFZs, life became increasingly unbearable and precarious in the war's final weeks. Following the declaration of the final NFZ on 8 May 2009, which resulted in an estimated 100,000 civilians being crammed into just three square kilometres of shorefront, government shelling only intensified. One witness who gave evidence to the UN investigation stated that, so dense was the population, "practically each time a shell fell, people would be injured and killed."³⁴

On 13 May, the last remaining medical facility in the war-zone – a makeshift medical centre in the grounds of a former school in Mullivaikkal – was closed.³⁵ It followed nearly a week of daily bombardment from government forces by land, air and sea, in which dozens of civilians were killed, including patients and health staff.³⁶ Owing to "continuous heavy fighting", a ferry chartered by the International Committee for the Red Cross (ICRC) and carrying vital humanitarian supplies was unable to reach those in need. Without drinking water, food and medical treatment, many were simply left to die.³⁷

Despite the signs of imminent defeat, and amid confusion about the intention of senior Tiger officials to surrender, LTTE forces continued to fire upon fleeing civilians. Eyewitnesses report that many, possibly hundreds, were killed on 14 May when tens of thousands sought to cross the lagoon that separated them from government held territory.³⁸

Over the next few days, senior LTTE cadres scrambled to negotiate a surrender.³⁹ As they did so, it is understood that top Tiger commanders, including leader Vellupikkai Prabhakaran and several of his family members, had attempted to escape into nearby jungle and behind enemy lines. Soon afterwards it was announced that members of this party had been killed, possibly after being captured. One video shows the 12-year old son of Prabhakaran alive in the custody of government troops. Later he is pictured dead, having apparently been killed by a close-range gunshot wound.⁴⁰

The OISL report provides evidence of multiple other incidents in which LTTE members and their supporters appear to have been captured and extra-judicially executed.⁴¹ In several cases, including that of the LTTE news presenter Isaipriya, the victims are believed to have been sexually assaulted, and their bodies desecrated.⁴²

³³ 'Report of the Commission of Inquiry on Lessons Learnt and Reconciliation' (November 2011), paras 4.241-4.260. Annex 4.15 records 1,018 persons alleged to have been disappeared after arrest by government forces.

³⁴ OISL report', para 876.

³⁵ 'Let Them Speak', UTHR-J (December 2009), p. 89.

³⁶ 'OISL report', paras 878-879.

³⁷ 'Sri Lanka: humanitarian assistance can no longer reach civilians', ICRC (14 May 2009).

³⁸ 'Let Them Speak', UTHR-J (December 2009), p. 89.

³⁹ Earlier, on 26 April, the LTTE unilaterally declared a ceasefire. It was rejected by the government who instead sought a surrender. 'OISL report', para 91.

⁴⁰ 'OISL report', para 312.

⁴¹ 'OISL report', paras 317-322.

⁴² 'Fate of Tamil propagandist: new Sri Lanka evidence', Channel 4 News (October 2013).

Civil society groups have pieced together in great detail how the negotiations by remaining LTTE officials proceeded.⁴³ Following unambiguous assurances from government officials that a surrender deal had been reached, on 18 May several small batches of people led by the LTTE's political wing leaders left their bunkers and crossed a bridge into government territory. All wore civilian clothing and at least two white flags were carried. Within hours, the same political leaders were seen dead by eyewitnesses.

Hundreds of other LTTE officials, along with many more civilians (including children and humanitarian leaders), surrendered between 17 and 19 May. Many were loaded on to buses and never seen again. According by a recent statistical analysis by two civil society groups, drawing on multiple data sets of recorded surrendeers, it is estimated that over 500 people were forcibly disappeared in just three days.⁴⁴

As the UN's OISL report concluded:

*"There are reasonable grounds to believe that a number of military cadres, who had laid down arms ... were unlawfully killed after having surrendered unarmed to the security forces. There are also reasonable grounds to believe that a number of LTTE cadres, such as those belonging to the political wing, and other individuals not or no longer taking direct part in hostilities, including children, were also extrajudicially executed."*⁴⁵

Reflecting on these incidents, Nalini remarked:

"There were small children who surrendered. Imagine how old would they be now."

Among those who surrendered in the final days of the war was Nalini's husband, who disappeared after entering government-controlled territory accompanied by a Catholic Priest, Fr Francis Joseph:⁴⁶

"He surrendered on 18th May 2009. It was in the morning. Around 100 people were there. They asked the priest to make sure they were safe. That is why he went with them. They asked entire families to surrender. But those who went with him have not been found to date ... They made them kneel down on the floor and took down their information. I saw it."

Ten years on, Sakthi, whose brother was disappeared after surrendering to the army in the final days of the war, expressed anger at the lack of action in bringing those responsible to account, despite the abundance of evidence gathered by the UN and civil society organisations implicating specific individuals:⁴⁷

"The military told us they would detain people who were members of the LTTE for two years and then hand them over to the families after that. We believed what they said and gave [our brother] to them. We handed him over alive. There are witnesses for it ... The entire world knows what happened on the 18th of May. They know who was in charge and who stood there. The entire world knows it! There is nothing hidden about this fact."

⁴³ See, for example, '5 years on: The White Flag Incident 2009-2014', ITJP (May 2014).

⁴⁴ See: 'How many people disappeared on 17-19 May 2009 in Sri Lanka?', ITJP and HRDAG (December 2018)

⁴⁵ 'OISL report', paras 317-322, para 285. It is a pattern of targeting that appears to have been broadly consistent with Brigadier Shavendra Silva's remarks that "we [the armed forces] destroyed anyone connected with the LTTE. That is how we won the war." In August 2019, Shavendra Silva (now a Major General) was appointed as Army Commander.

⁴⁶ A key demand among Tamil relatives of the disappeared has been for the government to release the kind of information that Nalini describes Fr Joseph recording here. See: 'Release the List', Sri Lanka Campaign (August 2018).

⁴⁷ See, for example, the dossiers compiled by ITJP against General Jagath Dias, Major General Shavendra Silva and General Jagath Jaysuriya, which allege – among other serious human rights violations – responsibility for extra-judicial killings carried out at the end of the war under the doctrine of command responsibility.

1.8 MASS DETENTION

After being subjected to an initial screening (as described in 1.6), the vast majority of the hundreds of thousands who made it out of Sri Lanka's war zone alive were sent to a cluster of government-run camps in Vavuniya in Sri Lanka's interior. The largest of the camps was Menik Farm, where approximately 250,000 individuals were forcibly held for many months, without any legal basis provided for their detention.⁴⁸ While described by the government of Sri Lanka as "welfare villages", established for the purpose of delivering humanitarian relief, the testimonies of those held inside them tell a very different story. As put simply by Indra:

"Life in the [IDP] camp was like prison life. We lived like we were living in a prison."

The movement of IDPs in these facilities was strictly controlled. In Menik Farm, IDPs were filtered out into a number of smaller zones, each of which was surrounded by razor wire fencing and round-the-clock armed guard. For many families separated during the war, the restrictions on movement rendered it impossible to search for missing relatives. Indra, who sought news of a son who had been forcibly recruited by the LTTE in the final months of the war, explained:

"We couldn't go to the other blocks. If we tried to go to those places, there would be questions and interrogation. So, we lived in the camps in fear."

