



# The Numbers Game

## Politics of Retributive Justice



**IDAG-S**

INDEPENDENT DIASPORA ANALYSIS GROUP – SRI LANKA

## Table of Contents

<b>1. Background</b>	<b>4</b>
<b>2. Methodology</b>	<b>5</b>
<b>3. Legal Definitions</b>	<b>5</b>
3.1 IHL – Definition of a Civilian	6
3.2 IHL – Use of Human Shields	8
<b>4. Numbers Game – Is it real?</b>	<b>14</b>
4.1 The AGA’s Figures	15
4.1.1 Conflicting values – The numbers don’t add up?	19
4.1.2 Satellite-derived automatic detection methods	22
4.1.3 A credible estimate	23
4.2 Evidence sampled – The UN insistence on “ <i>tens of thousands</i> ” killed	23
4.3 Evidence ignored by the UN	26
4.3.1 A: Credibility of AGA Parthipans’s figures	27
4.3.2 B: Conflating combatant / non-combatant in COG reports	27
4.3.3 C: Flawed interpretations of satellite imagery	29
4.3.4 D: Levels of conscription	36
4.3.5 E: Unaccounted – Fleeing the camps and conflict zone	38
4.3.6 F: Impartiality of eye-witness testimony	38
4.3.7 Summary	42
4.4 A Probable Truth	43
4.4.1 Methodology	43
4.4.2 January & February	46
4.4.3 March	47
4.4.4 April	48
4.4.5 May	49
4.4.6 Final Tally	55
4.4.7 Other Assessments	59
<b>5. New Claims</b>	<b>62</b>
<b>6. Comparable Conflicts</b>	<b>65</b>
<b>7. The human rights approach – Moral crusaders</b>	<b>70</b>
<b>8. Conclusion</b>	<b>76</b>
<b>9. List of Figures</b>	<b>81</b>
9.1 List of Tables	81
9.2 List of Maps	85
9.3 List of Images	88
9.4 List of Satellite Images	98
<b>10. Appendix I</b>	<b>134</b>
<b>11. Appendix II</b>	<b>135</b>

## **List of Abbreviations**

AGA	Assistant Government Agent
BBC	British Broadcasting Company
COG	Crisis Operation Group
GA	Government Agent
GS	Grama Seveka
GTF	Global Tamil Forum
HRW	Human Rights Watch
ICG	International Crisis Group
ICRC	International Committee Red Cross
IDP	Internally Displaced Persons
IHL	International Humanitarian Law
ILA	International Law Association
LLRC	Lessons Learnt Reconciliation Commission
INGO	International Non-Governmental Organisation
LOAC	Law of Armed Combat
LTTE	Liberation Tigers of Tamil Eelam
MBRL	Multi-Barrel Rocket Launcher
NFZ	No-Fire-Zone
NGO	Non-Governmental Organisation
RDHS	Regional Director for Health Services
RPG	Rocket Propelled Grenade
SGO	Senior Government Officer
SLA	Sri Lankan Army
TGTE	Trans-national Government of Tamil Eelam
TNA	Tamil National Alliance
TRO	Tamil Rehabilitation Organisation
UN	United Nations
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UN OSAT	United Nations Operational Satellite Applications Programme
UTHR(J)	University Teachers for Human Rights (Jaffna)
WSWS	World Socialist Web Site

## 1. Background

After three decades of conflict, in May 2009 the Sri Lankan Government finally defeated the ethnic separatist insurgent group Liberation Tigers of Tamil Eelam (LTTE), popularly known as the Tamil Tigers, in the last and final chapter of the “Eelam” wars – Eelam War IV. In the years that followed this decisive military victory, this tiny island nation has found itself being besieged on the international stage with accusations that its military, in the process of defeating the LTTE, were responsible for unlawfully killing “tens of thousands” of its own civilians. The explosive nature of the allegation generated significant global interest, especially in foreign capitals with a large Tamil diaspora. The resulting media interest, who gave considerable coverage to these events, eventually pushed the UN Secretary General in June 2010 to appoint a Panel of Experts to advise him on the facts surrounding these allegations.<sup>1</sup> What followed were two UN reports that detailed the events and actions of the warring parties during the fighting in 2009.<sup>2 3</sup>

In November 2012 the UN published its second and final report on Sri Lanka. The new document like its predecessor in 2011 reignited the debate surrounding the numbers of civilians allegedly killed during the latter stages of Eelam War IV. More so since the latest report pushed the possible civilian fatality estimate up to 70,000. A significant increase from the 40,000 quoted in the previous UN report, which claimed that the figure was a ‘credible’ estimate.<sup>3</sup>

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*“[a] number of credible sources have estimated that there could have been as many as 40,000 civilian deaths”*

**Panel of Experts, April 2011**

*“[other] sources have referred to credible information indicating that over 70,000 people are unaccounted for”*

**Internal Review Panel, November 2012**

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Since the report’s release in November last year, several human rights groups in the west<sup>4</sup> along with numerous other NGO’s claiming to have an interest in the protection of human rights in Sri Lanka – this included many of the hostile Tamil diaspora organisations like the pro-LTTE GTF and TGTE – have all used the latest UN report to bolster their individual campaigns in trying to bring about an international investigation into the conduct of the Sri Lankan Army during the latter stages of Eelam War IV. In this regard, the slogan “tens of thousands of civilians killed” has featured heavily in the propaganda literature of these organisations and individuals.

Whilst it is widely accepted that the fighting during the last few months was brutal, and that there were potentially many civilian casualties, the aim of this discussion paper will be to examine in detail the accuracy of some of these larger fatality estimates.

Through a process of empirical analysis these fatality estimates will be rigorously scrutinised against other forms of conflict related numerical data, many of which has come to light post-conflict. Following which the analysis will look to address the following points:

1. The empirical evidence used to enumerate some of the larger death tolls like 40,000, 70,000 and 147,000 civilians killed.
2. The accuracy of the evidence used to estimate these totals?
3. Other forms of empirical evidence that point to different estimates for the number of civilians killed?
4. The merits of a war crimes investigation based on the evidence presented of significant civilian deaths?

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<sup>1</sup> On 22 June 2010 the United Nations’ (UN) Secretary-General established a “*Panel of Experts on accountability in Sri Lanka*” (Panel of Experts) to advise him on accountability during the final stages of the war in Sri Lanka. The panel was chaired by Marzuki Darusman of Indonesia and also included Yasmin Sooka of South Africa and Steven Ratner of the United States. Marzuki Darusman, Chair (Indonesia) – Attorney General of Indonesia (1999-2001). Yasmin Sooka (South Africa) – Executive Director, Foundation for Human of South Africa. Steven R. Ratner (USA) – Professor of Law at the University of Michigan Law School, member of the U.S. State Department’s Advisory Committee on International Law and adviser to Human Rights Watch.

<sup>2</sup> Report of the Secretary-Generals’ Internal Review Panel on United Nations action in Sri Lanka, November 2012, See: [LINK](#)

<sup>3</sup> Report of the Secretary-Generals’ Panel of Experts on accountability in Sri Lanka, April 2011, See: [LINK](#)

<sup>4</sup> Some of the most virulent critics of the Sri Lankan establishment as of late have been Frances Harrison and Alan Keenan from the ICG. Both strongly believe that the Sri Lankan President, Defence Secretary and the upper echelons of the Sri Lankan military are guilty of war crimes. They have invested a great deal of time and energy in finding international platforms to attack the Sri Lanka Government on these issues. Both are broadly sympathetic to the Tamil struggle for autonomy, and are keen to see the islands existing political structure dismantled to accommodate a fully-autonomous Tamil state, believing that this holds the best chance for the island to achieve a lasting peace. In this regard, for both of them, the notion of accountability and reconciliation in Sri Lanka by definition means: (1) the immediate removal of the existing leadership within the Sri Lankan government and military through an international war crimes tribunal, (2) the immediate creation of a fully-autonomous Tamil region on the Island.

## 2. Methodology

The study will be largely semi-empirical, and will focus on analysing numerical data and pictorial evidence gathered from the following sources:

- **Eyewitness Testimony** – Culled from a large body of interviews conducted by the UTHR(J) team in 2009 with persons from the conflict zone. The UTHR(J) was one of the few organisations to interview people in Sri Lanka, and at the same time cover a broad spectrum of views. They also provide valuable historical data through their informants in the Vanni about the state of affairs in the region from 2006 to 2009. See Appendix I for more information about the UTHR(J).
- **Satellite & associated imagery** – Images from the conflict zone covering a period from 2007 to 2009.
- **Wikileaks** – Reveals information related to the conflict from sources / contacts maintained by the U.S. Embassy within Sri Lanka and other postings outside the island.
- **Documentary Information** – Covers information gleaned from various reports / articles / statistics that came out during and after the conflict ended.
- **Media Groups** – Information about the conflict from media coverage during the conflict and after.
- **Information from human rights groups and related organisations** – Covers reports / analyses / eye-witness accounts – these sources are usually independent to the ones used by the UTHR(J).
- **UN** – Data from various UN departments in and outside Sri Lanka.

The current debate concerning civilian fatalities from Eelam War IV only relates to incidents that occurred during the last 5 months of fighting. As a result the following analysis will only consider events and the actions of the warring parties (Sri Lankan State and LTTE) leading up to and including May 2009 – the analysis will also take into consideration historical events / actions prior to Eelam War IV.

## 3. Legal Definitions

For there to be a meaningful discussion about unlawful civilian deaths as a result of the fighting in 2009, it is important to first review certain principles and definitions within international law that are relevant to this subject.

Since these laws have provided the justification for critics of the Sri Lankan Government to push for an international investigation. The primary focus in this section will be to look at how some of these ‘rules’ have been applied to incidents where the Sri Lankan military have been accused of unlawfully killing large numbers of civilians.<sup>5</sup>

The UN Panel of Experts (herein will be referred to as Panel) in their first report on Sri Lanka concluded that given the nature and intensity of the fighting in 2009, the four Geneva Conventions and specifically International Humanitarian Law (Law of Armed Conflict) served as the best means of judging the conduct of the warring parties in the conflict. The report, under the heading: *Legal Evaluation of Allegations*, stated:<sup>6</sup>

**179.** The Panel’s mandate requires it to consider alleged violations of both international humanitarian law and international human rights law. **The Panel proceeds from the basic and long-settled premise of international law that during an armed conflict such as that in Sri Lanka, both international humanitarian law and international human rights law are applicable.**

....

**181.** International humanitarian law applies because the hostilities clearly met the threshold for an internal armed conflict, i.e., one involving protracted armed violence between the Government and organized armed groups. According to the International Criminal Tribunal for the former Yugoslavia (ICTY), an armed conflict exists “*whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within the State*”. **There is no doubt that an internal armed conflict was being waged in Sri Lanka with the requisite intensity during the period that the Panel examined. As a result, international humanitarian law is the law against which to measure the conduct in the conflict of both the Government and the LTTE.**

<sup>5</sup> Examples of these cases can be found in some of the more well know reports on Sri Lanka. See ICG Asia Report No. 191 ([LINK](#)), UN Panel of Experts Report ([LINK](#)) and the latest UN Internal Review Panel Report ([LINK](#)).

<sup>6</sup> Report of the Secretary-Generals’ Panel of Experts on accountability in Sri Lanka, April 2011, page 52, See: [LINK](#) (emphasis added)

It should be recognised that both prior to and during Eelam War IV, the LTTE routinely flouted the Law of Armed Conflict in many of its battlefield strategies and combat operations. Particularly relevant to the current discussion are two specific aspects of international law that need to be clarified and explored in greater detail, due to their obvious links to issues relating to civilian fatalities:

- a. The definition of a ‘civilian’ in the context of the conflict in 2009; given how the LTTE regularly recruited civilians by force or coercion, imparting military training, to form civilian militias and auxiliary groups.
- b. The LTTE’s deliberate use of civilians as well as protected facilities like hospitals, schools, churches and administrative (governmental) buildings, as a cover for its military operations.

In adopting such methods of warfare, the LTTE made it impossible for the Sri Lankan military to avoid collateral damage to civilians and civilian objects whilst pursuing legitimate military objectives during its operations in the Vanni theatre in 2008/2009. The tactics and *modus operandi* of the LTTE were deliberately tailored to violate the most fundamental legal and moral norms of human behaviour during a war.

While LTTE violations of the Law of Armed Conflict cited in this discussion paper are far from exhaustive, they illustrate the extraordinary challenges that the tactics of the LTTE posed for the Sri Lankan military – especially the Sri Lankan Army – whom as many independent western observers have noted, appear to have exercised some care during significant periods of fighting in 2008/2009 in trying to respect its obligations under international law.

For example, the former U.S. Ambassador to Sri Lanka, Robert Blake, noted in a confidential embassy cable (Wikileaks 09COLOMBO86) to Washington on January 26, 2009 that:<sup>7 8</sup>

[the] Army has a generally **good track record of taking care to minimize civilian casualties** during its advances...

On July 9, 2009 the then U.S. Ambassador-at-Large for War Crimes Issues – Ambassador John Clint Williamson – whilst collecting information in relation to a U.S. Congressional reporting requirement, met and discussed the recent fighting in Sri Lanka with several INGO heads in Geneva, Switzerland. One of these heads was Jacques de Maio, the ICRC’s Head of Operations for South Asia. Whilst discussing potential violations of International Humanitarian Law, Jacques de Maio noted (as revealed in Wikileaks 09GENEVA584):<sup>9</sup>

For example, he (Jacques de Maio) said that the Sri Lankan military was **somewhat responsive to accusations of violations of International Humanitarian Law (IHL)** and was **open to adapting its actions to reduce casualties** [...] He could cite examples of where the Army had stopped shelling when ICRC informed them it was killing civilians. In fact, the **Army actually could have won the military battle faster with higher civilian casualties, yet chose a slower approach which led to a greater number of Sri Lankan military deaths...**

In the same cable, Jacques de Maio had this to say about the LTTE and its strategies:

On the LTTE, de Maio said that it had **tried to keep civilians in the middle of a permanent state of violence**. It saw the civilian population as a “*protective asset*” and kept its fighters embedded amongst them. De Maio said that the LTTE commanders, **objective was to keep the distinction between civilian and military assets blurred...**

### **3.1 IHL – Definition of a Civilian**

The LTTE had a long documented history of using unarmed civilian auxiliaries on the frontlines; a practise it continued till the last days of Eelam War IV. The following historical account by author / analyst C. Christine Fair is a good example of how the LTTE integrated civilian sympathisers in its frontline engagements:<sup>10</sup>

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<sup>7</sup> Cable: 09COLOMBO86; See: [LINK](#) (emphasis added)

<sup>8</sup> It is worth noting that an account of military operations prior to September 2008 has received very little attention in relation to the current debate on civilian casualties. From available media reports and other sources of information from the conflict zone during this period, it would appear there were no complaints or accusations directed at the Sri Lankan military for causing significant civilian casualties during this phase of the war. During the whole of the military campaign up to the capture of Mullaitivu, the Sri Lankan Government was claiming that civilian casualties were minimal or “zero”, and that they would adhere firmly to this policy. At the time this Government claim was widely accepted by the international community as being true, and was not challenged in international forums.

<sup>9</sup> Cable: 09GENEVA584; See: [LINK](#) (emphasis added)

<sup>10</sup> C. Christine Fair; *Urban Battle Fields of South Asia: Lessons Learned from Sri Lanka, India, and Pakistan*, 2004, page 22; See: [LINK](#)

The IPKF observed a number of LTTE battlefield innovations. The LTTE cadres were always accompanied by an equal number of unarmed personnel. Their function was to provide extra ammunition, to recover weaponry from their own fallen cadres and it was their job to carry away the bodies of slain LTTE personnel. If they could not remove a corpse, they clothed the body in a lungi to create the impression that the slain person was a civilian.

The ICRC website under the section: *Practice Relating to Rule 5. Definition of Civilians → II. Other Instruments*, describes a ‘civilian’ and ‘civilian population’ as:<sup>11</sup>

#### ILA Draft Convention for the Protection of Civilian Populations against New Engines of War

Article 1 of the 1938 ILA Draft Convention for the Protection of Civilian Populations against New Engines of War provides:

The phrase “*civilian population*” within the meaning of this Convention shall include all those not enlisted in any branch of the combatant services nor for the time being employed or occupied in any belligerent establishment as defined in Article 2.

The term “*belligerent establishment*” is defined in Article 2 as “*military, naval or air establishment, or barracks, arsenal, munition stores or factories, aerodromes or aeroplane workshops or ships of war, naval dockyards, forts, or fortifications for defensive or offensive purposes, or entrenchments*”.

This description clearly states that a ‘civilian’ undertaking any activity that ‘helps / contributes / advances’ the military ‘goals / objectives’ of the LTTE – like sentry duty, building bunkers / bunds / trenches or transporting military material – **cannot** then enjoy the protection this category (civilian) is afforded under international law in a conflict situation.

According to the Sri Lankan Army, just prior to the breakout of all-out hostilities in 2006 the LTTE maintained roughly 25,000 trained cadres in its ranks. This included regular cadres and auxiliary units that had been given combat training and were employed for both offensive and defensive operations. As the conflict progressed, the LTTE escalated its recruitment process, forcibly recruiting and training many more civilians, including child soldiers, to fight in its war effort. At the start of 2008, the Sri Lankan Army estimated that the LTTE had within its ranks approximately 30,000 cadres.<sup>12</sup>

The regular cadres of the LTTE were supported by an auxiliary force called the “*Makkal Padai*” that had been given basic military training. This auxiliary force comprised of two distinct branches:

- a. **Eelapadai** – This auxiliary unit, which according to the Sri Lankan military comprised of approximately 5,000 volunteers, was initially employed as home guards that were subsequently used for both offensive and defensive operations in the Vanni. They were on the payroll of the LTTE.
- b. **Gramapadai** – This auxiliary unit according to the Sri Lankan military also comprised of approximately 5,000 individuals. They fought alongside regular units of the LTTE and helped resist the Sri Lankan Armies advances into LTTE dominated territory in the North. They were also used to assist the LTTE in meeting its logistics requirements in addition to carrying out offensive and defensive operations during the later stages of the ground war in the Vanni.



Civilians in the Vanni undergoing military training in 2007 –  
Source: aruchuna.net

There is considerable evidence to show the existence of these civilian volunteers in the LTTE auxiliary core. The following series of images, taken inside LTTE territory in the Vanni between 2007 and 2009, is a snapshot of some this evidence. For more visual evidence, see Figure 9.3-1 and Figure 9.3-2.

<sup>11</sup> ICRC, Customary IHL, chapter 1, rule 5; See: [LINK](#) (emphasis added)

<sup>12</sup> Sri Lankan Defence Ministry, *Humanitarian Operation – Factual Analysis*, July 2011; See: [LINK](#)



Civilians from the LTTE's auxiliary wing: The people are carrying shovels and other digging utensils used in the construction of defensive fortifications. They are being accompanied by an armed LTTE cadre. The video was taken by an LTTE camera man in the second No-Fire-Zone in April 2009 – Source: defence.lk

Given this scenario, **injured persons** or **individuals killed whilst fulfilling these roles** that turned up at civilian medical centres from January to May 2009 **cannot** be regarded as ‘civilian’ under current definitions of this category according to international law.

### 3.2 IHL – Use of Human Shields

The Law of Armed Conflict not only prohibits targeting an enemy’s civilians; it also requires parties to an armed conflict to **distinguish** their **combatant forces** from their **own civilians**, and not to base operations in or near civilian structures, especially protected sites such as schools, medical facilities, places of worship, and protected zones.

The Panel having concluded that the conflict was an ‘armed conflict’, acknowledged the LTTE’s responsibility towards the people under its control. In their report, under the heading: “Legal Evaluation of Allegations”, in para 188 the Panel stated:<sup>13</sup>

**188.** With respect to the LTTE, although non-state actors cannot formally become party to a human rights treaty, **it is now increasingly accepted that non-state groups exercising de facto control over a part of a State’s territory must respect fundamental human rights of persons in that territory.** Various organs of the United Nations, including the Security Council, have repeatedly demanded that such actors respect human rights law. Although the Panel recognizes that there remains some difference of views on the subject among international actors, it proceeds on the assumption that, **at a minimum, the LTTE was bound to respect the most basic human rights of persons within its power, including the rights to life and physical security and integrity of the person, and freedom from torture and cruel, inhuman or degrading treatment and punishment.**

This customary law principle is reflected in Article 51(7) of Additional Protocol I to the Geneva Conventions:<sup>14</sup>

The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular attempts to shield military objectives from attacks or to shield, favour or impede military operations. **The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.**

The reason for these rules is clear. When a party to an armed conflict uses civilian and protected spaces for military purposes, those spaces become legitimate targets for the opposing side, thereby placing civilian lives and infrastructure in grave danger.<sup>15</sup>

Despite these clear proscriptions of international law, the **intentional** abuse of civilian areas for military advantage was central to LTTE battlefield strategy. A good example of this is the way the LTTE abused the No-

<sup>13</sup> Report of the Secretary-Generals’ Panel of Experts on accountability in Sri Lanka, April 2011, page 54, See: [LINK](#) (emphasis added)

<sup>14</sup> Additional Protocol I, art. 51(7). Although Sri Lanka is not a party to the Additional Protocols to the Geneva Conventions, it accepts that this provision, as with certain others addressing the principles of distinction and proportionality, accurately reflects customary international law. The principle imposes obligations on both parties to an armed conflict. (emphasis added)

<sup>15</sup> See, e.g., ICRC Commentary on Additional Protocol I, Article 52(4)(a), ¶ 1953 (noting that – *[i]n combat areas it often happens that purely civilian buildings or installations are occupied or used by the armed forces and such objectives may be attacked, provided that this does not result in excessive losses among the civilian population.*).



Fire-Zones created by the Sri Lankan Army, to allow civilians to escape the effects of hostilities. By refusing to acknowledge the protective character of these areas and by deliberately using them for military purposes, their status as a protected space under international law became null and void. As a direct consequence, the LTTE denied the civilian population under its control the best means of shielding itself against the effects of war. This is reflected in a letter the ICRC sent the Sri Lankan Army in February 2009:<sup>16</sup>

However, the ICRC would like to point out that not having been agreed upon by both parties to the conflict with the aim to shelter the wounded, sick and civilians from the effects of hostilities or with the aim to demilitarize it, **the zone as such is not specifically protected under International Humanitarian Law (IHL).**

In addition to this, the LTTE with increasing regularity launched artillery / mortar / rockets and indigenous projectile weaponry from near schools, hospitals and IDP settlement clusters, alongside using hospitals as bases of operation and storing weapons in and around IDP settlement areas. This was all in contravention of clear and specific prohibitions of international law.

This is clearly illustrated in the image below. Taken in May 2009, it depicts an area in the second No-Fire-Zone that housed several hundred IDP settlement clusters (for more details see Figure 9.3-3).



The No-Fire-Zone: photographs taken from a helicopter by a *Times* cameraman on May 24, 2009. Moving from LEFT to RIGHT: [1] LTTE firing positions – probably mortar pits. [2] An arms trailer used by the LTTE for moving ammunition and supplies around the No-Fire-Zone. [3] LTTE bunker dug into the beach is probably a command post. [4] A bulldozer is hidden in the trees – likely to have been used for constructing the bunker and for dragging the ammunition trailer around the No-Fire-Zone – **Source: thetimes.co.uk**

This practise of using civilians in this way was even acknowledged by the Panel. In their report it states, under the heading *Legal Evaluation of Allegations* → *E. Alleged Violations of the Liberation Tigers of Tamil Eelam*, in para 239:<sup>17</sup>

**239. Ban on locating military objectives near densely populated areas:** International humanitarian law prohibits the location of military objectives near densely populated civilian areas, where feasible (Rules 23-24, ICRC Study). Credible allegations point to a violation of this provision insofar as they indicate patterns of conduct whereby that **the LTTE deliberately located or used mortar pieces, other light artillery, military vehicles, mortar pits, bunkers, and trenches in proximity to civilian areas.** These locations included hospitals and concentrations of IDPs, including in each of the NFZs. This illegal practice does not relieve the SLA of its duties to comply with various precautions noted above to ensure respect for the rules of distinction and proportionality.

In addition to hiding behind civilian facilities, the LTTE regularly used civilians themselves, including women and children, as **human shields**.<sup>18</sup> Armed LTTE operatives routinely mingled with civilians in order to cover their movements and launch attacks against the Sri Lankan Army. The following account, given to the UTHR(J)

<sup>16</sup> ICRC letter to Sri Lankan Army, See: [LINK](#) (emphasis added)

<sup>17</sup> Report of the Secretary-Generals' Panel of Experts on accountability in Sri Lanka, April 2011, page 65, See: [LINK](#) (emphasis added)

<sup>18</sup> Dr. SinhaRaja Tammita-Delgoda, Review Essay: *Sri Lanka's Ethnic Conflict – How Eelam War IV was Won* by Ashok K. Meht, 2011; See: [LINK](#)

team by a civilian who fled the first No-Fire-Zone in February 2009, is a representative example of this widespread LTTE practise during this period:<sup>19</sup>

Ganeshapillai was among civilians advancing towards the Army line in Iruddumadu. **Four LTTE cadres joined the civilians and kept firing, deliberately provoking the Army.** A group that had gone ahead of them had told the Army that more civilians are following along the road. **The Army kept shelling but was then careful not to shell the road.** As they got close, the four cadres ran back and turned into snipers. As the Army was receiving the civilians, the snipers opened fire killing four soldiers. But the other soldiers betrayed no signs of reacting against the civilians. They calmly carried their dead, loaded the civilians into tractor trailers and sent them on.

There were also other occasions where the LTTE deliberately encouraged civilians, including children, to congregate and act as human shields in locations where the Sri Lankan Army had provided prior warnings to civilians of pending attacks. This account by the veteran Canadian Tamil journalist, D.B.S. Jeyaraj, is a pertinent example of this action:<sup>20</sup>

**The Army had planned out a move to take the coast and thereby “box” in the LTTE without access to the sea.** For this the 55 division was to move south along the coast from Challai. The 59 division was to move north from Karaichikkudiyiruppu. Both were to link up half-way.

**The LTTE resorted to a cruel and inhuman stratagem by moving the civilians into this coastal strip in large numbers. If the army tried to move along the coast, large numbers of civilians would be killed or injured. It was an inhumane “human deterrent” placed by the LTTE.**

**The security forces were compelled to abandon the original manoeuvre.** Thereafter they concentrated on the A-35 and adjacent areas in the hinterland rather than the Karaithuraipatru littoral.

The practices described above purposely endangered civilians and therefore breach the Law of Armed Conflict, contravening the fundamental principle of distinction between combatants and non-combatants.<sup>21</sup> The principle of distinction imposes obligations on the conduct of all parties, **including those controlling the territory where the hostilities take place.**

The LTTE strategy was two-fold: (1) to take advantage of the sensitivity of the Sri Lankan Government to civilian casualties amongst the people under LTTE control in an attempt to deter the Sri Lankan military from attacking legitimate military targets; and (2) when Government Forces did attack, to wield an excellent propaganda weapon against the Sri Lanka Government, featuring civilian casualties as well as damage to homes and protected sites. In other words, the LTTE chose to base its operations in civilian areas not in spite of, but *because of*, the likelihood of substantial harm to civilians.

The tactic did succeed in many ways because it forced the Sri Lankan military into doing two things:

- a. In some cases **forego attacks on legitimate military objectives** in order to protect the lives of civilians forcibly held by the LTTE to protect their military hardware and troops.
- b. **Forced them into changing their tactics**; which in the Sri Lankan Armies case lead to significantly higher casualties amongst its troops, as noted by the ICRC South Asia head in July 2009.

However, in many of these cases the Sri Lankan military could not forego a legitimate military objective without undermining its mission and putting at serious risk both its soldiers and the wider Sri Lankan civilian population. In those circumstances, the result of the LTTE approach was to make it difficult, and sometimes impossible, for the Sri Lankan military to avoid harm to civilians and civilian structures.

Nevertheless, the fact of civilian casualties in an armed conflict, even in significant numbers, does not in itself establish any violation of international law. In fact, the doctrine of “*proportionality operates in scenarios in which incidental injury and collateral damage are the foreseeable, albeit undesired, result of attack on a*

<sup>19</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

<sup>20</sup> D.B.S. Jeyaraj, *Fraudulent concept of a “fire-free, no-fire, safe zone”*, 18 April 2009, See: [LINK](#) (emphasis added)

<sup>21</sup> The Principle of Distinction – The first core principle of the Law of Armed Conflict, as reflected both in treaty law and in customary international law, is that – *the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives* (Additional Protocol I, art. 48). Although Sri Lanka is not a party to the Additional Protocols to the Geneva Conventions, it accepts that this provision, as with certain others addressing the principles of distinction and proportionality, accurately reflects customary international law. The principle imposes obligations on both parties to an armed conflict.

legitimate target”.<sup>22</sup> As Kenneth Watkin (Canadian Judge Advocate General who presided over the workings of the Israeli *Tirkel* Committee investigating the Israeli military raid of the Gaza Aid flotilla in May 2010) has explained:<sup>23</sup>

[a]lthough civilians are not to be directly made the object of an attack, **humanitarian law accepts that they may be killed or civilian property may be damaged as a result of an attack on a military objective.**

It is for this very reason that the Office of the Prosecutor, at the International Criminal Tribunal for the former Yugoslavia, rejected any suggestion, in its evaluation of the NATO bombing campaign in Yugoslavia, that the mere fact of civilian harm was indicative of wrongdoing. As the Committee Established to Review the 1999 NATO Bombing Campaign Against the Federal Republic of Yugoslavia stated in 2000 to the Prosecutor of the ICTY, “[m]uch of the material submitted to the OTP consisted of reports that civilians had been killed, often inviting the conclusion to be drawn that crimes had therefore been committed”. Yet as the Prosecutor’s Committee noted, “[c]ollateral casualties to civilians and collateral damage to civilian objects can occur for a variety of reason”.<sup>24</sup> For example, they may be harmed due to their proximity to a military target, or by operational mistakes. At times civilians may suffer harm because they are conscripted by the adversary to serve as “**human shields**” against an attack upon a military target.

In those and similar situations, one cannot jump from the unfortunate occurrence of civilian harm to the unfounded conclusion that the attacks were illegal. The critical but often omitted link in determining the legality of an attack – even an attack that results in death or injury to civilians – is whether the attacking forces sought to observe the rules of the Law of Armed Conflict, and in particular the principles of distinction and proportionality. This analysis depends on the particular facts of each incident. When individual attacks are legitimate, “*the mere cumulation*” of such instances, all of which are deemed to have been lawful, “*cannot ipso facto be said to amount to a crime*”.<sup>25</sup>

The presence ‘of civilians at a site’ (whether voluntarily or involuntarily) does not by itself forbid an attack on an otherwise legitimate military target. As explained in L. Oppenheim’s *International Law: Disputes, war and neutrality*:<sup>26</sup>

[c]ivilians do not enjoy absolute immunity. Their presence **will not render military objects immune from attack** for the mere reason that **it is impossible to bombard [the military objects] without indirectly causing injury to the non-combatants.**

The military manuals (LOAC) of numerous countries echo this point.<sup>27</sup> So do leading commentators, such as W. Hays Park, who has written that:<sup>28</sup>

Within both the Just War Tradition and the law of war, it has always been permissible to attack combatants even though some non-combatants may be injured or killed; **so long as injury to non-combatants is ancillary (indirect and unintentional) to the attack of an otherwise lawful target, the principle of non-combatant immunity is met.**

The tactics and strategy of the opposing force can transform sites that may once have been purely civilian into legitimate military objectives. The determination of what is a lawful ‘military objective’ turns on an assessment of ‘**military advantage**’. Additional Protocol I reflect customary international law – *Rule 8* – in defining ‘military objectives’ as:<sup>29</sup>

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<sup>22</sup> Michael N. Schmitt, *The Principle of Discrimination in 21<sup>st</sup> Century Warfare*, Yale Human Rights and Development Law Journal, Vol. 2, page 153, 150, 1999 (emphasis added).

<sup>23</sup> Kenneth Watkin, *Assessing Proportionality: Moral Complexity and Legal Rules*, Yearbook of International Humanitarian Law, page 3, 9 (Timothy L.H. McCormack ed., 2005) (emphasis added)

<sup>24</sup> NATO Bombings, Final Report to the ICTY Prosecutor, ¶ 51.

<sup>25</sup> *ibid.*, ¶ 52.

<sup>26</sup> Lassa Oppenheim, *International Law: Disputes, War and Neutrality*, page 525, (7<sup>th</sup> ed. 1952). (emphasis added)

<sup>27</sup> See, e.g., ICRC CIL Study, Practice, Ch. 2, ¶ 635 (quoting Australia’s Defence Force Manual as providing that “[t]he presence of non-combatants in or around a military objective does not change its nature as a military objective. Non-combatants in the vicinity of a military objective must share the danger to which the military objective is exposed”).

<sup>28</sup> W. Hays Parks, *Air War and the Law of War*, 32 A.F. L. Rev. 1, 4 (1990). (emphasis added)

<sup>29</sup> Additional Protocol I, art. 52(2). Also see ICRC, Customary IHL, chapter 2, rule 8; See: [LINK](#)

[t]hose objects which by their nature, location, purpose or use **make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.**

The LOAC manuals of many western States also confirm that the relevant ‘military advantage’ defining a ‘military objective’ relates to “*the military campaign or operation of which the attack is a part considered as a whole and not only from isolated or particular parts of that campaign or operation*”.<sup>30</sup> For example, the U.S. LOAC manual in relation to military advantage recognizes that:<sup>31</sup>

The foreseeable military advantage from an attack includes **increasing the security of the attacking force.** In any event, the anticipated military advantage **need not be expected to immediately follow from the success of the attack,** and may be **inferred from the whole military operation of which the attack is a part.**

By definition, then, evaluation of **proportionality** (or excessive harm to civilians compared to military advantage) – *Rule 14* – requires balancing two very different sets of values and objectives, in a framework in which all choices will affect human life. States have duties to protect the lives of their civilians and soldiers by pursuing proper military objectives, but they must balance this against their duty to minimise incidental loss of civilian lives and civilian property during military operations. That balancing is inherently difficult, and raises significant moral and ethical issues. Indeed, as the Committee established to review NATO’s bombing campaign in the former Yugoslavia emphasised:<sup>32</sup>

The main problem with the principle of proportionality is not whether or not it exists but what it means and how it is to be applied. It is relatively simple to state that there must be an acceptable relation between the legitimate destructive effect and undesirable collateral effects. ... **Unfortunately, most applications of the principle of proportionality are not quite so clear cut.** It is much easier to formulate the principle of proportionality in general terms than it is to apply it to a particular set of circumstances because the comparison is often between unlike quantities and values.

It is precisely because this balancing is difficult that international law confirms the need to assess proportionality from the standpoint of a ‘**reasonable military commander**’, possessed of such information as was available at the time of the targeting decision and considering the military advantage of the attack as part of the wider objective. Once again, the military manuals of many western States reflect this interpretation. For example, the Canadian LOAC manual states with respect to *Rule 14* that:<sup>33</sup>

[d]ecisions must be based on an honest and reasonable expectation made by the responsible commanders “*that the attack will make a relevant contribution to the success of the overall operation*”, based on the information reasonably available to them at the relevant time, and **taking fully into account the urgent and difficult circumstances under which such decisions must usually be made.**

Inevitably, different soldiers in combat make different choices in balancing competing values and interests. As the Committee Established to Review NATO Bombings in Yugoslavia explained to the ICTY Prosecutor:<sup>34</sup>

It is **unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and injury to non-combatants.** Further, it is **unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases.** It is suggested that the determination of relative values must be that of the ‘**reasonable military commander**’.

Moreover, the balancing may not be second-guessed in hindsight, based on new information that has come to light; it is a forward-looking test based on expectations and information at the time the decision was made. This

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<sup>30</sup> ICRC CIL Study, Practice, Ch. 2, ¶ 336 (quoting New Zealand’s Military Manual); see also ¶¶ 329, 332, 334, 337 (quoting manuals of Australia, Germany, Italy, and Spain). (emphasis added)

<sup>31</sup> ICRC CIL Study, Practice, Ch. 2, ¶ 361 (quoting the Report on U.S. Practice, 1997). Also see ICRC, Customary IHL, Practice Relating to Rule 8; See: [LINK](#) (emphasis added)

<sup>32</sup> NATO Bombings, Final Report to the ICTY Prosecutor, ¶ 48.

<sup>33</sup> Canadian militaries balance of expectations placed on its commanders with respect to *Rule 14*; See: [LINK](#) (emphasis added)

<sup>34</sup> NATO Bombings, Final Report to the ICTY Prosecutor, ¶ 50-1 (emphasis added)

perspective is confirmed by the use of the word “*anticipated*” within the text of the rule itself, as well as in the explanations provided by numerous States in ratifying Additional Protocol I.<sup>35</sup>

In other words, there is no indication of a ‘war crime’ simply because others conclude, after the conflict, that a different decision – often, a snap decision taken on the battlefield – could have led to fewer civilian casualties. To the contrary, if the commander in the field did not intend and did not know that the attack would cause **clearly excessive levels** of civilian harm, there is no legal basis for labelling it as a war crime.

For these reasons, any assessment of the legality of particular conduct – like launching artillery / mortar attacks against targets in the No-Fire-Zone – cannot focus only on the consequences (whether civilians were harmed). Instead, the proper focus is on whether the persons carrying out the attack, **based on what they knew and the conditions they faced at the time, taking into consideration the military advantage gained as part of the overall military objective of which the attack is a part**, complied with the applicable rules of international law. As a result, any genuine attempt that tries to quantify or assign responsibility for civilian casualties from the fighting in 2009 cannot then ignore these very important distinctions within international law, and the associated implications that go with it when assessing culpability.

Taking all these points into consideration – a subsequent review of the incidents highlighted by the Panel and other human rights groups of alleged Government Forces excesses, reveals that in a vast majority of these cases the relevant international laws have been interpreted within the framework of a premeditated assumption – that there was a deliberate strategy on the part of the Sri Lankan Government to intentionally target and kill civilians.<sup>36</sup>

The Panel for example rejects the Sri Lankan Governments claim that the objective of the military campaign in the Vanni was to defeat the LTTE and rescue the civilian population who were being used as hostages. The denial of any humanitarian intention is made despite the Panel’s own account of (a) how soldiers, at the risk to their own lives, had helped countless civilians attempting to escape the war-zone, and (b) their account of how the Army penetrated the second No-Fire-Zone, incurring heavy casualties amongst its troops, to rescue over 100,000 people. The last exercise in particular should have enabled them to gain a better understanding of the Sri Lankan militaries objectives / operational procedures during this phase of the campaign. On the contrary, the Panel reports these events in a manner which takes care to avoid any positive humanitarian motive on the part of the Sri Lankan Government. In the case of the assistance given by soldiers, in order to keep this separate from what the Panel alleged was the overall Government strategy of killing civilians, specifically mentions that these were actions of individual soldiers – not the Army as a whole. This is despite clear evidence of a command decision to do so given the widespread prevalence of this phenomenon during the last 5 months of fighting – confirmed by numerous eye-witness accounts.

