

The ITJP is administered by South African transitional justice expert Yasmin Sooka. The project collects and stores evidence for any future credible justice process but also intervenes where it can to assist victim communities from Sri Lanka in seeking accountability.

Initiated by journalists, writers and human rights defenders forced to flee the island, Journalists for Democracy in Sri Lanka (JDS) has been active in reporting, documenting and campaigning against state criminality for more than a decade. JDS plays an important role in assisting fellow journalists, writers and rights activists who are under threat of persecution. Since 2011, JDS functions as the Sri Lankan partner of the Paris-based international media watchdog, Reporters Without Borders (RSF).

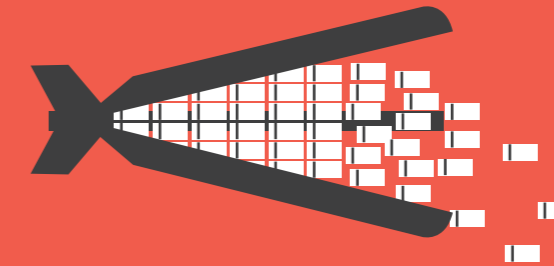
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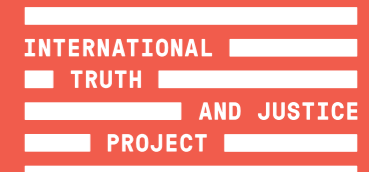
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BURIED WOUNDS: SRI LANKA'S CLUSTER MUNITION VICTIMS

AUGUST 2019



EXECUTIVE SUMMARY

The President of the Convention on Cluster Munitions – Sri Lanka – has failed to come clean about the existence of cluster victims on its soil. While heading the 100-member treaty body designed to address “the unacceptable harm caused to civilians by cluster munitions”, Sri Lanka submitted its first “transparency report” (see below). This declared there simply were no victims and therefore no need for victim assistance.

This flies in the face of the testimonies of scores of war survivors, including UN and de-mining staff inside and outside Sri Lanka – testimonies that bear witness to multiple casualties caused by cluster munitions attacks during the final phase of the civil war in 2009. Also disregarded are persistent reports of cluster remnants being discovered in Sri Lanka post-war¹, and even the findings of a domestic Commission which said that it couldn’t ignore

evidence of civilians being hit by cluster munitions. The Government denies that it used cluster munitions but fails to grasp that it still remains responsible for caring for victims.

Buried Wounds: Sri Lanka’s Cluster Munition Victims is a preliminary report commissioned by the International Truth and Justice Project based on interviews conducted by activists inside Sri Lanka. Eighteen Tamil war survivors in the north of the island describe their injuries from cluster munitions in February and March 2009. This is in addition to 5 cluster victims abroad previously interviewed by the ITJP².


Nearly all those interviewed said that authorities refused to state in medical records that the survivors’ injuries had been caused by cluster ordnance. They also described being intimidated into keeping silent about the true nature of their injuries.

“The culture of fear spread by the Sri Lanka Government is preventing victims from revealing the true source of their wounds, compelling them to live in physical and psychological pain and without reparations,” said the report authors who are Sri Lankan activists who cannot be named for their own safety.


The report is calling for a thorough and independent survey of cluster munition victims in Sri Lanka to address their medical, social and psychological needs.

SRI LANKA'S INITIAL TRANSPARENCY REPORT

Last updated: 27 February 2019



Sri Lanka
Acceded: 1 March 2018
Entered into force: 1 September 2018



Article 3 - Stockpile destruction and retention
Does not have cluster munition stockpiles

Article 4 - Clearance and risk reduction education
Does not have any contamination in areas under its jurisdiction or control

Article 5 - Victim assistance
Does not have cluster munition victims

Article 6 - International cooperation and assistance
Has not provided any assistance to other States Parties

Article 7 - Transparency measures
Initial transparency report submitted on 26 February 2019

Article 9 - National implementation measures
Analysis of existing law taking place to determine how Sri Lanka could implement the CCM domestically

CCM Coordination Committee membership 2018-2019
President of the Ninth Meeting of States Parties (9MSP)

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FOREWORD

This is a preliminary report on victims of cluster munitions from Sri Lanka's civil war. Successive Sri Lankan governments have consistently denied that there are any such victims – the ultimate violation to those whose bodies still bear the wounds and remnants from the use of such weaponry, which the international community seeks to prohibit.

The medical and social consequences of Sri Lanka's denial are devastating – a decade on, war survivors are left without the treatment they need because they are fearful even to tell a doctor what injured them.

Cynically, Sri Lanka chairs the Convention on Cluster Munitions and in that position has submitted a report boldly declaring it had no victims. This is the height of deceit.

The ITJP presents this report but cannot take credit for all the hard work and commitment

that went into it. The project was conceived, researched and written by a collection of Sri Lankan activists, journalists and development specialists inside and outside the country who need to remain anonymous for their own safety. This unique collaboration gave them an opportunity to work together again and for those forced into exile to be able to advocate directly for victims on the ground. The ITJP's role has been to provide support and guidance and we are proud of the finished result.

We hope this will trigger members of the Convention and donors to commission a proper scoping exercise inside Sri Lanka to establish exactly how many victims of cluster munitions there are and to identify their urgent medical and social needs.

Yasmin Sooka

The International Truth and Justice Project
August 2019

INTRODUCTION

Sri Lanka has to date refused to carry out an impartial investigation into violations of international human rights and humanitarian law that occurred during the armed conflict. Ten years after the fighting ended, there has been no credible investigation and there have been no attempts to provide access to justice for victims. Following repeated calls for justice for victims, the international community took upon itself the task of investigating allegations of all parties to the conflict that violated International Human Rights Law (IHR) and International Humanitarian Law (IHL). The result of one such was the UN Secretary General's Panel of Experts report³ of 2010. Another was by the UN Office of the High Commissioner for Human Rights – the OISL report⁴ in 2015.

Meanwhile, civil society organisations have initiated their own investigations in the face of Sri Lanka's intransigence in dealing with wartime accountability. By providing evidence-based and factually accurate information on violations of IHL and IHR, they hope to bring the international community's attention to these acts and thereby set in motion investigations for truth, accountability and justice. This report is one more with this objective.