The repressive atmosphere in the camps was intensified by the pervasive presence of informants and intelligence officials, whose role it was to identify and remove LTTE fighters for questioning. As Mugil recalled:

"They [the prison officials] would check our documents almost everyday ... They used to line us up and question us as to whether we were involved in the LTTE. They asked me if I knew a particular person [from another camp]. They threatened me. So it was like a dictatorship. We were constantly treated with suspicion."

Added to the mix was the ritual – and often racially charged – humiliation inflicted upon detainees by their captors. Mugil described one scene in which her fellow detainees had been aggressively interrogated by officials. ***"Be careful, [they] might bite you. Tamils bite,"*** the interrogators had remarked.

Conditions in several parts of the camp were appalling, with extreme over-crowding and grossly inadequate sanitation facilities. Sickness and diseases were rife. As Sakthi explained:

"We suffered a lot ... We weren't even able to turn while sleeping it was so congested. They kept us inside a small tent for six months. There was no water or sanitation facilities. Everyone fell ill."

Several of the women whom we spoke to highlighted the specific indignities they were subjected to as women. As Malathi complained, for instance:

"When we [washed] it would be the military pumping the water. They would pump from above and we would have to bathe underneath. These were open areas."

Later investigations by the UN have highlighted the systematic sexual exploitation and abuse that prevailed in the camps, with numerous alleged cases of rape by soldiers.⁴⁹

⁴⁸ 'Crimes Against Humanity in Sri Lanka's Northern Province: A Legal Analysis of Post-War Human Rights Violations', Sri Lanka Campaign (March 2014), para 198.

⁴⁹ 'OISL report', paras 616-618.

For many in the camps, even accessing sufficient food became a daily struggle. As Vithya recalled:

“They [the army] would come to deliver bread in a lorry. But, as we would approach, the vehicle will start to move ... For about a week we suffered a lot. We only gave food to the children. We suffered so much, just for food.”

At several points the situation became particularly acute, resulting in dozens of confirmed deaths from starvation and malnutrition.⁵⁰ Compounding – and indeed facilitating – this dire picture, were the government’s repeated refusals to grant unimpeded access to humanitarian organisations and other external observers. When the Chairman of a government appointed commission visited the camps in August 2010, he described conditions he encountered as “deplorable” - yet it was not until September 2012, more than three years after the war, that the camps were closed.⁵¹

1.9 SYSTEMATIC TORTURE AND SEXUAL VIOLENCE

Among the most disturbing stories to emerge from the war and its aftermath, have been those told by the scores of Tamils subjected to torture and sexual violence at the hands of Sri Lankan security forces. Contrary to claims that such incidents are attributable to ‘a few rotten apples’, testimony provided by survivors has underscored the widespread nature of these practices at the end of the war - with victims reporting being targeted at an array of locations (including at screening points, IDP camps, and military bases), by a broad range of perpetrators (including police, intelligence officials, and soldiers).⁵²

Particularly susceptible to such abuses were those with suspected links to the LTTE, many of whom have bravely spoken out to describe the extremely cruel and grimly inventive methods of torture inflicted upon them in the detention centres and so-called ‘rehabilitation camps’ in which they were held. Such was the breadth, scale and coordination of this violence that a subsequent UN investigation later concluded that “incidents of sexual violence were not isolated acts but part of a deliberate policy to inflict torture,” with “male detainees ... as likely to be subjected to sexual violence as female detainees.”⁵³

Unfortunately, despite the Sri Lankan government’s insistence that it today maintains a “zero-tolerance policy” towards such practices, allegations of torture and sexual violence have persisted long after the end of war – and even after the change of government in 2015. The International Truth and Justice Project (ITJP) has documented 76 cases of torture and sexual violence taking place since 2015,⁵⁴ while Freedom From Torture as documented 16 such cases in the same period.⁵⁵ Following a visit in June 2017, a UN Special Rapporteur concluded that the use of torture in Sri Lanka was “routine and endemic,” with Tamils disproportionately bearing the brunt of the “State’s well-oiled torture apparatus.”⁵⁶

⁵⁰ There were more than 30 confirmed cases of death due to starvation and malnutrition by 27 April 2009. See ‘Crimes Against Humanity in Sri Lanka’s Northern Province: A Legal Analysis of Post-War Human Rights Violations’, Sri Lanka Campaign (March 2014), para 198.

⁵¹ At the end of the war in May 2009, approximately 290,000 IDPs were being held in the camps. While significant numbers were released in a steady stream in the months that followed, over 60,000 remained by May 2010, and over 17,000 remained by April 2011 (nearly two years later). Based on data gathered by the UN Office for the Coordination of Humanitarian Affairs in their ‘Joint Humanitarian Update[s]: North East Sri Lanka’.

⁵² ‘OISL report’, paras 544, 545-551, 588 and 589.

⁵³ ‘OISL report’, paras 571 and 591.

⁵⁴ ‘Factsheet: Ongoing Torture’, ITJP, (December 2018).

⁵⁵ ‘Too Little Change: Ongoing Torture in Security Operations in Sri Lanka’, Freedom From Torture (February 2019).

⁵⁶ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. See: ‘Sri Lanka routinely tortures security suspects amid stalled reform process, UN expert finds’, UN OHCHR (July 2017).

2. The call for justice: not going away

In the ten years since Sri Lanka's civil war came to an end, the fight for justice by victims and survivors has seen hopes rise and then fall.

As highlighted in *infographic two*, it is a story with a series of distinct phases: the first, marked by a flurry of white-washing initiatives under the authoritarian reign of former President Mahinda Rajapaksa; the second, a period of escalating international pressure and the conclusive exposure of war-time human rights violations (as recorded by both UN investigators and civil society groups); third, a moment of political transition in 2015 led by a coalition government promising to address the legacy of the war under the rubric of Human Rights Council Resolution 30/1; and, finally, the slow unravelling of that process, with the evaporation of domestic, and then international, political will.