The Panels seriously flawed theory about the intentions of the Sri Lankan Government and interpretations of its military strategy, are the result of an approach that failed to satisfy two essential reporting criteria:

- a. The Panel did not gather all the vital information relevant to the events and actions it analysed.
- b. The Panel did not consider all the possible interpretations and explanations of these events and actions.

Under these circumstances, the conclusions drawn by the Panel with respect to violations of International Humanitarian Law (in relation to incidents on the battlefield that allegedly led to significant civilian fatalities), needs to be reassessed in light of the serious shortcomings in the methodological approach and analysis of these events.

It should be understood however that this statement and the arguments advanced in general in this section, draws a clear distinction between confronting accusations of unlawful attacks in the context of pursuing a legitimate military objective, and those accusations related to extra-judicial killings – whether by individuals or rogue units. Whilst the evidence used against the former category – like the Panels assessment of what

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<sup>35</sup> See, e.g., ICRC CIL Study, Practice, Ch. 4, ¶ 195 (noting Austria’s statement that “*with respect to any decision taken by a military commander, the information actually available at the time of the decision is determinative*” for judging proportionality in attack) (emphasis added). Numerous other States have made similar declarations. See *id.* ¶¶ 196-205. As Germany stated forcefully, “*the decision taken by the person responsible has to be judged on the basis of all information available to him at the relevant time, and not on the basis of hindsight*” *Id.* ¶ 199 (emphasis added).

<sup>36</sup> The Panel has interpreted the government strategy in the Vanni as one which drove the citizens and the LTTE forward and trapped them in the narrow coastal region (Para’s 71 and 72). The strategy was not only aimed at defeating the LTTE but also “*calculated to bring about the destruction of a significant part of the Tamil population*” (Para 251); See: [LINK](#)

constitutes a legitimate military objective in relation to accidental civilian deaths due to shelling – is at times partial or partisan as will be demonstrated later in this paper. There is nevertheless compelling evidence to indicate that violations in the latter category – like the execution videos – might have occurred, and that these incidents need to be impartially investigated by an independent body and the perpetrators brought to justice.

#### 4. Numbers Game – Is it real?

Following the official end of hostilities in May 2009, Sri Lanka’s final war with its Tamil Tiger insurgents has continued to gain widespread international coverage in the main stream media of several countries, in addition to other forms of public discourse across countries in North America, Europe and Asia.

It will be noted that the attention for the most part has been exclusively focused on the estimates associated with the number of civilians allegedly killed during those final 5 months of fighting. The table below lists all the claims made thus far about the numbers of civilians allegedly killed, and by whom and when:

Organisation / Person	Date	Number of Civilian Fatalities
U.S. State Department	October 22, 2009	+7,700 <sup>37</sup>
UTHR(J)	December 13, 2009	20,000 – 40,000 <sup>38</sup>
Gordon Weiss	February 9, 2010	10,000 – 40,000 <sup>39</sup>
ICG	May 17, 2010	+35,000 <sup>40</sup>
UN Panel of Experts	March 31, 2011	7,700 – 40,000 <sup>41</sup>
Alan Keenan	February 27, 2012	40,000 – 147,000 <sup>42</sup>
Frances Harrison	July, 2012	147,000 <sup>43</sup>
UN Internal Review Panel	November 10, 2012	+70,000 <sup>44</sup>
Frances Harrison	December, 2012	50,000 – 101,748 <sup>45</sup>

Analysing these different claims – culled from various reports and statements after May 2009 – reveals a very distinctive pattern in the way these various figures were being derived.

The facts reveal that **ALL** these fatality estimates, issued by various international bodies / persons after December 2009, have in principal relied on the same empirical data first sampled by the UTHR(J) team during the latter half of 2009. In terms of a methodology, all the parties listed in the table above have unanimously copied the approach the UTHR(J) team adopted in December 2009,<sup>46</sup> to eventually determine their own estimates for the total number of civilians killed during the conflict.

This fact also highlights another stark reality. That from December 2009 to December 2012, a 3 year span, there still appears to be **no direct evidence** that has emerged from the former conflict zone that either supports or complements the casualty figures that were derived using population data from 2009. Given the concerted efforts of many individuals and organisations outside the island that are looking to uncover credible evidence to support the formation of an internationally led war crimes investigation, this is an incredible development.

<sup>37</sup> U.S. Department of State, *Report to Congress on Incidents During the Recent Conflict in Sri Lanka*, 2009, page 32; See: [LINK](#)

<sup>38</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>39</sup> Foreign Correspondent – ABC, *Sri Lanka – Hell or High Water*, 9 February 2010; See: [LINK](#)

<sup>40</sup> ICG, *War Crimes in Sri Lanka*, Asia Report No. 191, 2010; See: [LINK](#)

<sup>41</sup> Report of the Secretary-Generals’ Panel of Experts on accountability in Sri Lanka, April 2011, page 59, See: [LINK](#)

<sup>42</sup> ICG Blog, *Sri Lanka’s Dead and Missing: the need for an Accounting*, 27 February 2012; See: [LINK](#)

<sup>43</sup> Frances Harrison, *Journalists failed to tell the story of war crimes in Sri Lanka*, 17 May 2012 See: [LINK](#)

<sup>44</sup> Report of the Secretary-Generals’ Internal Review Panel on United Nations action in Sri Lanka, November 2012, page 14; See: [LINK](#)

<sup>45</sup> Frances Harrison, *One Hundred Thousand Tamils Missing After Sri Lanka War*; 17 December 2012; See: [LINK](#)

<sup>46</sup> This method of using population statistics to extrapolate a death toll was first pioneered by the UTHR(J) team in their report issued in December 2009.

It goes to stand that since the data and the methodology has remained the same, obviously means that the UTHR(J) was first organisation to speculate on the possibility of their having been “tens of thousands killed” during the final months of the conflict:<sup>47</sup>

An accounting for the civilian dead needs to be done. **Whichever way one looks at it, significantly more than 20,000 civilians are dead or missing from January to May 2009** (see Part V). The number could be several tens of thousands more.

This estimate was essentially derived by subtracting from the population claimed to have been present in the second No-Fire-Zone in February 2009 – a figure close to 330,000,<sup>48</sup> the final number of registered IDPs in Government camps by May 2009 – roughly +290,000.<sup>49</sup>

This then became the default method for all the other interested parties to arrive at a final death toll.<sup>50</sup>

The validity of this framework for estimating the number of civilian fatalities from the war rests heavily on two important factors:

- a. The accuracy of the estimate for the number of people in the second No-Fire-Zone in late February 2009.
- b. The ability to differentiate between combatant and non-combatant fatalities.

The reality is that for the most part, the weight of **all** the evidence of mass scale fatalities – these alleged numbers killed being the primary drivers behind the need for an international investigation; rests on the accuracy of a single figure – 330,000.

How reliable is this figure and where did it come from?

#### **4.1 The AGA’s Figures**

On March 5, 2009 the AGA for the Mullaitivu district, Mr. K. Parthipan (from herein will be referred to as AGA Parthipan), who was still trapped inside the second No-Fire-Zone along with the displaced population of the Vanni, forwarded to his superiors in the Ministry of Public Administration & Home Affairs his February *Situation Report* for the Mullaitivu district. In it he claimed:<sup>51</sup>

Almost the entire people from all AGA Divisions of the District are displaced. The IDPs of Mullaitivu and Kilinochchi and parts of Vavuniya, Mannar and Jaffna Districts are now staying in Mullaitivu District.

...

**The population of Mullaitivu District at present is about 81,000 families, consisting of about 330,000 persons.** This population is now living in the above mentioned villages amidst untold difficulties.

All the international reports that were subsequently commissioned following the end of the war have taken this figure of 330,000 to represent an accurate ‘credible’ estimate of the Vanni population in February 2009. In light of the criticism levelled by many of the authors of these reports at the Sri Lankan Governments own findings, from its most recent island wide census in 2011, this was an astonishing stance.<sup>52</sup>

It should be highlighted that unlike all the other reports that accepted AGA Parthipan’s estimate without further scrutiny, the UTHR(J) team attached several conditions regarding the accuracy of this figure. One of details revealed by the UTHR(J) was how AGA Parthipan calculated this estimate.<sup>53</sup>

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<sup>47</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

<sup>48</sup> Revealed by the Mullaitivu AGA – Mr. K. Parthipan, on 28 February 2009; See: [LINK](#)

<sup>49</sup> Report of the Secretary-Generals’ Panel of Experts on accountability in Sri Lanka, April 2011, page 40, See: [LINK](#)

<sup>50</sup> See ICG Asia Report No. 191 ([LINK](#)), UN Panel of Experts Report ([LINK](#)) and the latest UN Internal Review Panel Report ([LINK](#))

<sup>51</sup> AGA Parthipan, February *Situation Report*; See: [LINK](#) (emphasis added)

<sup>52</sup> It should be recognised that the census takers were far more comprehensive in their approach than what AGA Parthipan was able to carry out in February 2009. The 2011 census report for the Northern Province can be downloaded here: [LINK](#)

<sup>53</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

We were given a jerk by a senior community leader who had been in the NFZ and told us of a conversation he had in early March 2009 with a high ranking government administrator. **The latter told him that from the checks he had made through the village headmen (GSs) of the Vanni who were nearly all there, there were 330,000 civilians in the NFZ.**

The UTHR(J) also reveals that it was a coterie of international bodies, which included the UN in Sri Lanka, that had asked AGA Parthipan to carry out a census of the people still trapped inside the conflict area:<sup>54</sup>

The Government originally maintained from September 2008 that there were only 100,000 civilians in the war zone and by March reduced it to 70,000. Food and medicine could be brought only with government approval. **It was clear that the numbers were grossly understated and the UN and INGOs were helpless. They asked the SGO how many there really were so that they could make a case. It was sometime in February that the SGO began working through his subordinates to compile a census of those in the war zone.**

Based on these revelations it becomes quite apparent that AGA Parthipan was not directly responsible for calculating this number himself, via an individual head count. Rather it was based on discussions AGA Parthipan had with the village headmen (Grama Sevaka's – GS)<sup>55</sup> who were also present in the No-Fire-Zone. Based on these exchanges, using information provided by the GS's, AGA Parthipan estimated the numbers present in the area. It is the GS's responsibility to maintain family lists of all the people in their respective administrative units.

This detail raises several important questions like (a) the accuracy of the family lists and (b) the credibility of the GS's themselves.<sup>56</sup>



(LEFT) grama sevaka's in the Vanni receiving training (RIGHT) MP's, religious dignitaries and grama sevaka's in the Vanni raising their hands in salute to the LTTE leader during a Pongu Tamil (or Tamil Uprising) event in the Vanni in 2005 – **Source: tamilnet.com**

In this regard the UTHR(J) provides valuable historical information about the GS's in the Vanni. Their research has revealed that the GS's in the Killinochchi and Mullaitivu districts worked very closely with the LTTE, in many instances directly assisting in enforcing the groups oppressive diktat on the local population.<sup>57</sup>

Controlling village headmen (Grama Sevakas) is also to control the people. The government's social welfare measures, ration cards, identity cards, and voters lists are all routed through the headman. **From the 1990s the LTTE has used the headmen under its control to police the people, force them to attend demonstrations, perform compulsory military service as auxiliaries, impose punitive cuts of rations, diddle government aid and report on those coming in and going out...**

It should also be recognized that following the fall of Killinochchi – the LTTE's de-facto capital city – in January 2009, and with it the final realisation within the LTTE leadership that a complete military defeat was a

<sup>54</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

<sup>55</sup> The Grama Sevaka is the lowest ranking government-paid official within the government administration and has become the successor to the unpaid village headman elected by members of respected families in the village before the independence of Sri Lanka. The Grama Sevaka is responsible for the application of government regulations at the village level. Among other duties, the Grama Sevaka hands-over subsidies to the village on the government's behalf, and draws up both the civil list of all the families in the village and the electoral list.

<sup>56</sup> Dr. Muttukrishna Sarvananthan – is a Research Fellow at the International Centre for Ethnic Studies, Colombo, Sri Lanka – has spoken at length on how Grama Sevakas in the Wannu regularly padded up Family Lists to obtain more Supplies and Funds from the Central Government for personal use.

<sup>57</sup> UTHR(J) Information Bulletin No.39, 1 November 2005; See: [LINK](#) (emphasis added)



distinct possibility. The use of the civilian population under its control as a bargaining chip to engineer a ceasefire became the LTTE's primary military objective. The following assessment by academic Professor Michael Roberts is worth noting in this regard:<sup>58</sup>

When the LTTE initiated Eelam War IV in July 2006 it was confident of success. Matters turned out different. By late 2007 their military capacity in the Eastern Province had been reduced to nil. By January 2008 they lost control of the north western coastline which had enabled a supply of arms from India. Outgunned and outmanned, their troops were forced into a retreat that moved from west to east for the most part. They used landmines, bunds, trenches and booby traps to slow down the government forces.

The LTTE also increased its conscription of civilians to build these defences and replenish its troops. At the same time the civilian population was induced to retreat en masse ahead of the battle lines – moving from west to east. Though subject to multiple displacements, these people faced limited danger at the outset in 2008. But from January 2009 they were in increasing danger of being submerged in the crossfire.

This was the LTTE's intent. **The civilians were, now, not only a source of labour and conscripts; they were also hostages shielding the Tigers and providing a concern for humanitarian agencies which intervened and sought a ceasefire from the warring parties.** Since the LTTE had no intention of releasing the Tamil people or respecting any ceasefire, such interventions were in fact a form of military aid for the LTTE. **The humanitarian outcry raised by AI, HRW, ICG as well as some Western leaders was also a potential escape route that would have enabled the LTTE leadership to return to the fight another day.**

The strongest evidence yet of the existence of such a strategy comes via the confessions of two former senior LTTE officials.

The first example comes from the late Seevaratnam Pulidevan, a senior official in the LTTE's political wing (Head of the LTTE Peace Secretariat) in 2009. The confession, found in Frances Harrison new book "*Still Counting the Dead*", comes in the form of an account of a conversation in early 2009 between Seevaratnam Pulidevan and a Sri Lankan Tamil supporter in Europe. In it the head of the LTTE Peace Secretariat clearly outlines the organisations thinking during this stage of the conflict:<sup>59</sup>

**They [LTTE] hoped for a humanitarian intervention.** Puli had been quite open about this approach. He told European friends that, **just as in Kosovo, if enough civilians died in Sri Lanka the world would be forced to step in.**

This is further corroborated by the former de-facto leader of the group from May 2009 to August 2009, Kumaran Pathmanathan (KP). In an interview in 2011 with the respected Canadian Tamil Journalist, D.B.S. Jeyaraj, KP confesses about the group's raison d'être for holding the civilian population hostage:<sup>60</sup>

**DBS:** Did you not try to save the civilians by getting the LTTE to release them?

**KP:** I did try at the start. There was even an offer by the Americans to transport them by sea to Trincomalee. But the LTTE hierarchy was not agreeable. This attitude was most unfortunate and may appear as inhuman. **I am not trying to condone or justify this action but when I reflect upon the past I think the LTTE leadership also had no choice. If they released the people first, then only the tigers would be left there. Thereafter all of them could have been wiped out.**

Under the prevailing conditions in February 2009, for the LTTE, there was a clear strategic need to amplify the magnitude of any humanitarian crisis affecting the civilian population still under its control. This would have included as part of that strategy, a need to inflate the numbers of people affected by the fighting.

Based on these notes, it is worth considering the following points:

1. It has already been established that the GS's have a documented history of working closely with the LTTE. The following quote from HRW is a small reflection of that relationship:<sup>61</sup> "*They [the LTTE] got the lists of IDPs from the GS [grama sevaka, a village official] – every family had to register there – and then*

<sup>58</sup> Prof. Michael Roberts, *Misreading and Distorting the Sri Lankan War, 2009-2012*, 25 May 2012; See: [LINK](#) (emphasis added)

<sup>59</sup> Frances Harrison, *Still Counting the Dead: Survivors of Sri Lanka's Hidden War*, 2012; page 63 (emphasis added)

<sup>60</sup> D.B.S. Jeyaraj, *KP speaks out ~ 2 – An interview with the former LTTE Chief*, 13 August 2010; See: [LINK](#) (emphasis added)

<sup>61</sup> HRW, *War on displaced*, 3 February 2009; See: [LINK](#)

visited every family several times. If anybody tried to hide their sons and daughters, they would come back at night and search the house”.

2. Credible evidence that suggests many of GS’s in the Vanni, with varying shades of support, subscribed to the ideological vision of an Independent Tamil State. This vision was inspired and maintained for over a decade by the LTTE’s military strength, and as a result many did not want the LTTE defeated.

Considering all these connected issues within a single framework, the evidence suggests that there is a large body of credible data that warrants raising genuine concerns about the ‘integrity’ of some of the GS’s in the Mullaitivu and Killinochchi districts. The question that looms large and one that cannot be so easily dismissed is: **Could the GS’s from the Mullaitivu and Killinochchi districts have ‘massaged’ their family lists to assist the LTTE’s strategy of engineering a humanitarian ceasefire to stave of defeat and regroup?**

Given the nature of the evidence surrounding this issue, it is almost conditional that any information provided by such individuals would have to be heavily scrutinised and verified by other means. However, there appears to be **no evidence** to suggest that AGA Parthipan carried this out in February 2009.

Nevertheless, setting these issues of integrity aside, the UTHR(J) team attached additional caveats regarding the 330,000 population estimate – **caveats that none of the other reports appear to have taken into consideration during their subsequent discussions about civilian casualties.**

For example, the UTHR(J) claimed that the figure of 330,000 needs to be qualified by two very important factors:<sup>62</sup>

1. One was that **even as the figures were being compiled, people were either escaping into Government controlled territory or being killed in the cross-fire.**
2. That this figure **also included LTTE cadres and conscripts who were on family lists** used to compile the figure.

To put these issues into context it is important to consider the ground situation during February 2009. See Figure 9.2-1. As the situation map illustrates, following the loss of Killinochchi on January 1, 2009, the LTTE was on the retreat and was losing territory on all fronts. Its leaders were increasingly being confined to shrinking areas around Puthukkudiyiruppu, and people in the conflict zone were constantly on the move, many were taking every opportunity to leave the area.

The table below outlines some of the major population movements with the respective dates and time intervals over which they occurred:

Date	Number of IDPs in camps	Difference	Days elapsed
February 6, 2009	> 6,000 <sup>63</sup>		
February 9, 2009	15,800 <sup>64</sup>	+9,800	3 days
February 10, 2009	19,800 <sup>65</sup>	+4,000	1 day
February 12, 2009	24,138 <sup>66</sup>	+4,338	2 days
February 17, 2009	33,662 <sup>67</sup>	+9,524	5 days
February 27, 2009	35,338 <sup>68</sup>	+1,676	11 days
In the space of <b>21</b> days (from February 6 – 27) – the period over which AGA Parthipan was collecting data – more than <b>29,000</b> people crossed over from LTTE-controlled territory in Mullaitivu into Government controlled territory.			

<sup>62</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>63</sup> Amnesty International, *Calls for temporary truce and humanitarian corridors in Sri Lanka*, 6 February 2009; See: [LINK](#)

<sup>64</sup> UN News Service, *Sri Lanka: UN agency voices ‘outrage’ at civilian deaths in conflict with rebels*, 10 February 2009; See: [LINK](#)

<sup>65</sup> *ibid*

<sup>66</sup> UNOCHA, *Sri Lanka: Joint Humanitarian Update – Jaffna, Killinochchi, Mullaitivu, Mannar, Vavuniya, Trincomalee and Batticaloa Districts Report No. 1*; See: [LINK](#)

<sup>67</sup> UNOCHA, *Sri Lanka: Vanni IDP Information* (as of 17 February 2009); See: [LINK](#)

<sup>68</sup> UNOCHA, *Sri Lanka: Vanni IDP Information – Northern Area* (as at 27 February 2009); See: [LINK](#)

In trying to quantify these changes – some over the space of a few days – it is necessary to take a holistic approach when assessing the situation. Within that framework it is worth considering the following points:

- **Factoring in forced conscription:** this was a daily occurrence, where the young and old were taken away to take part in combat, sentry duty, or building bunkers and fortifications. A vast majority never made it back.
- **People were constantly on the move:** many were taking every opportunity to leave the conflict zone to safer areas. Anecdotal evidence from the UTHR(J) team shows that this was in the order of a few hundred to a thousand a day: *“During March, an average of 1,000 persons escaped daily, because there were more escape routes. When confined to Putumattalan, an average of 700 persons escaped daily. Even during May, when desperation contended with difficulty, an average of 800 persons a day made their escape”*.<sup>69</sup>
- **People were dying:** either killed by the LTTE whilst attempting to escape or through incidents of collateral damage as a result of shelling.
- **Psychological impact of being a human shield:** accounting for the highly traumatic conditions the people were under – a collective mass of people forcibly held as a human shield in the midst of a high intensity war.

Bearing in mind these individual points were all playing out at the same time. Under these circumstances, in February 2009, it would appear highly improbable that the GS's inside the No-Fire-Zone would had the resources to be able to maintain at all times reliable / accurate family lists of everyone present in the area – notwithstanding the issues highlighted earlier surrounding their integrity / credibility.

Reconciling all the available evidence regarding these issues, it is more than likely that the actual number of people in the second No-Fire-Zone towards the end of February was a figure considerably smaller (minus a few tens of thousands) than the 330,000 quoted by AGA Parthipan. At the same time remembering that this figure would also have included designated combatants like enlisted and forcibly recruited personnel.

The following analysis will reinforce this assessment.

#### **4.1.1 Conflicting values – The numbers don't add up?**

To qualitatively assess the accuracy of the methods used by AGA Parthipan to determine the population in the second No-Fire-Zone (and with it test the credibility of the data itself), brings to the forefront four numbers derived using these methods. AGA Parthipan was personally responsible for calculating three of these four figures whilst in the second No-Fire-Zone. The first figure however was issued by his superior Imelda Sukumar (GA for Mullaitivu District); nevertheless AGA Parthipan was instrumental in its calculation.

In her testimony to the LLRC in November 2010, Imelda Sukumar claimed:<sup>70</sup>

Mr Divaratne, Secretary, Essential Service instructed us to keep food stuff for 03 months and asked any every time to maintain those buffer stocks at our Food Warehouses. I maintained those and at that time **there were nearly 300,000 people from Kilinochchi District people, people of un-cleared area from Mannar District, and people of un-cleared area from Vavuniya District and people of Mullaitivu District were there with me – altogether 360,000 people**. But I am sure, at that time I was maintaining 3 months buffer stock, when I left from Mullaitivu on January 22<sup>nd</sup> and sufficient food was there for all these people in the district.

It should also be noted that by early / middle January, the population inside the last remaining pockets of LTTE controlled territory in the Vanni were at this point now all displaced. The UTHR(J) makes this very clear in their interviews:<sup>71</sup>

Maniam lived with his family in Iranapalai, a suburb to the north of Puthukkudiyiruppu. This was a time, first week of January, when people displaced or in anticipation of it were moving into Putumattalan – a place by the sea which later was made nominally a safe zone.

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<sup>69</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>70</sup> Proceedings of public sittings of the LLRC, Lakshman Kadirgamar Institute of International Relations and Strategic Studies, 4 November 2010; See: [LINK](#) (emphasis added)

<sup>71</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

....

The Army was planning to take Puthukkudiyiruppu and was firing from the south. LTTE artillery was firing from Pacchaipulmoodai just north of where Maniam was. While listening to news from Sooriyan Radio, he noticed that at 6:11 PM LTTE cannon changed direction and fired three shells to the southeast. He later found out that the shells landed in Putumattalan, killing 17 civilians and injuring 23. Maniam confronted a strong LTTE supporter about this. **The answer he got was that the whole of Puthikkudiyiruppu should be displaced and the people must suffer. This has been a regular LTTE refrain since the mid-1980s.**

Taking into account the overall ground situation during these months. According to AGA Parthipan, the following four estimates (listed in the table below) for January through to April 2009, can then be taken to represent the total number of people still inside the conflict zone:

Date	Population	Authority
January 22	360,000 <sup>72</sup>	Mrs. Imelda Sukumar – using data from AGA Parthipan and AGA Shanmugathan
February 28	330,000 <sup>73</sup>	AGA Parthipan
March 31	305,219 <sup>74</sup>	AGA Parthipan
April 29	150,000 <sup>75</sup>	AGA Parthipan

It is also known that on these four respective dates the total numbers of people that had crossed over from LTTE controlled areas and were housed in Government run camps were:

Date	Population	Authority
January 22	> 5,000 <sup>76</sup>	UN OCHA
February 28	36,378 <sup>77</sup>	UN OCHA
March 31	57,412 <sup>78</sup>	UN OCHA
April 29	172,291 <sup>79</sup>	UN OCHA

Adding together the two sets of numbers will give an indication of the overall total population for the Vanni during January, February, March and April 2009:

Date	Population	Authority
January 22	> 365,000	Largely based on data from Mrs. Imelda Sukumar – who in turn has referenced data from AGA Parthipan and AGA Shanmugathan
February 28	366,378	Largely based on data from AGA Parthipan
March 31	362,631	Largely based on data from AGA Parthipan
April 29	322,291	Largely based on data from AGA Parthipan

Recognising the fact that the same person (AGA Parthipan) was largely responsible for collecting all four sets of population data, thus ensuring some degree of internal consistency in the way the data was gathered. One can then infer that any differences found between consecutive population datasets would represent the number of people killed / unaccounted for during the intervening period. This is where AGA Parthipan's numbers begin to look suspect.

<sup>72</sup> Proceedings of public sittings of the LLRC, Lakshman Kadirgamar Institute of International Relations and Strategic Studies, 4 November 2010; See: [LINK](#)

<sup>73</sup> AGA Parthipan, February *Situation Report*; See: [LINK](#)

<sup>74</sup> AGA Parthipan, March *Situation Report*; See: [LINK](#)

<sup>75</sup> Report of the Secretary-Generals' Internal Review Panel on United Nations action in Sri Lanka, November 2012, page 38-39; See: [LINK](#)

<sup>76</sup> Office of U.S. Foreign Disaster Assistance, Sri Lanka – Complex Emergency Fact Sheet #1; 2 February 2009; See: [LINK](#)

<sup>77</sup> UNOCHA, *Vanni IDP Information* (as of 3 March 2009); See: [LINK](#)

<sup>78</sup> Cable: 09COLOMBO374; See: [LINK](#)

<sup>79</sup> UNOCHA; *Vanni IDP Camps and Hospitals Information* (as of 29 April 2009); See: [LINK](#)

Based on an assessment of the size of the remaining LTTE dominated areas in the eastern Vanni from February to April 2009 (Figures 9.2-1 through to 9.2-3 gives an indication of these areas). It can be safely concluded with some degree of confidence, that AGA Parthipan's assessment for April of the remaining population in the conflict zone should represent his most accurate estimate. This is largely due to the vastly reduced area in which all the people were now located within, and the fact that the population had shrunk considerably.<sup>80</sup>

Considering all the evidence, if AGA Parthipan's figures are to be believed, then from January 22 to March 31 and March 31 to April 29 respectively, the following numbers of people were either killed or are missing:

January 22 to March 31	≥	2,369
March 31 to April 29	=	40,340

Of special significance is the last figure, but a quick note about the casualty figure for January through to March. If AGA Parthipan's population enumeration methods were 'credible', then according to his data only 2,369 people were killed between January 22 and March 31. It should be noted that this figure would also have to include LTTE combatant deaths since AGA Parthipan's population figures also included this group. All things considered, this combined figure (combatant + civilian) appears to be a significantly lower estimate when compared to casualty estimates from the UN and other international groups over the same period. These groups claimed with some degree of authority that during this period the civilian tally alone was no less than 4,000 people killed / unaccounted for.<sup>81</sup> These figures were largely based on information provided by a network of informants inside the conflict zone. Accounting for the fact that there would have been at least 1,000 combatant deaths over this period, a generous minimum, still suggests a difference of over 2,600 fatalities. Given the level of credibility assigned to AGA Parthipan's population estimates during this time, this is not an insignificant difference. This discrepancy however is overshadowed by the figure for April, which is even more dramatic.

According to AGA Parthipan's population estimate for April, in one month alone from March 31 to April 29 – **40,340** people were either killed or are unaccounted for. This is an astonishing statistic; given that this figure is in direct conflict with the two known facts for April:

1. April ICRC data for the number of injured persons transported by sea shows that the mercy missions removed around ~2,800 injured civilians from the No-Fire-Zone.<sup>82</sup> Sources in the conflict zone also claim that only 50% of the total numbers injured were transported by sea. This would mean that for April alone there were potentially 5,600 combat related injuries.
2. During the conflict, and subsequently after its end, not a single source or organisation has speculated on the possibility of their having been this many fatalities in April 2009. It should be remembered that during this period the UN had several different informants within the No-Fire-Zone, none of whom reported back with details of such mass scale fatalities.

This figure cannot even be reconciled after comparing it to casualty statistics from Pro-LTTE sources, like TamilNet. Incidentally for the whole of April 2009, TamilNet reported that there were roughly 2,600 civilian fatalities.

Although TamilNet's close association with the LTTE discount it from being an impartial authority on events in the conflict zone. Nevertheless, for illustrative purposes, its ability to chronologically record alleged incidents of death or injury to people inside the Vanni during April 2009 serves as a useful yardstick, to qualitatively assess the impact the intensity of the fighting had on the civilian population (See Figure 9.1-4).

Making the reasonable assumption that given the size of the conflict zone in April 2009, that the TamilNet correspondent would have been able to cover a vast majority if not all the alleged shelling incidents in the second No-Fire-Zone. The graph reveals that out of all the recorded incidents in April, only six incidents led to

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<sup>80</sup> AGA Parthipan's count of the population still left in the No-Fire-Zone took place straight after over 103,000 people escaped the area over April 20, 21st and 22nd. His initial estimate of 165,000 still left behind appears to be a plausible assessment at this early phase. However, over the next few days from April 22 through till the end of April, several thousand people trickled out in batches of 1,000's. By the end of April this figure had shrunk to close to 150,000 (Also see Figure 9.1-5 for further detail). The second UN report, quoting AGA Parthipan as a source, supports a figure of around (~150,000) for the end of April (See entry for "Population numbers in the Vanni" for April in the table found on page 38-39; See: [LINK](#)). By May 5 the number of people remaining in the Vanni pocket had shrunk further to around ~ 120,000 according to "reliable reports from the Vanni" – TamilNet; See: [LINK](#).

<sup>81</sup> Cable: 09COLOMBO374 – "The U.N. reports that 3,937 civilians have been killed and over 9,000 injured from January 20 to March 31"; See: [LINK](#)

<sup>82</sup> ICRC mercy missions: For a breakdown of the number of people vs. number of injured transported by sea for April, see Sri Lankan Navy archived records at [navy.lk](http://navy.lk) (from April 1 – 31, batch 17 to 29)

casualties of greater than a 100 people (100 – 350), with the incident on April 20 alone allegedly accounting for a 1,000 fatalities.

This is how neutral observers like the UTHR(J) reported the average casualty rate for April:<sup>83</sup>

In contrast our Bulletin No.47 published on 17<sup>th</sup> April stated, “Persons in regular touch with those who have escaped confirm that an average of 15 to 20 people die each day; either killed by shells or shot by the LTTE attempting to drive fear into would-be escapees”. That huge discrepancy cannot be bridged even if one adds combatant deaths. Also averages are misleading. **April was a relatively quiet month until the Army entered the NFZ on 19<sup>th</sup> April.**

This general perception is also reflected in the satellite imagery from the time. Comparing high-resolution satellite images of the second No-Fire-Zone between February and April 19, indicates that the No-Fire-Zone as a whole did not witness anything like the scale of sustained bombardment required for there to have been more than 40,300 fatalities. See Figures 9.4-1 through to 9.4-3.

The UN estimated that for April there were potentially between 3,000 – 3,900 civilian fatalities.<sup>84</sup> Assuming a worst case scenario where there were 5,000 civilian fatalities, and an additional 2,000 LTTE cadres and conscripts killed in April. This would still leave an unbridgeable deficit of close to a staggering 33,040 unaccounted for!

This simple empirical analysis clearly demonstrates that AGA Parthipan’s estimate for the population in February 2009 appears to be unsupported based on facts on the ground. In addition to this, the evidence gathered from the analysis of shelters from high resolution satellite imagery strengthens the growing body of evidence that appears to undermine AGA Parthipan’s population estimates for February.

#### 4.1.2 Satellite-derived automatic detection methods

At the end of February 2009, the UN country team informed the Sri Lankan Government that, in its view, there were 267,618 civilians present in the No-Fire-Zone, basing the estimate, in part, on UNOSAT *Quickbird* and *Worldview* satellite images, used to count the number of IDP shelters. The resolution of the imagery produced by both satellites was 0.6 and 0.5m respectively, meaning a pixel resolution of 60cm × 60cm or 50cm × 50cm square. This resolution density is sufficient to be able to distinguish a single person on the ground.<sup>85</sup>

Subjecting these UN estimates to an additional error-in-data iteration using a range of standard deviation percentages – with a maximum deviation of +15% – would take into account any additional errors that might not have been accounted for in the original UNOSAT error analysis. Since the final figure delivered to the Sri Lankan Government would have incorporated some form of error analysis. This new data is tabulated in the Table below:

Error Analysis	0%	+2.5%	+5%	+7.5%	+10%	+12.5%	+15%
February 28, 2009 (NFZ-2)	267,618 <sup>86</sup>	274,308	280,999	287,689	294,380	301,070	307,761
February 25, 2009 (IDP Camps)	36,378 <sup>77</sup>	36,378	36,378	36,378	36,378	36,378	36,378
<b>Total</b>	<b>303,996</b>	<b>310,686</b>	<b>317,377</b>	<b>324,067</b>	<b>330,758</b>	<b>337,448</b>	<b>344,139</b>

Once again, this simple analysis shows that the required error to give a population figure of around 330,000 people – to match AGA Parthipan’s estimate – would have to be in region of +23% (62,000+ people). It is extremely unlikely given the level of fidelity on offer based on pixel resolution of the satellite imagery, and to the level of accuracy and confidence the initial figure of 267,618 was quoted to the Sri Lankan Government, that this many people would have gone unaccounted for.

<sup>83</sup> UTHR(J) Special Report 32; See: [LINK](#) (emphasis added)

<sup>84</sup> The UN’s internal Crisis Operation Group believed that by March 31, there were 3,937 civilian fatalities. By April 31, this had risen to ~7,000 fatalities. Which means for April, there were an additional ~3,000 killed. Another UN estimate speaks of 129 killed a day in April, which comes to roughly 3,900 killed for April; See: [LINK](#)

<sup>85</sup> See UNOSAT Satellite imagery; See: [LINK](#) and [LINK](#)

<sup>86</sup> Report of the Secretary-Generals’ Panel of Experts on accountability in Sri Lanka, April 2011, page 55, See: [LINK](#)

To support this assessment – about the levels of accuracy achievable by the satellite / shelter analysis methodology – it is necessary to examine the details surrounding events in May 2009.

On May 6 the UNOCHA office in Colombo speculated that there were between 70,000 – 80,000 people in the last remaining No-Fire-Zone. The assessment was based almost entirely on evidence gathered from analysing satellite imagery taken on May 6.<sup>87</sup> Eventually, close to 89,000 people came out of the conflict zone between May 10 and May 25.<sup>88</sup> Accounting for the fact that several people were killed during the intervening period – a few thousand, and also factoring an appreciation of the qualitative differences in the way people sought protection from the fighting during this time; by May many people did not have access to their own specific shelters unlike in February. The facts show that the original estimate was close to between 85-90% accurate.

It is worth noting that in the first UN report the Panel, apart from mentioning this figure of 267,618 in passing, did not use it in any of their subsequent analysis, instead relying on AGA Parthipan's higher estimate of 330,000. The Panel did not give an explanation as to why this figure or derivatives of it were disregarded in their final casualty enumeration analysis.

It is rather remarkable that the Panel did not consider it necessary, in the interests of accuracy, to cross-check AGA Parthipan's population estimates for the different months with other forms of empirical evidence to assess the credibility of the data.

### 4.1.3 A credible estimate

These two very different lines of investigation have shown that there are strong foundations on which to question the 'credibility' of AGA Parthipan's assessment that there were 330,000 people in the second No-Fire-Zone at the end of February 2009. This then spawns the follow up question – if AGA Parthipan's figures are incorrect or unreliable, what was the population in February 2009?

As will be shown through supporting analysis (See section 4.4: *A probable truth* for more details), in February 2009 this figure appears to have been closer to 298,000.

This leads to the conclusion that based on this estimate, the total Vanni population in February 2009 was probably closer to ~**334,000** (298,000<sub>NFZ</sub> + 36,000<sub>Camps</sub>) compared to the roughly ~**366,000** (330,000<sub>NFZ</sub> + 36,000<sub>Camps</sub>) quoted in the first UN report.

Incidentally, the UN whilst claiming that the figure of 366,000 was a credible estimate speculated in 2010/2012 that there were potentially close to 70,000 people unaccounted for following the end of the fighting in 2009. The UN further concluded that from this figure, around 40,000 represented the number of civilians killed during this period.

Whilst the entire foundation behind this theory is based on the assumption that there were 330,000 people still left in the Vanni in February 2009 – a statistic that has now been shown to be incorrect. It should be recognised that over the course of the final few months of the war, there was a gradual changing of attitudes (a new mindset) amongst mid-level UN staff in Colombo in the way they perceived the conflict. Well before the conflict ended on May 18, 2009, many of these individuals at this point had conditioned themselves to look at the war from an almost apocalyptic angle, and were convinced that there were tens of thousands of civilian fatalities – it should be noted that this occurred well before any kind of accounting of the total IDP population following the end of hostilities was undertaken. This hostile / confrontational approach believed the Sri Lankan military intentionally targeted and killed thousands of civilians.