METHODOLOGY AND LIMITATIONS

Snowball sampling (chain sampling) was used to create the group participants used in this study. The main reason for this was survivors of cluster munition attacks feared coming forward because of repercussions from the Sri Lanka Government. Initially, enumerators received information that there were survivors who were willing to speak on the record. These interviewees put enumerators in touch with others and a chain was created.

The group chosen for this study through snowball

sampling has drawbacks. The 18 individuals selected are from three villages in the Kilinochchi and Mullaitivu districts. Residents of each village were displaced at the same time due to military combat reaching places where they lived. Following the end of the civil war they were resettled in the same villages. What is more, the attacks these residents describe in their testimonies, and in which they suffered injury, were mostly the same because they fled as a group towards what they hoped was safer ground.

Names of individuals and their places of residence have been changed due to security reasons. However, place names of where they came under attack are unchanged.

BACKGROUND TO WAR

Sri Lanka's political conflict between majority Sinhalese and the numerically smaller Tamils grew into sporadic armed violence and then into a full-blown civil war in the late 1970s and early 1980s. The fighting was characterised by human

rights violations, some of which have been categorised as war crimes and crimes against humanity⁵, in which both Sri Lanka's military, police and special forces as well as Tamil rebel groups, primarily the Liberation Tigers of Tamil Eelam (LTTE), were perpetrators. Fighting came to an end with the military defeat of the LTTE by government troops on 18 May 2009.

Sri Lanka is a mosaic of languages and religions⁶. The country is peopled by three main ethnic groups – Sinhalese (74.9%), Tamils (15.3%) and Sri Lankan Moors (Muslim) (9.3%). Of them, Sinhalese and Tamils use language as the main marker of identity – Sinhala and Tamil. Muslims on the other hand, use religion as their main marker of identity. While language might be the dominant element that makes up Sinhala and Tamil identity, 70.1% of the population – almost totally Sinhalese – are Buddhist, while 12.6% Tamils are Hindu, and Muslims are 9.7%. Christians, who claim adherents from both the Sinhalese and Tamil ethno-religious groups, are around 7.6% of Sri Lanka's population.

The political roots of Sri Lanka's civil war lie in Tamils resisting economic, social and political dominance by the Sinhalese after Sri Lanka became independent of British rule in 1948. Sinhalese used their majorities in parliament to disenfranchise groups of Tamils, made Sinhala and not

Tamil the official language – thereby restricting Tamils' employment in government – and limited entry of Tamils into state universities.

Sustained hostility towards Tamils by the then government, and a series of particularly nasty anti-Tamil riots between 1977 and 1983, resulted in the non-violent, largely parliamentary, campaign for secession transforming into an armed struggle⁷.

Fighting between Tamil rebels and the Sri Lanka military was known for its ferocity, as it was for serial atrocities against non-combatant civilians, on both sides. The Sri Lanka Government forces and the LTTE either deliberately targeted civilians or were not concerned enough to keep them safe from collateral damage.

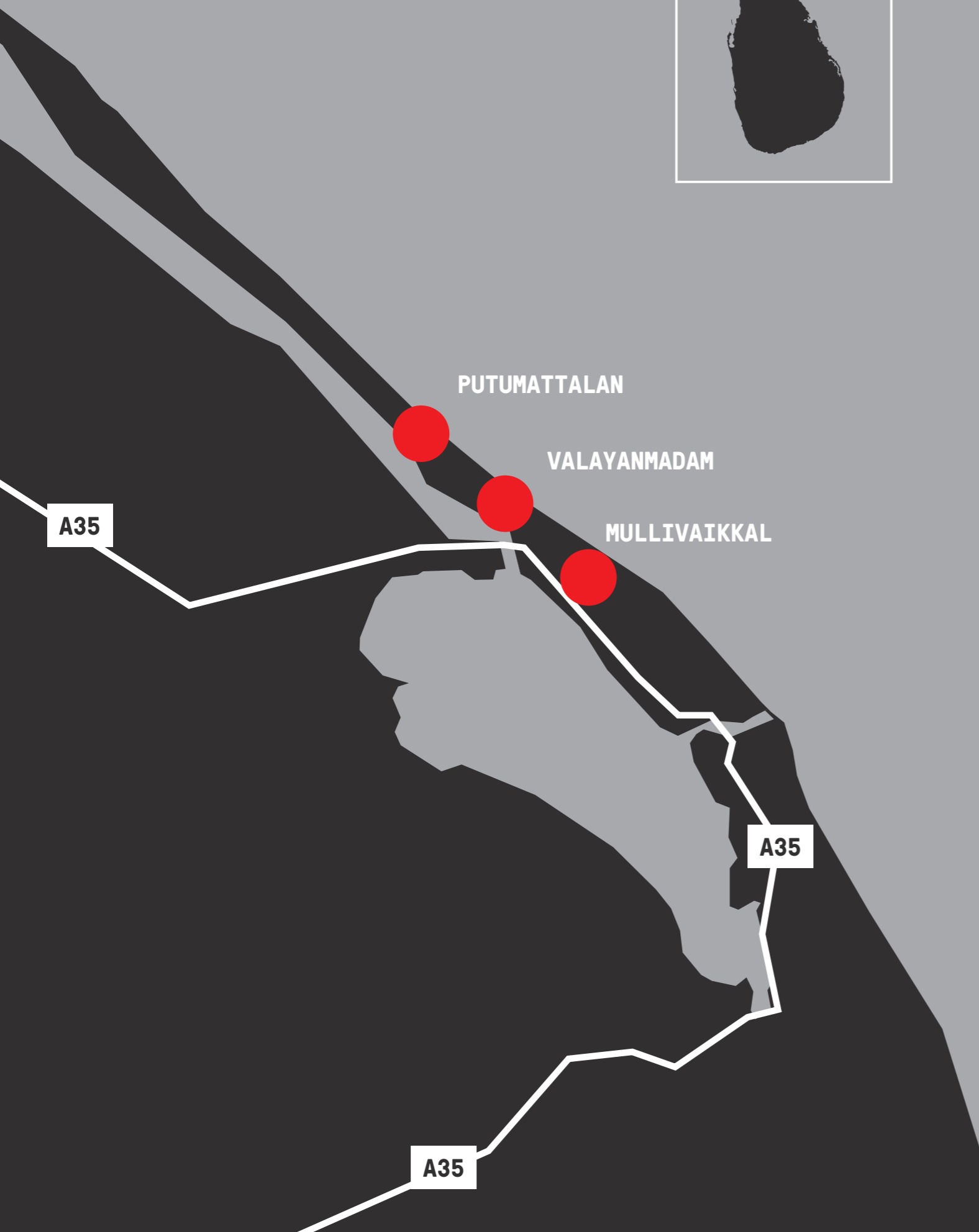
A Ceasefire Agreement of February 2002 between the Sri Lanka Government and the LTTE recognised three districts known as the Vanni in the Tamil-speaking North to be in the full control of the rebels. When fighting resumed in 2006, the Sri Lanka Government's objective was to capture that area, eliminate the LTTE as a politico-military organisation and complete the pacification of the civilian population living in the Vanni.