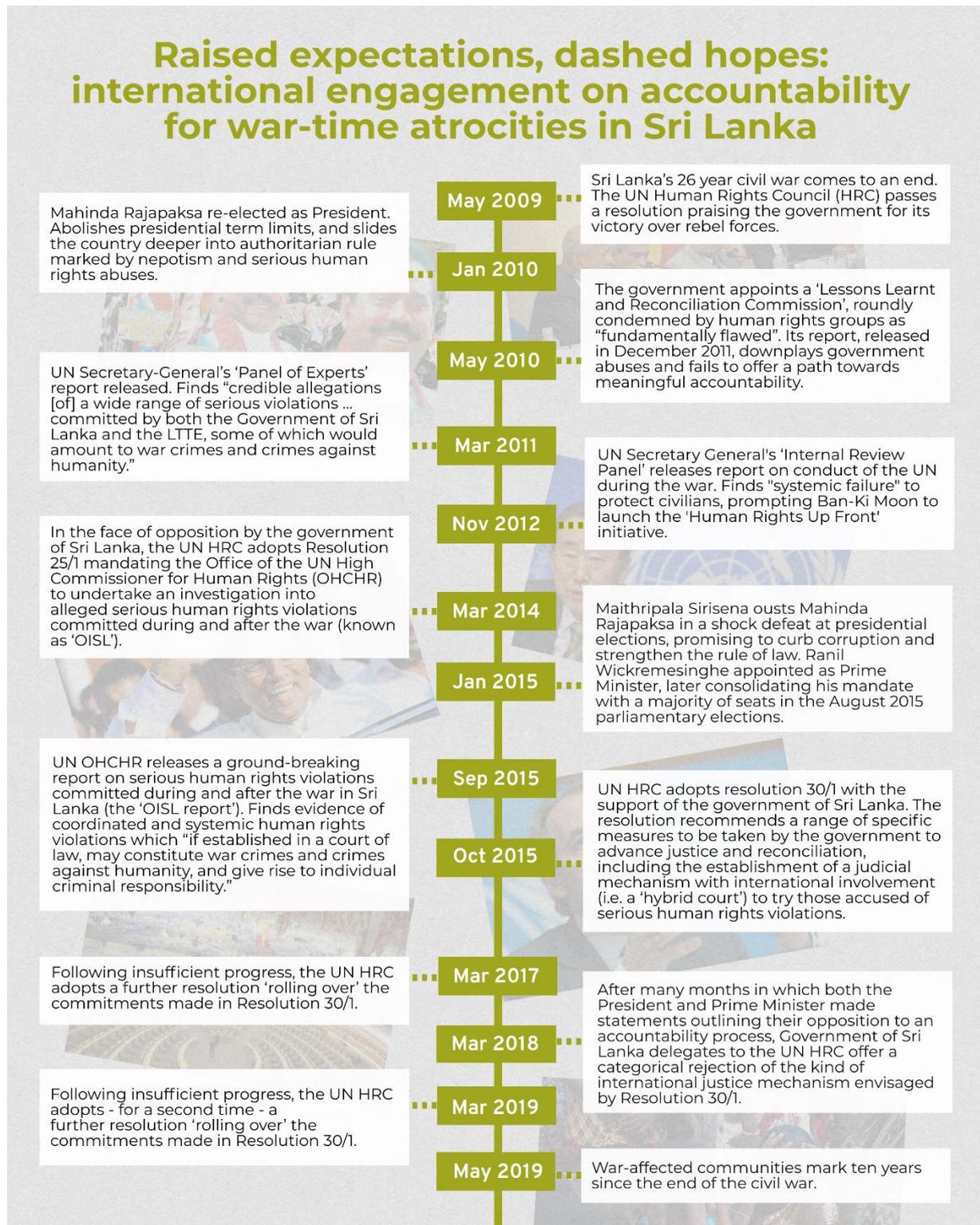
Today – despite several areas of progress – few hold out hope that the government of Sri Lanka will deliver on its core pledge to establish a credible accountability mechanism to try alleged war criminals⁵⁷, nor that the ordinary criminal justice system might be effectively harnessed to achieve the same result. Whereas in the period immediately following the government of Sri Lanka's co-sponsorship of Resolution 30/1 Sri Lanka's political leaders appeared to grudgingly accept the idea of establishing an independent accountability mechanism with international involvement, today that proposal is rejected in categorical and unabashed terms.⁵⁸

The current impasse raises three sets of interrelated questions: What do war survivors' demands look like in the current context? Where did earlier efforts to meet those demands go wrong? And what must happen next? In the following section, we unpack these questions and set out a blueprint for future action drawing on the views of war survivors.

⁵⁷ UN HRC Resolution 30/1, OP. 6: "...notes with appreciation the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable [and] affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality [and also] affirms the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators."

⁵⁸ Human rights groups and civil society organisations have documented in great detail the evolving position on accountability put forward by members of the current government. See for example: 'Delayed or denied?', PEARL (May 2018); and 'Flip Flopping on Accountability', Groundviews (March 2018). The government's formal repudiation of an accountability mechanism with international involvement appears to have crystallised at least as far back as March 2018, when its delegation to the HRC declared Sri Lanka's judiciary and law enforcement mechanisms to be "fully capable", while alluding to the (erroneous) argument that the inclusion of international judges would require amending the constitution (see: <https://www.mfa.gov.lk/statement-by-foreign-minister-tilak-marapana-at-37th-session-of-the-un-human-rights-council-21-march-2018-3/>). This position was spelled out even more explicitly by the delegation before the HRC in March 2019 (see: <https://www.mfa.gov.lk/statement-by-hon-tilak-marapana-p-c-minister-of-foreign-affairs-of-sri-lanka-and-leader-of-the-sri-lanka-delegation-to-the-40th-session-of-the-human-rights-council-on-agenda/>)

Infographic two:



2.1 WHAT WAR SURVIVORS WANT

Though the question ‘what do war survivors want?’ is one that has been answered in various fora since 2009,⁵⁹ the changing political context in Sri Lanka – and the self-evident failure of a decade’s worth of attempts to meaningfully advance accountability – suggest that it is one worth re-visiting at the present juncture.

Below, we provide a small snapshot of the views and wishes of the group of war survivors to whom we spoke, to see if and how attitudes are changing, whether common assumptions still hold, and to situate current demands against the various options available today for advancing justice and reconciliation.

2.1.1 Truth or justice? A false choice

Discussions with interviewees on how to deal with the past laid bare a diverse and nuanced range of views. Yet there remained broad consensus about the need for a formal process capable of investigating and holding the perpetrators of serious human rights violations criminally liable for their actions. For many, the attainment of this kind of justice remained paramount. Typical of the responses was Malathi’s: ***“It is 100% important. We have to get justice ... for the people who disappeared, for the people who died. There should be some legal process and [those found guilty] should be put in prison, or something like that.”***

On the importance of justice:

“Justice is crucial for us.” - Sakthi

“We can be happy and peaceful only if there is justice. If there is not justice, then it is no use.” - Indra

“Justice to me is to prosecute the criminals in courts.” - Vithya

Many of those we spoke to explicitly rejected the notion that the best way of dealing with the past was to simply forget or ‘move on’. ***“How is it possible to forget what happened?”*** said Priya, ***“they cannot just leave it like that. They cannot just tell us to look forwards. They must give us an answer.”*** Some, such as Malathi, went on to nuance this position by stating that, even if they were to come to terms with the past themselves, it would be wrong that other victims and survivors be denied justice as a result: ***“We cannot say that just because I accept [what has happened], that everyone else has to accept it. We cannot say that there should not be justice, just because it doesn’t matter to me or because I’m living a good life.”*** While several interviewees framed accountability in retributive terms, others, such as Senthil, stressed that it was not a matter of retaliation or vengeance, stating, ***“we aren’t supposed to take revenge ... more than being punished, there is something called justice.”***

One interviewee, Nivethika, suggested that perpetrators might be pardoned for the crimes they had committed: ***“I think that whoever made a mistake ... should be forgiven. They should correct themselves and live. We have to forgive the ones who made mistakes if they ask for a pardon. This is not just for the LTTE but also for the Sri Lankan military.”*** However, the overwhelming majority of interviewees were of the view that pardons (on the basis of an apology) could only be condoned in very limited circumstances, or not at all. ***“There are crimes which are eligible for apology,”*** remarked Senthil, ***“and there are crimes which cannot be forgiven. In such a case, the punishment should fit the crime.”*** Malathi’s response was more absolute: ***“No, apologies cannot be accepted. There should be a legal process.”***

⁵⁹ Including, for example, through research by the Sri Lanka Campaign, the Consultation Task Force (CTF) and, most importantly, through the statements and messages regularly issued by victim and survivor groups themselves.