## 4.2 Evidence Sampled – The UN insistence on “tens of thousands” killed

On May 29, 2009 the *Times* newspaper in the UK published a front cover page article about the end stages of the Sri Lankan conflict. The report, based largely on information provided by UN sources in Sri Lanka, revealed

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<sup>87</sup> Cable: 09COLOMBO539; See: [LINK](#)

<sup>88</sup> OCHA's *Vanni Emergency Situation Reports* No. 11 and No. 17 stated that during the period 27 October 2008 to 12 May 2009, 197,751 people had come out ([LINK](#)). From 27 October 2008 to 22 May 2009, 286,721 people had come out ([LINK](#)). The difference is 88,970 people between May 10 and May 22

some very important clues about the mindset of certain UN personnel whose responsibilities included collecting civilian casualty data from the conflict zone.<sup>89</sup>

Summaries of UN documents leaked this month confirmed almost 7,000 dead in the first four months of the year.

More than 13,000 civilians were killed until May 19, the day after the death of Velupillai Prabhakaran, the leader of the Tigers, was announced.

That figure is based on the growth in the intensity of shelling in May, resulting in an average of 1,000 civilian deaths every day.

*“These figures are not even complete yet”, the UN source said. “It’s going to end up way more”.*

...

In February, 15% were killed by gunfire as more civilians attempted to escape and 64% were killed by shelling. The numbers killed by shelling doubled from March to April, with an average of 129 every day.

...

UN projections based on the last five days of April predicted an average May death rate of 341 every day, but the month was to prove bloodier.

Until the end of April, the death toll was collated from the number of bodies arriving at improvised medical centres or reports from doctors, priests and humanitarian workers inside the no-fire zone.

Bodies taken to the medical centres or casualties who died undergoing treatment accounted for not more than 19% of the total death toll. In one day, when the names of 198 dead were collected, only 39 bodies were taken to the medical centre.

In the four days leading up to and including May 13, an average of 220 bodies were taken to medical points. On the worst day, the toll reached 480. Workers were unable to collect reports of other deaths because of the intensity of the bombing.

Based on the previous ratios, a conservative estimate still comes out at more than 1,000 civilian deaths each day, one UN source noted.

Counting of any kind was abandoned on May 13 when the bombardment reached such an intensity that most humanitarian staff had left and others were unable to leave their bunkers.

Still unaccounted for are 3,000 wounded civilians who were left in the last medical post in the no-fire zone when the remaining medical staff fled.

The empirical information in this report can be broadly summarised as follows:

Average casualty rate for April	=	129 dead / day <sup>90</sup>
Total casualties for April (30 days)	=	3,870
Average casualty rate for May (based on data from April)	=	341 dead / day
Total casualties for May (May 6 to 19 = 13 days)	=	4,433

The UN through its “Crisis Operation Group” estimated that there were nearly ~7,000 civilian fatalities by the end of April 2009 (for more details about the COG see Appendix II). Based on these estimates, the UN initially projected that by the end of the war there could have been at least (~7,000 + ~4,400) = ~11,400 dead, all civilian.

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<sup>89</sup> Catherine Philp and Michael Evans, *Times photographs expose Sri Lanka’s lie on civilian deaths at beach*, 29 May 2009; See: [LINK](#) (emphasis added)

<sup>90</sup> These daily casualty estimates are extremely misleading. According to the *Times* report, based on the UN estimate of 129 deaths / day, for the whole of April the death toll should = 3,870. It is also know from the same report that the UN estimated the total dead at the end of April to be around 7,000, based on reports from its network of informants in the Vanni. The UN also estimated that at the end of March there were 3,937 killed ([LINK](#)). Based on the last two UN estimates, in April there should have been 3,063 deaths. Quite a stark difference to the 3,870 estimated earlier. For April there appears to have another daily fatality estimate of 116 deaths / day = 3,480 for the whole of April ([LINK](#)). The point being that estimates based on daily dead are extremely unreliable and misleading.



However, based on a single incident in May where the names of 198 dead were collected but with only 39 bodies being registered at the medical centre, assumed that this percentage of uncertainty for the unaccounted dead (39 / 198 ~ 19%) applied across to all the incidents that lead to death and injury in May.

So whilst ground estimates suggested that on average 220 deaths were being recorded / registered per day at medical centres during the later part of May. Based on the previous experience of only 19% being accounted for, the COG theorised that the actual average fatality rate per day was closer  $(220 \times 81\% / 19\%) = \sim 1,000$ .

Average casualty rate for May based on only 19% being recorded	=	~1,000 dead/day
Total casualties for May (May 6 to 19 = 13 days)	=	~13,000

In reality, according to all the incident reports the group received, there were allegedly 17,810 deaths between October 2008 up to and including May 13, 2009.

However from this total the COG were only able to verify 7,737 claims, about 44%, until May 13. This was the result of its methodology for verifying a claim – which required a minimum of two independent sources to the claimant to have witnessed the event and the casualties associated with that event. This means that more than half the claims received by the COG were from single sources inside the conflict zone (**Note:** in section 4.3.6: *F: Impartiality of eye-witness testimony*, the current discussion will give examples of how some of the sources the COG included in its list of informants, were responsible for sending out highly exaggerated accounts / figures on the number of casualties in the No-Fire-Zone).

These reports nevertheless ceased after May 13.

Presented with this lacuna in casualty information from May 13 onwards, for the 13 days of intense fighting in May (May 6 to May 19), the UN based its estimates for the month on an average fatality rate of 1,000 per day. This suggested that there were an additional 13,000 civilian deaths from May 6 to 19. It concluded therefore that the last 5 months of fighting saw the death of close to 20,000 civilians ( $\sim 7,000 + \sim 13,000$ ).

This kind of speculative reasoning quickly instilled a way of thinking amongst some UN staff in Sri Lanka that there must have been ten's and thousands of civilian fatalities. In this regard, any estimate that suggested a figure in this range was 'plausible' and 'credible' regardless of the objectivity and accuracy of the underlying data.

Statements like the following, attributed to a UN staffer in Sri Lanka, typifies the way of thinking prevalent at the time:<sup>91</sup>

One UN official described the statistics he collected as merely a snapshot, **adding that he'd be staggered if the final death toll didn't exceed 30,000** [...] His warnings of a massacre were ignored.

To reinforce the credibility of these figures additional evidence in the form of satellite imagery of the conflict zone and statistics from medical centres inside the IDP camps, were used to justify the growing belief within the UN system that there must have been mass scale fatalities within the civilian population during the final months of the war.

### **Satellite Imagery**

The Panel used satellite imagery primarily to justify its belief that the Sri Lankan Army were deliberately targeting the No-Fire-Zones, and as direct consequence were killing a large number of innocent civilians in the process:<sup>92</sup>

**101.** [...] Despite Government pronouncements, satellite images in Annex 3 show that **SLA artillery batteries were constantly adjusted to increasingly target the NFZs**. The LTTE had fewer heavy weapons left and less space to fire them from.

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<sup>91</sup> Frances Harrison, *Still Counting the Dead: Survivors of Sri Lanka's Hidden War*, 2012; page 63 (emphasis added)

<sup>92</sup> Report of the Secretary-Generals' Panel of Experts on accountability in Sri Lanka, April 2011, page 29, See: [LINK](#)

## **Medical Centre Statistics**

The Panel also used data from medical centres inside the IDP camps and Government hospitals to further justify its conclusions about the numbers of civilian fatalities:<sup>93</sup>

133. Some have developed estimates based on the statistics of the injured and dead collected by the doctors, which were collated by the hospitals and the District Disaster Management Unit. **One estimate is that there were approximately 40,000 surgical procedures and 5,000 amputations performed during the final phase.** Depending on the ratio of injuries to deaths, estimated at various times to be 1:2 or 1:3, this could point to a much higher casualty figure.

Using deaths to injuries ratios of 1:2 or 1:3, the Panel estimated that there were between 15,000 and 22,500 civilian deaths (45,000/3 and 45,000/2).

Although the last assessment (based on injured analysis) produced a fatality estimate that was within the realm of plausibility, the Panel dismissed this range for an even higher one claiming, “*A number of credible sources have estimated that there could have been as many as 40,000 civilian deaths*”.<sup>94</sup> The Panel's conviction that the actual death toll was closer to 40,000 was largely driven by its belief that the population figures provided by AGA Parthipan from within the No-Fire-Zone were more credible than the data it had available for the number of injured persons.

Based on the importance the Panel attached to this single source of evidence, it stated with some confidence that:<sup>95</sup>

[m]ultiple sources of information indicate that a range of up to 40,000 civilian deaths cannot be ruled out at this stage. Only a proper investigation can lead to the identification of all of the victims and to the formulation of an accurate figure for the total number of civilian deaths.

As will be seen in the next section, this not only represented a gross generalisation but also a serious misrepresentation of the different forms of evidence that emerged from the battlefield.

### **4.3 Evidence Ignored by the UN**

The Panel's biggest failing was the manner in which it interpreted the different forms of evidence relating to casualty information from the conflict zone. The Panel's almost deliberate selectivity in only sampling a portion of the available evidence seriously undermined the credibility of its analytical approach. The Panel on many occasions only assessed evidence – or interpretations of it – that it felt reinforced its primary hypothesis, that there were tens of thousands killed. Whilst at the same time other sources of credible evidence that contradicted these assessments were either by intent or sheer negligence, ignored.

Although the Panel report stated from the onset that there was no authoritative figure for civilian fatalities during the final phases of the war:<sup>96</sup>

132. There is no authoritative figure for civilian deaths or injuries in the Vanni in the final phases of the war. Several factors make it very difficult to calculate a reliable casualty figure: (a) **the number of persons in the conflict area remains uncertain, although it was likely to have been as many as 330,000;** (b) **the lack of an accurate count of the number of persons who emerged from the Vanni, due to the lack of transparency in the screening process;** (c) **lack of certainty on the numbers of LTTE combatants, complicated further by the increase in forced recruitment in the final phase;** and (d) **the fact that many civilians were buried where they fell, without their deaths being registered, in some cases, unobserved.**

Regardless, the manner in which the Panel subsequently endorses circumstantial claims of tens of thousands killed clearly demonstrates that it had ignored its own warnings about the limitations and uncertainty in the original data. This fact alone reveals the serious internal contradictions inherent in the final concluding remarks.

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<sup>93</sup> Report of the Secretary-Generals' Panel of Experts on accountability in Sri Lanka, April 2011, page 40, See: [LINK](#) (emphasis added)

<sup>94</sup> Report of the Secretary-Generals' Panel of Experts on accountability in Sri Lanka, April 2011, page 41, See: [LINK](#)

<sup>95</sup> *ibid*, page 41

<sup>96</sup> Report of the Secretary-Generals' Panel of Experts on accountability in Sri Lanka, April 2011, page 39, See: [LINK](#) (emphasis added)

Fundamentally, when the Panel authoritatively uses words like ‘civilian’ and ‘killed’ in front of numbers derived from unreliable / unverified data, it raises some extremely worrying questions about the methods and motives employed by the Panel when reaching these conclusions.

The following analysis will demonstrate how the Panel failed to adequately reconcile six very important categories of evidence relevant to the discussion about civilian casualties. These specific details when considered with due weight in the context of the ongoing debate, makes it very clear that it was impossible for the Panel to have concluded with any degree of confidence that there were ‘credible’ indicators to suggest that +40,000 ‘**civilians**’ were ‘**killed**’ during the fighting in 2009.

#### **4.3.1 A: Credibility of AGA Parthipan’s figures**

As was argued in section 3.1 of this paper, AGA Parthipan’s estimate of the remaining Vanni population in the second No-Fire-Zone during February 2009 has been shown to be extremely unreliable and unsupported by other known facts.

Without subjecting these numbers to any kind of reasonable scrutiny, the Panel appears to have carelessly accepted AGA Parthipan’s estimates on face value and included it in their analysis to draw significant conclusions. Considering the clear political implications of how the Panel’s findings would have been viewed and used on the diplomatic stage, for a document of this nature, this was an unprecedented decision that seems to defy any reasonable logic.

#### **4.3.2 B: Conflating combatant / non-combatant in COG reports**

The casualty reports received by the COG failed to reconcile one important detail – who was a civilian amongst these casualties?

It is now widely acknowledged that these reports of incidents of death and injury in the No-Fire-Zone, compiled by a network of informants,<sup>97</sup> did not adequately differentiate between civilian and combatant / conscript deaths in its causality figures. All deaths and injuries were included under the single category of civilian casualties.

The following assessment by the U.S. embassy in Sri Lanka (WikiLeak 09COLOMBO695) on July 13, 2009, is quite emphatic about this possibility:<sup>98</sup>

Unofficial UN estimates for Tamil civilian deaths over roughly the same January to mid-May time period are more than ten times as high, between 7,000 and 8,000. **Those UN estimates did not rigorously seek to exclude deaths of possible LTTE conscripts...**

This observation is also reflected in an official U.S. State Department Report on Sri Lanka, “*Report to Congress on Incidents during the Recent Conflict in Sri Lanka*” released in December 2009, that stated:<sup>99</sup>

However, one organization, **which did not differentiate between civilians and LTTE cadres**, recorded 6,710 people killed and 15,102 people injured between January 20 to April 20.

The UTHR(J) team also reached a similar conclusion after analysing its own material from its extensive interviews with IDP’s from the former war zone:<sup>100</sup>

Thus although figures attributed to the UN have been considered authentic, there are many imponderables, such as who gave the figures from the ground and **whether they adequately distinguished between civilians and (enforced) combatants.**

The reasons for highlighting these concerns are quite simple. Through the research of the UTHR(J) and other civil society groups in Sri Lanka, there is strong evidence to show that during the war there were many instances

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<sup>97</sup> This included: Medical officers, Government agents, UN and international NGO national staff in total numbering 213, Clergy, Education department staff and Community leaders.

<sup>98</sup> Cable: 09COLOMBO695; See: [LINK](#) (emphasis added)

<sup>99</sup> U.S. Department of State, *Report to Congress on Incidents During the Recent Conflict in Sri Lanka*, 2009, page 15; See: [LINK](#) (emphasis added)

<sup>100</sup> UTHR(J) Special Report 32; See: [LINK](#) (emphasis added)

where LTTE cadres / conscripts / auxiliaries were being routinely treated at civilian medical centres. This brings to the fore the real possibility that combatant injuries / deaths were being included in civilian casualty data.

The following account by the UTHR(J) team about events at Putumattalan Hospital in the second No-Fire-Zone in April 2009, is a good example of the kind of environment that existed for there to have been contamination in the civilian casualty figures with combatant casualties – given the additional fact that many cadres and conscripts at this stage were fighting in civilian attire:<sup>101</sup>

**Injured LTTE cadres were brought to the hospital and left there for two days** and were then taken over by the LTTE. [...] The Army fired with RPGs or small arms whenever they saw a vehicle approaching the hospital, taking it to be one bringing injured cadres. They did not fire at ambulances displaying the red light above. The LTTE usually approached the hospital when it was dark after switching off all lights.

This account at Putumattalan Hospital is corroborated by other eye-witnesses:<sup>102</sup>

He took me to Matalan (Putumattalan) hospital in a vehicle and I stayed there for three days. The hospital was in a school building and the operating theatre was thrown together quickly. [...] **Both civilian injured and LTTE injured were treated there.**

These accounts in general reflect a practice that occurred across all the hospitals in the conflict zone throughout the war. For example, the following account at Kilinochchi hospital in October 2008:<sup>103</sup>

Muhunthan above was later admitted to Kilinochchi Hospital, which had around 300 patients, mostly injured civilians. **LTTE injured were also brought to the hospital in civilian clothing and in civilian vehicles**, but were dressed and soon moved to an LTTE facility.

At Puthukkudiyiruppu Hospital in February 2009:<sup>104</sup>

**The same witness told us that the Hospital also had over 200 injured LTTE patients**, one of whom was his nephew, who used a separate building and additional tents had been erected to accommodate the overflow.

There were also many occasions during the final few months of the war when combatants (injured / fit) routinely mingled in with civilians (injured / fit) fleeing the conflict zone. The following account by an eye-witness in May 2009 is an example of such an instance:<sup>105</sup>

Among the most tragic sights were hundreds of young injured LTTE cadres, many of them girls, who were brought early in the morning of 16<sup>th</sup> May and stretched out along the sides of the road near the southern end of the NFZ. **The LTTE originally hoped that the Government would give the ICRC clearance to come over the Vattuvakkal Bridge and pick them up.** This did not materialise although as late as 11.00 AM, they were still hopeful.

...

The injured above were the worst cases with no one to care for them. **Most of the other injured, perhaps around 1,000, had been taken by their families or friends.**

...

The cadres who survived the fighting, once they knew their families were leaving, had **abandoned their cyanide capsules and uniforms, put on civilian clothes and joined the exodus with their families.**

In addition to these instances where the distinction between a combatant and civilian injured was deliberately blurred, another issue that complicated the identification of the cause of death was that civilians killed by the LTTE were regularly passed off as fatalities due to shelling – allegedly always by the Sri Lankan Army:<sup>106</sup>

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<sup>101</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

<sup>102</sup> Social Architects, Story 4, 2012; See: [LINK](#) (emphasis added)

<sup>103</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

<sup>104</sup> *ibid* (emphasis added)

<sup>105</sup> *ibid* (emphasis added)

<sup>106</sup> *ibid* (emphasis added)

The principal described something else he had seen. 15 escapees had been shot dead opposite the Putumattalan Hospital. Along with the daily quota of dead resulting from Army shelling, these bodies too were placed in a space ringed by ropes on a side of the hospital. **With the help of labourers, the doctor looked at the bodies and pronounced the cause of death. The distinction was clear between shell injuries and bullet injuries. The doctor regularly pronounced all of them to have died due to Army firing.** The principal remarked, *“I wonder how he did it?”* **This went on day after day and perhaps above a thousand died trying to cross the strip of water.**

This account is reflective of another phenomenon that was unique to the Vanni. According to the UTHR(J) team, all the doctors working for the State that practised in the conflict zone during this period were heavily monitored by the LTTE. The UTHR(J) recounts an incident when a senior State doctor (RDHS for Mullaitivu, Dr. Shanmugarajah) whilst attempting to flee the No-Fire-Zone with his family was apprehended and beaten by the LTTE.<sup>107</sup>

Sources close to him told us that he had tried to escape from the Vanni and was apprehended by the LTTE, and beaten and taken back to the NFZ. **The LTTE kept all the doctors under close watch. An armed guard was placed near them even when they did surgical operations.**

The UTHR(J) team summed up this general state of fear that gripped the State medical fraternity, and other civil servants not aligned to the LTTE cause:<sup>108</sup>

**No doctor in an LTTE-controlled area dared to certify the LTTE as the cause of a death.** Often they were spared this dilemma. When the wife of someone executed by the LTTE for political reasons went to the local headman in Jaffna, which was by then under Army control, to make an application for a death certificate, **he without batting an eyelid wrote or altered the cause of death to Army shelling.**

All these accounts raise serious concerns about the accuracy of the reports that were sent out from the conflict zone – the possibility of combatant casualties being included in with civilian casualties. Whilst the intention of this cautionary note is not to make a sweeping generalisation about all the reports that were sent out, it does nevertheless highlight the need for vigilance and some form of robust screening to ascertain the validity / accuracy of the data.

There appears to be no indication that – going by the U.S. Governments assessment of these reports – the Panel of Experts or the UN system carried out any form of robust cross-checking to differentiate between civilians and combatants in the casualty reports it was receiving from the front line.

### **4.3.3 C: Flawed interpretations of satellite imagery**

A body of evidence that the Panel used extremely subjectively drawing what one can only describe as rather partisan conclusions, is the large repository of high definition satellite imagery available of the conflict zone from February to May 2009.

Whilst the satellite imagery does reveal visibly clear signs of shelling within the second and third No-Fire-Zones, including the surrounding areas adjoining the zones; thus broadly corroborating eye-witness accounts of these events. However, the way in which these images are interpreted by the Panel raises several concerns. In particular, how the Panel uses the imagery to justify its assessment that there existed a deliberate strategy on the part of the Sri Lankan Army to target civilians.

Broadly speaking, the Panel has paid little or no attention to the following details in their analysis of this imagery:

- The types of impact crater and the degree of damage visible in the imagery – important when differentiating between the types of shell responsible (e.g. mortar, artillery or rocket), and whether the shelling was indiscriminate.
- Where in the No-Fire-Zone a vast majority of the shells (mortar, artillery or rocket) were landing – specifically in relation to populated areas.

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<sup>107</sup> UTHR(J) Special Report 32; See: [LINK](#) (emphasis added)

<sup>108</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

- The general density of impact craters within populated areas of the No-Fire-Zone.
- Where the frontlines were located during the time frame considered by the Panel – February to May 2009.

Modern artillery and mortar systems come in standard calibres, and their munitions produce calibrated explosive yields, which combine to determine the diameter of the resulting crater. The appearance of numerous depressions of identical diameter can indicate repeated fire of the same artillery or mortar piece, or multiple guns of the same model, calibre, or munition. The Sri Lanka Army used standard, easily identifiable, artillery / mortar / rocket firing equipment. The table below lists the specifications of the shells and the delivery systems used by the Army in the Vanni theatre in 2009:<sup>109</sup>

System	Type	Calibre	Range	Explosive Weight
<b>Type 86 (W86)</b>	Mortar	81 mm	4.7 km	~750 g
<b>Type 87 (W87)</b>	Mortar	120 mm	6.4 km	~1.36 kg
<b>NORINCO Type 59-I</b>	Artillery	130 mm	27 km	~12.5 kg
<b>NORINCO Type 66</b>	Artillery	152 mm	17.2 km	~16.4 kg
<b>RM-70</b>	MBRL	122 mm	21 km	~19.8 kg

There are distinct differences in the crater features and the degree of damage caused by 81 mm / 120 mm mortar shells and 130 mm / 152 mm artillery shells.

This is largely due to significant differences in explosive yield and barrel velocities (hence kinetic energy) of the different shells. The characteristic impact features created by these different types of munitions are easily identifiable in high resolution satellite imagery. The following series of images (See Figures 9.4-4 to 9.4-6) illustrate the clear differences that are visible to the naked eye between artillery, mortar and rocket shell impacts in images taken at the same resolution. The effects of these munitions on different physical environments also reveal different manifestations in the damage markers. For example, in open terrain an artillery, rocket or mortar barrage will reveal clearly identifiable craters. In environments with lots of foliage, the surrounding trees and shrubbery will show signs of damaged / felled trees (clearings) or burnt vegetation in addition to impact craters.

The ability to identify the type of shell used from analysing satellite imagery is an important revelation. Primarily because the type of shell used has a direct bearing on the number of casualties (killed / injured) to expect from a shell impact in a populated area. In principal, a 152 mm artillery shell explosion would cause far more damage than an 81 mm or 120 mm mortar round.

Whilst the Panel was keen to emphasise that the Sri Lankan Army was primarily firing artillery shells into the No-Fire-Zone – part of its justification for suggesting there having been a large number of casualties. The evidence gathered from analysing high resolution satellite imagery of the areas in question is far less supportive of this position. This observation is particularly relevant to the third No-Fire-Zone, the area where it has been argued many civilians lost their lives due to intense barrages of artillery from Sri Lankan Army positions.

Although a few artillery shell craters can be identified during the time period in question, a vast majority of the impact craters in the second and third No-Fire-Zones are in fact from 81 mm and 120 mm mortar shells. Under current international systems of classification, mortars fall under the category of ‘infantry weapons’, and hence are not classed as ‘heavy weapons’.<sup>110</sup> (See the discussion below about shelling on May 6 – May 10)

This assessment by the Panel about the extensive use of artillery forms part of the group’s core argument that the Sri Lankan Armies use of force towards the later stages of the conflict was considered to be ‘disproportionate’. This is also linked to the Panels belief that during this stage of the end game the LTTE was “immobilized” and had “fewer heavy weapons left and less space to fire them from”:<sup>111</sup>

**101.** At the time, the Defence Secretary stated: “We are taking casualties to prevent civilians getting hurt. This is a factor we are very concerned about. Otherwise we could have used so much artillery and just moved on”. The

<sup>109</sup> Armaco JSC, Bulgaria; See: [LINK](#)

<sup>110</sup> For more detail; See: [LINK](#)

<sup>111</sup> Report of the Secretary-Generals’ Panel of Experts on accountability in Sri Lanka, April 2011, page 29, See: [LINK](#) (emphasis added)

Government announced on 25 February, and again on 27 April, that the SLA was no longer using heavy weapons in the second and third No Fire Zones. But what was happening on the ground indicated the opposite. Intensive artillery fire had been a core tactic in the SLA’s military campaign from the outset. As victory neared, this tactic was not abandoned, but rather its use was intensified, **even though the LTTE was now immobilized and surrounded in an area of high civilian density**. The intensive shelling also caused many civilians to attempt to flee the area, meeting another of the Government’s objectives, to put pressure on civilians to get out of the way. Despite Government pronouncements, **satellite images in Annex 3 show that SLA artillery batteries were constantly adjusted to increasingly target the NFZs. The LTTE had fewer heavy weapons left and less space to fire them from.**

Under Annex 3, *Satellite Imagery – Explanatory Note*, the Panel notes that:<sup>112</sup>

The second ten images show artillery batteries and their projected fire bearing and range capabilities, **derived from the direction in which their barrels were pointed (which is visible from satellite imagery)**. The series of diagrams were designed by UNOSAT to **show that artillery batteries were redirected over time from the first to the second and then the third No-Fire-Zones.**

The broad message contained within these different statements is: **LTTE heavy weapons at this stage no longer posed a threat to front line Sri Lankan Army troops. Hence there was no tactical need for the Sri Lankan Army to resort to using its own artillery and mortar assets against the LTTE** (the disproportionate use of force argument).

This flawed thinking dangerously ignores the fact that the LTTE were using until May 17, from within the third No-Fire-Zone, the following types of heavy weaponry against the Sri Lankan Army and civilians trying to flee these areas:

System	Quantity	Type	Calibre	Range	Explosive Weight
Palispan 2000	3	Mortar-Gun	140 mm	17 km	~20 kg
Pandithar 1550	+10	Rocket-Mortar	130 mm	1-2 km	~15 kg
NORINCO Type 59-I	1	Artillery	130 mm	27 km	~12.5 kg
NORINCO Type 66	6	Artillery	152 mm	17.2 km	~16.4 kg

These weapons were used in addition to several dozen 81 mm, 120 mm mortar and other large calibre projectile weaponry (*baba* mortar) the group had in its arsenal till the very end. See Figures 9.3-8, 9.3-9, 9.4-7 and 9.4-8 for more details.

It should be noted that during this period, according to the Sri Lankan Army, these weapons were “officially” killing on average 40 – 60 soldiers a day.<sup>113</sup>

Compounding these serious shortcomings in the analysis of this type of evidence was the Panel’s misguided assessment that based on the direction Sri Lankan Army artillery / mortar barrels were pointing, the Armies “*artillery batteries were constantly adjusted to increasingly target the NFZs*”. This judgement shockingly ignored the underlying ground situation, and the subsequent location of the front lines over the periods the images covered.

The following sequence of images (See Figures 9.4-9 to 9.4-18) compares the UNs graphical illustrations of Sri Lankan Army artillery / mortar fire bearings, with the forward defence lines over those respective periods. The comparisons are quite revealing.

### **February 5 to March 29**

Analysing the images covering this period (See Figures 9.4-9 through to 9.4-14) in parallel with images of the No-Fire-Zone depicting the locations of IDP shelters (See Figures 9.4-1 through to 9.4-3). It is quite clear that from February 5 to March 29, the fire bearings of the artillery and mortar batteries were constantly changing in order to reflect the changes to the forward defence lines where front line soldiers needed fire support. A critical mistake made by the Panel was in assuming that these weapons were at all times consistently firing up to their

<sup>112</sup> Report of the Secretary-Generals’ Panel of Experts on accountability in Sri Lanka, April 2011, page 186, See: [LINK](#) (emphasis added)

<sup>113</sup> Cable: 09COLOMBO507; See: [LINK](#)

maximum permissible range as projected in their illustrations – hence overlapping the No-Fire-Zone. These two flawed arguments – reasons for the bearing change and use of maximum range – when combined, paints the impression that these batteries were being readjusted to deliberately target the No-Fire-Zone. Rather the overlaps over the No-Fire-Zone were an artificial feature, the result of a pre-meditated premise that the Sri Lankan Army was intentionally targeting the No-Fire-Zone. In reality these weapons were all supporting frontline troops along all the forward defence lines, and any direction changes were a reflection of the fact that the frontlines eventually converged on the boundaries of the No-Fire-Zone by April 2009. The fact that a vast majority of these fire bearings were missing concentrated pockets of IDP shelters, shown by comparing Figures 9.4-9 to 9.4-14 with Figure 9.4-2, further reinforces the argument that these changes had nothing to do with targeting civilians inside the No-Fire-Zone.

### *March 29 to April 19*

On April 6, 2009, the battle for the town of Anandapuram in Puthukkudiyiruppu took place in what turned out to be a defining moment in the history of the conflict.<sup>114</sup> The Sri Lankan Army used concentrated fire from artillery, mortar and rockets from MBRL's to target a 600 strong, elite LTTE ground force holed up in the Anandapuram area. The fire bearings in *Image 7* from the Panel series are a clear reflection of that particular operation (See Figure 9.4-15). It is quite clear that the object of the attack was not the No-Fire-Zone. Furthermore, the mortar batteries that were not targeting the Anandapuram region in this illustration are clearly all pointing in directions away from concentrated pockets of IDP shelters during this period (comparing Figure 9.4-15 with Figures 9.4-2).

### *April 19 to May 17*

Apart from the image covering the period May 6 – 10 (See Figure 9.4-17), all the other images (See Figure 9.4-16 and 9.4-18) show changes in fire bearing of mortar batteries. This evidence alone is strongly supportive of the Sri Lankan Armies position that during this phase, the Army had stopped using 'heavy weapons' and were now only using 'infantry weapons'.

The imagery covering the period May 6 – 17 (See Figure 9.4-18) is very important because it represents the time frame over which the Panel and many other human rights groups claim that there were tens of thousands killed – mainly civilian. Furthermore, that a vast majority of these casualties were due to the indiscriminate use by the Sri Lankan Army of heavy artillery and rocket fire from MBRL units.

### *May 6 to May 10*

Following the events of May 9/10 when it was alleged that the Sri Lankan Army had bombarded the No-Fire-Zone with heavy artillery, rockets and mortar, leading to a large number of civilian casualties. Human Rights Watch and Amnesty International USA requested the Science and Human Rights Program of the American Association for the Advancement of Science (AAAS) to analyse and report for advocacy purposes the conditions within the No-Fire-Zone. It was reported at the time the UN had referred to a "bloodbath" following the shelling that occurred over this period.<sup>115</sup> The conclusions the AAAS reached having studied the satellite imagery between May 6 and May 10 are striking:<sup>116</sup>

What caused the IDP structures to be removed between May 6 and May 10 is uncertain based solely on the imagery. It is notable how complete the removal of IDP structures appears, in that while some debris and evidence of the structures remains, overall the area appears to have been swept relatively clean (Figure Three). **This is less indicative of the entire area being razed by shelling**, though it could correspond with an emigration from those specific areas by the IDPs due to some outside driver.

...

**These roofless buildings were initially interpreted as possible evidence of shelling or burning. However, on-the-ground photos taken immediately after the conflict instead indicate widespread removal of rooftops, which were composed of sheet metal, for use in constructing shelters throughout the area.**

...

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<sup>114</sup> D.B.S. Jeyaraj, *Anatomy of the LTTE military debacle at Anandapuram*, 5 April 2009, See: [LINK](#)

<sup>115</sup> Gordon Weiss, Spokesman for the UN Humanitarian Coordinator in Sri Lanka; See: [LINK](#) and [LINK](#)

<sup>116</sup> AAAS, *High-Resolution Satellite Imagery and the Conflict in Sri Lanka*, 12 May 2009; See: [LINK](#) (emphasis added)



Examination of the area surrounding the CSZ by AAAS identified several emplacements consistent with mortar positions in the surrounding countryside, most likely created by the Sri Lankan Army. AAAS conducted subsequent analysis seeking to determine the possible origin of the shells which caused the craters indicated in the imagery. **In numerous cases, information indicates that craters were caused by mortar positions to the south of the CSZ,** corresponding with several possible SLA positions.

...

Given the average distance of these suspected mortar sites from the CSZ, it can be extrapolated that any mortars therein would likely be up to 120 mm in size...

...

**None of the sites reviewed showed indications they were occupied by heavy artillery pieces,** which are generally readily identifiable in such imagery unless camouflaged.

The AAAS team also revealed that based on their assessment of the craters inside the No-Fire-Zone, a vast majority of the mortar shells were landing outside the perimeter of the most densely populated areas. This appears to suggest that Sri Lankan Army mortar crews, far from engaging in indiscriminate shelling, were attempting to discriminate between legitimate military targets and civilian encampments in the No-Fire-Zone (See Figures 9.4-19 & 9.4-20). It is worth noting that the Panel, either by intention or short-sightedness, failed to consider any of the evidence or the conclusions reached by the AAAS, in their final report.

In an attempt to verify the main points highlighted by the AAAS, the current analysis re-examined the areas around the third No-Fire-Zone using high-resolution satellite imagery taken on May 23. The evidence is quite revealing. Based on analysing the area marked out by the AAAS as being the main IDP settlement footprint, the imagery analysis reveals the following important observations:

**[Please refer to the imagery in section 9.3 and 9.4; pages 91 – 128]**

- A.** A vast majority of the permanent structures inside this area are completely intact; a surprising find when juxtaposed against the accounts of alleged eye-witnesses who ‘claim’ to have ‘seen’ the widespread use of artillery and rockets from MBRL’s during this period of the conflict. See Figures 9.3-4 to 9.3-7 and 9.4-26 for visual confirmation.
- B.** Within the third No-Fire-Zone, only 2 large craters (artillery or air strike) can be identified in the primary settlement area on May 9/10. There are 7 other artillery impact sites outside the main IDP settlement area. See Figure 9.4-21 for visual confirmation.
- C.** There are up to a couple dozen 81 mm / 120 mm mortar shell craters inside the primary settlement area on May 9/10. See Figure 9.4-22 for visual confirmation.
- D.** Some of the shell impact sites within the main settlement area inside the third No-Fire-Zone predate the events on May 9/10. See Figures 9.4-2 & 9.4-3 for visual confirmation.
- E.** An assessment of the damage to a handful of permanent structures inside the primary settlement area that appear to have been hit on May 9/10, strongly suggests the use of mortars instead of artillery. This is clearly discernable in the following comparison. See Figure 9.4-24 & 9.4-25 for visual confirmation.
- F.** A vast majority of the shell impact sites appear to be outside the perimeter of the most densely populated areas – this finding was also echoed in the AAAS study. See Figure 9.4-20 & 9.4-21 & 9.4-22 for visual confirmation.
- G.** In general, based on a detailed analysis of the terrain and the structures inside it, there appears to be no evidence of the widespread use of rocket and artillery fire into the area (See Figure 9.4-26). To demonstrate the clear differences visible in the terrain topology of areas that have been subjected to heavy bombardment from artillery, mortar and rockets at the same resolution; it is necessary to compare the current area with the areas surrounding Anandapuram in Puthukkudiyiruppu when these assets were used extensively. See Figures 9.4-27 through to 9.4-35 for a source of comparison.
- H.** The area where the LTTE set fire to their military equipment on May 15 is easily identifiable in the imagery. It is also in close proximity to several IDP shelters (See Figure 9.4-23 for visual confirmation).
- I.** Aerial photographs taken by international camera crews support the conclusions reached from studying the satellite images; that the second and third No-Fire-Zones do not display the visual markers of having been indiscriminately bombarded with heavy artillery or rockets from MBRL’s. See Figures 9.3-4 to 9.3-7 and also compare with Figure 9.4-2 for visual confirmation.
- J.** The ‘tent city’ visible in the second and third No-Fire-Zones is a vast camp area (See Figures 9.3-4 to 9.3-7). Despite all the reports of wanton bombing and shelling, the sea of tents and huts still standing

stretch for several hundreds of meters, as far as the eye can see. They are so densely packed together that if these areas were indeed attacked with artillery and rockets, the resulting fires would have destroyed vast swathes of the tent city. Although there are a few stray blackened patches visible here and there from possible mortar strikes, these are few and far between as clearly indicated in the satellite imagery. There is next to no visible evidence to show the vast swathes of devastation which have been talked of in the Panel report or the other documents produced by other international bodies.

In summary, after a detailed study of the satellite imagery the analysis reveals that the main IDP settlement area on May 9/10 was not bombarded with heavy artillery and rockets from Sri Lankan Army positions. There is however several mortar shell impact craters in the area. Based on analysing the density of shell impact sites within the given area, a vast majority of the shells were landing in areas outside the main settlement footprint. So whilst the UN illustration for this period is partially accurate, at least with respect to the mortar batteries. The alleged heavy use of artillery as the illustration suggests does not appear to be supported by evidence on the ground.

### *May 10 to May 17*

Following the events on May 10, the IDP's in the No-Fire-Zone moved en masse from their settlement site around the tsunami housing scheme in Karatamullivaikkal, to the littorals surrounding Vellamullivaikkal further south of the No-Fire-Zone (See Figure 9.4-36). Using the May 23 imagery, based on an assessment of the terrain covering the areas of the No-Fire-Zone where the IDP settlement footprint shifted too during the period May 10 to May 17, indicates numerous shell impact craters within the analysis area (See Figure 9.4-37). These craters are in close proximity to, and intermingling with, IDP shelters and other structures. Analysing these craters indicate that all impacts without exception appear to be from 81 mm / 120 mm mortar shells.

Complicating the analysis however with regard to crater identification, origin / source of firing and location of impact – especially after May 9 – are the following facts:

- On May 10, May 14 and May 17/18 the LTTE was responsible for indiscriminately shelling, using all their remaining assets, large pockets of the last remaining No-Fire-Zone. This has been confirmed by eye witness accounts and by Sri Lankan Army electronic assets – AN/TPQ-36 *Firefinder* artillery / mortar locating radar.
- On May 10, whilst many reports about the events concerning this day talk about Sri Lankan Army shells killing a large number of people in the No-Fire-Zone. Sri Lankan Army artillery / mortar locating radar maps show numerous volleys of LTTE mortars being fired at people inside the No-Fire-Zone who were trying to escape.<sup>117</sup>
- On May 14, the UTHR(J) reported that the LTTE in an effort to prevent large groups of people escaping, shelled areas of the lagoon beach in the process killing many people:<sup>118</sup>

Following the shelling on Saturday 9<sup>th</sup> May, the people who were used as a civilian shield in the shrunken NFZ were desperate to get out, as were the Tigers to prevent them. We relate the story as told by a family in a large group of an estimated 60,000, who in the desperation of their plight, decided to make the journey across the Nanthikadal lagoon. Herded together, they trekked north along the coast of the lagoon towards a point in the NFZ where the crossing was shallower.

A group of LTTE cadres moved into the crowd cutting it in two and started firing and chasing back south the section of the crowd that came behind. The section at the front ran forward along the lagoon coast towards the intended crossing point.