Since this objective could only be achieved with huge civilian casualties, the Sri Lanka Government ordered all international NGOs, including the UN, serving in the LTTE

controlled Vanni to leave. Fighting that followed the withdrawal of NGOs grossly violated norms of international humanitarian law⁸. But in view of mounting international criticism, the Sri Lanka Government designated areas as No Fire Zones (NFZ)⁹ into which it said civilians living in the LTTE-controlled areas could flee to safety.

Despite public announcements that the NFZs would afford displaced persons safety, Sri Lankan security forces deliberately fired artillery barrages and bombed from the air civilians crowding the confined space of the NFZs¹⁰. It was during the military's onslaught on the NFZs that cluster munitions were used. Fighting ended on 18 May 2009 with the death of the LTTE leader and other senior cadres. As the military closed in, the remaining LTTE cadres with about 300,000 civilians¹¹ moved into the Sri Lanka Government-controlled area, where more brutality awaited them.

SRI LANKAN CLUSTER VICTIMS



1. FINDINGS

VICTIM SAMPLE

The sample we used of 18 survivors living in Sri Lanka consisted of 10 males and 8 females. At the time they were interviewed for this report they ranged from ages 14 to 64. Somasundraam Ramani, 14, and Mahalingam Arjuna, 23, were the youngest while Sothinathan Ramanathan, 64, and Nathan Kulasingham, 62, are the oldest.

Somasundaram Ramani (female), then five years old and Mahalingam Arjuna, then 12, were children at the time of the attacks that occurred between February and May 2009. Rajendran Ravindran now 28, was 17 years old when he became the victim of cluster munitions.

VICTIMS OF MULTIPLE VIOLATIONS

Being survivors of cluster weapons was not

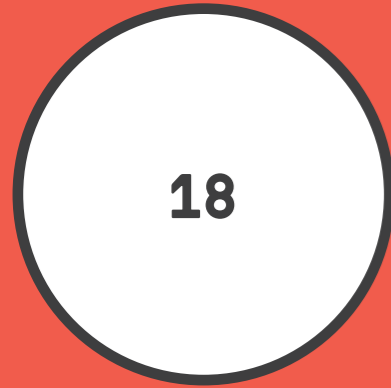
the only human rights violation persons in this sample suffered. Fighting intensified in late 2008 when Sri Lanka's security forces' multipronged advance by land to capture rebel-held territory reached the districts of Kilinochchi and Mullaitivu, which formed the core of the LTTE's de facto state. The ferocity of the fighting led to mass displacement as civilians fled their homes ahead of the armed combat closing in on them.

Every individual in the sample of 18 had been displaced multiple times, 16 of them between August 2008 and May 2009 when the fighting came to the end. Of the 18, half were first displaced in August 2008. They were displaced from villages in the Pooneryn, which is an area in northern Kilinochchi District. Their testimony of being displaced due to fighting corresponds with public accounts¹² of intense artillery fire by the Sri Lanka Army from its positions in the Jaffna Peninsula towards Pooneryn

before launching ground operations from Pooneryn towards Kilinochchi town, the administrative centre of the LTTE's de facto state.

Of the balance of nine, six persons were first displaced in January 2009 from a village in the Puthukkudiyiruppu Divisional Secretary Division in the Mullaitivu District. The village is southeast of Kilinochchi and north of Mullaitivu town. Testimonies of residents fleeing on 19 January 2009 are in keeping with published material¹³ of the Sri Lanka military's campaign to move southeast after capturing Kilinochchi town on the day after New Year 2009 towards Mullaitivu town, which fell on 25 January 2009.

SRI LANKAN CLUSTER VICTIMS



INJURED BY CLUSTER MUNITIONS



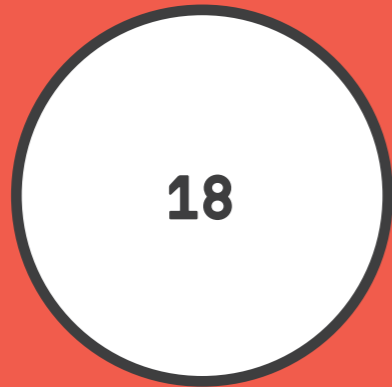
MALE



FEMALE



VICTIMS WHO WERE CHILDREN IN 2009



MULTIPLE DISPLACEMENTS



DISABILITY DUE TO INJURY



DISPLACED AUG 2008



DISPLACED JAN 2009



DISPLACED 20 TIMES

The highest number of displacements was suffered by the Somasundaram family, Amirthalingam Somasundram (father), Somasundram Devika (mother) and the five-year-old Ramani - 20 times.

Suppaiah Velayutham was also displaced 20 times. The individual who was displaced the fewest times was Vaidiyasekaram Kokila from the Puthukkudiyiruppu Division in Mullaitivu - three times. Among the others, five individuals were displaced between 14 and 16 times.