Several interviewees, all of whom had family members who had been forcibly disappeared at the end of the war, indicated that their primary concern was establishing the fate of their missing relatives. ***“Punishing is secondary,”*** remarked Mugil, ***“we want to know the truth now.”*** However, many were keen to emphasise that attainment of justice and accountability was not up for compromise, nor could be exchanged for the truth about the disappeared. As Malathi explained, ***“We need to know the truth as well as there being justice. We can achieve justice only when we find out the truth. If we can obtain the truth about who took him or her and who killed him or her, then we can take the perpetrator through a justice mechanism.”*** A similar view was put forward by Nalini, who stated that, ***“the apt punishment should be given even if the truth is been found. Even after knowing the truth, we should find out who committed the offence, what offence they committed, and they should be punished.”***

On the relationship between truth and justice:

“Both are important. We need to know the truth and the reason for why they caught them [the disappeared]. Action against them must be taken.” - Priya

“I need both. I need to know the truth regarding what happened - and to have justice done.” - Sakthi

2.1.2 Who should be held accountable?

Nearly all of the individuals whom we spoke to stressed the importance of holding state actors accountable for crimes committed during the war and its aftermath. For many, this meant pursuing those with some direct involvement in specific crimes – including, for example, members of the security forces who used weapons indiscriminately against civilians, or who were present at the point at which forcibly disappeared persons were last seen alive. However, supplementing earlier discussion about the extent to which rank-and-file perpetrators might be forgiven or pardoned, interviewees also highlighted practical obstacles to mounting prosecutions against low-level perpetrators. As Priya explained, for example: ***“We don’t know who the military people are. We don’t know who the individuals are.”***

In light of these considerations, many interviewees placed an emphasis on holding accountable those in positions of responsibility in the military and government. In Vithya’s words: ***“The [institution] that is accountable is the military. If it is the military, then it is the government who is also accountable.”*** This was a view echoed by Mugil, who stated, ***“It is the government which should be held responsible. It is the government who ordered the military. The military will just do what they are asked to do.”***

To that end, several interviewees identified specific individuals in the former regime whom they regarded as bearing responsibility for crimes committed, among them former president Mahinda Rajapaksa. As put by Indra: ***“Mahinda [Rajapaksa] is the one who is responsible for what happened. He is the one who was in power at that time ... Even Ranil or others; it is not like they do not know what happened through the war when Mahinda was in power. All of them know everything. So there is a responsibility for them to be answerable as well. They have to tell the truth if we ask them.”***

Others stated that those overseeing the main military divisions involved in the final war-time offensive should be tried and punished. Malathi, for example, stated: ***“The area officers who were commanding should at least be sent to trial and punished. Because they will know what happened in their areas.”***

A smaller number of interviewees outlined their belief that members of the LTTE should be held accountable for crimes committed by them. In the words of Senthil, ***“they must accept that they were also involved, and that they also destroyed.”*** As with the Sri Lankan military, several interviewees expressed the view that those in positions of responsibility in the LTTE should be regarded as most culpable. As explained by

Mugil, for example, in relation to the group's practice of forcibly conscripting civilians: ***"It is the responsibility of the commanders who were in the LTTE ... There were orders from the head for the commanders to arrest and catch the people, to take them for the war. We cannot assume that those on the front line would have planned that. They will only do what they were told to."***

However, several were aware of the practical barriers to holding members of the LTTE accountable given that so few of its senior leadership survived the end of the war. ***"They should be punished,"*** said Malathi, contemplating that point, ***"but whom can we take as accountable from the LTTE side? They are not here."***

2.1.3 The seeds of violence

In a pattern consistent with previous research by the Sri Lanka Campaign, responses from interviewees drew a link between the failure to hold perpetrators accountable for past human rights abuses and the perceived risk of future violence.⁶⁰

Several framed this link in terms of their fear that their communities could become the targets of violence by perpetrators again in the future. As Priya explained, emphasizing the deterrent aspects of accountability, ***"it is only if we get justice, that they won't repeat the same thing. They [the perpetrators] will be aware that if they do things like this, punishments will be given, and hence they won't do it. Look at how children behave: if we don't punish them for their mistakes, they repeat it. Only if punished, they will not do it again."***

For others whom we spoke to, this threat was contextualised against the potential prospect of renewed armed conflict – and the possible re-emergence of Tamil militant groups. For Indra, the likely consequences of failing to address the legacy of the war, and the resulting sense of anger among the Tamil community, was straightforward: ***"If there is no justice, there will only be fighting in the future. There can be a war again. They say the LTTE is completely gone ... But I believe that they will come back again. If they do, then there will be problems. If there is no proper solution or justice for what happened, we will have to flee again."***

On holding the LTTE accountable:

"For the LTTE to be held accountable ... we do not know who it should be. If they are in a party or in politics we can question them. But now where would we find them? Because my son surrendered I can only question Mahinda Rajapaksa." - Indra

On the risk of recurrence:

"There should be accountability as to who did it ... [to] stop the recurrence." - Malathi

"If there is no justice then it will be problematic in the future. We will have to go through difficulties ... If there is justice then this situation will not arise." - Nivethika

"Yes there are chances for violence to happen in the future. If there is injustice in all directions then the next stage is violence." - Malathi

"It's important to get justice because these problems shouldn't re-occur. Only if they are addressed, our children will not experience them in future. When our children grow up they have to live in peace." - Nalini

"There are generations ahead of us. They must not face problems like we did." - Priya

⁶⁰ See 'I live in fear and go to work: ongoing surveillance, harassment and intimidation in Sri Lanka's North', Sri Lanka Campaign (February 2018).

It was a link also drawn by Malathi, who – reflecting on the history of the LTTE – explained: ***“Violence starts when there are rights violations. The war started here because our rights were violated. We have lost so much and so many people died. But even now, if there is no justice, this whole thing might escalate to an even worse situation than before. And the government itself is creating this situation.”***

Mugil, who was elsewhere critical of the LTTE, elaborated on how she believed the sense of grievance within her communities might one day find expression through violence. ***“Yes, there will definitely be violence. Because, for example, if one person is being affected, a larger group of them can form and do something [about the situation]. That is how the rebel group started. Not everyone will be silent like us. There are so many crimes happening everywhere. People are not going to bear the oppression continuously.”*** The salience of Mugil’s observation appeared to be partly borne out by the sense of nostalgia for the LTTE expressed by one interviewee, who stated: ***“We who were dedicated to the LTTE, still have feelings. We still have it. When I see the places which were so much better when the LTTE was around, I still get a feeling for it.”***

2.1.4 On the possible return of the Rajapaksas

Discussions with interviewees – which took place after the October 2018 coup attempt by forces loyal to the former President Mahinda Rajapaksa, as well as amid speculation about a (now confirmed) Presidential bid by former Defence Secretary Gotabaya Rajapaksa – provided an opportunity for reflection about what the re-election of members of Sri Lanka’s former regime might spell for the future, as well as the performance of the current government since 2015.