Having driven back one section, **the LTTE shelled the lagoon beach where those who moved forward were gathered for the crossing. Many of the civilians perished.**

- On May 15, the LTTE decided to pile up all their weaponry, ammunition and vehicles and make a huge bonfire. This huge flame rising into the clouds was what had been shown in many television channels

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<sup>117</sup> Frontline, *Final assault*, 5 June 2009; See: [LINK](#)

<sup>118</sup> UTHR(J) Special Report 32; See: [LINK](#) (emphasis added)

around the globe (See Figure 9.4-23). The explosive heat, according to eye-witnesses, resulted in death and searing burns too many as their IDP tents caught fire.

- Towards the end, the State Department report noted that, based on IDP accounts regarding events on May 17/18, a vast majority of the civilian deaths during the last few days of the conflict were caused by LTTE artillery and mortar fire.<sup>119</sup>

An organization reported accounts from IDPs of heavy fighting from the night of May 17 into the morning of May 18. **The IDPs were certain, based on the direction from which the shells were coming, that a large number, perhaps the majority, of those killed in the NFZ during the previous 12 hours of fighting were killed by LTTE forces.**

This version of events appears to be corroborated by the UTHR(J) interviews:<sup>120</sup>

The night of the 17 saw heavy fighting going on into the 18 morning. Some reliable witnesses and other IDPs who were present when the Army entered are certain that a large number, perhaps the majority, of those killed in the NFZ during the last 12 hours were killed by LTTE shelling. **Shells were falling into them and from the direction they are certain that they were fired by the LTTE.**

- The LTTE towards the later stages of the conflict were using their artillery guns in direct fire mode (shooting at something the gun crew can see, using a sight similar to a sniper scope). This means the artillery barrels were almost parallel to the horizon, and as a result a shell impact with the ground did not display the visible tell tale signs (e.g. an identifiable crater) when used in in-direct fire mode where the shells take a parabolic trajectory to the target.

With regard to events on May 17/18, it should be noted that even in this extreme scenario where the proximity and intensity of shelling was unprecedented; the numbers of casualties as a proportion of the total population – considering the significantly increased risks at this stage of being killed or injured in the crossfire – were surprisingly low.

Statistical analysis of the population figures over these last few days of fighting (see the discussion in section 4.4: *A Probable Truth*, for more details), shows that the numbers of civilians potentially killed as a result of the shelling was far from being in the region of many several thousands. On the contrary, based on these figures it is even possible to boldly suggest that Sri Lankan Army mortar attacks into the No-Fire-Zone during the final few weeks could not conceivably have caused the death of tens of thousands of



LTTE artillery crew firing a 122 mm gun in direct fire mode – Source: aruchuna.net

<sup>119</sup> U.S. Department of State, *Report to Congress on Incidents During the Recent Conflict in Sri Lanka*, 2009, page 44; See: [LINK](#) (emphasis added)

<sup>120</sup> UTHR(J) Special Report 32; See: [LINK](#) (emphasis added)

civilians.

The facts presented in this section have shown that the Panel's use and interpretation of satellite imagery has been extremely subjective, and at times misleading. For example, the language used by the Panel when sourcing this body of evidence clearly reveals a premeditated agenda that seeks to impose a premise that the No-Fire-Zone was being indiscriminately attacked using heavy artillery and rockets – thus inferring that there were tens of thousands of casualties. This position has however now been shown to be unsupported following the detailed analysis of the satellite imagery over this period. The conclusions drawn in this paper having analysed these images, is supported independently via the findings of the AAAS analysis team. Both studies indicate that a vast majority of the impact craters within the No-Fire-Zone are in fact from mortar shells and not heavy artillery or rockets from MBRL units. Furthermore, that a vast majority of these impact sites appear to be outside areas of densely populated space.

Fundamentally, the Panel when assessing the legality of these shell attacks with respect to the principals of distinction and proportionality, failed to consider whether these attacks were directed at legitimate military targets / objectives inside the No-Fire-Zone – the neutralisation of which would have offered a definite military advantage. Having not consulted or requested more information from the Sri Lankan Army about these attacks, or having studied each attack individually in any detail making sure to collect all the relevant facts. The Panel's limited survey of these events failed to factor in the following salient points when judging these attacks:

- The conditions ruling at the time of the attacks;
- Whether the commander ordering the attack believed his actions would cause clearly excessive levels of civilian harm in relation to the anticipated military advantage gained;<sup>31</sup>
- The reasons behind the choice of weapon used in a vast majority of the attacks – mortar as against artillery, rockets and airstrikes (e.g. consideration given to the impact on civilians);
- Considered the military advantage gained as being part of the overall military objective of which the attack was a part – to neutralise LTTE artillery and mortar threats that were seen as a direct barrier to freeing the civilian hostages.

These provisions make it impossible for the Panel to have concluded with any degree of certainty, and if anything precludes against the notion, that these attacks presented prima facie evidence of a clear premeditated agenda on the part of the Sri Lankan military to intentionally target and kill civilians in the conflict zone.

The limited character of the Panel's assessment of these incidents is demonstrated by its failure to examine and compare the actions of the Sri Lankan military, with similar actions in similar scenarios in other conflicts around the world. For example in the battle of Fallujah, Iraq in 2004, shows that the use of mortar in these circumstances was in keeping with the current military doctrine of many western States, like the United States for example (see the discussion in section 6: *Comparable Conflicts*, for more details).

#### **4.3.4 D: Levels of Conscription**

Whilst the Panel made a few passing remarks about increasing levels of forced conscription within the No-Fire-Zone during the final months of the war, it made no attempt to highlight the gravity of this phenomenon given the existence of some preliminary data regarding numbers of people being conscripted. This issue has a significant bearing on any kind of quantitative analysis of the missing or of the unaccounted as a result of the war.

During the final 9 months of the conflict the LTTE recruited literally thousands of civilians into its active and auxiliary forces, some as young as 12 and old as 60, to build bunds / trenches / bunkers, supply ammunition, in addition to taking an active part in combat operations against the Sri Lankan Army. Anecdotal evidence from several UTHR(J) reports offers an appreciation of these numbers.

For example, in a report released in October 2008 the UTHR(J) claims:<sup>121</sup>

**Since early September**, sources from the Vanni say that the **LTTE has conscripted 9,000 'very young' persons** who are now under training.

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<sup>121</sup> UTHR(J) Special Report 31; See: [LINK](#) (emphasis added)

A further update in March 2009 claims:<sup>122</sup>

By draconian punishments it deterred their escape from its clutches, conscripted a large number of their children and forced others into lethal tasks such as digging bunkers on frontlines. **Of the ten thousand or so the LTTE conscripted in this manner, the majority are now believed dead...**

The final two UTHR(J) reports reveal further details about the number of conscripts killed during the period January to May 2009:<sup>123</sup>

Another observer told us that **LTTE units at this time (Jan-Feb 2009) often comprised 3 experienced cadres and about 15 newer conscripts.**

...

However in the NFZ, dead cadres, who were conscripted and used briefly like disposable objects, were brought by the dozens, **about 50 a day on the average**, on trailers of tractors and buried unceremoniously, **about three in the same hole, one above the other**, covered and forgotten.

...

Following the end of the war, the Government claimed that nearly 23,000 'terrorists' were killed. Taking this figure, along with how the LTTE was making up its fighters, **it would not be wide off the mark to say that more than 13,000 of this number were made of recent conscripts who did not want to fight and family men forced to dig bunkers.** This would account for a huge chunk of the total dead.

These observations are further supported by the thoughts of the American Ambassador at the time, Robert Blake, in March 9, 2009 (WikiLeak 09COLOMBO265):<sup>124</sup>

Both sides speak of heavy fighting and high casualties. **This appears to undermine government claims that only about 500 LTTE cadres remain:** it is not clear how such a small force would be capable of keeping government forces in the area numbering about 50,000 at bay while simultaneously preventing 100,000 to 200,000 civilians in the "safe zone" from fleeing.

Whilst publicly and privately, Sri Lankan Government estimates of the LTTE strength during this period never exceeded 1,000 – 3,000 cadres, the actual number required to keep the Sri Lankan Army fighting on three fronts and at the same time holding a civilian population hostage, would have exceeded 15,000.

This was the situation in February-March, and given the fact that forced recruitment got even more aggressive from March to May; the justification for claiming that the LTTE maintained at all times a minimum cadre strength of 15,000 from February to May, becomes even stronger. These figures are corroborated by the UTHR(J) team:<sup>125</sup>

An inside description of the state of the LTTE in its final year said that out of say 10,000 cadres, **5,000 would have been fresh conscripts**, who were inadequately trained or unfit for battle. Of the 5,000 trained, about 3,000 were those unwilling to fight and looking for some means of avoiding it. An option many of them took for exemption from fighting was to become recruiters. The price they had to pay was to bring in 20 conscripts/recruits every month. **This figure was raised to 50 once the LTTE was cornered in the NFZ from February 2009 to keep the number at 15,000.**

...

The LTTE artificially increased numbers by conscription and these began to dominate casualties, often in the age group 15 – 20. When they ran away the LTTE began conscripting other family members or imposing severe punishments on others as deterrence. **By such reckless means it was enabled to maintain a nominal strength of around 15,000. Conscription went until almost the last, until about 17 May**, when anarchy prevailed within.

By directly involving these conscripted civilians in some shape or form in military operations against the Sri Lankan Army, the LTTE denied the humanitarian protection (according to the Law of Armed Conflict used to

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<sup>122</sup> Rajan Hoole, *A Humanitarian Calamity and the Threat of Despotism*, UTHR(J) report an Update: 8 March 2009; See: [LINK](#) (emphasis added)

<sup>123</sup> UTHR(J) Special Report 32; See: [LINK](#) and UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

<sup>124</sup> Cable: 09COLOMBO265; See: [LINK](#)

<sup>125</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

judge Sri Lanka) these new recruits would have been entitled to if they weren't forcibly enlisted. The direct result of conscription was that they became legitimate targets for the Sri Lankan Security Forces.

#### **4.3.5 E: Unaccounted – Fleeing the camps and conflict zone**

Another phenomenon the Panel failed to address in any detail was the reality that many people fled the conflict zone by boat to India, and later from the IDP camps to international destinations.

Tamil MP's from various Tamil political parties who had independently interviewed IDPs in the camps during 2009 have publicly stated that a significant number of IDP's (civilian + LTTE members), anywhere from between 1,500 – 8,000, many with connections to LTTE organs in the West, have escaped (by paying for their freedom) before being registered on official Government and UNOCHA lists.<sup>126</sup>

In an interview in December 2010, Dharmalingam Siddharthan, the leader of the People's Liberation Organization of Tamil Eelam (PLOTE) – a former militant group that had now joined the political mainstream – included significant detail about how this was done:<sup>127</sup>

**After the Army searched and found many LTTE fighters, many of them bought their freedom and escaped. Definitely not less than 5,000 – 6,000 people fled the IDP camps.** Out of that, at least 500 hardcore LTTE would have fled overseas. Possibly 50-60 could have been Lieutenant Colonel Rank, others were civilians or LTTE families and supporters. It is quite possible that more than 50% of the IDPs that fled the camps are likely to be connected to the LTTE because they had the money and the help of the expatriate LTTE community in the West.

These events were also documented by the UTHR(J) team having conducted their own interviews with persons in the IDP camps:<sup>128</sup>

**As to whether these give an indication of the total dead requires careful consideration. Persons interested in such matters who were in Manik farm tell us that a number got away by paying money or through sneaking away without leaving a record with the Government.**

The scale of the phenomenon was such that in September 2009, 4 months after the official end of the war, the Sri Lankan Police claimed that it had evidence to show that nearly 20,000 individuals had escaped from the IDP camps set up for the people that escaped the fighting in the Vanni:<sup>129</sup>

**At least 20,000 of the nearly 300,000 Internally Displaced Persons (IDPs) in the Vavuniya camps had escaped,** SSP for Kandy Ranjith Kasturiratna said at the Kandy District coordinating committee meeting, chaired by Central Province Chief Minister Sarath Ekanayake, on Monday.

In addition to this, an unknown number of IDPs fled to India by sea during the period February to May 2009. For example from January 2006 to September 2008, 22,679 people had crossed over to Tamil Nadu. The Sri Lankan Navy intercepted several boats in 2009 whilst they were making their way to Tamil Nadu. See Figure 9.2-4.

Both UN reports failed to acknowledge this reality in their enumeration of the dead and missing.

#### **4.3.6 F: Impartiality of eye-witness testimony**

Eye-witness accounts of what allegedly happened in those final few weeks was an important component in the body of evidence considered by the Panel. These accounts went a long way in helping formalise an impression in the eyes of the Panel that there were tens and thousands killed in those final few weeks. A vast majority if not all these accounts were from individuals that had managed to escape the IDP camps, and had fled the island. Many of these individuals fled the camps before UNOCHA or the Sri Lankan Government had begun any kind

<sup>126</sup> See Serge de Silva Ranasinghe's interviews with T. Sridharan, D. Siddharthan and Fr Rohan Silva; See: [LINK](#) and [LINK](#) and [LINK](#)

<sup>127</sup> Serge de Silva Ranasinghe, "The 13th Amendment to the Constitution must be properly implemented", 22 December 2010; See: [LINK](#) (emphasis added)

<sup>128</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

<sup>129</sup> Cyril Wimalasurendre, *Nearly 20,000 escape from IDP centres*, 30 September 2009 ([LINK](#)) and Sergei DeSilva-Ranasinghe, *There are Tigers among boat people*, 28 October 2009 ([LINK](#)) (emphasis added)

of systematic registration of numbers in the camps. In addition to these people, several others escaped the conflict zone by other means and made their way to foreign countries.

Given the Sri Lankan Governments extreme preoccupation with aspects relating to security during the weeks and months immediately following the end of the war; the larger IDP camps by this point had restricted the freedom of movement of the people inside them. Given the state of affairs it is worth highlighting that anyone that did manage to ‘slip out’ of the camps, would have needed access to large financial resources considering the fact that any attempt to escape was by no means a ‘cheap’ exercise. In this regard, anecdotal evidence from the UTHR(J) team shows that a vast majority of the financially wealthy in the Vanni region prior to 2009, were in some shape or form connected to the LTTE structures that governed these areas during this period.

Bearing this in mind, it is crucial to establish the ‘credibility / impartiality’ of the witness before assessing the content of their ‘evidence’. Through sources like the UTHR(J), there is a credible body of well documented evidence that shows that many of these persons were strong Tamil nationalists, ideologically committed to a vision of a separate independent Tamil State.

The following series of observations for example – regarding the Catholic clergy in the Vanni – is a representative example of this fact; as noted by the UTHR(J) in their final report:<sup>130</sup>

**Catholic laymen who wanted the church to stand up to the LTTE were very angry with the compromising attitude of some clergy**, one of whom told the BBC Tamil Service in 1999 that the shell killing dozens of civilians at the Madhu shrine was fired by the Army, when Bishop Rayappu himself admitted when asked that it was the LTTE that fired the shell.

...

On 22<sup>nd</sup> April a single shell fell in the church and Fr. James Pathinathar was injured. **Fr. James was a Tamil nationalist** long involved in welfare projects...

...

The church became a centre for discussion for persons thoroughly disillusioned with the way the LTTE was directing things and wanted to do something. [...] Out of about thirty priests who were there, the younger priests who were the majority were very critical of the LTTE, notable among whom were Fathers Nehru and Roche. Another group of priests kept out of any discussion, believing that their role was to administer the sacraments and deliver sermons. **About three priests were pro-LTTE, one of whom was considered so subservient to the LTTE that he was kept out of all conversations.**

Fr. Pathinathar being senior was at the centre of their activity. He readily accepted all the criticism made by the young priests about the LTTE. **But he was held back by the dilemma long faced by nationalists who were dissatisfied with the LTTE’s leadership. At the same time they felt that if the LTTE is finished all the sacrifices made by the Tamil people would go waste.**

Thus Fr. Pathi’s regular question was, **is this the right time to expose the LTTE’s wrongdoing?**

These insights into the (Tamil) nationalistic leanings of some elements of the clergy in the Vanni, is a reflection of a generic mindset that would have been entertained by many who lived and worked in the Vanni. This would have covered people from all walks of life from certain health workers, education officials, and civil servants to the average layman or woman. These political overtones when married to a shared feeling of hostility towards the Sri Lankan State, present realities that cannot be ignored when considering the testimony from people who claim to have ‘seen’ thousands killed during the latter stages of the war.

Apart from the obvious political biases, the UTHR(J) team draws attention to further cautionary proviso’s before relying too heavily on such testimonial



Catholic priests attending a Pongu Tamil (or Tamil Uprising) event in the Vanni in 2005 – **Source: tamilnet.com**

<sup>130</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

evidence. This is based on an appreciation of the psychological state of many of the witnesses during the penultimate weeks. For example, two specific incidents highlighted by the team concern events on April 20 and May 9:<sup>131</sup>

April 20, 2009

Civilians loosely spoke of deaths up to one thousand on the 20 morning. **They had certainly seen many bodies, but the number must be taken as an impression from another traumatic event they had been through.**

May 9, 2009

Our checks with people who had been through the ordeal confirmed that the shelling was like in the northwest of the NFZ on 19 April, a prelude to the Army making a new advance into the NFZ from the south, which borders Mullaitivu town. The civilians also confirmed that the LTTE was firing into the Army from among them. The Army came in shelling, but once inside they helped to evacuate the civilians they had access to, including the injured. These civilians placed the number who died in that incident as 2,000. **That too is an impression gathered from seeing dead bodies**, just as those who escaped on 20 April thought a thousand had been killed.

Apart from these concerns, there are other more tangible reasons for treating these eye-witness accounts with some degree of scepticism. This becomes evident when these ‘stories’ are cross-checked with other forms of physical evidence.

The following two accounts in Frances Harrison’s new book *Still Counting the Dead* stand out as being good examples of occasions where eyewitness accounts when thoroughly interrogated against other know facts have been found to be highly exaggerated.

### ***The Doctor***

In her interview with Dr. Niron (not his real name) – one of the doctors that worked in the conflict zone but was not connected to the State health service – the ex BBC correspondent narrated the following account based on his testimony:<sup>132</sup>

The death toll is still uncertain, but Dr. Niron is in a good position to make an estimate. It was his job to pass the names of injured to the rebel radio station so they could broadcast the information to the families. [...] **From March 2009 onwards Dr. Niron says they treated 300 injured people a day**, but in January and February the numbers were also high. [...] He first calculated the 2009 death toll as at least 27,000 in five months. Today, as he hears that more and more people he once knew are dead, he’s revising the estimate upwards.

Based on this account, Dr. Niron appears to convey the impression that there were around 9,000 combat related injuries for March 2009 (based on 300 a day). For an outsider with a superficial understanding of the conflict, this is staggering figure. When taken in isolation, this figure appears to suggest that the No-Fire-Zone was being blitzed on a daily basis with thousands of shells being fired into it. Once again, overtly suggesting the plausibility of their having been tens of thousands killed. This figures ‘credibility’ only becomes an issue for persons aware of the casualty reports released by the Mullaitivu RDHS (Dr. Shanmugarajah) from within the No-Fire-Zone during the month of March. In AGA Parthipan’s *March Situation Report*, quoting the RDHS, claims:<sup>133</sup>

**According to the RDHS, Mullaitivu, 3,551 injured civilians were admitted at Puthumathalan Hospital in the month of March, 2009 and 546 died after admission.**

Puthumathalan Hospital was the only medical centre in the second No-Fire-Zone with surgical theatre facilities. The few injured patients that did turn up at the other temporary medical centres at Valaingeramadam and Mullivaikal Schools were all transferred to Puthumathalan Hospital for further care. Injured civilians that boarded the ICRC ships were all sent via Puthumathalan Hospital, which kept a record of the numbers transported by sea. In March, the ICRC transported roughly ~1,900 injured persons from the No-Fire-Zone, which would have meant there were roughly ~3,800 combat related injuries in March.

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<sup>131</sup> *ibid* (emphasis added)

<sup>132</sup> Frances Harrison, *Still Counting the Dead: Survivors of Sri Lanka’s Hidden War*, 2012; page 63 (emphasis added)

<sup>133</sup> AGA Parthipan, *March Situation Report*; See: [LINK](#) (emphasis added)



It is extremely difficult to reconcile this large difference in the number of injured (9,000 versus 3,800) unless Dr. Niron was also treating injured combatants, and included them in his total. It is already well documented that LTTE casualties were routinely treated at civilian medical facilities. Furthermore, it would also appear that LTTE doctors regularly worked alongside doctors working for the State:<sup>134</sup>

[the] LTTE doctors began to work alongside the government doctors. There were about twenty-five LTTE doctors.

There are other ‘stories’ from Dr. Niron that raises further concerns about his credibility as an impartial witness.

Whilst working at the Uddayarkattu hospital near the first No-Fire-Zone in late January, Dr. Niron claimed he witnessed the indiscriminate shelling of the areas in and around the hospital:<sup>135</sup>

It was one of 2,000 shells Dr. Niron says landed on or around Uddayarkattu hospital in the last ten days of January 2009.

The following satellite images (See Figure 9.4-38 and 9.4-39) taken on March 13, 2009 shows the areas surrounding Uddayarkattu hospital. Taking into account that these images were taken more than a month and half after the period mentioned by Dr. Niron (**Note:** more fighting was recorded in the area after the hospital was abandoned during the first week of February). The images nevertheless clearly reveal that Dr. Niron’s ‘impression’ that 2,000 shells landed on or around Uddayarkattu hospital appears to be a gross exaggeration.

The Panel of Experts concluded that, based on analysing the satellite imagery, between January 21 and February 6 only four mortar shells struck the hospital complex.<sup>136</sup> One shell hit a building in the complex whilst the other three fell within the hospital grounds. Analysing the terrain within a half kilometre radius centred on the hospital reveals that apart from a few dozen mortar shell impact sites north and south of the hospital complex, only six artillery shell impact sites can be identified. Even these are several hundred meters outside the hospital grounds.

It is clear to see how this witnesses’ ‘impression’ when taken in isolation can be extremely misleading, and at times exaggerated.

There are other stories.

### ***The Priest***

On May 10, 2009 a Catholic priest (Rev. Fr. G.A. Francis Joseph) trapped in the final No-Fire-Zone sent an open letter to the former Papal, Pope Benedict XVI in Rome. In it he claimed:<sup>137</sup>

I a priest of the diocese of Jaffna am prompted to write this open letter to Your Holiness after a night of terror and horror, the worst of the daily ordeal meted out by the Sri Lankan Security forces on the innocent Tamil civilians huddled in the so called ‘no fire zone’ of about three square kilometres. **Last night’s toll of the dead is 3,118 and of the injured more than 4,000. It was a barrage of artillery, mortar and multi-barrel shelling and cluster bombs,** weapons which the Sri Lankan Government denies using on the civilians in the no fire zone.

The following sequence of satellite images (See Figure 9.4-26) taken on May 23, 2009 shows the areas surrounding the third No-Fire-Zone; the location mentioned by Fr. Francis Joseph in his letter. Fr. Francis Joseph assessment that Sri Lankan Security Forces were bombarding the No-Fire-Zone with volleys of heavy artillery and rockets from MBRL’s does not appear to be supported by the visual evidence on display. The analysis of these images in relation to this particular aspect was highlighted in some detail in section 4.3.3: *C: Flawed interpretations of satellite imagery*. Further corroborative evidence can be found by comparing and contrasting the visual differences between areas that were attacked with mortars and those areas attacked using artillery, mortar and rocket fire, (See Figures 9.4-27 through to 9.4-35).<sup>138</sup> This further illustrates the unlikely hood of Fr. Francis Joseph’s version of the events on that day.

<sup>134</sup> Social Architects, Story 6, 2012; See: [LINK](#) (emphasis added)

<sup>135</sup> Frances Harrison, *Still Counting the Dead: Survivors of Sri Lanka’s Hidden War*, 2012; page 76 (emphasis added)

<sup>136</sup> Report of the Secretary-Generals’ Panel of Experts on accountability in Sri Lanka, April 2011, page 188, See: [LINK](#)

<sup>137</sup> Frances Harrison, *Still Counting the Dead: Survivors of Sri Lanka’s Hidden War*, 2012; page 24 (emphasis added)

<sup>138</sup> Many eye-witness accounts from the conflict zone regularly confuse 120mm mortar shells with artillery shell

Furthermore, the Mullaitivu RDHS (Dr. Shanmugarajah) on May 10 claimed that based on his assessment of the injured, in their estimation – relying on firsthand knowledge of the ground situation – there were potentially close to a 1,000 deaths as a direct result of the attacks within the No-Fire-Zone.<sup>139</sup>

Two overnight artillery barrages (9<sup>th</sup>, 10<sup>th</sup> May) pounded the area over the weekend, with several shells landing inside newly demarcated ‘safe zone’, where the government had urged civilians to gather, according to Dr. V. Shanmugarajah, another doctor at the hospital.

A total of 430 ethnic Tamil civilians, including 106 children, were either brought to the hospital for burial or died at the facility after those attacks, he said. **But the death toll was likely closer to 1,000 because many of those killed would have been buried in the bunkers where they were slain, and many of the gravely wounded never made it to the hospital for treatment, he said.**

The only other report that claimed the fatality toll from this incident was higher than a 1,000 was the pro-LTTE affiliated TamilNet that claimed 2,000 civilians were killed.<sup>140</sup> The report however did not specify how, based on what evidence, its correspondent was able to reconcile this estimate.

Once again, the disparity in the fatality figures quoted by Fr. Francis Joseph and those of the Mullaitivu RDHS (Dr. Shanmugarajah) for this incident cannot be explained, unless Fr. Francis Joseph’s figures also included combatants killed during this incident. Given the nature of Fr. Francis Joseph’s account of this incident, it is perhaps worth asking who gave Fr. Francis Joseph these figures in the first place. The reason being that going by Dr. Shanmugarajah’s account of the events surrounding May 10, it appears to be quite clear that the medical officers within the conflict zone were not the sources behind Fr. Francis Joseph’s estimates. So who was?

By in large, when this alleged eye-witnesses account of incidents on May 10 is compared with actual physical evidence in the form of satellite imagery, the narrative is found to be extremely exaggerated.

It should be remembered that this is not the first time a priest’s account of what happened in the war zone during the last 5 months has been found to be in conflict with other known facts. A close scrutiny of the accounts from the Catholic priests in the No-Fire-Zone has shown that on many occasions, their narratives appear to be at odds with other credible sources of evidence. For example on May 17, when the LTTE itself and most other organisations were claiming there were roughly 35,000 – 37,000 people in the No-Fire-Zone, the Catholic priests still inside the No-Fire-Zone were estimating 65,000 – 75,000 persons left. This was revealed by the Bishop of Mannar, Rt. Rev. Dr. Rayappu Joseph to the U.S. Embassies Political Officer on May 17 (Wikileaks 09COLOMBO535):<sup>141</sup>

The Bishop of Mannar called PolOff to inform us that there were seven Catholic priests still in the conflict zone, tending to about 80 parishioners. **The priests estimated that there were 60,000 to 75,000 civilian left in the zone,** according to the Bishop.

Given the strong Tamil nationalistic tendencies of many of the clergy in the Vanni, especially the Catholic clergy, it is crucial when receiving evidence in the form of eye-witness accounts from this group, that these stories are cross referenced with other know facts, in order to weed out exaggeration and propaganda.

#### **4.3.7 Summary**

These six discussion points have highlighted the serious gaps in the Panel’s knowledge and the general weaknesses in their arguments when it came to reconciling the available evidence about civilian casualties from the conflict zone.

These systemic failures have allowed the Panel to conclude, incorrectly, that there were tens and thousands of civilian fatalities during the final months and weeks of fighting between the Sri Lankan Army and the LTTE.

Based on this assessment, taking into consideration some of the points raised in this section, this paper will attempt to quantify a more realistic estimate of this fatality figure using credible empirical data.

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<sup>139</sup> Ravi Nessman, *Sri Lankan health official says 49 patients, bystanders killed in war zone hospital shelling*, 12 May 2009; See: [LINK](#)

<sup>140</sup> Associated Press, *Sri Lanka Artillery Barrage Kills 378 Civilians*, 10 May 2009; See: [LINK](#) (emphasis added)

<sup>141</sup> Cable: 09COLOMBO535; See: [LINK](#) (emphasis added)

## 4.4 A Probable Truth

### 4.4.1 Methodology

One of the main reasons the UN and many other likeminded groups continue to believe that the number of civilian fatalities run into the tens of thousands; compared for example with the UN's own internal COG estimate of 7,737 – a number based on actual casualty reports. Is founded on the belief that the COG's network of informants in the No-Fire-Zone might not have observed all the casualties from the fighting, specifically those killed. That many deaths could have gone unregistered because the bodies were not transported to nearby hospitals due to the intensity of fighting during those periods.

Here is how the Panel justifies its reasons for sidelining the original COG figure:<sup>142</sup>

**135.** The number calculated by the United Nations Country Team provides a starting point, but is likely to be too low, for several reasons. **First, it only accounts for the casualties that were actually observed by the networks of observers who were operational in LTTE controlled areas. Many casualties may not have been observed at all.** Second, after the United Nations stopped counting on 13 May, the number of civilian casualties likely grew rapidly. **Due to the intensity of the shelling, many civilians were left where they died and were never registered, brought to a hospital or even buried. This means that, in reality, the total number could easily be several times that of the United Nations figure.**

During January and the early part of February the civilian population in the Vanni were very much on the move, and eye-witness accounts suggests that many of the dead were not reported to near-by hospitals. A similar situation would have prevailed from May 10 to 18 due to the increased intensity in close-in fighting. Thus the figures collected for the dead are potentially unreliable, and lends credence to some of the fears expressed by the UN about the COG's own figure of 7,737 killed. However, one group that does not suffer from this ambiguity are the injured or walking wounded. Through this casualty group – who would have all made their way to medical centres during the period January 1 to May 13 to seek medical help – one can get a reasonably accurate idea (at least to the nearest 1,000 people) about the number of dead. Provided one takes into consideration certain facts, like corrections for the injured that die for the lack of adequate medical care and the major casualties who did not receive transport to a proper facility in time (there was no ICRC transport from January 27 to February 10). Another group that would also require accounting for are those injured that might have been fulfilling some kind of military role either as an auxiliary or a conscript fighter.

According to UTHR(J) team, based on eye-witness testimony from medical staff, social workers, and civil servants in the conflict zone from January to April, evidence from the field suggests that 20-25% of the injured (particularly with head or stomach injuries) died in the hospitals and surrounding areas. This goes up to 40% in May. The UTHR(J) also claimed that its sources reveal that just over 50% of all the casualties were normally shipped by the ICRC to hospitals in Government controlled areas during the period February 10 to May 9.

Taking into account these salient points, the following casualty enumeration table can be set up covering the months of January to May 2009. In this table, under Category [1] injuries – Terminal, the standard ratio of dead to injured falls within a range between 1/3 and 1/2. For Category [2] injuries – Critical, based on ground estimates the expected range is between 1/5 and 1/2.5:

Time Period	Category [1] injuries (40 – 50%)	Category [2] injuries (20 – 40%)	Average dead / injured ratio
January 20 – 31	1/2.5	1/5	60%
February 1 – 28	1/2.3	1/5	63%
March 1 – 31	1/2.3	1/5	63%
April 1 – 19	1/2.3	1/4.5	66%
April 20 – 31	1/2	1/4	75%
May 1 – 19	1/2	1/2.5	90%
<b>Number Killed = (Number Injured × Category [1]) + (Number Injured × Category [2])</b>			

<sup>142</sup> Report of the Secretary-Generals' Panel of Experts on accountability in Sri Lanka, April 2011, page 40, See: [LINK](#) (emphasis added)

The gradual increase in the ratios used in Categories 1 and 2 from January to May is reflective of the increase in intensity of close-in fighting and the gradual shrinking of the combat space that contained the displaced population.

As a sanity check, spot calculations are performed using data from specific incidents where the numbers of dead / injured were accurately recorded, over three representative months. Bearing in mind each incident / month would be reflective of the intensity of combat during that period, and hence the number of casualties.

Take for example the following three incidents on March 9-10, April 20 and May 12.

**Case study – March 9-10**

The TRO, a NGO that had strong links to the LTTE, during the period from January to May 2009 had many local staff who actively performing numerous humanitarian tasks in the Vanni region and the different No-Fire-Zone’s.

On March 11, Lawrence Christy the Planning Director for the TRO, who was in the second No-Fire-Zone, released the following situation report “*On the Spot Report – Bunker life*”, in which he claimed:<sup>143</sup>

According to hospital sources on the 10<sup>th</sup> alone 277 casualties were brought to the hospital. In that 46 were children. 49 cases died without improvement. **With the dead persons who were not taken to hospital 62 persons on the 9<sup>th</sup> and 129 on the 10<sup>th</sup> died in these two day’s orgy. Over 500 got injured.**

Based on this account – which describes the casualties from a specific shelling incident on the 9<sup>th</sup> and 10<sup>th</sup> of March – there were 191 fatalities and over +500 injured. This description makes clear that the total number of fatalities included the wounded that died in hospital as result of the severity of their injuries, and also the bodies that weren’t brought to hospitals.



(LEFT) TRO staff in the second No-Fire-Zone – note the use of laptops with live internet / satellite connectivity even in March 2009. Lawrence Christy, the Planning Director for the TRO is seated on the Left (RIGHT) TRO workers helping the wounded at the make-shift hospital – Source: tamilnet.com

The TamilNet reported the same incident with the claim that there were 207 fatalities.

Summarising both reports, it would be a reasonable assumption to claim that the calibrated death toll and injury toll from this incident was 220 and 510 respectively.

Using the injured numbers, the casualty enumeration methodology gives the following numbers killed:

Date	Civilians Injured	Category [1] (1/2,3)	Category [2] (1/5)	Total Killed
March 10	510	222	102	324

<sup>143</sup> TRO, *On the Spot Report*, 11 March 2009; See: [LINK](#) (emphasis added)

This clearly shows that the method is more than capable of accounting for people that (a) die as a result of their injuries and (b) ones that are not brought to medical centres – if anything, the ratios used in Categories 1 and 2 for March appear to be overly pessimistic and predict higher numbers killed.

### **Case study – April 20**

On April 20 the Sri Lanka Army physically split the second No-Fire-Zone in half and in the process rescued over 108,000 people from the northern half of the second No-Fire-Zone.

However, many eye-witnesses reported that this military exercise led to the death of close to 1,000 people. On April 22, 23rd and 24th the ICRC evacuated 1,396 persons from the No-Fire-Zone of which close to 635 were injured persons from the incident on April 20.

In a report filed on April 20, TamilNet claimed with the heading “*Casualties cross 1000 in SLA’s attempt to capture civilians*”:<sup>144</sup>

Hundreds of dead bodies and wounded civilians were still lying in the Maaththa’lan and Pokka’nai, **and more than 600 seriously wounded have been brought to a makeshift hospital** functioning at a school in Mu’li-vaaykkaal in LTTE held area throughout Monday, TamilNet correspondent reports from Vanni. The correspondent personally witnessed nearly 300 dead bodies while fleeing from the area.

Based on accounts from local ICRC staff and medical personnel from inside the No-Fire-Zone, this military manoeuvre resulted in there being between 1,200 to 1,500 persons getting injured. Using these figures, according to the injury ratios for April, the casualty enumeration methodology gives the following death toll for this event:

<b>Date</b>	<b>Civilians Injured</b>	<b>Category [1] (1/2)</b>	<b>Category [2] (1/4)</b>	<b>Total Killed</b>
April 20	<b>1,200 to 1,500</b>	600 to 750	300 to 375	<b>900 to 1,125</b>

Based on this it appears to be quite plausible that close to 1,000 people could have died on April 20, broadly corroborating estimates provided by local medical staff.

Once again, the method appears to be robust enough to be able to predict with reasonable accuracy the number of people killed provided the number of injured are known. A point to highlight is that the method by design is more likely to over predict than under predict the number killed.

### **Case study – May 12**

Compared to the preceding 4 months, May was widely speculated amongst international organisations as being the month of uncertainty in terms of number of civilian casualties. Following the gradual contraction of the battle space from May 1 to May 18, it is speculated that the number of fatalities due to shelling increased many fold.

A shelling incident on May 12 provides good detail about the kind of fatalities to expect from a direct hit in a populated area. Ravi Nessman from the Associated Press reported the incident on May 12 as:<sup>145</sup>

Dr. Thurairajah Varatharajah, the top government health official in the war zone, said a single mortar shell hit the admissions ward in the makeshift hospital Tuesday morning. In addition to the 49 killed, scores of others were wounded, and he expected the death toll to rise, he said. Shells were still hitting the area hours later, including one that landed about 150 yards (meters) from the hospital, Varatharajah said.

Indian Journalist B. Muralidhar Reddy who at the time was embedded with the Sri Lankan 58 Division, quoting Human Rights Watch (HRW), reported the same incident as follows:<sup>146</sup>

<sup>144</sup> TamilNet, *Casualties cross 1000 in SLA’s attempt to capture civilians*, 20 April 2009; See: [LINK](#) (emphasis added)

<sup>145</sup> Ravi Nessman, *Sri Lankan health official says 49 patients, bystanders killed in war zone hospital shelling*, 12 May 2009; See: [LINK](#)

<sup>146</sup> Frontline, *Final assault*, 5 June 2009; See: [LINK](#) (emphasis added)

It went on to say that at around 8 a.m. on May 12, the makeshift hospital at Mullivaikkal was shelled when many wounded civilians were waiting for treatment. Nearly 1,000 patients were in the hospital at the time of the attack, including those wounded in the attacks on May 9-10. A shell reportedly exploded in front of the admission ward. **Doctors reported that the attack killed 49 people (26 immediately, while the rest succumbed to injuries) and wounded 31.**

Based on both these accounts, it can be concluded that: the total injured admitted to hospital = 54, the total killed = 49; died immediately = 26, died due to injuries = 23; wounded that survived = 31.

Taking the fact that there were 54 people injured from this incident, the casualty enumeration methodology gives the following numbers killed for this event:

<b>Date</b>	<b>Civilians Injured</b>	<b>Category [1] (1/2)</b>	<b>Category [2] (1/2.5)</b>	<b>Total Killed</b>
May 12	<b>54</b>	27	22	<b>49</b>

As is evident, the method appears to be able to estimate with reasonable accuracy the number killed from a direct shelling event, based on the number injured from the attack. Remembering that an overwhelming majority of the alleged shell attacks blamed on the Sri Lankan Army during May were from 81 mm and 120 mm mortar, these casualty ratios for Categories 1 and 2 for May builds confidence in the enumeration methods ability to estimate the number of fatalities provided there are good estimates for the number of injured – this is one statistic that is more readily available for May when compared to reports for the number of dead.