As the Sri Lankan security forces advanced towards

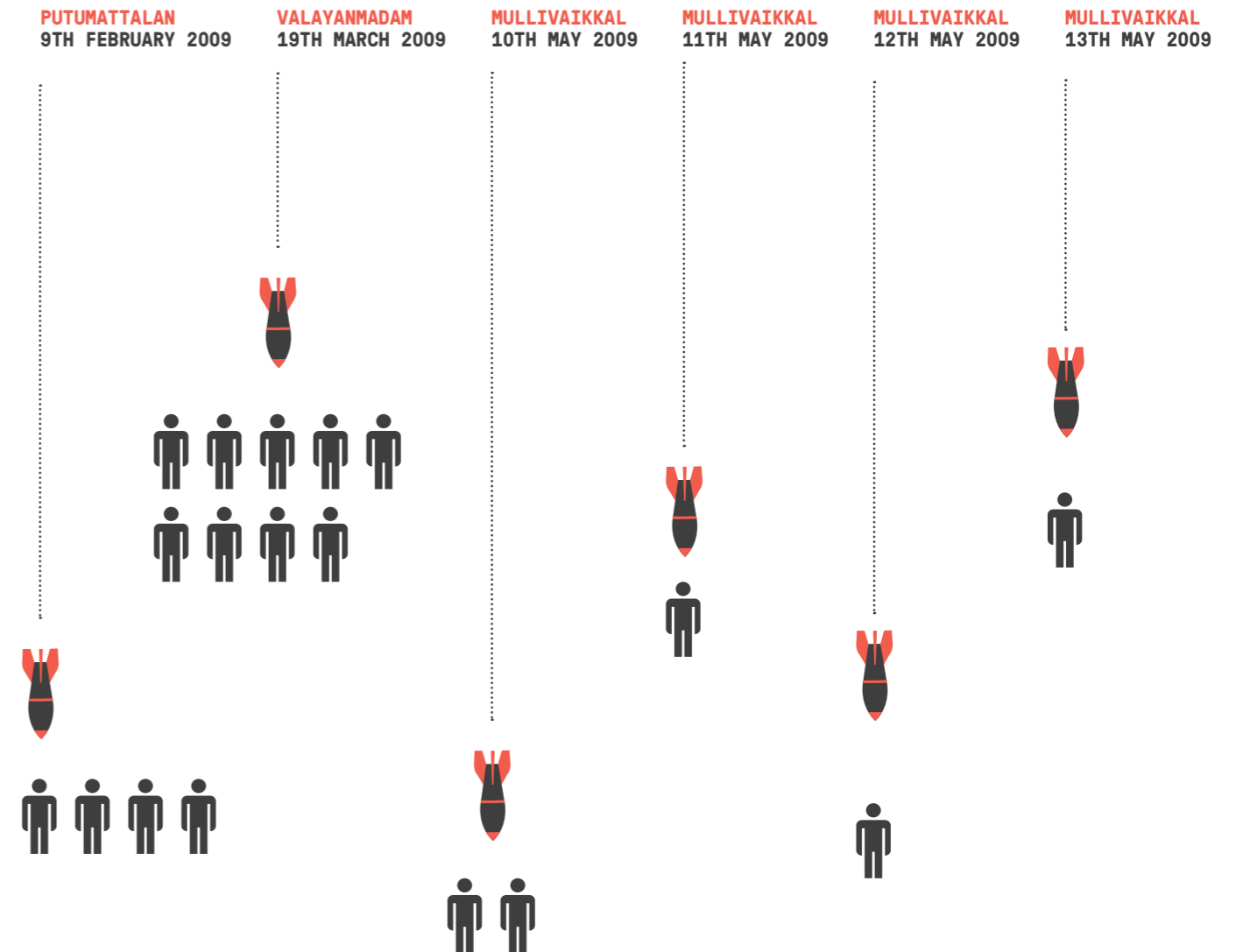
the area held by the LTTE, the civilian population moved ahead to escape being trapped in the fighting. The indiscriminate use of field artillery and aerial bombardment in places where civilians were taking refuge meant the civilians had to move from place to place, which could be any distance - as long as they thought it was at least temporarily safe.

ATTACKS USING CLUSTER MUNITIONS

The 18 survivors interviewed spoke in fair detail about

the circumstances of the cluster munition attacks, the physical and psychological trauma they suffered, the medical attention they received, and their present medical condition.

The witnesses mentioned six separate attacks in their statements.



Valayanmadam¹⁴, Matthalan (close to Putumattalan in the map) and Mullivaikkal are all places by the sea coast in the Mullaitivu District (please see map). As the troops of the Sri Lanka Army bore down on them, the civilian population of the Kilinochchi and Mullaitivu districts retreated southeast towards the Vadduvakkal Bridge over the Nandikadal Lagoon towards the territory under the control of the Sri Lanka Government.

It is also important to note that Valayanmadam, Matthalan and Mullivaikkal were all in the No Fire Zone. As mentioned in the background to this report and confirmed by numerous published sources, the NFZs were repeatedly targeted by aircraft and field artillery. Therefore, not only were attacks using cluster munitions executed, they happened in areas that the Sri Lanka Government had designated safe. There were three NFZs¹⁵ declared by the Sri Lanka Government. The above-mentioned places fall into the second and third NFZs that was declared on 12 February and 8 May 2009.

The survivors interviewed for this report gave details of where they were when they became victims to cluster munitions. Of them, the statement of Nathan Kulasingham is vital. He said he sustained injuries on 10 May 2009 when “bombs fell at the entrance of the Mullivaikkal Hospital.” There are independent reports of hospitals and medical facilities being shelled

by the Sri Lanka military. The report on Sri Lanka by the Office of the High Commissioner for Human Rights (OISL) states “According to witnesses, at around 8 a.m., on 12 May, shells fired by SLA fell directly in front of the admission ward of the facility, killing at least 20 people, including a district health administrator, medical volunteers, a nurse, and many patients.” Although the description by witnesses for the OISL report and Nathan Kulasingham’s testimony have certain details in common, the dates of the attack differ¹⁶. The OISL report however does not say that the shells that fell in front of the hospital were cluster munitions.

Another significant account about the use of cluster munitions was mentioned by Vaidiyasekaram Kokila. She was injured in an attack on 10 May 2009 in Mullivaikkal. Kokila recounted that she was on her way to a place where food was being cooked by the roadside – a makeshift, mobile facility that sprang up in the final desperate days of fighting to feed IDPs. While she was nearby, there was a cluster bomb explosion in which she was wounded. Over 20 died and 180 were injured. Kokila stated that she had seen a Kfir fighter-bomber hovering over the place where the attack occurred. The Sri Lanka Air Force (SLAF) used Kfir aircraft when bombing LTTE positions and civilian areas, using a variety of ordnance.