A large number of those whom we spoke to expressed serious concerns about the prospect of a return to power by members of the Rajapaksa family; concerns grounded in both of their experience of the war, and the repressive treatment of the Tamil community that followed in its aftermath. Malathi’s assessment was blunt: ***“How we picture him [Mahinda] in our mind is that he is a murderer. That will never change. He has murdered so many. If he comes back, all of it will happen again. We have that fear.”*** Elsewhere, Sakthi remarked: ***“He [Mahinda] destroyed our entire ethnicity. We don’t have any hopes in him. We will never ever trust him.”***

Adding to such fears was Malathi’s perception that during last year’s attempted power grab by the Rajapaksa’s, Sri Lanka’s security forces had become emboldened in their surveillance and harassment of the Tamil community:

“In the short period he was in power [in October 2018] it happened,” she said, ***“the CID [Criminal Investigation Department of the Sri Lankan police] came and inquired. It happened like that because they [the CID] feel free when Mahinda is there. Whether he is giving the orders or not, they use the freedom and start doing all of these things. So it is evidence of what will happen if he comes. We saw it. If he comes, there will be problems.”***

Vithya’s remarks echoed those of Malathi’s, but also articulated a specific concern that the increased space for dissent and civic activism over the past four years had left many exposed to the threat of repercussions in the future: ***“If he [Mahinda] comes to power, the country will take a down fall. Not only that, but many people will face trouble. Many people have been speaking and protesting against him. Those people may be disappeared. If he had been in power, they would have been killed.”***

Somewhat surprisingly, but perhaps revealingly, a small number of interviewees took a more ambivalent view of the possible return of a Rajapaksa-led government. Nivethika, for example, emphasised that despite the repressive nature of the previous government, it had outperformed the current government on other scores. ***“Sirisena was not as destructive as Mahinda,”*** she remarked, ***“but Mahinda did a lot by giving us***

houses and other facilities. Sirisena has not done anything for us so far. Mahinda killed people and we oppose that. But he has done good things here too.”

The overall picture that emerges is one in which many Tamil war survivors perceive themselves as trapped between two intolerable future scenarios: a continuation of the status quo – in which past human rights violations continue to be denied and dismissed; and another, in which survivors also face being once again ruled by those most responsible for those violations. Meanwhile, there is a prevailing sense that the increase in civic space enjoyed since 2015 may eventually leave many exposed to reprisals, while the state’s recalcitrance on justice and accountability issues, as well as its ongoing heavy-handedness towards minority communities, have allowed the grievances at the root of the ethnic conflict to fester.

2.2 TAKING STOCK OF THE FAILURE TO TACKLE IMPUNITY

2.2.1 Structural problems, personal failures

Any diagnosis of Sri Lanka’s decade of failure to bring the perpetrators of atrocity crimes to justice must naturally begin with the deep-rooted social and political dynamics inside the country that function to protect the accused. These include the continued popular appeal of hardline forms of Sinhala Buddhist nationalism, the persistent veneration of the Sri Lankan military as protector of the nation-state (reflected in popular anxiety about the prosecution of ‘war heroes’), and serious shortcomings in the effective functioning of Sri Lanka’s democratic institutions, including the judiciary. Although recent efforts to address the past in Sri Lanka are regularly described as examples of ‘transitional justice’, several interviewees intimated that it was precisely because of the lack of any real transition that this agenda has not borne fruit.

Common among the views expressed was a belief that Sri Lanka’s Sinhala-dominated constitutional and political settlement rendered the state incapable of addressing abuses against those from minority communities. In the words of Senthil, for example:

“Both parties of the past and present represent the majority. They aren’t going to do anything for the Tamils. They are only in power to fulfil their own needs. They aren’t in power to serve us. There are people who won’t let them ... There is nobody to speak up for the families of the missing. It is impossible to pass a resolution in Parliament [for them] if both the ruling party and the opposition have the same views.”

Some interviewees developed this strand of thinking to make a point about the need for the meaningful devolution of power to Tamils, and to reflect on the failure of the promised constitutional reform process to deliver it. Nivethika’s remarks provided one of the clearest statements of this: ***“We would like to ask for equal rights. We cannot live under the Sinhalese. We need equal status. We will not get a separate land; what we are asking for is a federal government.”***

Asides from these obstacles to reform, interviewees also criticized Sinhalese political leaders who had in their eyes failed to deliver on a mandate granted (in part) by Sri Lanka’s minority communities. It was a sense of disappointment that was captured by Nalini: ***“When I voted for Maithri [Maithripala Sirisena, in January 2015] I thought that if he becomes the President he might at least reveal where the [disappeared] were kept. But to date he hasn’t said anything. As President, what response has he given us? He hasn’t told us anything.”***

As Indra explained, in reference to the government’s repeated flouting of pledges to war-affected communities: ***“To this day, I cannot recall anything that the Sri Lankan government has promised being done. It is the current government who should have taken initiative to do this and got this done - but they did not do it. We cannot just blame the UN.”***

2.2.2 International engagement

Notwithstanding the remarks above, many of those whom we spoke to did apportion a significant amount of blame to the UN – as well as members of the international community writ large – for the failure to ensure accountability for perpetrators of war-time violations. As highlighted below, however, it was a viewpoint often tempered by an ongoing belief in the value of pursuing justice through international avenues.

In particular, interviewees expressed frustration about what they regarded as the growing passivity of the international community in their engagement with the government of Sri Lanka in recent years, as well as the perceived disconnect between statements made in forums such as the UN Human Rights Council and action on the ground. As Malathi remarked, *“Geneva is being very lenient with the government of Sri Lanka. They are giving more time, but nothing has happened.”*

The sense that the government was simply ‘playing for time’ was a theme also touched upon by Mugil, who described it in terms of the precarious struggle of the many elderly family members of the victims of enforced disappearances: *“It is like this; they [the government] wants to delay things until the parents [of the disappeared] will become sick and die, after which there won’t be any problem. That is how they are approaching this. In another 10 years most parents will be dead, and if that generation goes away there is no one else to take [the issue] forward.”*

Elsewhere Mugil was highly critical of what he perceived as the unduly cautious approach by international actors: *“there is no point just releasing reports, giving news and press conferences,”* he remarked *“There needs to be action. There is continuous talking and no action. They have to speed up this accountability process.”* Others, such as Vithya, were in little doubt about how such an approach had influenced the government of Sri Lanka’s approach to dealing with the past, stating: *“the government is not paying attention to the families of the disappeared. That means the international community is not applying pressure! The international community must help bring our issues into the arena.”*

While few of the interviewees provided detailed critiques of recent international engagement on Sri Lanka, it is worth mentioning here several key developments which have elsewhere been flagged by activists and civil society groups as evidence of the discrepancy between the international community’s words and action. Such developments include increased engagement with the government of Sri Lanka in the spheres of aid, trade and security cooperation, all of which have proceeded apace despite minimal progress towards addressing the past. They also comprise (as highlighted in *infographic three*) the considerable and largely unopposed strides that the government of Sri Lanka has made towards positioning itself as a global champion of human rights in various international fora - most notably the inroads the government has made in the sphere of UN peacekeeping (as an increasingly major contributor of troops), its election as President to the Convention on Cluster Munitions, and its entry into the UN Secretary General’s ‘Circle of Leadership’ on preventing sexual exploitation and abuse. These are

Frustration at the role of the international community:

“The entire world knows what happened. But we don’t why the international community remains silent about this matter.” - Sakthi

“Some [countries] are asking for justice, but there is no implementation” - Mugil

“I think the whole world is thinking that there need not be anyone to care for us and that they can just leave us as we are now. There were so many Tamils who were killed and so many atrocities which happened. But it doesn’t seem like anyone is actually asking for justice.” - Mugil

all areas in which the government of Sri Lanka has itself failed, and continues to fail, to address allegations of serious rights violations.