Having laid the foundations for the casualty enumeration methodology, based on a rationalised consensus of the different reports from the sources highlighted in section 2: *Methodology*, for the period covering January 20 to May 18 you get the following estimates for the number of civilian fatalities.

#### **4.4.2 January & February**

Prior to January 20, 2009 – the day the first No-Fire-Zone was officially declared by the Sri Lankan Government – civilian fatalities as a result of the fighting in the Vanni as recorded by various media organs was comparatively very low.

TamilNet was the only media group at the time that had unhindered access to the conflict zone through its correspondent on the ground.<sup>147</sup> Although TamilNet’s close association with the LTTE discount it from being a completely impartial authority on events during this period. Nevertheless, for illustrative purposes its ability to chronologically record incidents of death or injury to people inside the Vanni during January and February 2009, serves as a useful yardstick to qualitatively assess the impact the intensity of the fighting had on the civilian population (See Figure 9.1-3). The plot also includes TamilNets estimates for the numbers of people being killed during January and February.

During this period the UNOCHA office in Colombo was also discreetly liaising with its local representative in war zone to get an idea of the number of civilians affected by the fighting. The local OCHA representative was a political science graduate of the University of Jaffna, and according to the UTHR(J) team “*went beyond the call of duty, actively to maintain contact with all the makeshift hospitals and collect casualty figures on a regular basis*”.<sup>148</sup> These figures formed the basis of OCHA’s briefing with foreign diplomats in Colombo on March 9, 2009.<sup>149</sup>

In this briefing OCHA gave figures of the dead as nearly 2,700 from January 20 to March 8:<sup>150</sup>

<sup>147</sup> The TamilNet correspondent was the younger brother of the editor of the LTTE run paper *Eelanatham*, who once worked for that paper.

<sup>148</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>149</sup> TamilNet, *UN withheld civilian casualty figures to protect Sri Lankan state – report*; 3 March 2009; See: [LINK](#)

<sup>150</sup> TamilNet, *UN withheld civilian casualty figures to protect Sri Lankan state – report*; 3 March 2009; See: [LINK](#) and [LINK](#)

	January 20 – 31	February 1 – 28	March 1 – 8
No. of persons injured	<b>2,208</b>	<b>4,056</b>	<b>1,072</b>
No. of persons killed	<b>420</b>	<b>1,814</b>	<b>536</b>
Dead/Injured ratio	<b>1 / 5</b> (20%)	<b>1 / 2.23</b> (45%)	<b>1 / 2</b> (50%)

It is also known that from February 10 to March 7, the ICRC flagged mercy mission ships transported 2,789 people out of the conflict zone. From this total 928 were carers, 1,157 combat related injured and 704 persons with a serious illness.

Taking into account that the casualty figures recorded by the local OCHA representative during this period, especially for those injured, might have included potential conscripts that were injured whilst fulfilling a military role. Based on the available evidence, it is reasonable to presume that there were roughly 6,100 combat related civilian injuries during January and February.

Using this figure, the casualty enumeration methodology for January and February gives the following numbers killed:

Time Period	Civilians Injured	Category [1] (1/2.5 to 1/2.3)	Category [2] (1/5)	Total Killed
January 20 – February 28	<b>6,100</b>	2,512	1,220	<b>3,732</b>

This is considerably more than the 2,234 (420 + 1,814) recorded by the local OCHA representative from the conflict zone for the same period. TamilNet over this period reported close to 2,900 being killed.<sup>151</sup> The TRO head, Lawrence Christy, claimed it was over 3,000 for the same period.<sup>152</sup>

The visible difference between the number derived through the enumeration methodology and these other estimates, is attributed to the assumption that this delta accounts for the people that weren't reported to the local health authorities – either having died immediately or later through serious head and stomach injuries. It would also account for people that might have been killed without leaving any eyewitnesses to the event.

#### 4.4.3 March

During March, the entire Vanni population was trapped inside the second No-Fire-Zone. This meant that the reports sent out by the network of informants were of a more consistent standard, since all the civilians were now confined to a small area.

Based on ICRC shipping data, the mercy missions transported roughly ~1,900 injured persons from the No-Fire-Zone, which would have meant there were roughly ~3,800 combat related injuries in March. The RDHS for Mullaitivu stated that 3,551 injured civilians were admitted at Puthumathalan Hospital for the whole of March, and 546 died after admission.<sup>153</sup> Based on this data, the casualty enumeration methodology for March gives the following numbers killed:

Time Period	Civilians Injured	Category [1] (1/2.3)	Category [2] (1/5)	Total Killed
March 1 – 31	<b>3,800</b>	1,652	760	<b>2,412</b>

Other estimates appear to suggest a figure closer to 1,800 killed.

The local OCHA representative had a working figure of an average of 67 persons being killed daily during the early part of March. Subsequently, the OCHA office in Colombo reported that by the end of March the total

<sup>151</sup> Based on a summation of casualties from TamilNet reports for January and February 2009.

<sup>152</sup> TRO, *On the Spot Report*, 11 March 2009; See: [LINK](#)

<sup>153</sup> AGA Parthipan, March Situation Report; See: [LINK](#)

number of fatalities covering the period January 20 to March 31 was 3,937 killed.<sup>154</sup> This tells us that for March alone, according to the local OCHA representative and the network of informants sending information to the COG in Colombo, there were 1,703 fatalities (3,937 – 2,234).

Incidentally, TamilNet over this period also reported close to 1,700 being killed.<sup>155</sup>

Once again the enumeration methodology appears to have over-estimated the number killed for March. Regardless of these differences, the casualty enumeration methodology for the first 3 months of 2009 estimates that there were 6,144 fatalities.

The TRO claimed that over this period it had buried close to 4,000 people.<sup>156</sup> The UTHR(J) team quoting a “senior community leader” claims there could have been up to 6,400 deaths during this same period.<sup>157</sup>

#### 4.4.4 April

When assessing civilian casualties for April, the month is broken into two parts – before and after the Army split the second No-Fire-Zone on April 20.

**Part 1:** Between April 1 – 19 based on ICRC shipping data, the mercy missions transported roughly ~1,550 injured persons from the No-Fire-Zone, which would have meant there were roughly ~3,100 combat related injuries in the first part of April. Based on this data, the casualty enumeration methodology for the period gives the following numbers killed:

Time Period	Civilians Injured	Category [1] (1/2.3)	Category [2] (1/4.5)	Total Killed
April 1 – 19	3,100	1,348	689	2,037

OCHA on April 23 circulated amongst the foreign diplomatic staff in Colombo, a document detailing its latest casualty estimates for April based on the numbers passed to it by its local representative and the network of informants. In this document it claimed that from January 20 up to April 20, it had verified the death of 6,432 civilians.

Furthermore, two UN staff in Sri Lanka unofficially confided to the *Guardian* newspaper in the UK that from April 1 to the 20, at least 2,000 civilians were killed: “Two UN officials privately confirmed the figures to the *Guardian* today. At least 2,000 people are understood to have been killed in the last month but the death toll does not include all of those killed in this week’s intense fighting”.<sup>158</sup>

It should be noted that, as was highlighted in section 4.3.2: *B: Conflating combatant / non-combatant in COG reports*, in April many injured combatants were being treated at civilian medical centres like Putumattalan Hospital. Thus strictly speaking the killed and injured figures received by OCHA for April need to be recalibrated to take into account possible contamination between combatants / non-combatants killed or injured.

Nevertheless, based on the injured from January 20 to April 19, the casualty enumeration methodology estimates a total dead of 8,181. This is significantly higher than OCHA’s estimates of 6,432 – an estimate that might potentially include some combatant fatalities going by eye-witness accounts from the conflict zone during April.

**Part 2:** Between April 20 – 31 based on ICRC shipping data, the mercy missions transported roughly ~1,250 injured persons from the No-Fire-Zone, which would have meant there were roughly ~2,500 combat related injuries in the second part of April. Based on this data, the casualty enumeration methodology for the period gives the following numbers killed:

<sup>154</sup> Cable: 09COLOMBO374; See: [LINK](#)

<sup>155</sup> Based on a summation of casualties from TamilNet reports for March 2009.

<sup>156</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>157</sup> *ibid*

<sup>158</sup> Gethin Chamberlain, *Sri Lanka war toll near 6,500, UN report says*, 24 April 2009; See: [LINK](#)



Time Period	Civilians Injured	Category [1] (1/2)	Category [2] (1/4)	Total Killed
April 20 – 31	2,500	1,250	625	1,875

Based on these two estimates, the method predicts that for the whole of April there were just over 3,900 fatalities. And from January 20 to April 31, a figure in the region of 10,000 killed.

Similarly, the OCHA office in Colombo estimated that by the end of April, the total figure from January 10 to April 31 was potentially close to 7,000 killed. This implies that according to OCHA, there were close to 3,000 killed in April alone – based on subtracting from the total for April its earlier estimate of 3,937 killed by March 31.

TamilNet for the same period claimed that there were close 2,600 killed. Looking at April as whole, TamilNets incident graph reveals that out of all the alleged incidents in April, only six incidents led to casualties of greater than a 100 people (100 – 350), with the incident on April 20 alone allegedly accounting for a 1,000 fatalities.

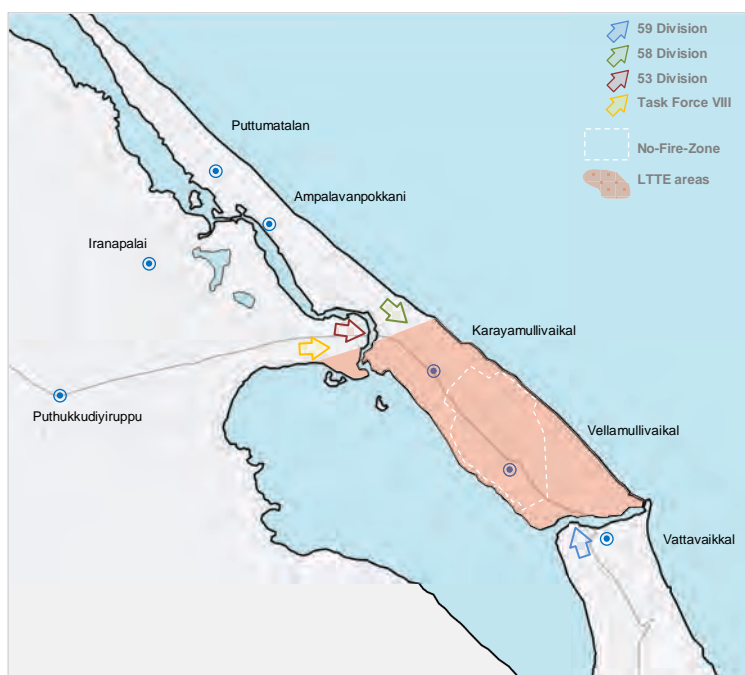
It is worth noting that the casualty enumeration methodology for the 4 months considered has consistently over predicted the number of fatalities. There is the potential, given the range of the other estimates, that the method might be overly pessimistic at times. Nevertheless, based on the available evidence the figures can definitely be posited as an upper estimate for the periods in question. Based on this rationalisation, the enumeration method shows that by the end of April the maximum number of fatalities to expect based on the intensity of combat, and taking into account people killed that weren't reported or recorded by the network of informants, is a figure in the region of 10,000.

#### 4.4.5 May

The civilians who had not escaped in the three days following the entry of the Sri Lankan Army into the northern half of the second No-Fire-Zone on 19 April, were now confined to area between Karayamullivaikal to the north and Vattavaikkal to the south near Mullaitivu town in the southern half of the eight mile strip that formed the original second No-Fire-Zone. See the situation map for May 5.

On May 6 the OCHA office in Colombo speculated that there were between 70,000 – 80,000 people in the last remaining No-Fire-Zone. The assessment was based almost entirely on satellite imagery analysis.

On May 9 the ICRC transported its last batch of injured civilians from the No-Fire-Zone. After the 9th the ICRC was unable to remove by sea anymore injured owing to the escalation of fighting in a shrunken area. The ICRC claimed later that its 31 mercy missions evacuated 6,600 weapon-wounded or sick patients from the conflict zone:<sup>159</sup>



Situation map on May 5

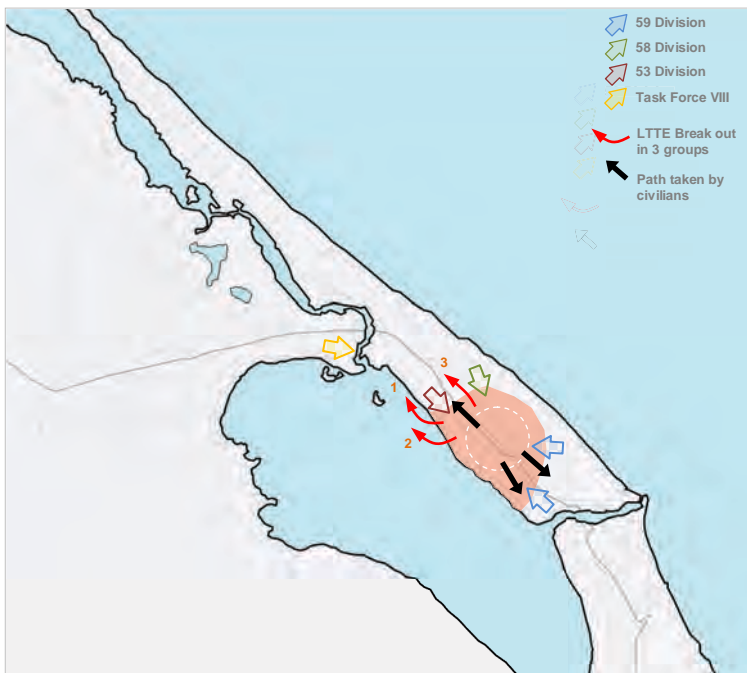
Following the last authorized land convoy on 29 January, more than 13,000 civilians, **including some 6,600 weapon-wounded or sick patients**, were evacuated from the conflict zone in 31 operations using a sea route.

The Army commenced operations to capture the truncated No-Fire-Zone on the night of May 9. The LTTE had placed the civilians in the middle of the strip to prevent their escape. This enabled the 53rd and 58th Divisions

<sup>159</sup> ICRC Annual Review, 2009; See: [LINK](#) (emphasis added)

to commence on May 13 a southward movement along respectively the western (lagoon-ward) and eastern (sea-ward) shores of the strip. The purpose was to link up with the 59th Division advancing northwards from Mullaitivu.

There was a lull in the fighting between May 14 and 15 as the LTTE attempted to negotiate surrender. These manoeuvres in general allowed several thousand civilians to cross over Army lines in all directions on the 14th, and also opened a gap for civilians to escape south towards the 59th Division. On May 15, the LTTE decided to pile up most of their non-essential weaponry, ammunition and vehicles and make a huge bonfire. This huge flame rising into the clouds was what had been shown in many television channels around the globe. The fires burned for 3 days.



Situation map on May 17

On May 16 the 59th Division moved north and later in the day linked up with a section of the 58th Division moving south along the sea coast. The Army had the entire area surrounded by May 16. On the evening of the 16th, in anticipation of the Army's move into the final No-Fire-Zone the LTTE began exploding many of the vehicles in the area with a view to blocking the Army's movement.

By May 17 the Army had the LTTE boxed into an area 400 m x 600 m. In the early hours of May 18 the LTTE attempted to break through Army lines in three groups (see the situation map for May 17), one of which contained the group's notorious leader – Velupillai Prabhakaran. In the final standoff, the remaining LTTE leadership along with its last remaining fighting cadre were annihilated. It is during this last day of fighting that numerous allegations of extra-judicial killings of militants trying to surrender have surfaced.

From May 10 to May 25 close to 89,000 civilians escaped the No-Fire-Zone.

Summarising this sequence of historical events, the fighting in May can be loosely broken into four distinct phases of intense military activity that directly affected the civilian population inside the final No-Fire-Zone:

May																			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
←—————→								←—————→						←————→		←————→			

The body of UTHR(J) interviews with IDP's, medical personnel and other civil servants who were in the affected areas during this period, provide valuable first hand information about the levels of casualties suffered by people in the No-Fire-Zone. Whilst these accounts have proven to be the most reliable, TamilNet reports over this period are the only other indicators about the levels of casualties amongst the people. A note of caution however; TamilNet like most other diaspora news services during this time were all strongly supportive of the LTTE strategy of seeking an international intervention to stop the war. In this regard many of these news services often exaggerated the scale of "shelling" and incidents of violence inside the No-Fire-Zone.

A representative example of such a scenario is the way TamilNet reported events on April 28, 2009. In an article titled "SLA fired 5,600 shells within 15 hours: LTTE",<sup>160</sup> the report claimed that the Sri Lankan Army fired 5,600 shells (2,600 MBRL, 1,000 artillery shells and 2,000 heavy mortar) into the Thaazhampan, Ottaippanaiyadi, and Iraddai-vaaykkaal areas of Mullivaaiikkaal. The report claimed that 200 people were killed and

<sup>160</sup> TamilNet, *SLA fired 5,600 shells within 15 hours: LTTE*, 28 April 2009; See: [LINK](#)

several hundred injured. However, a topological comparison of the terrain (using satellite imagery) between March 16 and May 23 shows that TamilNet’s claim of 5,600 shells being fired on April 28 is clearly not supported by the comparison analysis. Whilst a few impact craters are visible in the images, there is no evidence to support the scale of bombardment suggested in the TamilNet report. See the image series in Figures 9.4-40 to 9.4-43 for more details. Because of examples like this, these reports should only be viewed as a source of alternative information and never as a primary source.

As an initial starting point, it is possible to work out a reasonably accurate figure for the number that needs to be accounted for based on the population data provided by AGA Parthipan and UNOCHA at the end of April.

Before the final 3 weeks of fighting, the population of the Vanni at the end of April was:

Date	Source	Numbers
April 29	AGA Parthipan	150,000
	UN OCHA	172,291
	<b>Total</b>	<b>322,291</b>

After the fighting was over on May 19, the following numbers hold true:

Date	Source	Numbers
June 11	Number of civilians registered in the IDP Camps <sup>161</sup>	295,873
	Surrendered / Captured combatants	11,700
	<b>Total</b>	<b>307,573</b>

This potentially leaves just over 14,700 persons that need to be accounted for based on known, credible, population figures. It should be recognized that this figure would have to account for civilians killed, LTTE killed and those people that fled the camps before being registered on official lists.

Based on the evidence available about the number of persons injured during this period from a variety of sources, it is possible to break this figure down into its constituent parts to get the number of potential civilians killed.

Reconciling the facts for the 4 phases in May, gives the following breakdown.

### **May 1 – 8**

Summarising the salient points over this period:

- Based on TamilNet reports covering the period April 31 to May 8, close to 640 people inside the No-Fire-Zone were reported as having been injured through incidents of collateral damage.<sup>162</sup>
- TamilNet reported on May 5, that according to “reliable reports from the Vanni” there were more than 120,000 civilians in the area.<sup>163</sup>
- TamilNet reported on May 8 that 500 patients were awaiting transportation by the ICRC after the last ICRC ship left.<sup>164</sup>

Based on a rationalisation of the numbers the ICRC transported from May 1 to May 9, and taking into account the general levels of military activity that affected the civilian population. Using TamilNet reports as a measure of a worst case scenario. The evidence suggests there were roughly 950 combat related injuries during this period – this would also include people injured on April 31. Based on this data, the casualty enumeration methodology for this period gives the following numbers killed:

<sup>161</sup> Whilst the Sri Lankan Government had figures of 295,873 civilians in the camps on June 11 ([LINK](#)), the UNOCHA reports only showed 290,092 individuals (287,038 in the camps + 3,054 recently released from the camps), ([LINK](#) and [LINK](#))

<sup>162</sup> TamilNet, *SLA steps up attacks, civilian casualties mount amidst starvation, congested life*, 1 May 2009; See: [LINK](#). TamilNet, *SLA massacres patients with targeted shelling, 64 killed in hospital*, 2 May 2009; See: [LINK](#). TamilNet, *SLA steps up carnage on civilians*, 8 May 2009; See: [LINK](#)

<sup>163</sup> TamilNet, *‘Drop food now if the concern is humanitarian’: Vanni civilians*, 5 May 2009; See: [LINK](#)

<sup>164</sup> TamilNet, *SLA steps up carnage on civilians*, 8 May 2009; See: [LINK](#)

<b>Time Period</b>	<b>Civilians Injured</b>	<b>Category [1] (1/2)</b>	<b>Category [2] (1/2.5)</b>	<b>Total Killed</b>
May 1 – 8	920	460	368	828

### **May 9 – 13**

Summarising the salient points over this period:

- Following the widely reported incidents of shelling on the night of May 9 and May 10, Dr. Shanmugarajah told the international media that the number of injured increased by 1,100 overnight.<sup>165</sup>
- TamilNet reported on May 10 that persons in the conflict zone had counted 1,200 bodies, and that 1,125 injured had reached the Mullivaikal makeshift hospital.<sup>166</sup>
- On May 13, the UTHR(J) reported that Mullivaykkal makeshift hospital in a school building closed down, after the hospital was hit and the hospital staff, family members began to be affected and medical supplies ran out. There were nearly 2,000 injured about the hospital awaiting ICRC shipment, when the hospital was hit by a mortar shell.<sup>167</sup>

Based on a rationalisation of these reports, the evidence suggests there were roughly 2,000 combat related injuries during this period. Based on this data, the casualty enumeration methodology for this period gives the following numbers killed:

<b>Time Period</b>	<b>Civilians Injured</b>	<b>Category [1] (1/2)</b>	<b>Category [2] (1/2.5)</b>	<b>Total Killed</b>
May 9 – 13	2,000	1,000	800	1,800

### **May 15 – 16**

Summarising the salient points over this period:

- On the afternoon of May 15, Dr. Varatharajah, one of the RDHS doctors, said in an audio interview with an expatriate journal: *“More than 2,000 injured are in this area, in the hospital and in the village. For the last three days we are trying to send the patients to other hospitals [...] Shells are coming close to hospital; three to four of our staff were killed within the last three days. These three days we didn’t treat the patients. Wounded are dying without treatment. Both wounded and dead are in the same place, still they are not separated. Around 300 to 400 patients and dead bodies are mingled lying here and there on the floor”*.<sup>168</sup>
- D.B.S. Jeyaraj reported on the 15th that according to medical sources who had come out from LTTE controlled areas more than a 1,000 people were feared dead and over 2,500 injured in four days of fighting. This would have included the 15th, 13th, 12th, 11th.<sup>169</sup>
- He also reported that according to information provided by medical personnel who had come out, during the period May 10 to 15, around 2,000 – 3,000 persons had been killed and thousands more injured.<sup>170</sup>
- The UTHR(J) reported that according to NGO officials who were in touch with the ICRC operation, there were last about 3,000 injured left in the NFZ.<sup>171</sup>
- A TamilNet report on May 16 quoting volunteer medics placed the number of injured in the makeshift hospital at 2000+.<sup>172</sup>

<sup>165</sup> Mark McDonald and Thomas Fuller, *U.N. Tells of ‘Bloodbath’ in Sri Lanka*, 11 May 2009; See: [LINK](#)

<sup>166</sup> TamilNet, *Sonia says war is over while 1,200 civilian bodies are counted in Vanni*, 10 May 2009; See: [LINK](#)

<sup>167</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>168</sup> Lankasri, *Dr Varatharaja speaking from the scorching land*, 15 May 2009; See: [LINK](#)

<sup>169</sup> D.B.S. Jeyaraj, *Army wants to end “stand-off” and finish off Tigers*, 17 May 2009, See: [LINK](#)

<sup>170</sup> D.B.S. Jeyaraj, *KP, Soosai and Nadesan try for “ceasefire” while Praba and Pottu Amman become “silent”*, 17 May 2009, See: [LINK](#)

<sup>171</sup> UTHR(J) Special Report 32; See: [LINK](#)

<sup>172</sup> TamilNet, *Doctors quit safety zone, volunteer medics remain with injured*, 16 May 2009; See: [LINK](#)

- The TamilNet also claimed on the 16th that an uncounted number of dead bodies, between 2,000 and 3,000, were lying all over the place in civilian congested area and that the civilians were all struck by a heavy stench of dead bodies.<sup>173</sup>
- The UTHR(J) quoted an eyewitness, who had escaped on the 16th, to describe the nature of the dead bodies that were lying around during this period: “As Nick’s party ran out, they had regularly to take cover behind heaps of dead bodies, whenever there was a spate of shelling and run again desperately, holding on to dear life, when it abated. As they took cover and lay low often touching the corpses that gave them a modicum of protection, they had the impression that some of those bodies had been lying there for days, incurring decay and infection”.<sup>174</sup>

Based on a rationalisation of these reports, taking into account many of the total casualties reported during this period covered people affected by incidents from May 9 to May 16, the evidence suggests there were roughly 1,000 combat related injuries during the period May 15 – 16. Based on this data, the casualty enumeration methodology for this period gives the following numbers killed:

Time Period	Civilians Injured	Category [1] (1/2)	Category [2] (1/2.5)	Total Killed
May 15 – 16	1,000	500	400	900

### May 17 – 18

Summarising the salient points over this period:

- The LTTE reported on May 17 that there were more than 10,000 civilians consisting of families of cadres, leaders, great heroes, supporters, LTTE and employees in the war zone. In addition there were around 25,000 other civilians.<sup>175</sup>
- According to “international” estimates at the time the number of civilians believed to have been held within the boxed in area was in the range of 25,000 – 35,000.<sup>176</sup>
- In the final phase the tigers had set up a makeshift hospital without basic facilities’ in the South-eastern parts of Vellamullivaikkaal. Nadesan, Pulidevan and some members of the political wing were staying adjacent to the makeshift hospital. In addition there were many family members of tiger leaders and cadres. It was estimated then that there were 1,500 – 2,000 person holed up in that area of whom around 1,000 – 1,200 had major and minor injuries. About 350 – 400 of these were tiger cadres.<sup>177</sup>
- Between May 18 and May 25, the number of IDPs at Chettikulam Zone 4 rose by 30,300 individuals.<sup>178</sup>
- On May 18 alone, 29,000 civilians were transported from the battlefield to Chettikulam Zone 4. And 1,400 injured civilians to Padaviya Hospital. Witnesses who saw them said that nearly all of them had not received any first aid. Civilians were coming out of the war zone until at least May 20, 2009.<sup>179</sup>
- Around May 17/18, medical sources place the number of injured conscripts and cadres who got away with the civilians at several thousands. 15 bus loads of injured youngsters totalling about 1,000, many among them child conscripts aged 12 to 14 were moved to Mannar Hospital.<sup>180</sup>
- On May 19, the ICRC deputy Tony Dalziel told the American Embassy that in the last 36 hours 600 – 700 wounded civilians have come out of the safe zone. Some have fresh wound dressings, indicating medical care by the military somewhere en route.<sup>181</sup>
- Following the end of the fighting on May 17/18 most of the remaining civilians in the No-Fire-Zone crossed the Vattuvan Bridge which the Army had repaired into Mullaitivu. Most left, except for about

<sup>173</sup> TamilNet, Stench of dead bodies permeate Vanni, wounded allowed to die without treatment, 16 May 2009; See: [LINK](#)

<sup>174</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>175</sup> D.B.S. Jeyaraj, *KP, Soosai and Nadesan try for “ceasefire” while Praba and Pottu Amman become “silent”*, 17 May 2009, See: [LINK](#)

<sup>176</sup> D.B.S. Jeyaraj, *Army wants to end “stand-off” and finish off Tigers*, 17 May 2009, See: [LINK](#)

<sup>177</sup> D.B.S. Jeyaraj, *LTTE leaders who surrendered were killed by Army Special Forces*, 28 December 2009, See: [LINK](#)

<sup>178</sup> On May 18 the number in Zone 4 = 7,500 ([LINK](#)). On May 25 the number in Zone 4 = 37,800 ([LINK](#)). That’s an increase of 30,300 persons in the space of 7 days.

<sup>179</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>180</sup> UTHR(J) Special Report 32; See: [LINK](#)

<sup>181</sup> Cable: 09COLOMBO543; See: [LINK](#)

10,000 people. The Army suspecting that many militants and suicide bombers were in this remaining group, mixed in with the organisations strongest supporters, the Army fenced them in by erecting a barbed wire fence around the area. The Army erected tall secure sentry posts around this area. The people then had to walk out one at a time.<sup>182</sup>

- During this period, around 1,300 mid / senior level cadres were taken into custody from the final batches of people to leave the conflict zone on May 18-20.<sup>183 184</sup>
- The UN COG team reported that according to its estimates, for May, it had an unverified range of between 2,013 to 4,394 killed and 5,620 to 12,267 injured.<sup>185</sup>

Based on a rationalisation of these reports, the evidence suggests there were roughly 2,100 combat related injuries during this period. Based on this data, the casualty enumeration methodology for this period gives the following numbers killed:

Time Period	Civilians Injured	Category [1] (1/2)	Category [2] (1/2.5)	Total Killed
May 17 – 18	2,100	1,050	840	1,890

### **Total for May**

Combining the estimates for these four phases, the casualty enumeration methodology gives the following numbers killed from May 1 to 18:

Time Period	Civilians Injured	Category [1] (1/2)	Category [2] (1/2.5)	Total Killed
May 1 – 18	6,020	3,010	2,408	5,418

The UTHR(J) team having analysed the information it gathered from its interviews with the IDPs in camps (especially the category that stayed in the conflict zone till the very end) summarised the events in May with the following narrative:<sup>186</sup>

We may say that there was a fairly regular pattern until the end of March while the Army advanced and the LTTE and the people were pushed east. **There was in the first 18 days of April a lower level of deaths due to army shelling, while the LTTE shooting at escapees continued.** From 19th April there were as indicated above days on which deaths were high, 300 or more, notably on 9th and 10th May when it touched nearly 1,000. **On the 14th many escapees died due to LTTE shelling. On the 15th there was heavy fighting until about mid-day, resulting in heavy casualties among combatants, as well as civilians caught up in it.** Allowing for some exaggeration by TamilNet, the civilian dead was probably below 1,000. **As discussed earlier, the heaviest civilian casualties were during the last battle from the 17th evening to the 18th morning. While many civilian casualties resulted from LTTE shelling,** the Army too by its harsh approach on this occasion caused many deaths totalling 1,000 to 4,000.

Besides the estimates for the dead calculated using the casualty enumeration methodology; based on the information available about the number of people inside the war zone prior to the final assault on May 17/18, and also knowing how many people eventually came out, it is possible to calculate how many died during the final stand-off.

On May 17 the following facts are true for the number of people inside the last No-Fire-Zone:

<sup>182</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>183</sup> Cable: 09GENEVA584: “9,400 individuals had been taken from IDP camps to 10 internment centres in Vanuviya, including at least one exclusively for children suspected of being child soldiers. (Comment: These are the same 10 camps mentioned by ICRC. The discrepancy in the number of IDPs comes from the approximately 2,000 detainees who were not taken from IDP camps. End comment.)”; See: [LINK](#)

<sup>184</sup> Prime Minister D.M. Jayaratna: “Commenting on the LTTE cadres in custody, he said that 11,700 LTTE members surrendered to the military or were arrested. He said that 1,350 of them had been identified as top level hardcore LTTE members and legal action had been initiated against them. Besides, 10,350 LTTE members are held in rehabilitation camps in Vavuniya”; See: [LINK](#)

<sup>185</sup> Report of the Secretary-Generals’ Internal Review Panel on United Nations action in Sri Lanka, November 2012, page 115; See: [LINK](#)

<sup>186</sup> UTHR(J) Special Report 32; See: [LINK](#) (emphasis added)

May-17		
Category	Maximum	Minimum
Civilians	~25,000	~25,000
LTTE (families + cadres)	~12,000	~11,500
<b>Total</b>	<b>~37,000</b>	<b>~36,500</b>

After the fighting was over, from May 18 to 25 the following facts are also true:

May-18 to 25	
Category	Numbers
Civilians taken to Zone 4	30,300
Civilians taken to Padaviya Hospital	~1,400
LTTE conscripts taken to Mannar Hospital	~1,000
LTTE cadres taken into custody after final battle on May 18	~1,300
<b>Total</b>	<b>~34,000</b>

Based on these figures, there are potentially 3,000 – 2,500 persons unaccounted for during the period of fighting on May 17/18.

We also know that from this total, the following combatants have to be accounted for:

May-17		
Category	Maximum	Minimum
Unaccounted Total	~3,000	~2,500
LTTE Prabhakaran Group <sup>187</sup>	450	450
LTTE Nadesan Group <sup>188</sup>	~650	~650
<b>Total Missing</b>	<b>~1,900</b>	<b>~1,400</b>

The analysis shows that the maximum number of people potentially unaccounted for during the last 2 days of fighting is around 1,900 individuals. It is understood that this category would have to account for people killed by acts of shelling on May 17/18 – by both parties, but predominantly by LTTE gunners according to witnesses interviewed by the UTHR(J); those killed in the cross-fire and other acts; and persons who died from their injuries sustained from previous incidents during that week. Making the reasonable assumption that 90% were killed by acts of shelling on the 17th/18th. The total death toll from this type of weapon use would be roughly ~ 1,700 killed.


This assessment goes to show that even in scenarios like that on the 17th/18th where the intensity of shelling was unprecedented. Shelling, especially mortar shelling, could not have lead to the deaths of tens of thousands during the last few weeks of combat as speculated by critics of Sri Lanka – the statistics just don't support that prediction.

#### 4.4.6 Final Tally

The fatalities figures derived using the present methodology can be compared with estimates from other sources during this period to get a “quantitative feel” about the general accuracy of the method. The following table summarises many of the different claims that were made during and after the conflict ended:

<sup>187</sup> Gen. Sarath Fonseka: “In the final battle, attention was focused on identifying 450 dead bodies and for this purpose former leader of the LTTE Karuna Amman alias the present Deputy Minister Mr. Vinayagamorthy Muralidharan was present”; See: [LINK](#)

<sup>188</sup> Anecdotal evidence based on conversations with several SLA personnel. Also corroborated by D.B.S. Jeyaraj in his article, *LTTE leaders who surrendered were killed by Army Special Forces*, 28 December 2009, See: [LINK](#)

Source	Accumulative Total 					
	January	February	March	April	up to May-13	up to May-18
<b>Community Elder</b> <sup>189</sup> (UTHR)			~ 6,400			
<b>TRO</b> <sup>190</sup> (UTHR)			~ 4,000			
<b>TRO</b> <sup>191</sup> (L. Christy)		~ 3,000			~ 10,000	
<b>Civilian Contact</b> <sup>192</sup> (M. Roberts)				~ 7,800		
<b>UN</b> <sup>193</sup> (Panel of Experts Report)	420	2,234	3,937	~ 7,000	7,721	
<b>UN</b> <sup>194</sup> (COG Reports + Predictions)					17,810	← 2,013 to 4,394 →
<b>HRW</b> <sup>195</sup>		~ 2,000				
<b>TNA</b> <sup>196</sup>		~ 2,150		~ 7,000		
<b>TamilNet</b> <sup>197</sup>	~ 700	~ 2,200	~ 3,900	~ 6,500	~ 13,800	
<b>Estimate based on Injured Data</b>		3,732	6,144	10,056	15,474	

As the table shows, the casualty enumeration methodology has consistently over predicted the number of fatalities for each of the months considered. The assumption is that this would account for all those fatalities that weren't brought to the hospitals or those that died in the field due to the severity of their injuries.

Recognising the all encompassing nature of this assumption, these monthly estimates should be seen as a possible maximum number killed. These figures however need to be calibrated against another important factor that needs to be taken into account during this period. That is the real possibility that the injured recorded by different sources in the conflict zone might have included potential combatants. Bearing in mind some of the issues raised in section 4.3.2: *B: Conflating combatant/non-combatant in COG reports*, it is not inconceivable to claim that at least 3% of the injured might potentially be people that might have been undertaking some kind of military activity for the LTTE, be it as a conscript or auxiliary force member.