2. INJURIES AND RECOVERY

All 18 persons interviewed for this report state unequivocally that they are survivors of cluster munitions. They identify it as such by the sound, the pattern of destruction and some by the manner of their injuries.

These two descriptions are typical of cluster munition attacks:

“One bomb/shell exploded... there was a sound of many explosions – it scatters in the area and explodes. It burns and there is a stench of blood,”

NATHAN KULASINGHAM

“One bomb detonated... then other bombs exploded around and hit the furniture and elsewhere,”

SIVASAKTHI GOPALASAMY

The descriptions are consistent with the explosion of the main delivery cannister followed by the scattered detonation of fragmentation submunitions, which penetrate surrounding objects.

There is no consistent pattern of injuries except that, being cluster munitions, they have left victims with multiple wounds unlike those caused by bullets.

This report does not include details of all 18 in the sample, but only a representative group of five.

1. Somasundram Ramani, 15, (five years old at the time of attack), was injured on 19 March 2009 in Valayanmadam on the back and near the ribs. Her mobility is not impaired now although she suddenly falls unconscious and cannot sit up straight for long and has bouts of unbearable pain in her back. Ramani said although surgery was performed it

was not done immediately after her injuries because of the fighting, but only after she and her family moved into Government-controlled territory.

2. Amirthalingam Somasundaram, 48,

(father of Ramani) was also wounded in the bombardment on 19 March 2009 in Valayanmadam in the stomach and hand. Although he is mobile, he complains of frequent bouts of unbearable pain and aches in his stomach that prevent him from working or moving about when they occur. He said he underwent surgery in which some fragments were removed, but not all. He has been told that the fragments that remain in his body cannot be removed. A medical report was given by the hospital but not made available for this report.

3. Vaidiyasekam Kokila, 49, a former LTTE cadre, was injured on the right thigh and head in an attack in Mullivaikkal on 7 May 2009. She is partially disabled and walks with the aid of a crutch. Fragments are lodged in the nerve in her right thigh. If surgery is done to remove them, she could lose feeling in her leg.

4. Mahalingam Arjuna, 22, (he was 12 years old at the time of the attack) sustained injuries on his ribcage on the right side, the right chin and left arm above the elbow in attack in Mullivaikkal on 12 May 2009. Although surgery was performed and fragments extracted, the effects of the trauma linger. He cannot do hard work, cannot stand under the sun for long and becomes agitated and loses his temper easily.

5. Sabaratnam Rajeswari, 39, a former LTTE cadre but not in a combat unit, was injured in Mullivaikkal on 13 May 2009 when struck on the upper right thigh. She underwent surgery and her right leg was amputated. She walks with the aid of a crutch.

MEDICAL TREATMENT, COMPENSATION AND FEAR

“If we repeat that word [cluster bombs] there will be inquiries, problems and persecution.”

Treatment and compensation for survivors are included under one subheading because they are connected. Cluster ordnance attacks on the individuals who comprise the sample occurred either on 19 March 2009 or between 10 - 13 May 2009. As mentioned above, targeted attacks on medical facilities in the LTTE-controlled areas and other constraints such as the paucity of medical supplies compelled injured civilians to receive only rudimentary treatment in the LTTE-controlled territory. While nearly all interviewed did

receive treatment in the LTTE area, a vast majority of the survivors also had to obtain care after they crossed into Sri Lanka Government territory.

This had far-reaching consequences for medical treatment of the patients. They were treated by Sri Lanka Government medical staff. Government officers saw civilians from the LTTE-administered area as supporters of the rebels and the LTTE were perceived as the enemy.

The most significant reason that many persons in the sample were not treated for injuries inflicted by cluster weapons was because Sri Lankan Government medical staff rejected statements that their patients were victims of such ordnance. The medical reports in the survivors' custody are written in English, a language that the survivors could not read, and the medical officers have written that the injuries were caused by artillery shells. The interviewees recount how they were subject to aggressive questioning and comments by the medical staff, and as a result they stopped mentioning that the actual cause of their injuries was cluster fragments. All interviewees for this report who said they had concealed the fact that their injuries were caused

by cluster munitions were unanimous that the reason for their reticence was fear... Fear that they would face retaliation by government authorities if they spoke the truth.

Related to this is the awarding of compensation. Although many of the survivors interviewed for this sample said they did mention officially that they were survivors of cluster munitions, it was at the time they were resettled in their villages. When resettled in their villages, they had local government officials such as village officers and divisional secretaries, who were Tamils and mostly sympathetic, recording that they had been injured by cluster ordnance. But none of the survivors were awarded compensation for cluster munitions injuries.

Below is a representative group of five cases from the sample that illustrates the hospitals where interviewees received treatment and the obstacles they encountered when speaking the truth about their injuries and applying for compensation.

1. Somasundram Ramani, 15, injured in the cluster munitions attack in Valayanmadam, was initially treated at Matthalan Hospital in the LTTE area. She received

more comprehensive treatment at Vavuniya Hospital after crossing into the Sri Lanka Government area. Ramani repeated for this report what Government hospital authorities had said when her mother mentioned that Ramani's injuries were caused by cluster munitions: “They spoke rudely to her and asked how she knew it was a cluster bomb.” Later, at the time of registering for resettlement, Ramani's parents told local government officers that their daughter's injuries were caused by cluster weapons. But she received no compensation, as in the hospital medical report the hospital had not recorded her injuries as having been caused by cluster bombs.

2. Sabaratnam Rajeswari, 39, was treated initially at Mullivaikkal medical facility in the LTTE-administered area. She received more comprehensive treatment at Padaviya Hospital after crossing into Sri Lanka Government control. She did not divulge to government authorities that she had suffered a cluster munitions attack because even if she did “they will write it (the injury) is from a shell.” She was also compelled to be silent fearing intimidation by “the CID (the Criminal Investigation Department

of the Sri Lanka Police) and the military,” as she was an ex-LTTE cadre. She has not registered with local government officers but was later given Rs. 5000.00 (US\$50) as part of an election campaign by a political party. It was not compensation paid by the government.