The frustration of interviewees – possibly based on the kinds of developments described above – were also reflected in a sense of anger, disappointment and betrayal with the international community itself; feelings made all the more acute by a widely held belief that the world had failed to act protect civilians in 2009, as well as the subsequent raising of expectations that came with the international community’s previously robust support for justice and accountability at the UN Human Rights Council. As articulated by Nalini, for example:

“Recently some [diplomats] came to meet us. I told them that we are seeking a solution by international means. But now there is nothing. I don’t have any faith in the international community. They were watching when people died and when cluster bombs showered down on us. Will they really give us a solution now?”

Despite the dissatisfaction among interviews, many, it appeared, continued to regard members of the international community as important stakeholders when it came to advancing justice and accountability. Among those urging continued engagement was Nalini, who stated:

“The international community must do something. The government [of Sri Lanka] is not going to respond to whatever we do. Only the international community can question them and give us a solution. They must pressurise the government to bring our problems to an end.”

For Priya, the key question was whether those same countries who had earlier pledged to support victims in their fight for truth and justice were really willing to take the steps necessary to bring about those ends.

“They [members of the international community] need to take a decision. They must get a firm grip on this government and ask them to give an answer to the fathers and the mothers of the disappeared. They must tell us whether our children exist or not.”

Infographic three:

Charm offensive: how the government of Sri Lanka positioned itself as a global champion on human rights - in the very spheres where it stands accused of serious unaddressed violations

Sexual Violence



In September 2017, the government of Sri Lanka joined the UN Secretary General's 'Circle of Leadership' on preventing sexual exploitation and abuse. It was admitted to the group after reportedly making a \$10,000 USD donation to the fund for victims.

Somewhat at odds with the initiative's proclaimed 'zero tolerance policy', almost no members of the Sri Lankan security forces have been held criminally accountable for what the UN described as the "widespread and brutal" use of sexual violence during the final stages of the civil war and its aftermath - nor for the allegations of systematic sexual exploitation of children by Sri Lankan peacekeepers in Haiti between 2004-2007.

In mid-2018 Sri Lanka began deploying hundreds of troops on UN Peacekeeping missions. Officials described the move as a "feather in the cap" of the armed forces. By March 2019, it was reported that Sri Lankan peacekeepers were serving in at least three countries: the Central African Republic, Mali, and South Sudan.

As part of an agreement with the UN, the government of Sri Lanka pledged to vet and 'screen out' problematic troops - a category which ought have included those potentially complicit in atrocity crimes at the end of the war, as well the 134 soldiers identified by the UN as being involved in the systematic sexual exploitation of children during a 2004-2007 peacekeeping mission to Haiti. However, serious concerns have been raised about the adequacy of these processes. In October 2018, a Sri Lankan commander was repatriated from a peacekeeping assignment in Mali after human rights groups highlighted his disturbing war record. Given the fact that almost no member of the Sri Lankan armed forces has been held criminally accountable for the abuses above, their ongoing deployments as peacekeepers is deeply troubling.

Despite indications from the UN in September 2019 that deployments of Sri Lankan peacekeepers would be scaled back, following the appointment of alleged war criminal Shavendra Silva to Army Commander, in November 2019 it was announced that 243 Sri Lankan troops would be deployed to Mali to replace the current contingent there. Silva oversaw a pre-deployment ceremony for the troops in Sri Lanka.

Peacekeeping



Cluster Munitions



In September 2018, Sri Lanka was elected President of the Convention on Cluster Munitions - an international treaty to prohibit the use of a weapon well known for its devastating and indiscriminate impacts on civilians in war-zones around the world.

The move came despite the fact that the government of Sri Lanka is yet to address - nor even acknowledge - allegations that its own forces used cluster munitions against civilian targets during the final stages of the civil war in 2009. In 2015, a major UN investigation concluded that "given the persistent nature of the allegations ... further investigation needs to be carried out to determine whether or not they were used." The following year, the Guardian newspaper published a story featuring images - leaked by the former staff member of a de-mining agency - of cluster munitions that had been unearthed in the so-called 'No Fire Zones' after the end of the war.

2.3 LOOKING AHEAD: ADVANCING ACCOUNTABILITY IN UNCERTAIN TIMES

The ongoing need for justice for war-time violations in Sri Lanka should be clear from these pages. The gravity, scale, and breadth of the crimes committed during the final stages of the war in 2009 have not been diminished by the passage of the time. Nor, in the eyes of war survivors, has the demand for accountability abated in view of the minimal progress that the government has made elsewhere under the rubric of ‘transitional justice’.

Unfortunately, a decade’s worth of engagement from local activists and members of the international community has failed advance that demand. No mechanism has been established to try those accused of war-time abuses, and no sustainable progress has been made in dealing with other serious violations, including the many so-called ‘emblematic cases’, through the ordinary criminal system. Not only do the most egregious human rights violators continue to walk free; many of them continue to be rewarded with promotions and plaudits.⁶¹ While aspects of the social and political landscape in Sri Lanka have changed significantly over the past ten years, the culture of impunity for serious human right abuses remains firmly intact.

The implications of this fact for the future appear to be well understood by war survivors, with many increasingly concerned about the risk of recurrence. But the increasingly forbearing diplomatic engagement with Sri Lanka over the past few years - and the growing reluctance by a range of countries to use the full-range of levers at their disposal to incentivise and effect meaningful change - suggest they are not sufficiently appreciated by members the international community.

In light of the evident failure to help deliver justice to victims, and with the prospect of further political change in Sri Lanka now around the corner, the present moment offers a ripe opportunity for members of the international community to ask some important questions: about why efforts to hold perpetrators of atrocity crimes accountable have not succeeded; what that means for the future; and what can and should be done differently, in order to salvage efforts to meaningfully address the past in Sri Lanka.

In the following, we set out a blueprint for action by members of the international community across three key areas, based on an analysis and interpretation of the views set out above.

2.3.1 Confronting failure, tackling denial

Any re-vitalised strategy for addressing the past in Sri Lanka must begin with recognition of how international engagement on the issue of accountability has, to date, failed. For too long, the prevailing approach among many members of the international community has been to downplay or minimise the almost non-existent progress on this front – while indulging the fiction that the government of Sri Lanka is a willing partner when it comes to the issue of war-time justice.⁶²

⁶¹ To provide some key examples: in May 2015, alleged war criminal Major General Jagath Dias was promoted to the position of Army Chief of Staff; in November 2018, Rear Admiral Wijegunaratne was promoted to the position of Armed Forces Chief of Defence staff, despite allegations about his role in covering up the Trincomalee 11 disappearances case; and in August 2019, alleged war criminal Major General Shavendra Silva was promoted to the position of Army Commander.