Taking this into consideration along with the following six facts:

<sup>189</sup> UTHR(J) Special Report 34; See: [LINK](#)

<sup>190</sup> ibid

<sup>191</sup> February = [LINK](#); May = [LINK](#)

<sup>192</sup> Email Note: "based on 50 – 75 dying a day from January to April"

<sup>193</sup> January = [LINK](#); February = [LINK](#); March = [LINK](#); April = [LINK](#); May = [LINK](#), page 40

<sup>194</sup> Up to May = [LINK](#), page 115

<sup>195</sup> February = [LINK](#)

<sup>196</sup> February = [LINK](#); April = [LINK](#)

<sup>197</sup> Summation of fatalities for each month from January to May from various TamilNet reports in 2009



<b>Point 1</b>	Close to 11,700 LTTE cadres / conscripts were either captured or surrendered at the end of war (see section 4.3.4: <i>Point 4: Levels of Conscription</i> ).
<b>Point 2</b>	The possibility that 3,000 to 6,000 people fled the camps before being registered on UN and Government lists (see section 4.3.5: <i>Point 5: Unaccounted – Fled the camps and conflict zone</i> ). This would have occurred during the period covering May 18 to June 11 when Government Forces were conducting sweeps inside the IDP camps for suspected LTTE members. According to Tamil MP's, many LTTE personnel when indentified by the Army paid for their freedom and fled the camps.
<b>Point 3</b>	<p>There are strong indications that the LTTE killed “a few thousand” civilians who tried to escape from its human shield in the final 4 months of the conflict, using the full gambit of its arsenal from heavy artillery to suicide bombers.</p> <p>One of the most prominent single incidents in this category occurred on May 14. Extracts taken from UTHR(J) reports No.32 and No.34 give details of this incident:<sup>198</sup></p> <p>[w]e relate the story as told by a family in a large group of an estimated 60,000, who in the desperation of their plight, decided to make the journey across the Nanthikadal lagoon. Herded together, they trekked north along the coast of the lagoon towards a point in the NFZ where the crossing was shallower. A group of LTTE cadres moved into the crowd cutting it in two and started firing and chasing back south the section of the crowd that came behind. The section at the front ran forward along the lagoon coast towards the intended crossing point. Having driven back one section, <b>the LTTE shelled the lagoon beach where those who moved forward were gathered for the crossing. Many of the civilians perished.</b></p> <p>[w]e reported in Special Report No.32 that <b>a large group of civilians, who went to a palmyra nursery near Nanthikadal Lagoon before dawn on the 14th to cross to the other side or to Vattuvakkal to the south, were shot at by the LTTE killing about 500 of them.</b> We have had further confirmation of this.</p>
<b>Point 4</b>	The Army has strong evidence to show that from the LTTE's main fighting cadre (which does not include the conscripts recruited from February to May) a minimum of 5,000 died from January to May, of which it has radio intercepts for the names of 4,264. <sup>199</sup>
<b>Point 5</b>	Taking into account the levels of conscription that took place from January to May. It is know that during the final 9 months of the conflict the LTTE recruited thousands more into its active and auxiliary forces, some as young as 12 and old as 60, to build bunds / trenches / bunkers, supply ammunition, take-part in combat operations against the Sri Lankan Army (see section 4.3.4: <i>Point 4: Levels of Conscription</i> ).
<b>Point 6</b>	Taking into account death due to natural causes. The annual mortality rate in Sri Lanka (2009) was around 5.8 deaths / 1000 people. Applying this to the people in Vanni during 2009, including additional factors like increased mortality due to the shortage of medicine, and snake bites as a result of living in the field. It is difficult to argue that no less 1,000 people could have died. Once in Government run camps, death due to communicable diseases and other stress factors accounted for a further 800 deaths between 2009 and 2010. <sup>200</sup>

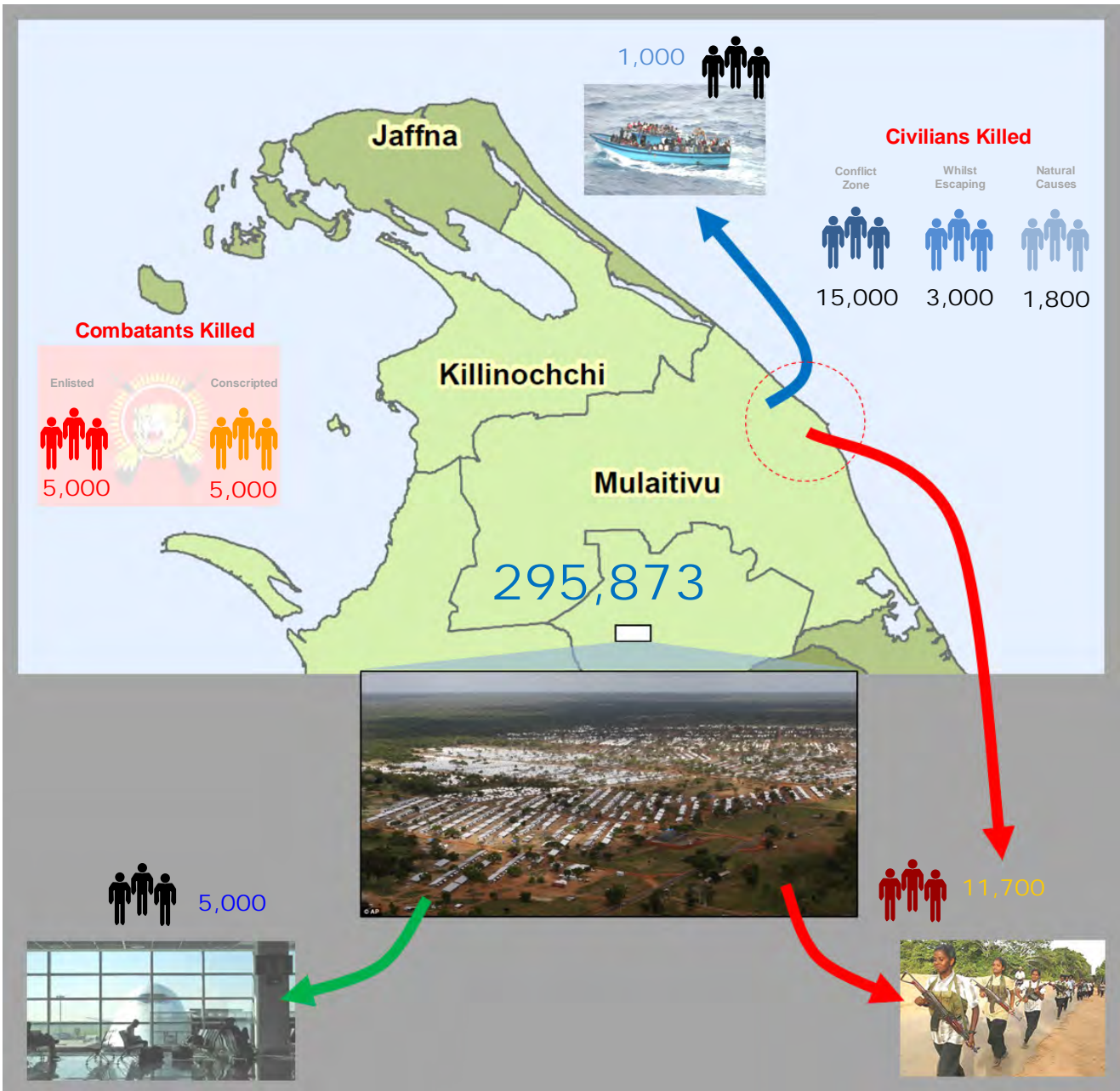
<sup>198</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

<sup>199</sup> LLRC Report, 2011, page 158; See: [LINK](#)

<sup>200</sup> Defence Secretary: “802 IDPs died due to natural causes during the time they were awaiting to be resettled”; See: [LINK](#)

Based on all the available evidence, the table below loosely gives the following breakdown for the numbers of fatalities in each category:

Classification	Rationalisation of Data	
	Minimum Estimate	Maximum Estimate
<b>Total Number of IDPs in the Camps in June</b>	<b>~295,800</b>	<b>~295,800</b>
LTTE cadres killed	~5,000	~5,000
LTTE conscripts / auxiliaries killed	~5,000	~5,000
Civilians killed in the conflict zone – <i>Shelling / Shooting</i>	~15,000	~15,000
Civilians killed whilst escaping – <i>Shooting / Drowning</i>	~2,000	~3,000
Civilians killed by natural causes – <i>Non-conflict related</i>	~1,800	~1,800
Fled the conflict zone / escapees	~3,000	~6,000
LTTE cadres/conscripts – <i>Captured or Surrendered</i>	11,700	11,700
<b>Estimate of Total Population in the Vanni on January 10</b>	<b>~339,300</b>	<b>~343,300</b>
<b>Estimate of Total Population in the Vanni East in and around the second No-Fire-Zone on February 28</b>	<b>~294,300</b>	<b>~298,300</b>



The purpose of this table is not to derive actual figures, but to demonstrate the greater plausibility of a range of “true-civilian” fatalities being in the “thousands” compared to the estimates released by the Panel of Experts to justify a figure in the range of “tens of thousands” killed.

Based on this data, from January 20 to June 11, 2009 the following maximum / minimum estimates in terms of fatalities for the different groups are plausible (**Note:** under the category “unaccounted-missing” this includes persons who escaped from the camps or the Vanni between January 20 to June 11):

Classification	Minimum Estimate	Maximum Estimate
<b>Civilians killed in the conflict zone</b> <i>(based on injured analysis)</i>	<b>~15,000</b>	
<b>Total number of civilians who died due to conflict related violence</b> <i>(conflict zone + escaping)</i>	~17,000	~18,000
<b>Total number of people dead from the War</b> <i>(civilians + combatants)</i>	~28,800	~29,800
<b>Total number of people unaccounted from the War</b> <i>(killed + missing)</i>	~31,800	~35,800

#### 4.4.7 Other Assessments

Since the end of the war several statistics have surfaced that directly challenge the very notion that there were “tens of thousands” killed during the conflict – once again specifically tens of thousands of civilians killed.

Here we will look at four different statistics that contradict the Panel’s findings.

##### *Based on a UN survey in the internment camps*

On May 7, 2009 the UNOCHA released a situation report that claimed:<sup>201</sup>

Protection agencies conducted a survey of 100 randomly selected shelters in zone 3 of Menik Farm, which showed that 72 per cent of the interviewees were separated from family members in some way while trying to flee the conflict zone. **In addition, 22 per cent of the families reported that an immediate family member had died** and some 15 per cent of the households were female headed.

This small survey found that “22 per cent of the families” interviewed “reported that an immediate family member had died”.

By May 7, Government run camps housed roughly 67% of the final total IDP population. Hence this survey would have been a reasonable indicator of the level of fatalities amongst the general population that came out of the Vanni from January to May.

It is known that the displacement camps at their peak in June 2009 housed approximately 90,000 families. It is also known that at the end of February 2009, the camps contained close to 10,800 families who had fled the Vanni between January 1 and February 28. If this figure is added to the 81,000 families AGA Parthipan claimed were present in the last remaining areas under LTTE control in February 2009 – even though these figures have now been shown to be unreliable – gives us a total population of around 91,800 families. Extending the 22% fatality rate to this latter estimate compared to the June estimate (assuming the number of families in June would have represented a depleted figure due to partial or complete destruction of some family units) suggests just over 20,100 fatalities from the conflict.

<sup>201</sup> UNOCHA, Vanni Emergency – Situation Report No. 8, 7 May 2009; See: [LINK](#) (emphasis added)

Taking into account sample bias and other potential problems like – the possible inclusion of family members who were combatants or conscripts, deaths in earlier stages of the war, or in previous wars – making the reasonable assumption then that 90% (a generous estimate given the levels of conscription that took place in 2009) of this total dead would be persons considered to be “strictly civilian”, suggests there were around 18,100 civilian fatalities.

***Based on estimates of war widows and female-headed households***

In an online article by the WSWS group in October 2010, according to the Jaffna-based Centre for Women and Development, there are more than 40,000 widows in the Northern Province:<sup>202</sup>

Deputy Minister for Womens Affairs and Child Development, M.L.A.M. Hizbullah announced late last month that he had a list of 89,000 war widows – 49,000 in Eastern Province and 40,000 in Northern Province. Among them were 12,000 below the age of 40 and 8,000 who had at least three children. “We need help to look after the war widows and we are seeking help from abroad for this”, he said.

...

Saroja Sivachandiran, director of the Centre of Womens Development, a voluntary organisation in northern Jaffna, provided the WSWS last week with its statistics for war widows in the North: 26,340 in Jaffna district; 5,403 in Kilinochchi, which was the LTTE’s administrative centre; 4,303 in Vavuniya and 3,994 in Mannar. The figures for the district of Mullaitivu, where the military’s final offensive took place, are not available.

The husbands of these widows were either killed in fighting or disappeared, Sivachandiran explained. In Jaffna district alone, 3,118 widows are under the age of 40, and 38 are under 20. The statistics also show that 1,042 women were widowed after their husbands committed suicide – victims of the economic and social crisis produced by decades of war.

Based on these figures (assuming the number of widows from Mullaitivu would at the least equal the number of widows from Kilinochchi since both population groups were displaced in their entirety together), gives us the following breakdown for the Northern Province:

District	War Widows
Jaffna	26,340
Kilinochchi	5,403
Mullaitivu	5,000
Vavuniya	4,303
Mannar	3,994

An overwhelming majority of these widowed women fall within the 35-55 age bracket. This means that depending on age all of them would have experienced, whilst been married, at least 2 or 3 different periods of intense warfare in the Northern Province between the Tamil Tigers and successive Sri Lankan Governments:

- a. Eelam War IV – 2007 to 2009
- b. Eelam War III – 1995 – 2001
- c. Eelam War II – 1991 – 1995

Taking this into account, it is quite clear that not all of them would have lost their husbands during the last phase of fighting. Since Kilinochchi and Mullaitivu were the worst affected districts in terms total population displacement and location for the most intense ground battles. It goes to stand that the widows from these two districts were worst hit. Based on these assessments it is reasonable to conclude that from all 5 districts the following percentage of widows lost their husbands during the most recent war: Kilinochchi and Mullaitivu widows = 75%; Mannar and Vavuniya widows = 50%; Jaffna widows = 10% (**Note:** the percentages are a reflection of the level of intensity of fighting and displacement within the respective district territories and population). In addition, some of these spouses would have been potential combatants. Based on a working assumption then that 90% were non-combatant deaths would suggest that the widows lost close to 13,100 spouses during the last conflict in 2009.

<sup>202</sup> WSWS, *Sri Lanka: War widows left in poverty*, 27 October 2010; See: [LINK](#)

Going by ground estimates for the ratio of men / women and children injured during the fighting, it is not unreasonable to suggest that based on the number of men killed, a further 75% of this total – 9,800 – would account for additional women/children and un-married men that died as direct result of the war.

This broadly suggests that there were around 22,900 civilian fatalities.

These figures are extremely speculative, but nevertheless, even after making rather generous allowances the evidence on the ground does not support claims that more than 40,000 civilians were killed during the last phase of fighting.

### ***Based on treating 40,000 in the camps***

In June 2010, the then *Hindustan Times* correspondent to Sri Lanka, Sutirtho Patranobis, filed this report following his interview with one of the Indian doctors that served in the Manik Farm complex during 2009:<sup>203</sup>

*“We were treating hundreds of patients every day. Shell injuries, bullet injuries. More than 80 per cent of these patients said either someone in their family or in a family they knew was killed or injured. Nearly 80 to 90 of the 120-odd patients had a story of death or injury to recollect”*

Between June 1 and August 31, the team of doctors, nurses and paramedics – of which the doctor was a part – treated more than 40,000 Tamils in a camp in the northern district of Vavuniya.

**This would mean, based on the doctor’s 80 per cent figure, casualties – deaths and wounded – in the region of 30,000.**

It is relevant in the context of the current debate to highlight the fact that this estimate of 30,000 includes the dead and injured.

During this period many militants in the camps who had yet to identify themselves, were amongst the patients seeking medical help from the medical teams inside the camps. This fact is acknowledged by the UTHR(J):<sup>204</sup>

**There are many militants in the refugee camps who have not identified themselves to the military out of fear. Many of those being treated for injuries in the local hospital who were casualties of the last phase of the war (post 19<sup>th</sup> April) are militants. There are many young boys and girls and many of them have been telling medical workers and visitors that they are militants.**

Making allowances for the possible inclusion of combatant / conscript deaths in these civilian patient accounts, the Indian medical teams estimate for the dead plus injured compares favourably with the total casualty figure calculated in section 4.4.6: *Final Tally*, (~36,000 killed plus injured).

Once again, the evidence from the Indian medical team appears to reinforce the view that the tally for the number of civilians killed in the conflict is closer to 18,000 than the +40,000 claimed by the Panel.

### ***Independent Academics – Professor Michael Roberts***

Professor Michael Roberts is a retired historical anthropologist from the University of Adelaide, Australia. Being of Sri Lankan origin – hailing from an ethnic background separate to the islands dominant Sinhalese and Tamil communities – armed with an intimate understanding of the islands politico-cultural history (add to that a strong foundation in the empiricist tradition which has allowed him to gain recognition in the disciplines of Politics, Sociology, Anthropology and History) has allowed him to research the latter stages of the Sri Lankan conflict in 2009 from an independent perspective, untainted by ethnic allegiances.

Prof. Michael Roberts who has travelled within the Vanni region and the Jaffna Peninsula since 2009, and having met a few civilians who were present in the final No-Fire-Zone, compiled the following report:<sup>205</sup>

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<sup>203</sup> Sutirtho Patranobis, *Huge civilian toll in Lankan war: Indian doc*, 1 June 2010; See: [LINK](#) (emphasis added)

<sup>204</sup> UTHR(J) Special Report 32; See: [LINK](#) (emphasis added)

<sup>205</sup> Prof. Michael Roberts, *The civilian death toll in early 2009: A flawed estimate from Gunaratna*, 23 November 2011; See: [LINK](#) (emphasis added)

Thus, I insist that all those assigned to auxiliary duties for the LTTE are not civilians simply because they are conscripts. I am alive to the fact that many of these Tamils may have thought that they were civilians because they were not wearing uniforms and because it was volunteer or conscripted work in a situation of exigency and thus implicitly short-term in duration. However, building bunkers for the LTTE frontlines and carrying supplies places them in the engineering and supply corps respectively. So, my analytic fiat locates all such personnel within the category “Tiger personnel”. This means that those referred to above as “auxiliaries” were part of the LTTE Army defending Thamililam (a shrinking space).

Read in these strict terms, if one assumes the LTTE death toll in 2009 to have been circa 5,000, the rough estimates for “strictly civilian” deaths provided by Sarvananthan, Nadesan and Narendran work out respectively as:

1. 10,000 – Sarvananthan
2. 6,000 – 10,000 – Narendran
3. 11,000 – Nadesan.

**These very different empirical assessments clearly demonstrate that based on the available evidence, the “strictly civilian” death toll as a result of the conflict was potentially anywhere between 10,000 and 18,000. What the evidence does not show is the possibility that there were in excess of 40,000 civilians killed, as advanced by the UN and similarly interested human rights groups.**

## 5. New Claims

Soon after the Panel released its findings in March 2011 stating that there could have been up to 40,000 civilian fatalities from the war in 2009, rumours began circulating that this figure was possibly in excess of 100,000.

One of the fiercest proponents of this new estimate has been the ex BBC journalist, Frances Harrison (BBC Sri Lanka correspondent from 2001 to 2004).

In an article to the online news portal *journalism.co.uk* in May last year, Frances Harrison claimed:<sup>206</sup>

Today marks three years since the end of the fighting in Sri Lanka. I would like to mourn the dead but still I do not know how many. Estimates range from seven to 147,000. It is a shocking difference.

More recently, in an article to the *Huffington Post* in December last year she re-calibrated her earlier estimate with a new figure of 101,748.<sup>207</sup>

World Bank population data from Sri Lanka indicates up to a hundred thousand Tamils are unaccounted for after the final war against the Tamil Tiger rebels in 2009, raising questions about whether they could be dead.

...

The leaked World Bank spreadsheets broken down by village for the north of the island estimate numbers of returnees to the former conflict area in mid 2010. The Bank also cites Statistical Handbook Numbers for population in 2007 – before the fighting intensified. The two sets of data reveal 101,748 people missing from Mullaitivu District – the area that bore the brunt of the final fighting. This is the equivalent of 28,899 households.

Too many of those that have followed Frances Harrison on Twitter since the end of the Sri Lankan conflict will not be surprised with these revelations.

Since leaving Amnesty International in 2009, Frances Harrison has taken forward an aggressive campaign targeting the current Sri Lankan administration on its human rights record, with particular emphasis on Tamil human rights in Sri Lanka. In the past she has not hesitated in using sources with questionable backgrounds / motives to discredit and demean the Sri Lankan establishment regarding these issues. Her new book is replete with examples where exaggeration and propaganda are freely mixed in with fact – a few examples were highlighted section 4.3.6: *F: Impartiality of eye-witness testimony*.

In general, her views are grounded in the firm belief that the Sri Lankan Government lies and has a great deal to hide from the international community.

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<sup>206</sup> Frances Harrison, *Journalists failed to tell the story of war crimes in Sri Lanka*; See: [LINK](#)

<sup>207</sup> Frances Harrison, *One Hundred Thousand Tamils Missing After Sri Lanka War*; See: [LINK](#)

The current drive to sensationalise this figure of “*One Hundred Thousand Tamils Missing*” is in part related to an advertising initiative to publicise her new book, “*Still Counting the Dead*”, and second to add new impetus by means of controversy towards a continuing drive by global human rights players to maintain the spotlight on Sri Lanka. The eventual aim of many of these groups is to institute regime change by means of a war crimes inquiry.

It should be noted however that Frances Harrison was not the first person to highlight this figure of 147,000 missing, presumed killed.

Prior to the current interest shown by Frances Harrison’s in the final stages of the Sri Lankan conflict, in 2011 the controversial Catholic Bishop of Mannar, Rt. Rev. Dr. Rayappu Joseph,<sup>208</sup> made a series of statements condemning the Sri Lankan Government for slaughtering 147,000 people in 2009.

In a document handed over to the LLRC in January 2011 as part of Dr. Rayappu Joseph’s testimony to the commission, he claimed:<sup>209</sup>

Based on information from the Kacheris of Mullaitivu and Killinochchi about the population in Vanni in early October 2008 and number of people who came to government controlled areas after that, 146,679 people seem to be unaccounted for. According to the Kacheri, the population in Vanni was 429,059 in early part of October 2008 (Refer Annex 4 and 5). According to UNOCHA update as of 10<sup>th</sup> July 2009, the total number of people who came out of the Vanni to government controlled areas after this is estimated to be 282,380 (Refer Annex 6).

As is evident from the text, the figure of 147,000 is derived by subtracting two sets of figures (429,059 Population in Vanni – 282,380 Total number of people who came out = 146,679).

Since then, Alan Keenan of the ICG has also joined the ranks of Frances Harrison in trying to promote this new alleged casualty figure. In a blog article released in February 2012, a month before the 19<sup>th</sup> UNHCR session, he claimed that:<sup>210</sup>

Finally, documents from the local government offices in Kilinochchi and Mullaitivu districts, dated 30 September and 1 October 2008, available here and here, show a total population of 429,000. These figures were cited in the LLRC testimony of the Catholic Bishop of Mannar, who asked for clarification as to what happened to the more than 140,000 people apparently missing given the much smaller population corralled into government camps.

...

There is also some corroborating evidence that argues for taking seriously even large estimates of the missing and demanding a full and independent accounting.

...

Because local government officials’ figures for Kilinochchi and Mullaitivu residents in late 2008 are almost exactly what the government had officially accepted for years, the government should explain why so many fewer people ended up in government camps in mid-2009.

The validity of both sets of figures, the 147,676 and the more recent 101,748, depend entirely on the accuracy of the two underlying numbers used in their calculation – first the alleged population of the Vanni in 2008, a number based on summing the Mullaitivu and Kilinochchi district population figures, and second the number of people that came out of the conflict zone in 2009.

### ***282,380 – Where does it come from?***

The figure used by Rt. Rev. Dr. Rayappu Joseph, quoting the UNOCHA as a source, for the total number of the people that came out of the conflict zone appears to be a deliberate attempt to deceive.

The following data from UNOCHA shows that the maximum number of recorded civilians who escaped the Vanni from 27 October 2008 to 11 June 2009 = 290,092<sup>145</sup> (See Figure 9.1-1). Rt. Rev. Dr. Rayappu Joseph’s

<sup>208</sup> Fr. Nicholas Selvaraja, *The Devil’s Advocate: A response to Rt. Rev. Rayappu Joseph’s letter to Australian Government*, 12 July 2012; See: [LINK](#)

<sup>209</sup> Submission by the Catholic Diocese of Mannar to the LLRC, 8 January 2011; See: [LINK](#)

<sup>210</sup> ICG Blog, *Sri Lanka’s Dead and Missing: the need for an Accounting*; See: [LINK](#)

figure of 282,380 was taken from a much later UNOCHA Report (Joint Humanitarian Update Report No.10) in July when people were slowly being released from the camps (See Figure 9.1-2). In reality, according to Sri Lankan Army records the actual figure was closer to 295,873.

This is the first obvious mistake. The second mistake lies in the figure used for the total number of people allegedly to have been in the Vanni during October 2008.

### **429,059 – Where does it come from?**

Prior to November 2008, it was common knowledge that the population figures released by the LTTE often inflated the numbers of people the group claimed were living in areas they controlled. The reasons for this were twofold:

1. The population lists were padded up so as to enable the siphoning off of part of the supply (welfare aid) to the civilian population to feed the LTTE and its related structures.
2. In its drive towards the recognition of the de-facto state of Tamil Eelam, to demonstrate the viability of state hood by showing that the group was in control of a substantial permanent population.

Nevertheless, in the context of the current discussion let it be assumed that this figure was accurate, and represented the real size of the population in the Vanni. This would cover all of Kilinochchi and Mullaitivu districts and parts of Mannar, Vavuniya and Jaffna.

The following map (See Figure 9.2-5) shows the general IDP displacement pattern from September 2007 to September 2008.

During this time Mrs. Imelda Sukumar was the Government Agent for the Mullaitivu district. She along with the civilian exodus from parts of the Vanni that converged on Kilinochchi towards the end of 2008, relocated to the first No-Fire-Zone in January 2009. She left the No-Fire-Zone on January 22 having moved all the displaced people in the Vanni in to the area. In her testimony to the LLRC in 2011 she claimed:

Mr Divaratne, Secretary, Essential Service instructed us to keep food stuff for 03 months and asked any every time to maintain those buffer stocks at our Food Warehouses. I maintained those and at that time there were nearly 300,000 people from Kilinochchi District people, people of uncleared area from Mannar District, and people of uncleared area from Vavuniya District and people of Mullaitivu District were there with me – altogether 360,000 people.

The following map (See Figure 9.2-6) shows the Forward Defence lines on the first week of December.

It can be safely concluded based on the available facts that according to the GA, 360,000 represented the total Vanni population trapped within LTTE controlled areas in November 2008.

It should be noted however that the figure of **360,000** has already been shown to be over inflation (See discussion in section 4.1.1: *Conflicting values – the numbers don't add up?*).

Nevertheless, in the context of the present discussion this figure in January 2009 represented in the eyes of the GA and AGA's present in the conflict zone what they believed to be the number of people still left in the Vanni.

Given that casualties amongst the general civilian population from 2007 to January 2009 were few in number, a fact corroborated by the Former American Ambassador Robert Blake.<sup>211</sup>

The question that needs to be asked is:

**“If the figure of 429,059 has any real basis in fact what happened to 69,059<sup>212</sup> people in-between the period October 2008 till the end of January 2009? Where did they all go?”**

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<sup>211</sup> Cable: 09COLOMBO86; See: [LINK](#)

<sup>212</sup> The figure is obtained via: 429,059 – 360,000



Next on February 28, 2009 the then AGA for Mullaitivu, Mr. K. Parthipan, trapped in the second No-Fire-Zone, sent a letter to the Ministry of Public Administration & Home Affairs claiming that there were 330,000 “people” in the second No-Fire-Zone.

It should also be noted that this figure of **330,000** has also been shown to be over inflation (See discussion in section 4.1.1: *Conflicting values – the numbers don’t add up?*).

Once again, for the sake of the present discussion this figure in February 2009 represented in the eyes of AGA Parthipan what he believed was the total number of people still left in the Vanni:

For instance, on 28 February 2009, the AGA based in the second NFZ sent a situation report to the Ministry of Public Administration and Home Affairs stating that there were about 81,000 families present in Mullaitivu District at that time, totalling some 330,000 persons.

The following map (See Figure 9.2-1) shows the Forward Defence lines in mid-February.

Based on the map, by February 2008 one can claim with absolute certainty that a vast majority if not all the remaining population in the Vanni were trapped within the second No-Fire-Zone.

This assessment is also supported by Satellite imagery from this period (See Figure 9.4-1).

Furthermore, in March 2009 the United Nations Office of the Resident Coordinator and Humanitarian Coordinator in Sri Lanka issued the following report (secret, UN eyes only) for internal circulation within the UN, See Figure 9.1-6.

An important piece of information can be gathered in the following footnote comment:

Between January and 12 February the reporting network was spread over a broad area. Since most civilians are now in the small NFZ – including the reporting network – the information is better.

The conclusion is that there were many witnesses present in the No-Fire-Zone to report on any large scale significant events that lead to disproportionately high fatalities amongst the civilian population.

Having established that, the question that needs to be posed once again is:

**“With the additional presence of this reporting network, if the figure of 429,059 has any real basis in fact how could this network of informants within the No-Fire-Zone have failed to highlight or register the disappearance of 63,059<sup>213</sup> people in-between the period October 2008 to the end of February 2009?”**

It should be recognised that not a single piece of physical evidence (e.g. photographs, video or grave sites) has emerged – either during the period (October 2008 to February 2009) or after the war ended – to suggest that there could have been close to 63,000 fatalities in those 5 months.

Based on this powerful fact, it is inconceivable that critics of the Sri Lankan Government still continue to believe that there were 429,059 persons in the Vanni during October 2008. Similarly it is equally surprising, given the obvious flaws in the Killinochchi and Mullaitivu district population statistics of 2008, that these figures have been used to enumerate a population for the Vanni. The facts clearly reveal that there appears to be no credible grounds on which to claim that there were 147,000 civilian fatalities by May 2009 based on their having been 429,059 persons in the Vanni during October 2008.

## 6. Comparable Conflicts

To put the civilian fatality figures suffered in Eelam War IV into perspective,<sup>214</sup> whilst recognising and taking into account (a) the intensity of the battles that took place between the Sri Lankan Army and the LTTE (b) the

<sup>213</sup> The figure is obtained via: 429,059 – (330,000 + 36,000) where 36,000 represents the number of people in IDP camps at the end of February

<sup>214</sup> Based on the available evidence, anywhere between 10,000 – 18,000 civilians were killed as a direct result of violent acts related to the activities of the LTTE or the Sri Lankan military

nature, and the tactics employed by the LTTE. It is necessary to compare the actions of the Sri Lankan military with the way the U.S. military responded to insurgent attacks from Fallujah city, Iraq in April and November 2004.

### **Comparison with Fallujah in 2004**

The following series of online articles, several from reputable news services, will give the reader a broad overview of what happened during that time.<sup>215</sup>

International estimates have put the civilian death toll from the American attacks in Fallujah city at anywhere between 1,000 to 6,000 killed:<sup>216</sup>

**Preliminary estimates as of December of 2004 revealed that at least 6,000 Iraqi citizens in Fallujah had been killed, and one-third of the city had been destroyed.**

In April and November 2004, American units that had surrounded the city of Fallujah in southern Iraq, over several days directed heavy artillery fire, tank fire, mortar fire and airstrikes into the city. At the time there were roughly 50,000 civilians along with 2,000 to 3,000 insurgents inside the city during the time of these attacks.



American equipment in Fallujah: (TOP LEFT) M1 Abrams Tank (TOP CENTRE) 81mm mortar (TOP RIGHT) F-16 Block C Fighter / Bomber (BOTTOM LEFT) M777 155 mm howitzer (BOTTOM RIGHT) White Phosphorous shells – Source: Reuters.com

Amongst civilian targets hit by American fire power included hospitals, schools and mosques. Whilst hospitals and other permanent structures in the conflict zone in Sri Lanka suffered minor to moderate damage, the structures in Fallujah were completely destroyed. See Figure 9.3-10

Dr. Hafidh al-Dulaimi, the head of “*the Commission for the Compensation of Fallujah citizens*” reported the following levels of destruction to permanent structures in Fallujah as a result of the American attacks in 2004:<sup>217</sup>

- 7,000 houses totally destroyed, or nearly totally destroyed, homes in all districts of Fallujah.
- 8,400 stores, workshops, clinics, warehouses, etc. destroyed.

<sup>215</sup>See: [LINK](#) and [LINK](#) and [LINK](#) and [LINK](#) and [LINK](#) and [LINK](#) and [LINK](#) and [LINK](#) (emphasis added)

<sup>216</sup> See: [LINK](#) and [LINK](#)

<sup>217</sup> Dirk Adriaenssens, *Fallujah, a Disgrace for the USA, an Eternal Curse on Humanity*, 21 September 21 2010; See: [LINK](#)

- 65 mosques and religious sanctuaries have been either totally demolished or levelled to the ground or whose minarets and inner halls have been demolished.
- 59 kindergartens, primary schools, secondary schools and technical colleges have been destroyed.
- 13 government buildings levelled to the ground.

It should be remembered that these attacks were directed against an insurgent force numbering a few thousand firing 82 mm and 60 mm mortars, 73 mm anti-tank rockets, RPG's, and sniper rifles.



Insurgents of Fallujah: (TOP LEFT) insurgents using 60mm mortar (TOP RIGHT) insurgents using sniper rifles (BOTTOM LEFT) insurgents using RPG's (BOTTOM RIGHT) SPG-9 73 mm recoilless gun – Source: Reuters.com

Compare this scenario with Sri Lanka in 2009.

### Sri Lanka in 2009

In 2009 the LTTE were using against the Sri Lankan Army, from within the No-Fire-Zone, the following kinds of weapons:



LTTE equipment: (LEFT) Type 66 152 mm artillery gun (RIGHT) Type 83 122mm artillery gun – Source: aruchuna.net



LTTE equipment: (LEFT) W86 120mm mortar (RIGHT) SPG-9 73 mm recoilless gun – Source: aruchuna.net

- 152 mm, 130 mm and 122 mm heavy / medium artillery
- 120 mm, 82 mm and 60 mm mortars,
- Several large calibre indigenous projectile weapons
- 73 mm anti-tank rockets, anti-tanks missiles (ATM), and RPG's

The American military was able to justify its use of such heavy fire power – against an enemy hiding within a civilian population of around 50,000 people firing medium to small calibre mortars, anti-tank rockets, RPG's, and sniper rifles – as being a proportionate response whilst taking into consideration the anticipated military gain as being part of the overall military objective of quelling the insurgency in Fallujah.

It is rather remarkable that the UN Panel, considering the similarities to Iraq in 2004, had deemed the Sri Lankan military's use of artillery and mortar in 2009 against a far superior enemy, using far superior weaponry and fire power – compared to the Iraqi insurgents; a disproportionate response!

The *Iraq Body Count* project which is widely acknowledged as being the only comprehensive set of casualty figures for deaths in Iraq since the invasion in 2003, has shown that out of all the 'recorded' civilian deaths, the U.S. led coalition was directly responsible for almost 15,000 of them.<sup>218</sup> Bearing in mind that though the project has the most detailed breakdown of casualties from the invasion, it is nevertheless widely acknowledged that its casualty figures are under-estimates of the actual total. Strongly suggests that Coalition Forces were responsible for considerably more civilian deaths than the 15,000 recorded by the *Iraq Body Count* project.

Given the fact that Coalition Forces had access to advanced weaponry, next generation targeting systems and electronic intelligence assets to ensure precision targeting, whilst at the same time fought an enemy that did not resort to the kind of human shielding tactics employed by the LTTE. How does the +15,000 civilian dead in Iraq measure up against the 15,000 dead in Sri Lanka? A conflict where the Sri Lankan military, with its meagre resources, had to contend with fighting a far superior enemy that employed unprecedented human shielding tactics!

### ***Protecting ones soldiers***

As the uses of force in Somalia, Kosovo, Iraq and Afghanistan have shown, western armies are extremely concerned about protecting the lives of their soldiers, and to that end are willing to risk many civilian lives in order to achieve this status quo.<sup>219</sup> History has also shown that they find acceptable the notion that civilian lives can be forfeited in order to attain important military goals.<sup>220</sup> The following examples are a clear reflection of this way of thinking:

<sup>218</sup> Simon Rogers, *Blog home Iraq Body Count report: how many died and who was responsible?*, 03 January 2012; See: [LINK](#)

<sup>219</sup> For example, the U.S. LOAC manual in relation to military advantage recognizes that: "*The foreseeable military advantage from an attack includes increasing the security of the attacking force. In any event, the anticipated military advantage need not be expected to immediately follow from the success of the attack, and may be inferred from the whole military operation of which the attack is a part*". ICRC CIL Study, Practice, Ch. 2, ¶ 361 (quoting the Report on U.S. Practice, 1997). Also see ICRC, Customary IHL, Practice Relating to Rule 8; See: [LINK](#) (emphasis added)

<sup>220</sup> Amichai Cohen, *Proportionality in Modern Asymmetrical Wars*, Jerusalem Centre for Public Affairs, 2010

1. In October 1993 a force of U.S. troops was caught inside the streets of Mogadishu, Somalia. Some 18 American soldiers were killed in a battle where women and children were being used as shields. Over one thousand civilians are believed to have been killed by American fire.
2. In its air campaign against Serbia in 1999, NATO adopted a policy of zero risk to its soldiers. This meant that pilots flew at a relatively high altitude, which also enlarged the risk to civilian lives on the ground. The number of civilian deaths in the NATO campaign was around 500.
3. American forces first attempted to retake the city of Fallujah, one of the centres of the Iraqi insurgency, in April 2004. The operation was halted after a few days due to the large number of civilian casualties. In November 2004, U.S. and Iraqi forces attempted to take Fallujah again. Reports of the number of people killed range from a few hundred to several thousand. The tactics used by U.S. forces included the use of white phosphorous. Vast quantities of fire power were employed in an urban setting known to house civilians, in order to protect the lives of American soldiers.

If the Sri Lankan Army had put as much emphasis on the safety and security of its own troops as the U.S. military for example, their task in 2009 would have been considerably easier and the war would not have dragged on until early May. Based on the fire power the Sri Lanka military had at its disposal, and the speed in which LTTE positions fell following the fall of Killinochi in January 2009, the war could have been finished by early March 2009. The issue which often gets omitted in the current debate is the price which the Sri Lankan Army had to pay during the final few weeks of the end stage operation. Most combat units involved in the last phase of the campaign had an attrition rate of more than 50% per unit.<sup>221</sup>

A closer examination of this period merely underlines the enormous difficulty Sri Lankan troops faced in distinguishing between genuine civilians and cadres fighting in civilian attire. In the fast moving circumstances of a running battle, the challenge this posed does not seem to be appreciated by critics of the Sri Lankan military. The LTTE frequently used women and child suicide bombers as offensive weapons, almost like tanks. Charging ahead, they would blast a way through the defences. The other cadres would then pour through the breach: *“Civilians fighting as soldiers, wearing T shirts and trousers. The first you see is when they are running towards you. Young boys and girls. You have only a few moments to think. And then it is too late”*.<sup>222</sup>

In these circumstances, restraint was dangerous; hesitation often fatal. Close combat infantry fighting against an utterly reckless and suicidal opponent, is a scenario which any conventional infantry force would find difficult to imagine.

In addition to the difficulties faced on the battlefield, political developments / manoeuvres of a regional variety also took a toll on the Sri Lankan Army. The Sri Lanka Government during the penultimate stages was very concerned about, and placed considerable importance on, the public opinion in Tamil Nadu, and India in general. So much so that the last offensive was timed to coincide with the end of the Indian general elections.<sup>223</sup> During the last few days of electioneering in India, there was a dramatic scaling down of operational activity by the Sri Lankan Army.<sup>224</sup> Every delay and every ceasefire gave the LTTE more time to build more defences, dig more trenches and lay more mines. These political factors cost the Sri Lankan Army dearly. Every day lost saw more soldiers killed and wounded.

What did these tactics cost in terms of dead and wounded – civilian and soldiers? In these circumstances, perhaps the question which should be asked is how many armies would have behaved in the same manner?

It is perhaps worth quoting a former NATO spokesman on how the West has always justified significant civilian casualties during its military operations. During a press conference in May 1999, the NATO spokesman (Jamie Shea) during *Operation Allied Force* – NATO's military operation against the Federal Republic of Yugoslavia during the Kosovo war, whilst responding to criticisms of civilian deaths due to NATO air strikes responded with the following:<sup>225</sup>

<sup>221</sup> Dr. SinhaRaja Tammita-Delgoda, Review Essay: *Sri Lanka's Ethnic Conflict – How Eelam War IV was Won* by Ashok K. Meht, 2011; See: [LINK](#)

<sup>222</sup> *ibid*

<sup>223</sup> India held general elections to the 15th Lok Sabha in five phases between 16 April 2009 and 13 May 2009. The results of the election were announced on 16 May 2009.