3. Rajendran Ravindran, 28, was injured in Matthalan in the Mullaitivu District. He was treated for his injuries in Matthalan and Chettikulam hospitals in the LTTE-controlled area. He did not receive medical attention in Sri Lanka Government hospitals. Ravindran did not register that he had been injured; hence the question of attributing his wounds to cluster munitions did not arise. He said his silence was because of fear. He has not received compensation because he had not registered his injuries with the Sri Lanka Government.

4. Kulendran Balambigai, 44, injured in the cluster munition attack in Valayanmadam on 19 March 2009, was not treated in medical facilities in the LTTE area but only after she was evacuated to Sri Lanka Government-administered territory. She was treated at Pulmoddai, Padaviya and Vavuniya hospitals between 22 and 26 March 2009. When asked by interviewers for this report whether she had mentioned that she was a survivor of cluster munitions, she said that although she had told the authorities at the hospital “the military [at the hospital] did not record it. Because of this there was no point saying it.” It should be noted that the Sri Lanka military was present in hospitals not only to provide security but to profile and interrogate patients from the LTTE-controlled areas. Balambigai said she had however told local government officials during

resettlement that she was injured in a cluster munitions attack. However, she received no official compensation for this, but only a general payment of Rs.5000.00 (about US\$50) because she was injured.

5. Vaidiyasekaram Kokila, 49, the LTTE cadre was not medically treated in the LTTE-run area as there were no facilities available. Instead she got treatment at Kurunegala and Vavuniya hospitals after crossing into Sri Lanka Government-controlled territory. Although surgery was done, she did not tell anyone it was caused by cluster munitions. In her statement for this report, she generalised the fear she and others have: “We don’t say anything because we don’t trust the doctors. At the same time, I had been a cadre. If we repeat that word [cluster bombs] there will be inquiries, problems and persecution.” She had however mentioned the source of her injuries when she was resettled on 29 February 2012. She has not received any compensation to date.

CORROBORATING INTERVIEWEES’ TESTIMONIES

Corroborating cluster munitions attacks is easiest when there is a footprint left by their

deployment. Interviewers for this report were told that cluster submunition debris had been found in Valayanmadam and, when the military heard about it, its de-miners had rushed to remove the residue and decontaminate the area. But this information needs to be verified.

There are few published sources that corroborate that the Sri Lanka Government deployed cluster munitions to during the civil war. This report has put together available published material about the use of cluster munitions, but an exhaustive archival search was not conducted. The search found one reference in a published source which corresponds closely to the date some interviewees for this report said they had been subject to attack by cluster weapons. The International Truth and Justice Project (ITJP) in its press release¹⁷ of 28 September 2018 cites testimony dated 19 March 2009: “This morning at 5 a.m. in Valaignanmadam NFZ, two cluster shells hit and made huge casualties. 53 injured (including 13 children, 22 females) and admitted to hospital. 2 children died in hospital.”

A reason for the scarcity of material on the use of cluster ordnance was the stringent control

imposed by the then Sri Lanka Government on media coverage of not only areas where active military operations were going on, but even in other parts of the country. In fact, the final months of the fighting were dubbed a ‘war without witness’ because not only were UN and INGOs asked to vacate the areas where fighting was going on, but the media too was forbidden to enter without express Government permission. The control of the media has continued to date.

The other reason for the lack of evidence on the use of cluster weapons was the Sri Lanka Government’s steadfast denial of the use of such munitions. Survivors and locals said that if they reported to de-miners or other officials that they had found such ordinances or the existence of cluster munition debris, the de-miners would inform the Sri Lanka military who would swiftly remove the evidence.

MEDIA REPORTS DURING THE WAR

Despite these drawbacks, evidence is available of the use of cluster munitions during the final months of Sri Lanka’s civil war.

Two organisations were

working in the LTTE-controlled areas – the Tamil Refugee Organisation (TRO)¹⁸ and the North East Secretariat for Human Rights (NESOHR)¹⁹. They both refer to the aerial bombardment of an IDP camp in Tharmapuram, Kilinochchi District, which was located within the NFZ, on 29 February 2009. The night attack conducted by the SLAF killed two and wounded 18.

Other than the TRO NESHOR statements on 4 February 2009, Gordon Weiss, the UN spokesman in Sri Lanka said²⁰ that Puthukkudiyiruppu Hospital was hit by cluster munitions. Weiss later denied the statement, but the denial did not receive significant publicity²¹ in the media except Sri Lanka’s, which was under the control of the Government. It could be that the Sri Lanka Government pressured the UN to issue a denial, which it had. Weiss later said the UN and he himself were threatened by the Sri Lanka Government to stay silent on the atrocities committed during the war²².

Other than the UN, TRO and NESHOR statements, the only material published in real time on the use of cluster ordnances comes from the Guardian (UK) and the independent website on Tamil affairs, TamilNet.

The Guardian²³ story of 22

April 2009 quotes medical doctor Thangamutthu Sathiyamoorthy who had spoken from a temporary hospital in Mullivaikkal. “Sathiyamoorthy claimed that there had been a number of cluster bomb attacks, one of which killed a doctor, Dr Sivamanokaran, in the temporary hospital at Valayanmadam,” the Guardian said.

TamilNet describes three separate incidents where the civilian population in the LTTE-run areas were affected. It also ran a general story about cluster ordnance debris.

1. On 29 November 2009 at Tharmapuram in the Kilinochchi District, a SLAF Kfir fighter bomber dropped cluster munitions²⁴ on an IDP camp. Tharmapuram was in the NFZ. The attack killed two and wounded 18. According to a subsequent report²⁵, the aircraft had returned on a second bombing run, but an astute camp leader had herded the inmates into the nearby jungle thereby preventing more carnage. In a third post²⁶, TamilNet identified the cluster ordnance deployed as a Russian-made OFAB-500.

2. At around 10.30pm on 24 December 2008 (Christmas eve), aircraft dropped cluster munitions on Holy Cross Convent²⁷ and a cooperative society building near the Paranthan junction in the Kilinochchi District. TamilNet said the church nearby was also damaged and many people displaced. There is no record of casualties, but 85 head of cattle perished.