⁶² One example of this tendency was contained in a recent summary of an ambassador-level meeting of the UN Peacebuilding Commission (PBC), in which those member states present are reported to have: “commended Sri Lanka’s continued commitment and engagement to transitional justice and reconciliation, including through the operationalization of the OMP and OfR, and demonstrating commitment to move ahead to establish the Truth Seeking Commission *and judicial accountability mechanisms.*” [emphasis added] ‘PBC Ambassadorial meeting on Sri Lanka’, Chairperson’s summary of the discussion (April 2019).

It is an approach that appears to have been driven by a constellation of factors including, among others, competing diplomatic priorities (for example, on trade and security), a premature desire to chalk up the Sri Lankan experience as a post-conflict ‘success story’, and a sincere (if mistaken) belief in some quarters about the value of putting the politically thornier issue of accountability ‘on the backburner’ of the transitional justice agenda.⁶³ Yet, rather than generating goodwill and buy-in from the government on the issue of accountability, and thereby enhancing the prospects of sustainable peace in Sri Lanka, the dominant effect of this approach has been the progressive renunciation of key commitments by the government of Sri Lanka, and the widespread flourishing of denial concerning war-time atrocities.

In order to reverse this trend, UN member states – especially those who form part of the Sri Lanka ‘core group’ at the Human Rights Council – must begin to re-frame their engagement with Sri Lanka around the issue of accountability: acknowledging the unsatisfactory state of play; re-affirming the evidence base regarding circumstances of the final stages of the civil war (for example, as documented in the UN OISL report); and re-grounding calls for action in the demands of affected communities, as well as arguments about the risk of future violence posed by ongoing impunity.

To support this, **international actors should take a much more active role when it comes to countering misinformation about the circumstances of the final stages of the civil war.** Recent efforts by supporters of the Sri Lankan government to downplay the scale of civilian harm during the war through the misleading use of evidence have largely gone unchallenged by the diplomatic community – a prime example of how the failure to ‘hold the line’ on established credible accounts of the final stages of the war have enabled denial, and ultimately, have helped reinforce impunity in Sri Lanka.⁶⁴

2.3.2 Enhancing the accountability tool-kit

As part of the approach outlined above, members of the international community should re-visit the package of measures available to advance accountability in Sri Lanka and consider ways in which that package can be revised and enhanced.

- **The end of the road for a hybrid justice mechanism?**

The first question that arises is the value of continuing to pursue the judicial mechanism which lies at the heart of the current framework for dealing with the past under Human Rights Council Resolution 30/1; that is, “a judicial mechanism with a special counsel [with the participation of] Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators.”

Among the four key mechanisms envisaged by the Resolution, it is this ‘hybrid’ justice mechanism which has suffered the bleakest fate of them all. Having been progressively rejected by members of the government of Sri Lanka since October 2015, today the mechanism stands entirely unimplemented. It is a sad reflection of the evaporation of political will behind it, that nowadays the proposal is scarcely even acknowledged (except in the vaguest terms) by its earlier proponents and sponsors within the international community.

In this context, pessimism and despondency around the prospect of securing accountability for war-time violations via such a mechanism are entirely justified. For several years now, the chances of its establishment have stood at virtually nil. However, it is a mechanism that remains – as it was in October 2015 – one of the

⁶³ For a fuller critique of the “truth first, justice later” sequencing approach to transitional justice, see: ‘The Politics of Sequencing: A Threat to Justice’, South Asian Centre for Legal Studies (November 2016).

⁶⁴ For example, see: ‘Claims about the ‘Gash despatches’ exposed’, Sri Lanka Campaign (June 2018).

few models notionally capable of satisfying the test of independence and impartiality set out by many victims, while ensuring the degree of local ownership warranted by political realities in Sri Lanka.⁶⁵

To cast it aside on the basis that it has not succeeded for want of political will would not only amount to a circular logic; it would also betray a key demand of many war survivors for internationalised forms of justice capable of being operationalised in close proximity to victims themselves. It is therefore incumbent on all those who called for a hybrid justice mechanism in the past to continue to aspire to and make the case for it. That is an obligation which is intensified, rather than diminished, by the experience of the past four years, and for which the prospect of political change in Sri Lanka, not to mention the risks outlined in this report, should prompt fresh ambition.

- **Bridging the accountability gap**

At the same time, while ‘holding the line’ on a hybrid justice mechanism, the current impasse demands that member states urgently pursue accountability through alternative avenues. The pursuit of the latter, in tandem with the former, has the potential to be mutually reinforcing – by raising the costs of inaction, and signaling clearly to the government that the shirking of its obligations to victims will not be tolerated.

First and foremost, **members of the international community must step up efforts to support the attainment of accountability in the small number of cases that are proceeding through the ordinary criminal justice system in Sri Lanka.** These include, for example, the various ‘emblematic cases’⁶⁶ as well as the large number of *habeus corpus* petitions lodged in relation to individuals who were disappeared during the war and its immediate aftermath. While there is no one-size-fits all template for engagement, there are a number of ways in which the diplomatic community can help support progress on this front – for example, by vigorously denouncing the threats and obstruction routinely faced by complainants and lawyers involved in such cases, by issuing clear public challenges to ‘heel-dragging’ by investigating authorities, and by urging further reforms that are required to improve access to justice and the effective functioning of the judiciary.⁶⁷

Second, **UN member states should look afresh at means of advancing justice and accountability beyond Sri Lanka’s borders.** While the current dynamics within the UN Security Council continue to render unlikely the possibility of establishing a parallel justice process,⁶⁸ the present moment is one that is ripe for decision-makers to seriously reflect upon, and consider the relevance and transferability of, what one commentator has described as the proliferation of “creative extraordinary accountability mechanisms that have been established within the UN system in recent years.”⁶⁹

⁶⁵ As highlighted by the final report of Sri Lanka’s Consultation Task Force, for example, the hybrid justice mechanism represents for many both a “compromise,” and a “considered response to the need for confidence and faith in the mechanism”, accounting for the “the necessity of multi community representation.”⁶⁵

⁶⁶ A category which, it should be noted, disproportionately (but not exclusively) concerns acts of state violence committed outside the conduct of the final stages of the war against Sinhalese victims.

⁶⁷ A clear example of such reforms would be the much-needed amendments to legislation relating to victim and witness protection. On which see: ‘Victim and Witness Protection: the need for further reform’, South Asian Centre for Legal Studies (2015).

⁶⁸ For example, by way of an *ad hoc* criminal tribunal or a referral to the International Criminal Court (ICC).

⁶⁹ ‘Accountability for International Crimes in Sri Lanka: A View on UN Approaches in other Situations’, European Centre for Constitutional and Human Rights (February 2019).

Of particular note is the ‘IIIM for Syria’⁷⁰ (established by the General Assembly in December 2016) and the ‘IIIM for Myanmar’⁷¹ (established by the UN Human Rights Council in September 2018) – mechanisms designed, in the words of the mandate of the former, to “collect, consolidate, preserve and analyse evidence” of human rights violations with a view to enabling criminal prosecutions before some later court or tribunal with jurisdiction.