<sup>224</sup> Dr. SinhaRaja Tammita-Delgoda, Review Essay: *Sri Lanka's Ethnic Conflict – How Eelam War IV was Won* by Ashok K. Meht, 2011; See: [LINK](#)

<sup>225</sup> Jamie Shea, NATO Spokesman, Press Conference in 1999; See: [LINK](#)

There is always a cost to defeat an evil. It never comes free, unfortunately. But the cost of failure to defeat a great evil is far higher.

He insisted NATO planes had bombed only “*legitimate designated military targets*” and **if more civilians had died it was because NATO had been forced into military action.**<sup>226</sup>

Would the West ever have accepted such an answer from Sri Lanka?

## **7. The human rights approach – Moral crusaders**

The war crimes accusations currently levelled against the Sri Lankan Government are driven by a complex coalition of forces. Though the principal engines are Tamil migrants in the Western world bent on exacting revenge for the humiliating defeat of the LTTE, included in the mix also are an array of INGO’s based in the West. It is claimed that their interest in pursuing this agenda is based around promoting accountability, reconciliation and a respect for human rights in Sri Lanka.

Whilst the participation of the former category might be understood and expected given that the relationship between the Tamil diaspora and the Tamil Tigers was nurtured over a 30 year period. The participation of the latter grouping is however is less tangible and needs to be understood in greater detail. This section will attempt to do that and highlight a few points in the process.

### ***The Panel of Experts***

On October 5, 2012 Yasmin Sooka, one of the panellists from the UN Secretary Generals Expert Panel on Sri Lanka, whilst attending the launch of Frances Harrison’s new book “*Still Counting the Dead*” at the Human Rights Action Centre in London, made the following remarks in the question and answer session that followed. This event was covered by the TamilNet media organ.<sup>227</sup>

Ms. Sooka was of the opinion that the figure of 40,000 Tamil civilians dead that the UN panel of experts arrived at was likely to be higher, at around 75,000.

Assuming this account is an accurate reflection of Ms. Sooka’s comments, the underlying message contained within her answer is that the Panel believed, and still believes, that in their eyes the underlying empirical data that led them to conclude there were +40,000 civilian fatalities is not only credible, it is now deemed to be an irrefutable fact.

In complete contrast to the Panels assessment on this issue, the present analysis has carefully demonstrated with verifiable facts that not only is this empirical data seriously flawed, but the figures derived using this data are not even supported by other forms of statistical evidence. Simply put, from the body of all the available evidence surrounding these issues, none of it appears to support the allegation that there were in excess of 40,000 civilian deaths as a result of the fighting in 2009.

The facts show that these numbers have been derived using a process that cherry picked evidence to sample and analyse, conflated civilian and non-civilian casualties, and made several gross generalisations of fact none of which was / is supported by evidence on the ground. The worrying aspect of this approach is that regardless of the actual evidence, the fact-finders had already premeditated on the outcome of their findings. Having deliberately politicised these fatality estimates, the numbers were seen as a means to achieve an objective – setting up an internationally led war crimes investigation into the conduct of the Sri Lankan Government and its military. Toward this end for example, the style and content in the narrative put forward by the UN Panel to describe the events that transpired during those final months of the war, is another clear demonstration of this intent.

The Panel narrative weaves the allegations it has received from various sources – all hostile towards the Sri Lankan Government and its military campaign – into a consistent sequence of events and presents it as the version which the Panel has reason to believe was what actually happened. The method of presentation does not

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<sup>226</sup> BBC, *Civilian deaths ‘necessary price’*, 31 May 1999; See: [LINK](#)

<sup>227</sup> TamilNet, *Solheim’s politics, UN role in SL criticized at Frances Harrison’s book launch event*, 06 October 2012; See: [LINK](#) (emphasis added)

attempt to keep the reader constantly aware that what is presented are allegations, nor is it made clear to the reader that the Panel lists these allegations and examines them only for the purpose of advising the UNSG on the modalities if they are proved to be true.<sup>228</sup> The style of presentation makes it clear that the Panel intends to present the narrative as a true account of what happened. It is this intent which is manifest in the report that has raised the eyebrows of many independent observers of Sri Lankan affairs,<sup>229</sup> thus leading many to criticise the report on the grounds of its impartiality and judicial integrity. This slant is also responsible for the way the report is being used as a substantial piece of evidence of war crimes to suit the agendas of various stakeholders including the pro-LTTE lobby.

Yet this development has to be appreciated within the context of how many Western stakeholders (especially the INGO sector) approached the Sri Lankan conflict prior to the break out of hostilities in 2006. Several Western powers and INGO's who had been involved in the peace process in Sri Lanka were gravely disappointed at the unilateral action taken by the Sri Lankan Government to find a military solution to the armed conflict with the LTTE. They had warned the Government on what they termed would be "devastating consequences" of such action.<sup>230</sup> Therefore from the outset it appeared that these parties were predisposed to see the outcomes of the operation in the light of their expectations. The complete defeat of the LTTE was also an unexpected outcome. The attempts made by these powers towards the end to rescue the LTTE leadership were not supported by the Government of Sri Lanka.<sup>231</sup>

This global context is not to attribute any blame or impute any sinister conspiracy against Sri Lanka. The facts are straightforward and merely reflect the hard realities of international politics. The reality is that many Western stakeholders did not want the LTTE completely defeated as an entity. Towards this end, many (especially the INGO community) wanted a ceasefire to diffuse the situation, and a return to the negotiating table believing this was the best way to save lives and achieve a lasting peace.

The feasibility of pursuing a ceasefire at that stage of the conflict was analysed by the former American Ambassador to Sri Lanka, Patricia Butenis. On October 30, 2009 the Ambassador sent the following cable (09COLOMBO999) to her superiors in Washington:<sup>232</sup>

The final months of the war were brutal, inflicting heavy damage on all sides, both military and civilian. Estimates of the number of dead and wounded vary widely, but outside observers agree that the civilian toll was high. **Many believed the Government of Sri Lanka (GSL) could have minimized those casualties had it allowed for some sort of negotiated surrender by the LTTE once the GSL had surrounded remaining LTTE fighters. It is not clear, however, whether greater effort in that direction by the GSL would have been successful. The LTTE seemed intent on holding out to the very end, forcibly recruiting civilians as young as 12 to continue the fight, and using their own civilians as human shields even when it appeared defeat was inevitable. In the last days and weeks of the conflict, it became increasingly difficult to differentiate between civilians and LTTE combatants. Most outside, neutral observers privately agree that the GSL could have finished off the LTTE more quickly if they had been willing to risk a higher level of civilian casualties.**

In the framework of this theme, events in 2002 provide valuable historical insight into the motives and behaviour of one of the chief protagonists in the conflict – the LTTE leader.

In 2002, after the Cease Fire Agreement had come into force, the United States Pacific Command carried out a comprehensive assessment of the LTTE and the Sri Lankan military at the request of the U.S. Department of Defence. The result of this study was a top secret report which was signed off by the late Peter W. Rodman on behalf of the International Security Affairs desk at the U.S. Department of Defence.<sup>233</sup>

The report made some crucial observations, very relevant to the current debate, about the LTTE leader:

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<sup>228</sup> Dr. Godfrey Gunatilleke, *Accountability, restorative justice, and reconciliation: review of the report of the secretary-general's panel of experts on accountability in Sri Lanka – 31 March 2011*, Marga Institute; See: [LINK](#)

<sup>229</sup> This grouping consists of a diverse array of personalities from academics, professionals to other civil society activists not aligned to the present administration or the global war crimes initiative.

<sup>230</sup> Dr. Godfrey Gunatilleke, *Accountability, restorative justice, and reconciliation: review of the report of the secretary-general's panel of experts on accountability in Sri Lanka – 31 March 2011*, Marga Institute; See: [LINK](#)

<sup>231</sup> *ibid*

<sup>232</sup> Cable: 09COLOMBO999; See: [LINK](#) (emphasis added)

<sup>233</sup> American govt's assessment of Prabhakaran - II See: [LINK](#) (emphasis added)

**Prabhakaran uses deception as an integral part of his modus operandi.** In many cases, he has arranged to visit subordinates or has extended olive branches to political targets to lull them into a false sense of security just prior to their assassination. In tactical operations, Prabhakaran would conduct deception manoeuvres to draw attention away from an intended target. **LTTE duplicity often factors into the organization's public posture. Deceptive guidelines are given to LTTE cadres on how best to answer questions posed by the public and media. Carefully worded guidelines are even provided to the Tamil Diaspora over the Internet on how best to respond to questions on the conflict posed by non-Sri Lankans. These guidelines are designed to portray LTTE cadres as freedom fighters pitted against a hostile and ruthless government.**

...

Prabhakaran's long-term goal is to **break the will of the Sinhalese-led government** and thus lead it to accede to his demand for a Tamil homeland. To achieve this end, **any and all means are justified in his mind.**

...

As long as Prabhakaran is alive, **any peace offers proposed by the LTTE will not be genuine; negotiations will be used as a short-term tactic for the LTTE to rearm and regroup as battlefield defeats increase.**

**If LTTE manpower and resources become severely depleted, Prabhakaran may, as a measure of last resort, publicly accept a seemingly long-term political arrangement short of secession, so long as he is able to retain some semblance of power. Again, this would be viewed by Prabhakaran as a temporary situation until he could position himself to confront the-government and revert to violence for, the sake of creating an independent Tamil homeland.**

These were pragmatic realities about the LTTE a vast majority in the INGO community refused to accept whilst pursuing a coordinated strategy which entailed (a) a ceasefire or a complete cessation of hostilities (b) bringing the warring parties back to the negotiating table. Most INGO's, like the ICG for example, considered the LTTE to be a credible representative of the Tamil people in Sri Lanka and an equal partner to any negotiated solution.

It should be noted however that the current drive by many of these groups in trying to haul the islands political and military leaders in front of a war crimes tribunal, is largely dictated by events that followed the end of war in 2009 compared to actual events that occurred during the war. The approach the present administration has taken towards addressing minority grievances – specifically Tamil grievances – and rule of law issues, has earned it the wrath of many in the INGO community. It is towards arresting / reversing these trends, that the charges of war crimes against the present Government have been framed. This approach is clearly discernable in the activities of groups like the ICG.

### ***The International Crisis Group***

The Sri Lanka unit of the ICG, under the tutelage of Alan Keenan its Project Director, over the last couple of years has displayed clear signs of a pre-defined political agenda when reporting on Sri Lankan affairs. Guided by a pervasive intolerance (moulded by aggressive liberalism) towards any policies put forward by the current administration that conflict with the groups agenda on Sri Lanka, the unit has attempted to externally influence political developments on the island by literally bypassing the islands electoral system – the basic principal of people's choice to choose its leaders and Government.

The general hostility the unit has shown towards the Government is best exemplified by the skewed logic the unit employs in many of its recent reports.

The report the unit released in May 2010 regarding "War Crimes" in Sri Lanka best demonstrates this partisan approach.

Working under a premeditated objective of seeking to institute an international investigation into the conduct of the Sri Lankan military, it is worth noting how the report assesses the intentions of the LTTE and the Sri Lankan Government / military.

First, the report is founded on the primary premise that all but a small number of casualties were caused by the Sri Lankan Army shelling, and that this was intentional. But, then, it goes on to say, though the LTTE held civilians as human shield, "*the actions likely do not amount to the war crime of human shielding*",<sup>234</sup> because

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<sup>234</sup> ICG, *War Crimes in Sri Lanka*, Asia Report N°191 – 17 May 2010, Footnote 120 on page 31



the crime requires the LTTE to 'intend' that the presence of civilians will deter the Sri Lankan army from advancing, which, the ICG says, as evidence suggests, was not the case.<sup>235</sup> That is fanciful logic though we do not know which evidence drove the ICG to this conclusion. Deterring Sri Lankan troops from advancing was the primary objective of the human shielding, without which it would not have taken four months (February to May) for the army to move from Puthukkudiyiruppu to Vellamullivaikkal. There was a domino effect on LTTE camps since the capture of Kilinochchi, which the Tigers defended with multiple earth bunds which Sri Lankan troops outmanoeuvred, going around and entering the town from 6 km north in Paranthan junction.

It was the heavy concentration of civilian 'human shields' which delayed the advance of the Sri Lankan troops. Though the ICG could not determine that the LTTE 'intended' to use civilians as human shields, strange enough, it has conclusively established that the Sri Lankan Army 'intended' shelling hospitals, humanitarian food convoys and the No-Fire-Zone.<sup>236</sup>

Again, there is the same skewed logic; at one point, the report states, referring to an incident of shelling near a food convoy that since shells "*were striking on or near LTTE positions, and because the LTTE generally benefited from the convoys, UN staff believed that the shells were fired by the security forces*".<sup>237</sup>

That is again fanciful logic. In the same line of argument, one could argue that since the Sri Lankan Army were likely to be blamed for shelling, the Tigers themselves shelled to hold the Sri Lankan Army responsible and attract international attention. If the ICG logic holds ground, this too would do equally well, though neither would lead to an objective assessment of what happened.

The ICG puts the blame squarely on the Sri Lankan Army on intentionally shelling civilians, hospitals and humanitarian food convoys. This incredibly skewed approach completely disregards the fact that two sides waged a war, and there were cross fires and of course, counter battery fire.

Referring back to the shelling of the food distribution centre inside the No-Fire-Zone, the ICG says, LTTE locations were too close to the No-Fire-Zone to fire artillery shells into it and that the "*LTTE in general had little reason to fire on their own fighters or cause the UN and especially internationals to leave*".<sup>238</sup> On another occasion, regarding attacks inside the No-Fire-Zone, the ICG said "*The LTTE also had strong motivations not to target their own families and supporters and give them more reason to want to leave the NFZs*".<sup>239</sup>

These are gross generalizations. Anything was possible, provided that the LTTE gained – as the U.S. Department of Defence assessment study concluded.

Following is an excerpt from an anecdote from a witness recorded by the UTHR(J) team:<sup>240</sup>

The Army was planning to take Puthukkudiyiruppu and was firing from the south. LTTE artillery was firing from Pacchaipulmoodai just north of where Maniam was. While listening to news from Sooriyan Radio, **he noticed that at 6.11 PM LTTE cannon changed direction and fired three shells to the south east. He later found out that the shells landed in Putumattalan, killing 17 civilians and injuring 23.** Maniam confronted a strong LTTE supporter about this. The answer he got was that the whole of Puthukkudiyiruppu should be displaced and the people must suffer. This has been a regular LTTE refrain since the mid-1980s.

This is another reference about as to how the LTTE, intentionally exposed civilians to counter battery fire:<sup>241</sup>

A science teacher, who was also in Udayarkaddu, related an incident where the people had a bitter argument with the LTTE. **An LTTE man went away threatening that they would soon see what happens. A little later the LTTE fired mortars from an area behind the tents, out of his sight. The teacher said the Army fired into a**

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<sup>235</sup> *ibid*, page 31

<sup>236</sup> *ibid*, page 4

<sup>237</sup> *ibid*, page 17

<sup>238</sup> *ibid*, page 20

<sup>239</sup> *ibid*, page 29

<sup>240</sup> UTHR(J) Special Report 34; See: [LINK](#) (emphasis added)

<sup>241</sup> *ibid* (emphasis added)

radius of a little over 100 yards from where the mortars were fired. This caused damage to the tents, some fell near entrances to bunkers.

Here is one last reference:<sup>242</sup>

Ganeshapillai was among civilians advancing towards the army line in Iruddumadu. **Four LTTE cadres joined the civilians and kept firing, deliberately provoking the Army.** A group that had gone ahead of them had told the Army that more civilians are following along the road. The Army kept shelling but was then careful not to shell the road. **As they got close, the four cadres ran back and turned into snipers. As the Army was receiving the civilians, the snipers opened fire killing four soldiers.** But the other soldiers betrayed no signs of reacting against the civilians. They calmly carried their dead, loaded the civilians into tractor trailers and sent them on. **The LTTE seemed to pin their hopes on ensuring maximum civilian casualties,** in the hope that Uncle Obama would intervene.

These facts clearly reveal the partisan approach the ICG adopted when reporting about the conflict and when it came to attributing blame for the events it described.

These issues however pale in comparison to the approach and motives behind the units attempt to quantify a figure for the number of civilians killed during the war. Remembering that the primary driver in the war crimes band wagon has always been the number of civilians killed. The ICG in this department does not disappoint.

Having stated in the report that according to ‘**credible evidence**’ it ‘**knew**’ there were 335,000 people in the Vanni in mid February 2009. The report argues:<sup>243</sup>

[t]here is a plausible case that as many as 75,000 persons remain unaccounted for. Even if the figure of 330,000 is reduced by as many as 30,000, or some adjustment to the difference between 330,000 and 290,000 is made to account for civilians who may have been killed lawfully because they were directly participating in hostilities at the time they were targeted – a number Crisis Group believes is very low – or to account for some number that may have avoided the government camps, **it is still difficult to arrive at a figure for the killed or missing that is lower than 30,000.** Moreover, Crisis Group has evidence from various individuals who were in the NFZs until the very end of the fighting to suggest that **the scale of death was much higher than reported at the time, and certainly high enough to triple the UN’s internal figure of 7,000.** Crisis Group also believes that all but a small portion of these deaths were due to government fire.

Having concluded that a vast majority of the deaths occurred during the final weeks, the group claims with authority that it was the Sri Lankan military that was responsible for most of them. This is despite numerous eye-witness accounts from the last few days that talk about LTTE shell fire killing a large number of civilians, rather than Sri Lankan Army shells:<sup>244</sup>

The night of the 17 saw heavy fighting going on into the 18 morning. Some reliable witnesses and other IDPs who were present when the Army entered are certain that a large number, perhaps the majority, of those killed in the NFZ during the last 12 hours were killed by LTTE shelling. **Shells were falling into them and from the direction they are certain that they were fired by the LTTE.**

These figures, like the UN Panels estimates, are all based on an assumption that there were 330,000 people in February 2009; a figure that has already been conclusively shown to be an overestimate.

### ***The Human Rights Approach***

The ICG like most human rights groups were convinced that the Sri Lankan militaries use of force was not only disproportionate but intentional as well – that they deliberately targeted civilian areas. This alone was singled out as being the only contributory factor when it came to assigning blame for civilian fatalities.

From the perspectives of those who emphasize the need for complete protection of civilians (human rights approach), proportionality is indeed problematic. The respect for human rights, and life, rejects the possibility that injury caused by armies to civilians might be classified as *collateral damage*. In this view, nothing

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<sup>242</sup> *ibid* (emphasis added)

<sup>243</sup> ICG, *War Crimes in Sri Lanka*, Asia Report N°191 – 17 May 2010, Footnote 120 on page 12 (emphasis added)

<sup>244</sup> UTHR(J) Special Report 32; See: [LINK](#) (emphasis added)

validates the subjugation of civilians to lethal attacks simply because they happen to be situated in the vicinity of a military target.<sup>245</sup>

At first sight, the human rights approach to proportionality appears to possess a moral advantage over any other model. After all, what could be more morally reprehensible than the killing of innocent civilians? Most human rights analyses of the issue indeed stop at that point, and go no further.

The problem with that approach is that there is in fact much more to be said. Specifically, there exist at least two separate reasons why – from a moral viewpoint – the premise of the human rights approach is open to question, especially in cases of asymmetrical armed conflicts – as was the case in Sri Lanka.

Proportionality cannot be detached from the question of responsibility: which side created the situation in which civilians find themselves? From a military as well as a moral perspective, however,<sup>246</sup> the onus clearly lies with the party that chooses to fight from within civilian concentrations. This circumstance does not, of course, absolve the attacking force from its obligations to protect civilian lives. But it does shift moral responsibility from the situation thus created to the other side.

Second, and perhaps more important, are the consequences of the human rights approach to proportionality. Once the non-state actor (in this case the LTTE) internalizes the fact that his foe (Sri Lankan Government) is bound under international law to protect its civilians, even at the expense of military actions, he will be bound to use civilians as shields that might protect him from enemy assault. That is precisely the tactic adopted by the LTTE, and the main reason why they situated their headquarters, fighters and armaments within civilian concentrations. In effect, then, an effort to protect civilians in one case places them in danger further down line. This was clearly the case in Sri Lanka, where the general population crossing all ethnic divides for the 30 years prior were enslaved to a perpetual cycle of conflict (war and peace) that continued to see the loss of significant numbers of civilians, government soldiers and insurgents. It should be pointed out that nearly seven attempts had been made by successive Sri Lankan Governments to bring the LTTE to the negotiating table. The question which arises is what does one do when the insurgent / terrorists refuse to come to the negotiating table?

In sum, what the Panel and ICG reports offer is the *human rights model* of the proportionality principle. This term reflects the perspective that there exist no real differences between the requirements for an assessment of proportionality in general human rights law (which applies universally to all cases of rights abuse by governments) and those of a military conflict.<sup>247</sup>

The conflation of the two spheres is exemplified in the strong presumption that every civilian death in a military conflict is illegal. It is further exacerbated in the conditions allowed to a state to counter this presumption. In order to do so, a state has to demonstrate – almost beyond doubt – that the target was a legitimate military target; the specific military gains it actually received from the specific use of power; and that the military gains did not simply consist of a reduction of the risk to the lives of soldiers. This degree of proof accords with that expected of a government that seeks to justify the use of force in conditions of domestic unrest.

It seems that when analyzing the principle of proportionality in the Sri Lankan context, the Panel and the ICG tend simply to take the legal norms which apply in times of internal unrest and apply them to a full scale armed military conflict. Not only is this assessment extremely naive, it is a position that is completely out of sync with the existential realities of the real world.

### ***The questions no one asked***

The one issue above all others, that continues to undermine the arguments put forward by critics of the Sri Lankan Government regarding civilian casualties, is their colossal failings in not impartially addressing the credibility of AGA Parthipan's population estimates for February 2009. Given the fact that there was, and still is

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<sup>245</sup> For a detailed description of the attitude of human rights law to the loss of life, see David Kretzmer, *Rethinking the Application of IHL in Non-International Armed Conflicts*, *supra* note 1, at 14-17, *Israeli Law Review*. 8 (2009)

<sup>246</sup> Michael Walzer, *Responsibility and Proportionality in State and Non-State Wars*, *Parameters* (spring 2009) pages 40 – 52

<sup>247</sup> Amichai Cohen, *Proportionality in Modern Asymmetrical Wars*, Jerusalem Centre for Public Affairs, 2010

available, a wide array of sources and statistics to show that these estimates in February did not appear to conform to other known facts.

If the motive of any of these surveys was to genuinely quantify a figure for this category of the dead, any subsequent empirical investigation would have been confronted with the following questions – these figures have been generated based on the assumption that AGA Parthipan's population estimates were credible:

1. The Panel believes it credible that there were 330,000 people in February 28, 2009 – hence the total population at the time must have been ~366,000 (330,000<sub>NFZ</sub> + 36,000<sub>Camps</sub>).
2. The Panel claims that 290,000 people ended up in the IDP camps by end of May 2009.
3. The Panel believes that based on these statistics, which it claims are all credible estimates, there are around 75,000 people unaccounted for (366,000 – 290,000).
4. The Panel also believes that 40,000 civilians killed is a credible estimate.
5. After the war, 11,700 combatants were detained by the Sri Lankan military.
6. This means that the Panel must accept that there were close to **20,000 – 23,300** combatants killed for 2009 alone (75,000 – (40,000+11,700+escapees)).
7. It then follows that in 2009, through forced recruitment the LTTE had a combat strength of close to **35,000** fighters (23,300 + 11,700) – which the Panel must accept since it considers the underlying data to be credible.
8. The Sri Lankan Army claims that, based on intercepted radio transmissions of insurgent radio traffic, close to 4,300 LTTE were killed in 2009.
9. This means that close to **19,000** conscripts (23,300 – 4,300) were killed in 2009 alone – which the Panel must accept since it considers the underlying data to be credible.
10. Which means that on average, the LTTE was losing **3,800 cadres a month** whilst fighting the Sri Lankan Army in 2009.
11. This implies that in 2009, the LTTE through conscription managed to recruit 30,700 people (19,000 + 11,700), mostly civilians, into its various military arms – which the Panel must accept since it considers the underlying data to be credible.
12. Which implies that over the 138 days of hostilities in 2009, the LTTE were able to recruit on average **222 people a day** (30,700 / 138) to fight for the LTTE cause?
13. This comes to, on average, **6,700 people a month** (222 × 30).
14. The Sri Lankan Army also claims that between July 2006 and May 2009, close to 22,200 combatants were killed.
15. This then implies that the LTTE over this period, through conscription and other means, had a fighting strength of close to **52,900** cadres (35,000 + (22,200 – 4,300)) – which the Panel must accept since it considers the underlying data to be credible.

These statistics are staggering. All things considered, if the LTTE were recruiting on average 6,700 people a month, and losing 3,800 at the same time. How was the ICG or the Panel for that matter able to reconcile these statistics within an intermingling landscape that also resulted in civilian casualties? Essentially, given the wide margins of uncertainty and complexity on the ground, how could both groups claim with some authority that based on a single statistic it had credible evidence to show that there were close to 40,000 civilians killed?

If on the other hand the Panel and the ICG claimed that there was evidence to suggest that 30,000 – 40,000 “**people**” were “**unaccounted**” for following the end of the war, they would have at least stood on firmer ground based on the available evidence – the present analysis itself has shown that it is extremely plausible that there are 30,000 – 36,000 people still unaccounted for (this includes non-combatants and combatants). By insisting that this unaccounted group were all “**killed**” and that they were all “**civilian**”, seriously undermined the Panels and the ICG's intentions and impartiality in the eyes of many people in Sri Lanka, regardless of their ethnicity / and political affiliations. It has become clear to many that these numbers were derived for the purposes of satisfying certain political agendas with regard to Sri Lanka, and far removed from the statements about accountability and reconciliation to which they were attached.

## 8. Conclusion

Nothing in this survey denies the probability and the evidence that some extra-judicial killings of high-ranking LTTE officers occurred during the last days of the war. These actions need to be impartially investigated by an

independent body, and where possible criminal indictments pursued against the perpetrators. The current study however has concentrated on the following:

- A. The accusations of substantial fatalities caused by the shelling and other military actions of the Sri Lankan Security Forces;
- B. The sustained and ongoing international campaign on this front via an emphasis on “tens of thousands” killed;
- C. The links that exist between current political activities on the island with the war crimes initiative, and debating the actual merits of an investigation based on the specifics of the actions and events that occurred in 2009 – within a context permeated by the current drive by critics of the administration to use the war crimes issue to steer political developments within the island.

The literature is considerable and this survey is therefore of a complex and intricate character. It is not easy to distil such complexity. However, in an effort to cover the most salient points in the study for the benefit of reader, a numbered, point-form distillation has been composed. These are abbreviated notations and require amplification through reference to the relevant sections in the document. The summary distillation is not comprehensive and it is possible for assiduous readers to extract other meaningful contentions from within this document – indeed we encourage readers to extract their own conclusions based on the evidence presented; and to present corrections, challenges and embellishments.

1. The LTTE leadership remained obdurate and, as most knowledgeable observers would have forecast, spurned (a) The Government's demands of an unconditional surrender on four separate occasions from October 11, 2008,<sup>248</sup> January 2,<sup>249</sup> February 3,<sup>250</sup> till as late as April 5, 2009,<sup>251</sup> as well as (b) subsequent mediations by the Norwegians that were premised on the laying down of arms (May 15, 2009).<sup>252</sup> The Sri Lankan Government also declared two limited ceasefires in 2009 in the hope that the LTTE might release most of the civilians in its human shield – these attempts were also spurned.<sup>253</sup>
2. Encouraged in part by their ‘alliance’ with the objectives of human rights agencies abroad and the power of their migrant agitation-propaganda arms, the LTTE policy was geared towards sustained resistance and the use of their own civilian population as a bargaining tool that would draw Western interventions and provide them with an escape-hatch.
3. The civilian mass was not only a hostage-shield, but a looming IMAGE of humanitarian disaster.
4. Thus as early as December 2008, as noted by the veteran journalist D.B.S. Jeyaraj, the LTTE deliberately forced a body of some 10,000 – 20,000 civilians into the coastal stretch extending between Ambalavanpokkanai in the north to Vattavaakallu in the South in order to block the north-south advance of the 55th Brigade and 59th Brigade. (see page 10 for more details)
5. Following the continuing west-east advance of the SL Army and the loss of Kilinochchi by early January, the civilian shield was corralled into decreasing land space. Indeed, by the end of February 2009 virtually the whole body of some 298,000 people were encamped on what became known as the “second No-Fire-Zone”, some 14 square kilometres of space on the coast between Nanthikadal lagoon and the sea
6. The concept of a No-Fire-Zone was an unworkable one. Since it was a unilateral declaration from the Sri Lankan Government it also had no legal status in terms of the conventions governing war. The enforceability of “no-fire” was also contravened regularly by the LTTE’s deliberate and regular policy of situating their mortar or artillery firepower within such precincts and / or close to civilian encampments.
7. Indeed, the LTTE chose to base its operations within or alongside civilian areas because of the likelihood of harm to civilians. Thus, as Jacques de Maio of ICRC noted in a little-known cable, the LTTE manipulated its civilian peoples as “a protective asset”. (see page 6 for more details)

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<sup>248</sup> See: [LINK](#)

<sup>249</sup> See: [LINK](#)

<sup>250</sup> See: [LINK](#)

<sup>251</sup> See: [LINK](#)

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<sup>253</sup> One was for three days from February 1 to 3, the other was for two days on April 13 and 14. The purpose was to facilitate civilians moving out from the war zone. But the LTTE imposed further restrictions and the number of civilians coming out dropped during ceasefire days. The LTTE also exploited the ceasefire in February to mount a very effective counter strike on February 4 that led to the death of several hundred Sri Lankan Army troops and the loss of some territory. The April ceasefire was used to construct several new “trench cum bund” defences.

8. As indicated by testimonies collected by the UTHR(J) and other evidence, the LTTE went beyond the use of civilians as cover to the actual shelling of their own people on some occasions in order to cry “humanitarian disaster” – thereby inviting foreign intervention. (see pages 34, 35, 73 for more details)
9. There is little doubt that the advance of the various Sri Lankan Army regiments was restrained by these tactics. The overwhelming firepower and manpower resources of the Sri Lankan Army were such that a victory would have been achieved in a couple of months in 2009 if the LTTE had not utilized their people as a human deterrent.
10. High resolution satellite imagery reveals that shells fired by the Sri Lankan Army, whether artillery, rocket or mortar during the months of February to May, mostly avoided the crowded concentrations of civilians in the second and third No-Fire-Zone, and that towards the final weeks there was hardly any artillery use (as distinct from mortars).
11. Aerial photographs taken by international camera crews support the conclusions reached from studying the satellite images; and reveal that the second and third No-Fire-Zones do not display the visual markers of having been indiscriminately bombarded with heavy artillery or rockets from MBRL's.
12. The ‘tent city’ visible in the second and third No-Fire-Zones is a vast camp area. Despite all the reports of wanton bombing and shelling, the sea of tents and huts still standing stretch for several hundreds of meters, as far as the eye can see. They are so densely packed together that if these areas were indeed attacked with artillery and rockets, the resulting fires would have destroyed vast swathes of the tent city. Although there a few stray blackened patches visible here and there from possible mortar strikes, these are few and far between as clearly indicated in the satellite imagery. There is next to no visible evidence to show the vast swathes of devastation which have been talked of in the UN Panel report or the other documents produced by other international bodies.
13. Nevertheless, that civilian deaths and injuries from Government Forces firing did occur is indubitable, but one has to be cautious in concluding intentionality from such a result without having studied each incident in detail and taken into account issues like: (a) the conditions ruling at the time of the attacks; (b) whether the commander ordering the attack believed his actions would cause clearly excessive levels of civilian harm in relation to the anticipated military advantage gained; (c) the reasons behind the choice of weapon used in a vast majority of the attacks – mortar as against artillery, rockets and airstrikes; (d) considered the military advantage gained as being part of the overall military objective of which the attack was a part.
14. Any such conclusions are further complicated by the fact that the LTTE killed civilians on several occasions when they sought flight.
15. Again, computing statistics on fatalities caused by Sri Lankan Army action is complicated by the fact that many LTTE fighters did not wear fatigues and thus deliberately contravened the protocols of war that enjoined the principal of distinction. This in turn makes the identification of a civilian corpse into a questionable issue in a significant number of instances.
16. Though those levelling allegations at the Sri Lankan Government sometimes refer to the confusion between LTTE personnel and civilians, they consistently gloss over the implications of this blurred zone when they compile their statistical count of “civilian deaths” in ways that imply that the vast majority was due to Sri Lankan military action.
17. The claim that “tens of thousands” were killed arose from one source – the UTHR(J) report No. 34 presented on 13 December 2009; but those who have seized on this claim have simply bypassed two significant caveats which the UTHR(J) attached to this contention. (see page 18 for more details)
18. The UTHR computation in its turn is centrally influenced by AGA Parthipan's flawed computation that 330,000 people were present in the Vanni Pocket on 28 February 2009.
19. AGA Parthipan's data was derived from gross figures provided by pro-Tiger *grama sevakas* over the course of the month – figures that seem to be based on household and tent sites; and a statistic which is rendered problematic by the fact that more than 31,000 people escaped from the LTTE's clutches in the course of February as the count was being compiled. So the total remaining in the Second NFZ on 28 February could be even, say, 298,000.
20. AGA Parthipan's subsequent statistics for the end of March and April reveal the implausibility of his February estimate.
21. While the serial TamilNet figures of dead and injured must be viewed with suspicion, it is significant that for the period 1 January to mid-May the number of fatalities add up to 13,800. This sum must be treated as an outer limit and qualified further by attention to the fusion of civilian / LTTE cadres.
22. Located against this complicated background, the computations of fatalities by the UTHR(J) as well as the UN Panel of Experts, COG, ICG, Gordon Weiss and Frances Harrison are seriously flawed and undermined by slipshod methodology in varying degrees of poverty.

23. With the ICG and Frances Harrison one witnesses a move into the realms of statistical fantasy in ways that raise questions about their integrity / morality.
24. It would seem that such spokespersons are motivated by moral rage and retributive justice. They seek regime change in Sri Lanka – a form of 21<sup>st</sup> century evangelism that is imperialist in character and effect.
25. With Bishop Joseph Rayappu on the other hand one has a case of clerical extremism that matches that of extremist *bhikkhus* on the Sinhala Right. His figure of 429,056 people in the Vanni for October 2008 has been influential in leading to the figure of 147,676 people unaccounted for in some tales, including that of the Journalists for Democracy and Channel 4. (see page 63 – 64 for more details)
26. This statistical figure is simply absurd: when placed beside AGA Parthipan's overcooked figure of 330,000 at the end of February 2009 it means that some 63,000 people died or disappeared in the course of five months October, November, December, January and February – defying all the information one has, including those from TamilNet, on casualties in that period.
27. In all these instances, whether the voices of Tamil extremists in Lanka, Tamil and Tiger migrants or other Lankan intellectuals forced to flee abroad, one sees the work of vengeance politics fuelled by emotion.
28. All wars result in soldiers missing in action (MIA) and often embrace a number of civilians. In this war the numbers of those unaccounted for would be particularly significant because of (a) the LTTE's mostly unrecorded 'blitz' conscription of combatants and auxiliaries during the last five months; (b) the unknown number of Tigers and civilians who slipped through the Navy cordon in 2009 and reached India; (c) those who drowned when fleeing across Nanthikadal lagoon; (d) those corpses – from whatever cause – buried without a record being kept (then or subsequently in testimony); (e) those corpses in the jungle that simply decomposed or became food for monitor lizards, jackals and termites; and finally (f) the considerable number of Tigers and civilians who survived but slipped out of the detention centre's before being formally registered.
29. The computations here indicate that the number of **those who escaped** from the conflict zone or detention centres would have ranged **between 3,000 and 6,000**.
30. One must also allow for **death by natural causes** (old age, disease, heart attacks, snake bite, etc). Taking Sri Lankan averages and allowing for a higher rate because of the abnormal conditions suffered by the populace, this figure would be **at least 1,000** over five months.
31. The computations here suggest that **at least 10,000 LTTE combatants and auxiliaries** were killed in this period.
32. The computations here suggest that **up to 15,000** truly civilian people were potentially killed in the conflict zone during the last five months, with an **additional 2,000 – 3,000** having died by either being shot, shelled or having drowned whilst trying to flee the battle zone.
33. The respective proportion of civilians killed by the LTTE and the government forces is difficult to work out. Though it is probable that more were hit by government fire than by the LTTE, the latter's 'work' in this sphere was not small.
34. In such a set of circumstances there is no way that one can refer to "tens of thousands" of civilian deaths.
35. In any event the LTTE was responsible for creating the parameters of the CRUCIBLE in the conflict zone known as the Vanni Pocket in an attempt to generate international intervention and to prolong the war till the Indian General Elections hopefully swayed the wider context in their favour.
36. That the figure of 40,000 has been firmly established in media circles and that Gordon Weiss himself has abandoned his initial range of "10,000 to 40,000" to assert such a singular statistic in definitive terms reveals (a) the power of a single number (b) that is repeated and repeated incessantly; (c) and pressed by powerful media and propaganda machinery of a worldwide character; and (d) lapped up by an emotional audience of Tamils who have been through a turbulent period of politics from the 1970s; while being (e) disseminated by 21<sup>st</sup> century evangelists blinded by ideological commitment; and (f) stoked by major government agencies in powerful counties who see Sri Lanka as an instrument in a ball game that has China in its frame.
37. To all such players empirical validity does not seem to matter. What works for their cause is what must be pressed... and repeated incessantly. Empirical groundings, careful evaluations and honesty are pushed to the backstage.

What these points clearly demonstrate is that these controversial figures, whether in the ICG report or the UN Panel report, were introduced not as irrefutable facts, but a "means" – circumstantial evidence – to act as a "smoking gun" to lay the foundation for greater external introspection – an international investigation.

This “strategy” is best elucidated by one of the Marga Institute Panellists’ (David Blacker) who studied the UN Panel report in detail.<sup>254</sup> He observed that:

Now, one would expect lawyers of the capacity of Darusman to be capable of interpreting the evidence, the law, and the legal precedents in order to make an accurate assessment in the report. And that expectation would be a fair one if we looked at the panel report as an actual indictment or charge sheet of some kind; it is neither. The closest analogy in legal terms, is that of a police detective applying for a search warrant. Unlike in a court of law, he doesn’t need to present actual evidence; all he need do is show sufficient suspicion of guilt in order to obtain the necessary permission to violate privacy and investigate more closely. That is exactly what the Darusman report is trying to do. Set up by Ban Ki-Moon after initial attempts at an investigation failed, its sole purpose is to create sufficient suspicion that the GoSL is guilty of war crimes. It is the GoSL that is resisting calls for an investigation, and it is this resistance that must be overcome. The Tigers and their war crimes are irrelevant.