3. On 3 January 2009 SLAF bombed targets in Mullivaikkal²⁸, Mullaitivu District. There were no casualties.

4. TamilNet posted another story on 18 January with photographs of cluster munitions debris found in Mullaitivu²⁹ which it said were from attacks of the previous week. The website said that after its exposure of the deployment of cluster munitions the debris discovered here had had their Russian markings obliterated by paint. Casualties, the extent of the damage, and other details are not included in the post.

MEDIA REPORTS AFTER THE WAR

Further media coverage of cluster munitions used in Sri Lanka would be years after military operations had ended and mine clearing teams were deployed to decontaminate areas of UXOs and other debris left behind after the war. What was more, resettlement of IDPs was also completed in parts of the former battle zone.

1. Paranagama Commission: The Presidential Commission of Inquiry into Abductions and Disappearances (also known as the Paranagama Commission)³⁰ in its report of August 2015

makes grudging reference to the possibility that cluster ordnances could have been used. “However, the Commission cannot ignore evidence emanating from many quarters, albeit, some of it unsubstantiated, that civilians were hit by cluster munitions or had phosphorus burns.”

2. UTHR-J: The University Teachers for Human Rights (UTHR-J)³¹ in its publication Special Report No.34 of 13 December 2009 said, “cluster shells, known locally as Koththu kundu, was fired from 21st January. They were then noticed by the Oxfam staff at Thevipuram and subsequently by the OCHA, which had its office near Puthukkudiyiruppu Hospital. Both observations were reflected in the UN statement.”

3. Panel of Experts: The UN Panel of Experts appointed by Secretary General Ban Ki-Moon mentioned³² in its report of 31 March 2011, “There are allegations that the SLA used cluster bomb munitions or white phosphorus or other chemical substances against civilians, particularly around PTK and in the second NFZ.”

4. AP: On 26 April 2012, the Associated Press (AP) scooped a story about residue of cluster munitions killing a child³³

and injuring another in Puthukkudiyiruppu, Mullaitivu District when they had picked it up to sell for scrap metal. The AP story said this was from debris used during armed combat in May 2009. In an email, Alan Poston, technical advisor to the UN Development Programme’s mine action group, stated, “After reviewing additional photographs from the investigation teams, I have determined that there are cluster sub-munitions in the area where the children were collecting scrap metal and in the house where the accident occurred.”

5. OISL: Report of the investigation by UN’s Office of the High Commissioner for Human Rights (OHCHR) on Sri Lanka (OISL Report)³⁴ of 16 September 2015. The report states, “OISL believes that given the persistent nature of the allegations of cluster munitions, further investigation needs to be carried out to determine whether or not they were used.” There are references to the use of cluster munitions in paragraphs: 751, 807 and 850.

6. The Guardian: On 20 June 2016, the Guardian (UK) published photographs³⁵ it said had been leaked by a former employee of the mine clearing organisation Halo Trust, which the

newspaper said “appear to show members of the trust digging out a large delivery missile as well as cluster submunitions, or ‘bomblets,’ in different locations.” The report does not pinpoint the location, other than saying they were from places close “to sites where fighting took place in 2008 and 2009.”

7. U.N. High Commissioner on Human Rights Annual Report, 28 June 2016: “In light of recent reports on new evidence that has emerged on the use of cluster munitions towards the end of the conflict, following similar allegations in the OHCHR investigation report [OISL report], the High Commissioner calls for an independent and impartial investigation to be carried out.”³⁶

8. ITJP: The ITJP report³⁷ of 28 September 2018 includes eyewitness testimonies of the use of cluster munitions and compiles other published material on the use of cluster munitions. It includes 11 text messages sent by UN staff from the NFZs.

3. SRI LANKA AND THE CONVENTION ON CLUSTER MUNITIONS

DENIAL BY SRI LANKA GOVERNMENT

Despite evidence slipping into the public discourse periodically about the Sri Lanka Government's use of cluster munitions, including photographs and reports in the international media, successive governments in Colombo have strenuously denied it. This has been possible partly due to the control governments have exercised over Sri Lanka's media to discuss matters pertaining to the civil war freely, especially aspects which could implicate the political leadership and the military in war crimes and crimes against humanity. In Sri Lanka's North and East, where military operations took place, matters are different because the use of cluster munitions is common knowledge, although it is

not acknowledged in the local media or in official documents.

Colombo's denials started early. Responding to the statement by Gordon Weiss, the UN spokesman in Colombo, quoted above and which accused the Sri Lanka Government of using cluster munitions, Palitha Kohona, Sri Lanka's secretary to the Ministry of Foreign Affairs, told CNN³⁸: "I can say categorically, the army does not use cluster bombs; it does not possess cluster bombs; it does not procure cluster bombs. I say this with authority..."

Sri Lanka has gone on to consistently deny the use of cluster munitions. It reacted in the same way to the AP article quoted above on mine clearing groups discovering cluster munition debris in 2016. The Sri Lanka Government spokesman³⁹ on security matters said, "We deny this information." This is despite a new Government having come into office in 2015 from the one which prosecuted the war against the LTTE (the new Government also included persons accused of war crimes).

Despite the denials, UN High Commissioner for Human Rights Zaid Al-Hussain called for an impartial investigation⁴⁰ into allegations of the use of cluster munitions in the OHCHR's report of June 2016.

BEING PART OF THE ANTI CLUSTER MOVEMENT

At the same time as denying the deployment cluster ordnances against its own citizens, Sri Lanka strove hard to become part of an international movement to enforce its banning.

DATE

December 2007

INTERACTION

Sri Lanka attended meeting on the Oslo Process in Vienna⁴¹.

DATE

November 2008

INTERACTION

Sri Lanka attended meeting in Bali on the Convention on Cluster Munitions⁴².

Sri Lanka participated as an observer in all meetings of state parties at the Convention on Cluster Munitions.

DATE

2015

INTERACTION

Sri Lanka took part in the first review conference of the Convention on Cluster Munitions⁴³.

DATE

1 March 2018

INTERACTION

Sri Lanka signed the instruments of accession⁴⁴ to become the 103rd state party to the Convention on Cluster Munitions⁴⁵.

DATE

1 September 2018

INTERACTION

Sri Lanka became President⁴⁶ of the state parties to the Convention on Cluster Munitions⁴⁷.