While an incomplete and imperfect response to tackling impunity – those bodies not being capable of delivering justice in and of themselves - **an IIIM-style mechanism for Sri Lanka could help build and preserve evidence of atrocity crimes until such time that there is the political will, nationally or internationally, to bring perpetrators to trial.**⁷² Such a mechanism could also help spur action from the Sri Lankan authorities and others to initiate prosecutorial processes themselves, both by “easing the investigative burden” and by enhancing the political and legal imperative to act in the face of evidence collected to international standards.⁷³

Despite the significant contextual differences between Sri Lanka and the two countries where IIIM’s have already been established – chiefly, that the latter were, at the time of the creation of the mechanisms, considered ‘active’ mass atrocity situations – the political hurdles to creating an IIIM for Sri Lanka should not be regarded as insurmountable. Indeed, the processes by which each of the two mechanisms to date were established were, in their own ways, remarkable and ground-breaking. It is also noteworthy that such a mechanism would appear to fall squarely within the bracket of “alternatives” to a hybrid judicial mechanism and third country prosecutions, which the UN High Commissioner for Human Rights recently stated were “needed to ensure that those most responsible for the most serious crimes [in Sri Lanka] are prosecuted.”⁷⁴

Lastly – and also consistent with the abovementioned call to action by the UN High Commissioner for Human Rights – **members of the international community should support efforts, wherever and however possible, “to prosecute Sri Lankans suspected of crimes against humanity, war crimes or other gross violations of human rights, in accordance with universal jurisdiction principles.”**⁷⁵ Such efforts might include urging prosecutors to investigate and prosecute alleged perpetrators outside of Sri Lanka, committing funds to support civil society groups engaged in the preparation of case files, and issuing clear statements of support for the principle of universal jurisdiction and its applicability to the Sri Lankan context.

2.3.3 Principled engagement and non-engagement

In view of the developments outlined in *infographic three*, **UN member states concerned with the advancement of accountability should also review the government of Sri Lanka’s recent inroads into**

⁷⁰ i.e. ‘the International, Impartial and Independent mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011’.

⁷¹ i.e. ‘the ongoing independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011’.

⁷² The extent of support for such a mechanism among victims and survivors is unclear, and further research is needed.

⁷³ Resonating with the Sri Lankan experience, is the fact that both IIIM mechanisms that have been established to date were created following findings of serious human rights abuses by UN Commissions of Inquiry, but where “the national courts were unwilling to initiate or progress with prosecutions of international law violations.” See: ‘Transitional Justice Bulletin’, Issue 33, South Asian Centre for Legal Studies.

⁷⁴ ‘Promoting reconciliation, accountability and human rights in Sri Lanka’, Report of the Office of the United Nations High Commissioner for Human Rights at the fortieth session of the Human Rights Council (March 2019).

⁷⁵ Ibid.

various multilateral fora, including, for example, its leadership of UN human rights treaty bodies. This review should include, specifically, looking at how such engagement is viewed from the perspective of victims, and whether, to date, it has served to normalise the government's failure to ensure accountability for serious human rights violations as opposed to catalysing action to address them.⁷⁶

Closely linked to the above is the need for member states to ensure that alleged perpetrators, as well as wider institutions that are yet to be investigated for their role in serious human rights violations, are deprived of the political and material support that sustains them. First and foremost, this should be reflected in the adoption of policies and guidelines preventing such actors from becoming beneficiaries of external support, be it, for example, in the form of bilateral aid, security cooperation, and military training.⁷⁷ But it might also mean, at the level of local diplomat engagement, officials refraining from meeting or appearing with problematic individuals in a way which risks conferring legitimacy upon them.

Finally, member states should begin to consider the use of targeted sanctions, including travel bans and asset freezes, against those credibly believed to be most responsible for grave war-time human rights violations.

⁷⁶ In this regard, the UN's recent announcement that it would begin repatriating significant numbers of Sri Lankan peacekeepers – a move which followed the appointment of alleged war criminal Shavendra Silva to the position of Army Commander – appeared to be a very positive, if overdue, step. 'UN Bans Sri Lankan Peacekeeper's', Foreign Policy (September 2019). However, there are already concerns about the depth of commitment to this pledge, following an announcement in November that a further 243 Sri Lankan troops would be deployed to a peacekeeping mission in Mali, replacing those already serving there. On 6 November 2019, a series of shocking photos emerged of the Mali-bound troops presenting a formal military salute to Silva.

⁷⁷ There are outstanding questions, for example, about whether such policies or safeguards exist in relation to recently announced aid spending by the UK and the EU (£10 million and €40 million, respectively, both of which were announced in October 2019). In the case of the UK, there is evidence that significant amounts of aid have previously been spent on training the Sri Lankan police and armed forces, including the notorious Special Task Force (STF). See e.g.: 'Freedom of Information Act 2000 Request Ref: 0968-16' (November 2016) and 'Undercover Footage Shows British Police Are Training Riot-Cops Linked to War Crimes in Sri Lanka', Vice (December 2017).

Conclusion

For over a decade, the government of Sri Lanka has delayed the attainment of justice and accountability for survivors of atrocities committed during the civil war. **But those survivors have remained resilient, determined and steadfast: justice and accountability must not, and will not, be denied to them.**

For many, especially those from the Tamil community, the horror of the final stages of Sri Lanka's armed conflict was but the beginning of a period of pain and anguish that has continued until the present day. As families have sought to come to terms with their loss, re-build their lives, and heal from the trauma of the war, they have been forced to endure official denial, state triumphalism, and the continued threat of further human rights abuses. They have also looked on in dismay as many of those most responsible for their suffering have continued to ascend, and re-ascend, to power.

It is a journey that has been made all the more exasperating by the increased hopes that accompanied Sri Lanka's political transition in 2015, and the government's pledges before the international community to establish mechanisms capable of bringing perpetrators to account. As the testimony in this report underscores, those hopes appear – for the time-being at least – to have been well and truly dashed, leaving many to question whether they will ever see justice in their lifetime, and prompting fears that Sri Lanka's unaddressed culture of impunity could yet again lead to renewed violence. While the issue of accountability is often described by decision-makers in terms of 'dealing with the past', it is the future that many war survivors are concerned about.

It is clear too that anger and disillusionment are not only reserved for the Sri Lankan state. There is also bitterness towards an international community perceived as having failed to follow through on earlier commitments to war-time accountability with the required political will; the dissipation of meaningful pressure in recent years constituting the second act in the world's failure to come to the aid of the victims of mass atrocity crimes in Sri Lanka. Nonetheless, many such victims do still retain a belief that members of the international community are, or can be, important and effective players in the fight for justice.

To that end, we have attempted to set out in this report how – ten years after the war ended, and with Sri Lanka's political landscape set to be re-shaped once again – members of the international community can play a positive and useful role. It is a shift which must start with some frank conversations about the effectiveness of international engagement to date, but also some creative thinking about how the perpetrators of grave human rights violations can be brought to book in the face of extremely limited domestic political will. Without such steps, it remains difficult to envisage a future in which the demands of war survivors are met, the threat of future violence is avoided, and where the Sri Lankan civil war does not stand as yet another terrible example of the modern world's routinely betrayed mantra: 'never again'.



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