The ascendance of Sri Lanka to the presidency provoked questions about its use of cluster munitions in the past and the plausibility of its denials. It also raises the question of whether, by joining the CCM, it is attempting to whitewash its image before the international community.

Reacting to Sri Lanka's elevation to the presidency of the state parties to the Convention on Cluster Munitions, the ITJP⁴⁸ said, "Fudging your own past use is simply not an option as President of the body championing the campaign to eliminate this banned weapon. Tamils who worked for the United Nations and de-mining groups tell us on several

occasions they personally witnessed cluster munitions falling and examined the casings immediately afterwards. Doctors in the war zone operated to remove a cluster munition embedded in a woman's leg. After the war, de-miners described finding cluster remains in several locations, only to have the army cordon off the area and keep the findings secret from the local community."

Under the Convention, state parties are legally obliged to:

(i) prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians, and

(ii) establish a framework for cooperation and assistance that ensures adequate provision of care and rehabilitation to survivors and their communities, clearance of contaminated areas, risk education and destruction of stockpiles of prohibited cluster munitions.

The opacity with which with Sri Lanka has cloaked its use of cluster munitions makes it difficult to know whether it still possesses the ordnance. Even if it does, regulations permit a period of 10 years after a state party becomes a member of the CCM to clear residue from their deployment in areas under its jurisdiction. But the issue, however, is whether Colombo is willing to undertake such a task since it has repeatedly denied having used them.

Sri Lanka's obligations as a state party are demanding if it is to fulfill them sincerely. It is expected to provide annual reports to the CCM on the use, stockpiling, transfer and clearing of cluster ordnances, on the care and rehabilitation of survivors and on the education of civilians of risk.

It is evident from the responses of individuals in the sample used in this report that the Sri Lanka Government has not provided care or rehabilitation of the survivors, nor has it given compensation to them. Further, if mine risk education had been given accidents⁴⁹ such as the one that happened in Puthukkudiyiruppu, where a child was killed and another was injured while handling cluster munition remnants, might not have occurred. But for all this, Sri Lanka should admit to the use of cluster weapons in the past and become more transparent on this question, both in dealing with its citizens and with the international community.

4 . RECOMMENDATIONS

TO THE UN

1. An international independent team of forensic doctors to visit Sri Lanka to undertake a comprehensive medical examination of survivors of cluster weapon attacks.

2. An independent team of experts from the UN to visit Sri Lanka to decontaminate areas where cluster munitions were deployed and officially declare them safe for resettlement.

3. The UN to make publicly available all documents submitted by Sri Lanka on how it is complying with the regulations in the Convention – especially on Sri Lanka’s use, stockpiling, and clearing of cluster munitions.

TO THE GOVERNMENT OF SRI LANKA

1. Undertake a risk education campaign throughout the country, but especially in places where cluster ordnance was deployed, involving provincial and local government officials and civil society.

2. Assess the human cost of the use of cluster munitions and undertake a comprehensive programme to care for and rehabilitate survivors.

3. Implement a structured programme of reparations for all survivors of cluster munition attacks.

4. Welcome the UN expert committee members (as set up in the recommendations to the UN) and work with them to clear cluster munitions and provide support to the survivors.

ENDNOTES

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2 <http://www.itjpsl.com/assets/press/28-sept-2018-cluster-munition-press-release-ITJP-final.pdf>
<https://www.theguardian.com/world/2016/jun/20/cluster-bombs-used-sri-lanka-civil-war-leaked-photos-suggest>

3 https://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf. Disclosure: Yasmin Sooka was one of the three experts on this panel.

4 <https://www.refworld.org/docid/55ffb1d04.html>

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6 Page 1 https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/statistics/otherpub/economic_and_social_statistics_of_SL_2018_e_0.pdf

7 <https://www.britannica.com/topic/Tamil-Tigers>

8 <https://www.hrw.org/news/2010/05/20/q-accountability-violations-international-humanitarian-law-sri-lanka>

9 Pages 21-23, <http://responsibilitytoprotect.org/War%20Crimes%20In%20Sri%20Lanka.pdf>

10 <https://reliefweb.int/report/sri-lanka/sri-lanka-boat-people-recount-horrors-no-fire-zone>

11 <http://www.cnn.com/2009/WORLD/asiapcf/05/24/sri.lanka.united.nations/index.html>

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Ministry of Defence Situation Reports corroborate fighting at this time in Pooneryn

3 Aug 2008: Troops of 61 Division and Task Force 1 (later 58 Division) are cited as present in the area. Reports on 9 and 15 and 22 and 24 Aug and 26 Sep and 26 Oct 2008: Task Force 1 are on the Mannar-Pooneryn Road.

18 Aug 2008: 57 Division in area.

27 Aug 2008: air strikes called in to support troops on the Mannar-Pooneryn road.

10 Oct 2008: Task Force 1 heading to Pooneryn.

4 Nov and 5 and 8 and 11 Nov 2008: “Task Force 1 now has continuous domination over 70 Km stretch of the strategically vital Mannar-Pooneryn (A-32) road”.

7 Nov 2008: air attack on Pooneryn.

12 Nov: Task Force 1 few miles from Pooneryn.

12, 9 and 6 Gemunu Watch crossing marshes south of Pooneryn.

15 Nov 2008: mop up operations in Pooneryn.

15 Nov 2008: LTTE stronghold in Pooneryn falls.

13 <https://www.youtube.com/watch?v=X1RwQQVEMyw>

14 Valaignarnadam is demarcated as Valayanmadam in Google maps, which is attached. This report will use spell it as Valayanmadam for the sake of clarity.

15 Pages 19-21, <http://responsibilitytoprotect.org/War%20Crimes%20In%20Sri%20Lanka.pdf>

16 OISL Report Para 879

17 ITJP Report (Page 6) <http://www.itjpsl.com/assets/press/28-sept-2018-cluster-munition-press-release-ITJP-final.pdf>

18 <https://www.tamilnet.com/img/>

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31 <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>

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33 http://archive.boston.com/news/world/asia/articles/2012/04/26/apnewsbreak_un_finds_cluster_bombs_in_sri_lanka/

34 https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.CRP.2_E.docx

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36 <https://www.google.com/search?client=firefox-b-1-d&q=A%2FHRC%2F32%2FCRP.4%2C+28+June+2016>

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