At the moment, the Tiger remnants in the Diaspora, certain UN departments, and the human rights advocacy groups want the same thing – investigations. To therefore acknowledge that the only actual available evidence shows war crimes to have been committed by the Tigers would be counter-productive.

The Darusman report isn’t about getting at the truth; it’s about overcoming GoSL resistance to a UN investigation. The only way to do that is to show the GoSL to be guilty. For that, the truth must be ignored for what is convenient, and the Darusman report does just that.

Regardless of evidence, it makes the GoSL look guilty.

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<sup>254</sup> The Marga Institute is an independent non-profit centre for Development Studies established in 1972 under the Companies Act of Sri Lanka – the first of its kind in Sri Lanka. From its inception it has conducted a sustained and wide-ranging programme of multi-disciplinary research on issues and problems of development. It has drawn on the three main disciplines in social science, Economics, Sociology and Political science, and has developed a framework of analysis incorporating all the important criteria of human development.; See: [LINK](#); See: [LINK](#); See: [LINK](#)



## 9. List of Figures

### 9.1 List of Tables

IDPs		
During the period 27 October 2008 to 10 July 2009		<b>282,380</b> persons crossed to the Government controlled areas from the conflict zone.
Vavuniya Camps:	260,039 <sup>1</sup>	<b>278,051</b> people are accommodated in temporary camps.
Mannar Camps:	225 <sup>2</sup>	
Jaffna Camps:	10,956 <sup>3</sup>	
Trincomalee Camps:	6,831 <sup>4</sup>	
Hospitals:		<b>4,329<sup>5</sup></b> IDPs (injured and care givers) are in hospitals in various districts <sup>6</sup> as of 21 June 2009.
RELEASES		
Vavuniya Camps:	5,303	<b>5,483</b> people have been released from temporary camps into host families and elders' homes as of 18 June 2009. The majority of these people are elders, people with learning disabilities and other vulnerable groups.
Mannar Camps:	17	
Jaffna Camps:	163	

**Figure 9.1-1:** IDP statistics from UNOCHA report – Situation Report #18 – Source: hpsl.lk

IDPs		
During the period 27 October 2008 to 26 May 2009		<b>289,915</b> persons crossed to the Government controlled areas from the conflict zone. This represents an increase of 3,194 IDPs since the last report (Sitrep No.17) on 25 May 2009. The increase is mainly due to improved, systematic registration being undertaken in the camps.
Vavuniya Camps:	269,417 <sup>1</sup>	<b>287,598</b> people are accommodated in temporary camps.
Mannar Camps:	398 <sup>2</sup>	
Jaffna Camps:	11,086 <sup>3</sup>	
Trincomalee Camps:	6,697	
Hospitals:		<b>2,317<sup>4</sup></b> IDPs (injured and care givers) are in hospitals in various districts <sup>5</sup> as of 18 May 2009.
RELEASES		
Vavuniya Camps:	1,489	<b>1,537</b> people have been released from temporary camps into host families and elders' homes as of 21 May 2009. The majority of these people are elderly, mentally challenged individuals and other vulnerable groups.
Mannar Camps:	5	
Jaffna Camps:	43	

**Figure 9.1-2:** IDP statistics from UNOCHA report – Joint Humanitarian Update #10 – Source: hpsl.lk

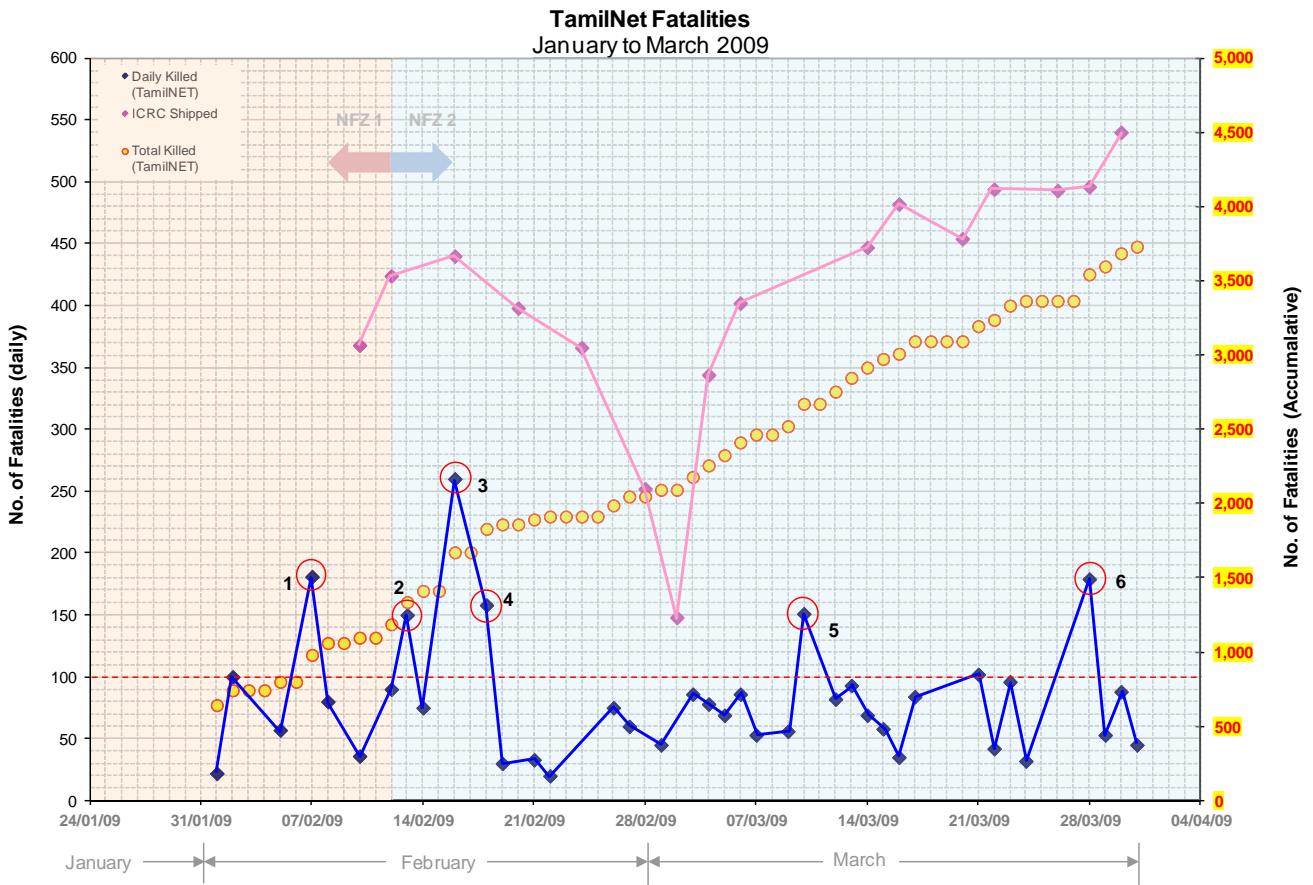


Figure 9.1-3: TamilNet fatality records from January 20 to March 31, 2009 – Source: tamilnet.com

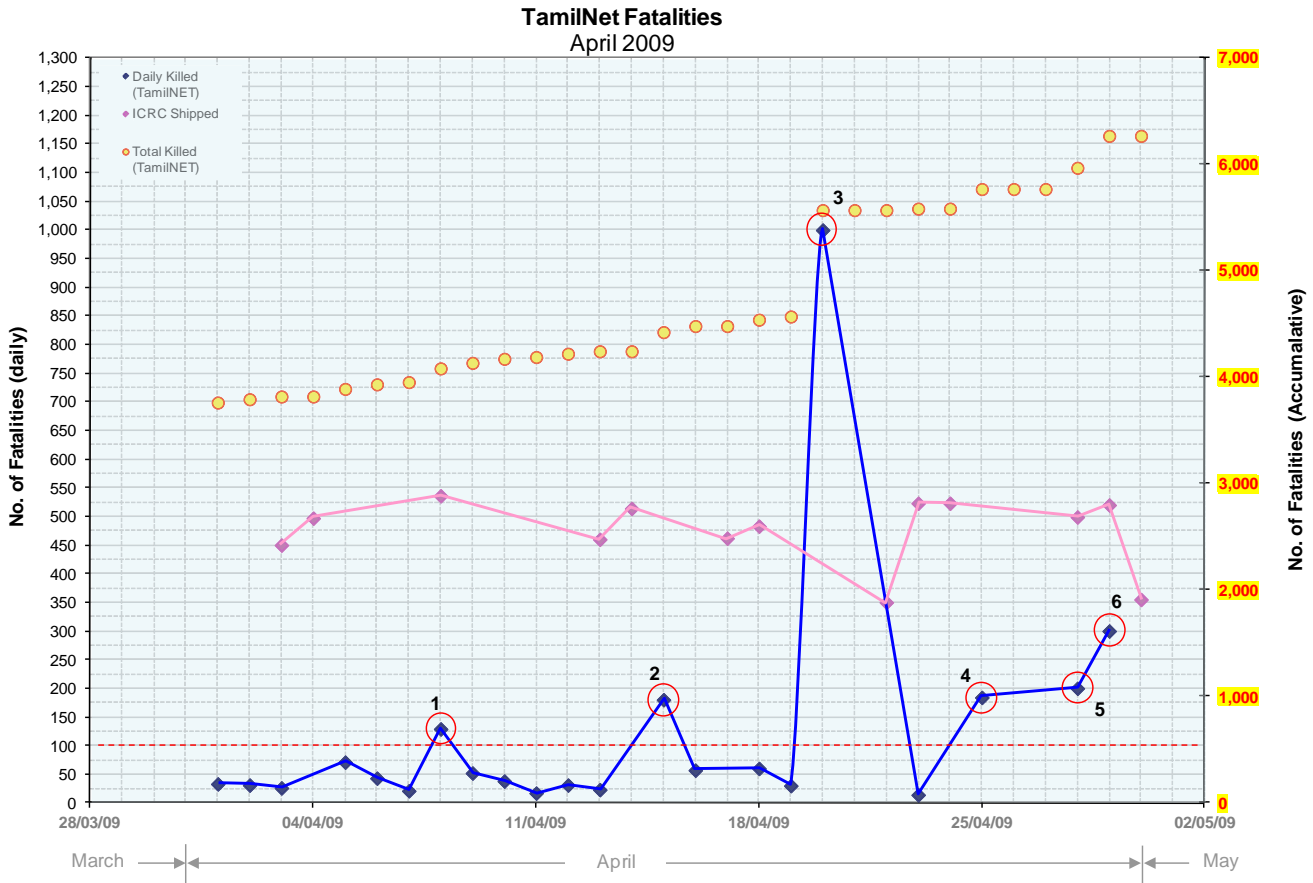
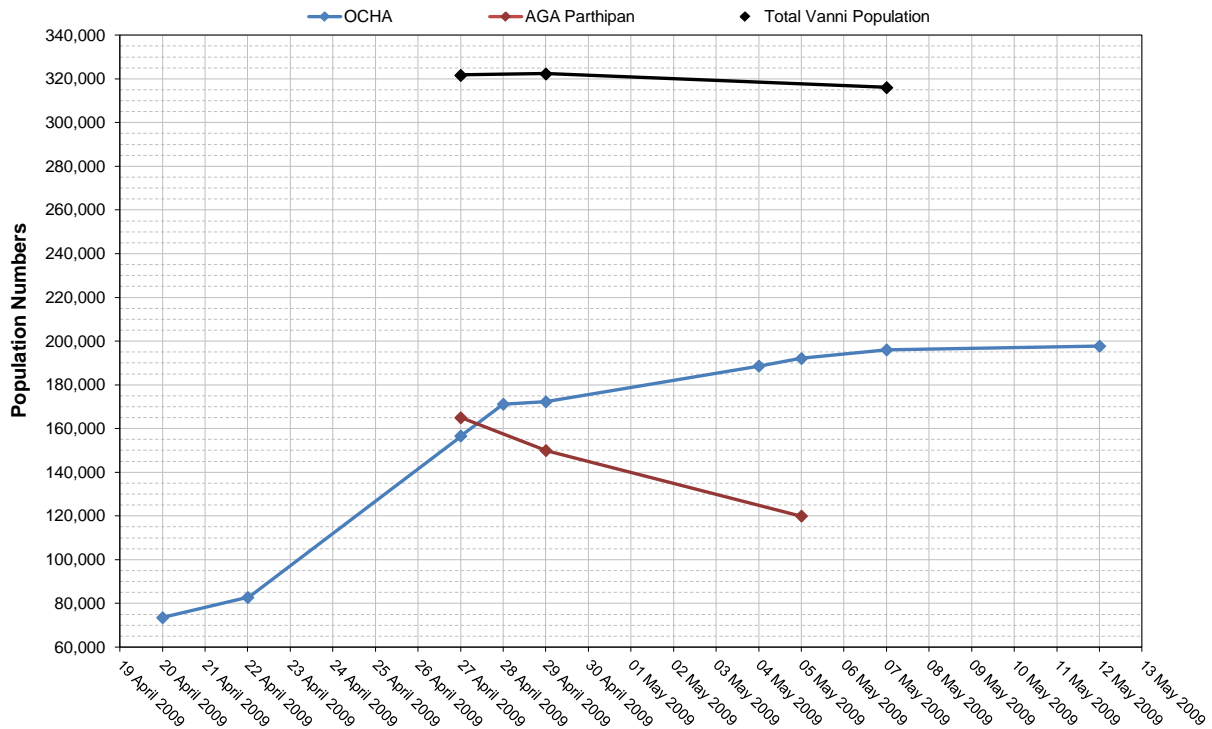


Figure 9.1-4: TamilNet fatality records for April 2009 – Source: tamilnet.com

### Population Trends over the last week of April 2009



Date	OCHA	AGA Parthipan + TamilNet	Total Population
20-Apr	73,511		
22-Apr	82,765		
27-Apr	156,645	~ 165,000	~ 321,645
28-Apr	171,184		
29-Apr	172,291	~ 150,000	~ 322,291
04-May	188,623		
05-May	192,094	~ 120,000	
07-May	196,044		~ 316,044
12-May	197,751		

**Figure 9.1-5:** The following graph shows the population changes from April 20 to May 12. As the plot indicates, the estimates coming out of the No-Fire-Zone from AGA Parthipan (April 23 – 27 and 29 estimates) and other sources (TamilNet for May 5 estimate), when added to the people already in the camps, shows remarkable consistency in the total population figure for the Vanni (~ 320,000 people). This demonstrates that a figure of around **150,000** in the No-Fire-Zone by the end of April appears to have been a reliable estimate. This is potentially indicative of a surprising development: that AGA Parthipan was now no longer relying on the figures provided by pro-LTTE GS's inside the No-Fire-Zone to estimate the number persons still left behind – the GS's were the sources behind AGA Parthipan's population estimates for February and March. The estimates for April clearly indicate that the figures the GS's provided for February and March are extremely unreliable.

The OCHA figures indicate that towards the end of the first 10 days of May, the total number of people in the camps had begun to stabilise at a nominal value. This was until the next major exodus on May 14. The OCHA figures for April 20 to May 12 can be found in the following OCHA reports: April 20: [LINK](#); April 22: [LINK](#); April 27: [LINK](#); April 28: [LINK](#); April 29: [LINK](#); May 4: [LINK](#); May 5: [LINK](#); May 7: [LINK](#); May 12: [LINK](#)

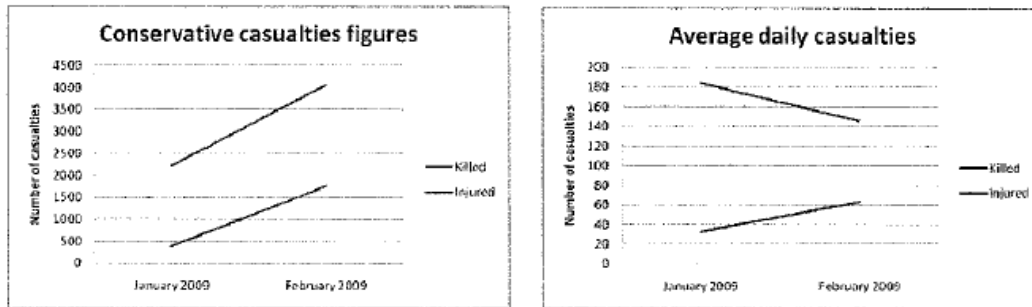
# Civilian casualties in the Vanni

NORTH | SRI LANKA

March 2009

## Casualty figures

Total minimum number of documented **civilian casualties** since 20 January 2009, as of 7 March 2009 in the conflict area of Mullaitivu District: **9,924 people including 2,683 deaths and 7,241 injuries**<sup>1</sup>. The number of people killed each day has doubled in one month.

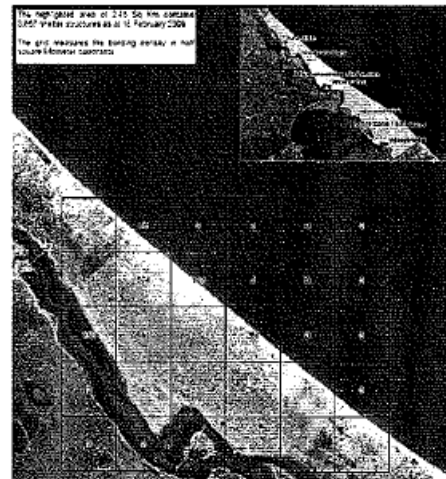


Attempts were made to indicate children under 15 years as an indicator of the presence of civilian casualties in general. Only partial figures were accumulated due to the difficulty of obtaining a constant breakdown. Nevertheless, there are **at least 135 deaths, and 707 injuries** since 20 January. However, like the basic casualty figure itself, this is thought to be a gross under estimate. Based on a population assumption the figure is likely to be closer to 400 deaths, and 1,100 injured. The recruitment of children by the LTTE must now be factored into the numbers of children who will perish.

## Density

Between January and February 2009 the combat area was reduced from 100 km<sup>2</sup> to 45 km<sup>2</sup><sup>2</sup> including the NFZ of 14 km<sup>2</sup>. As the combat area reduces the daily average shows an increase in the number of people killed (from 33 to 63) and a slight decrease in the number of injured (from 184 to 145). This is due to increased density, the use of heavy weapons which continue to strike the NFZ, and inadequate medical treatment.

**Two thirds of the documented casualties occurred in the NFZ**<sup>3</sup>.



<sup>1</sup> The ratio of deaths vs injuries is estimated to be 35.5%

<sup>2</sup> Colombo town is 40 Square Kilometres

<sup>3</sup> Between January and 12 February, the reporting network was spread over a broad area. Since most civilians are now in the small NFZ -- including the reporting network -- the information is better. The assumption is that casualties were greatly under-reported prior to 12 February.

Figure 9.1-6: Classified UNOCHA situation report issued March 2009 – Source: innercitypress.com

## 9.2 List of Maps



Figure 9.2-1: Situation map for February 2009 – Source: nation.lk

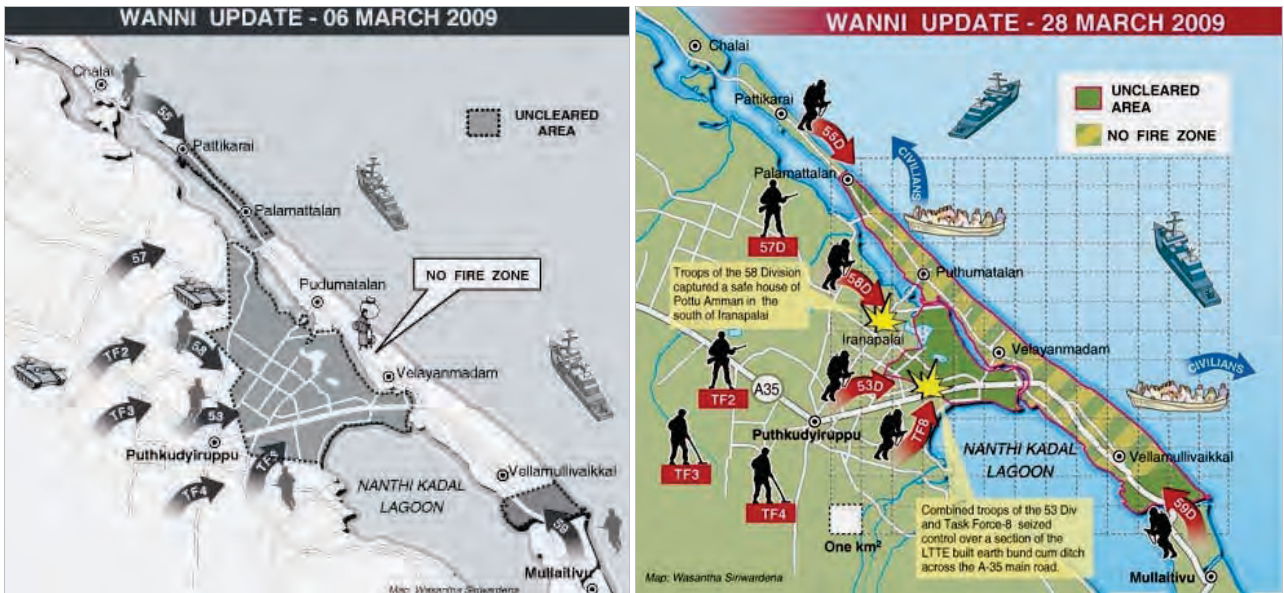


Figure 9.2-2: Situation map for March 2009 – Source: nation.lk

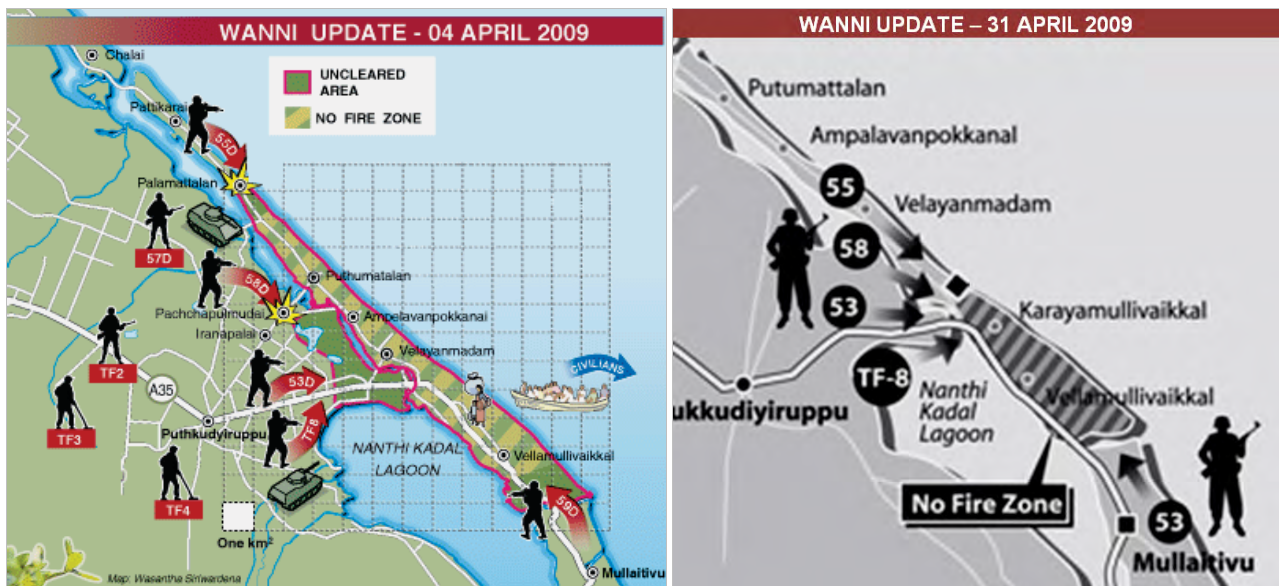


Figure 9.2-3: Situation map for April 2009 – Source: nation.lk

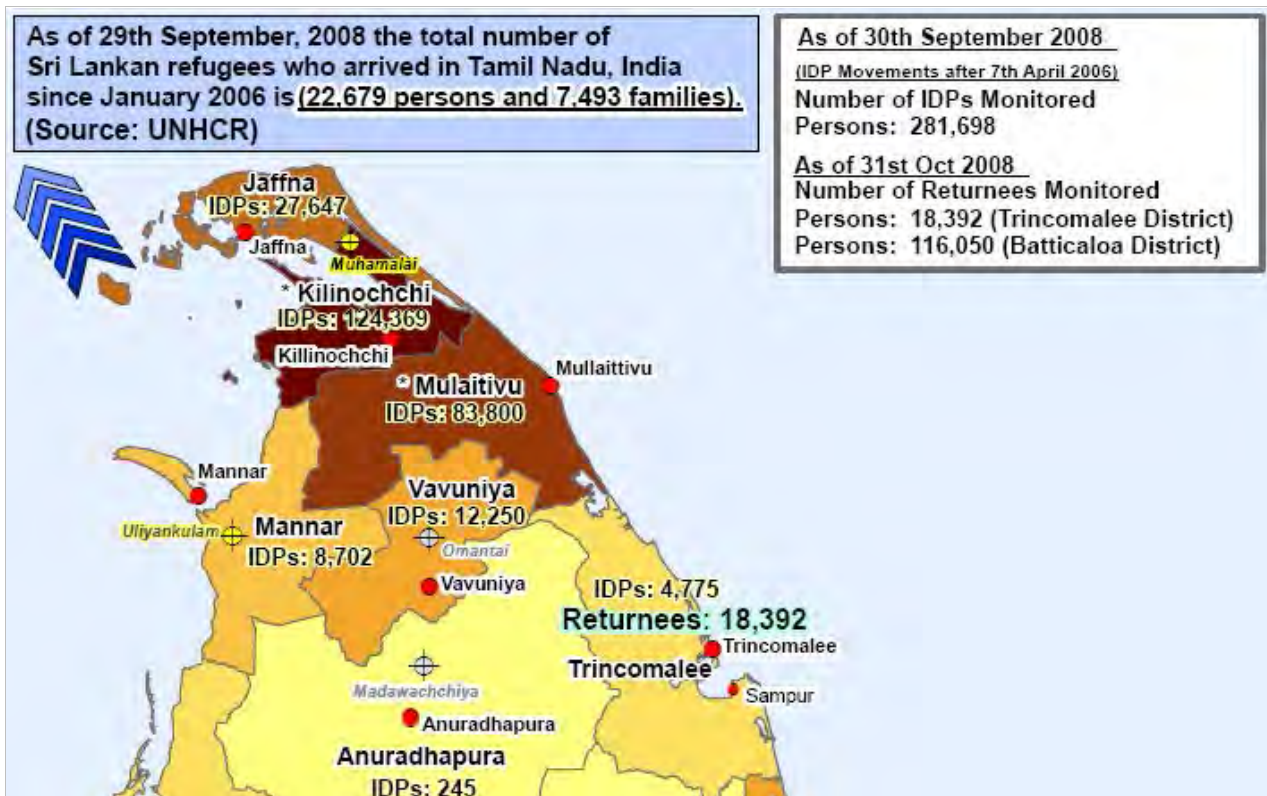


Figure 9.2-4: Situation map illustrating IDPs that fled the island by boat to India between 2006 to September 2008 – Source: hpsl.lk

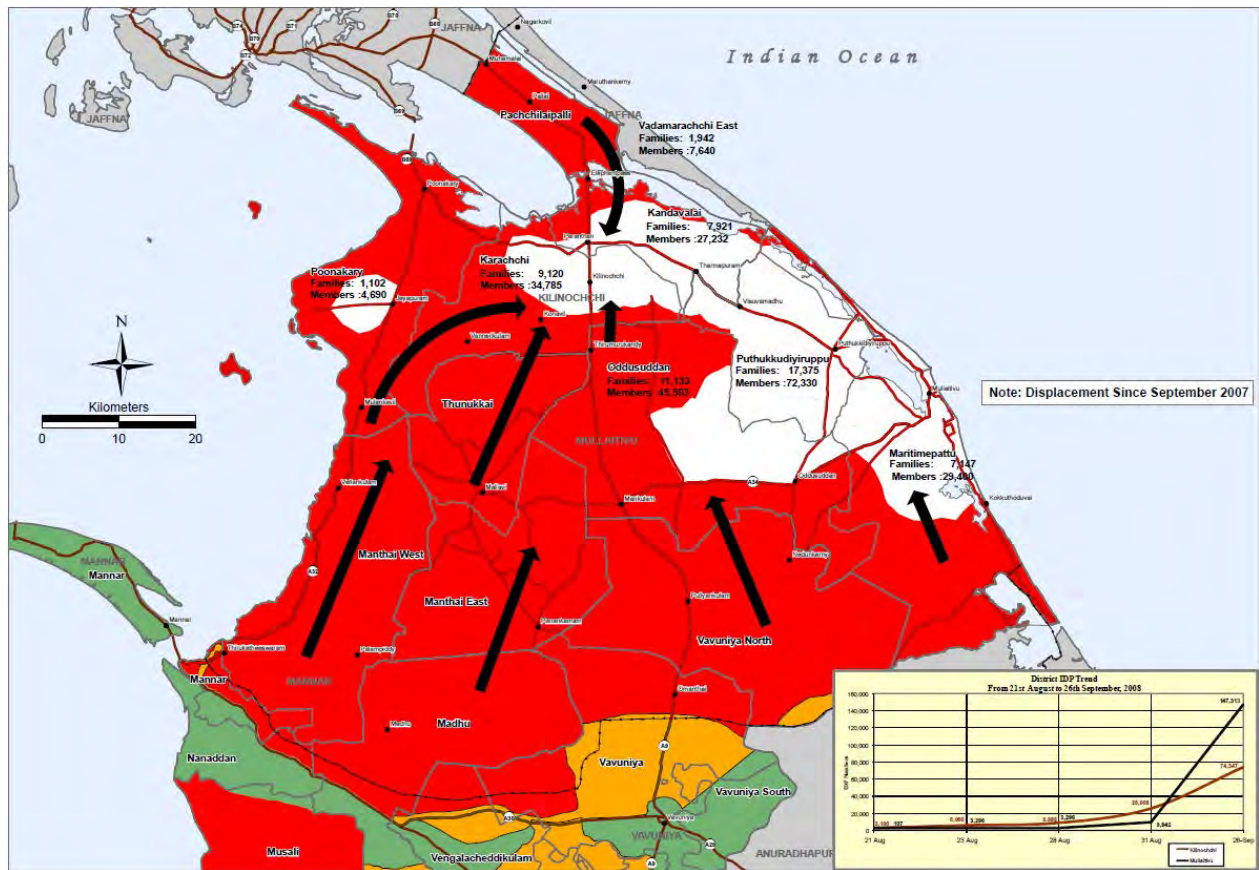


Figure 9.2-5: Displacement pattern of the Vanni population from September 2007 to September 2008 – Source: hpsl.lk



Figure 9.2-6: Situation Map for December 2008 – Source: army.lk

### 9.3 List of Images



Figure 9.3-1: Civilian auxiliaries from the *Eelapadai* and *Gramapadai* units being trained by LTTE instructors. These images show new recruits being trained in the use of anti-personal and claymore mines. These images were taken between 2005 and 2007 –  
Source: aruchuna.net





Figure 9.3-2: Civilian auxiliaries from the *Eelapadai* and *Gramapadai* units being trained by LTTE instructors. These images show new recruits being trained in the use of anti-personal and claymore mines. These images were taken between 2005 and 2007 –  
Source: [aruchuna.net](http://aruchuna.net)



Figure 9.3-3: LTTE 120 mm mortar emplacements in the second No-Fire-Zone identified from satellite imagery. These two mortar pits were photographed by a *Times* cameraman on May 24, 2009. There are several of these 120 mm mortar pits in the second No-Fire-Zone and all are located in close proximity to civilian tent shelters. This is clear evidence of instances the LTTE have used civilians to shield military equipment – Source: [aruchuna.net](http://aruchuna.net) & [earth.google.com](http://earth.google.com)



Figure 9.3-4: Aerial photographs of second No-Fire-Zone in Putumattalan. A unique characteristic of these images is the number of undamaged shelters. Clear evidence to show that the area was not indiscriminately bombarded as was commonly described by media organs sympathetic to the LTTE – Source: apimages.com



Figure 9.3-5: Aerial photographs of third and final No-Fire-Zone in Mullivaikal. A unique characteristic of these images is the number of undamaged shelters. Clear evidence to show that the area was not indiscriminately bombed as was commonly described by media organs sympathetic to the LTTE – Source: apimages.com



© AP

Figure 9.3-6: Aerial photographs of the second and third No-Fire-Zone in Mullivaikal. A unique characteristic of these images is the number of undamaged shelters. Clear evidence to show that the area was not indiscriminately bombarded as was commonly described by media organs sympathetic to the LTTE. The lower image shows several LTTE military fortifications in close proximity to civilian shelters – **Source: apimages.com**



Figure 9.3-7: Aerial photographs of the third and final No-Fire-Zone in Mullivaikal. A unique characteristic of these images is the number of undamaged shelters. Clear evidence to show that the area was not indiscriminately bombed as was commonly described by media organs sympathetic to the LTTE – Source: apimages.com

## Weapons recovered from the final No-Fire-Zone in Vellamullivaikal and Karayamullivaikal



Figure 9.3-8: The weapons recovered from the general areas of Vellamullivaikal and Karayamullivaikal on May 18 after the final battle (TOP LEFT) 3 x 152 mm and 1 x 130 mm artillery guns recovered from the beach 3 years later (TOP RIGHT) 152 mm artillery gun, 1 of 3 recovered in a patch of forest in the Vellamullivaikal area (MIDDLE) indigenous heavy calibre rocket powered mortars (Pandithar 1550) recovered near Karayamullivaikal (BOTTOM LEFT) 73 mm anti-aircraft gun recovered in a built up area of Karayamullivaikal (BOTTOM RIGHT) 106 mm recoilless anti-tank gun recovered in a built up area of Karayamullivaikal –

Source: army.lk



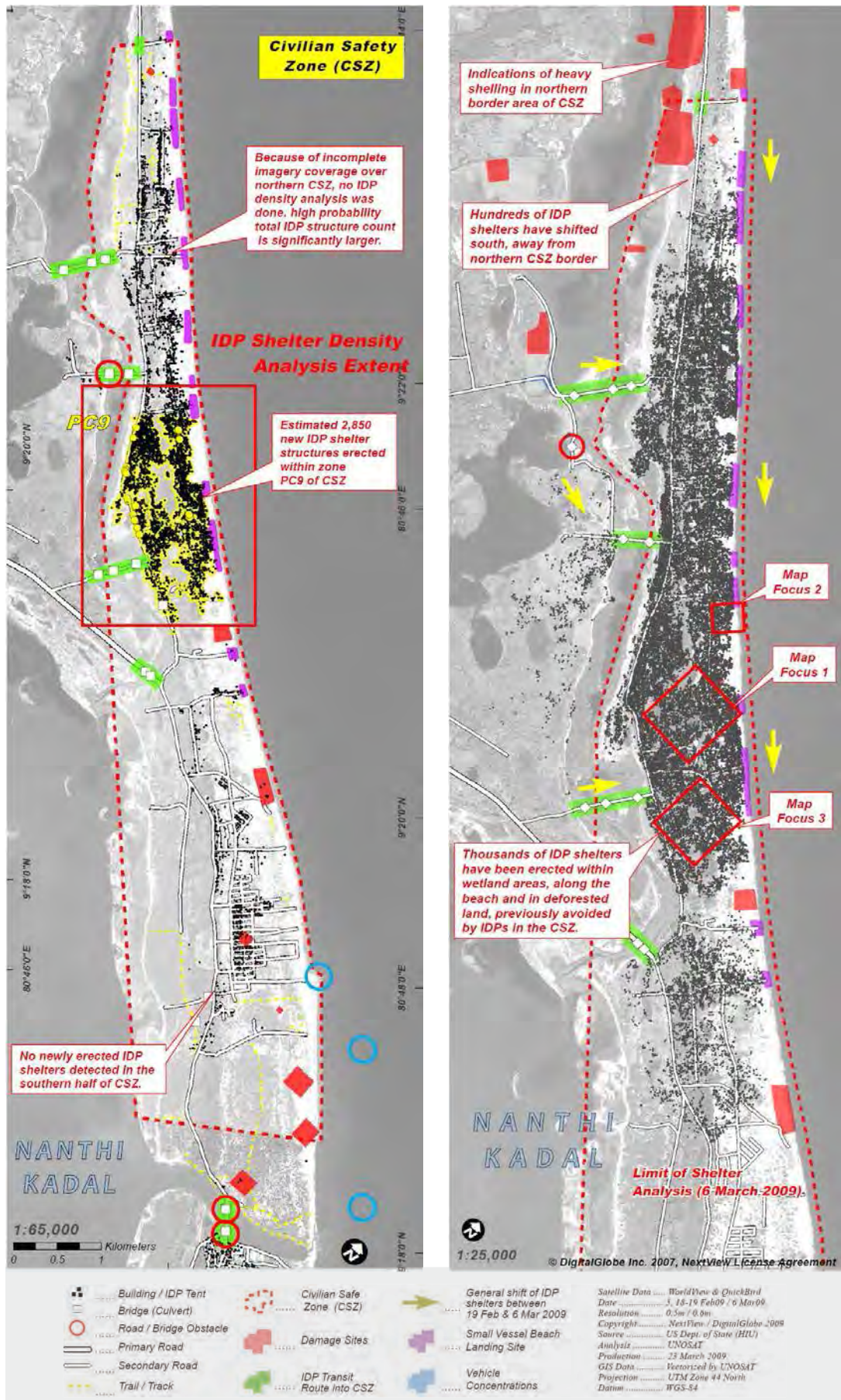
Figure 9.3-9: The weapons recovered from the general areas of Vellamullivaikal and Karayamullivaikal on May 18 after the final battle (TOP) 152 mm artillery gun, 1 of 3 recovered in a patch of forest in the Vellamullivaikal area (MIDDLE and BOTTOM) an assortment of recovered weapons: 120 mm, 81 mm, 60 mm mortars, indigenous BaBa mortars, 106 mm rockets and launcher, 106 mm recoilless anti-tank guns, Pandithar 1550 mortar rockets – Source: army.lk





Figure 9.3-10: Images from Fallujah, Iraq showing the destruction to civilian properties from American attacks in 2004 – Source: reuters.com & apimages.com

## 9.4 List of Satellite Imagery



**Figure 9.4-1:** Assessment by UNITAR/UNOSAT of 19 February (LEFT) and 6 March (RIGHT) satellite imagery – Source: [unitar.org](http://unitar.org)

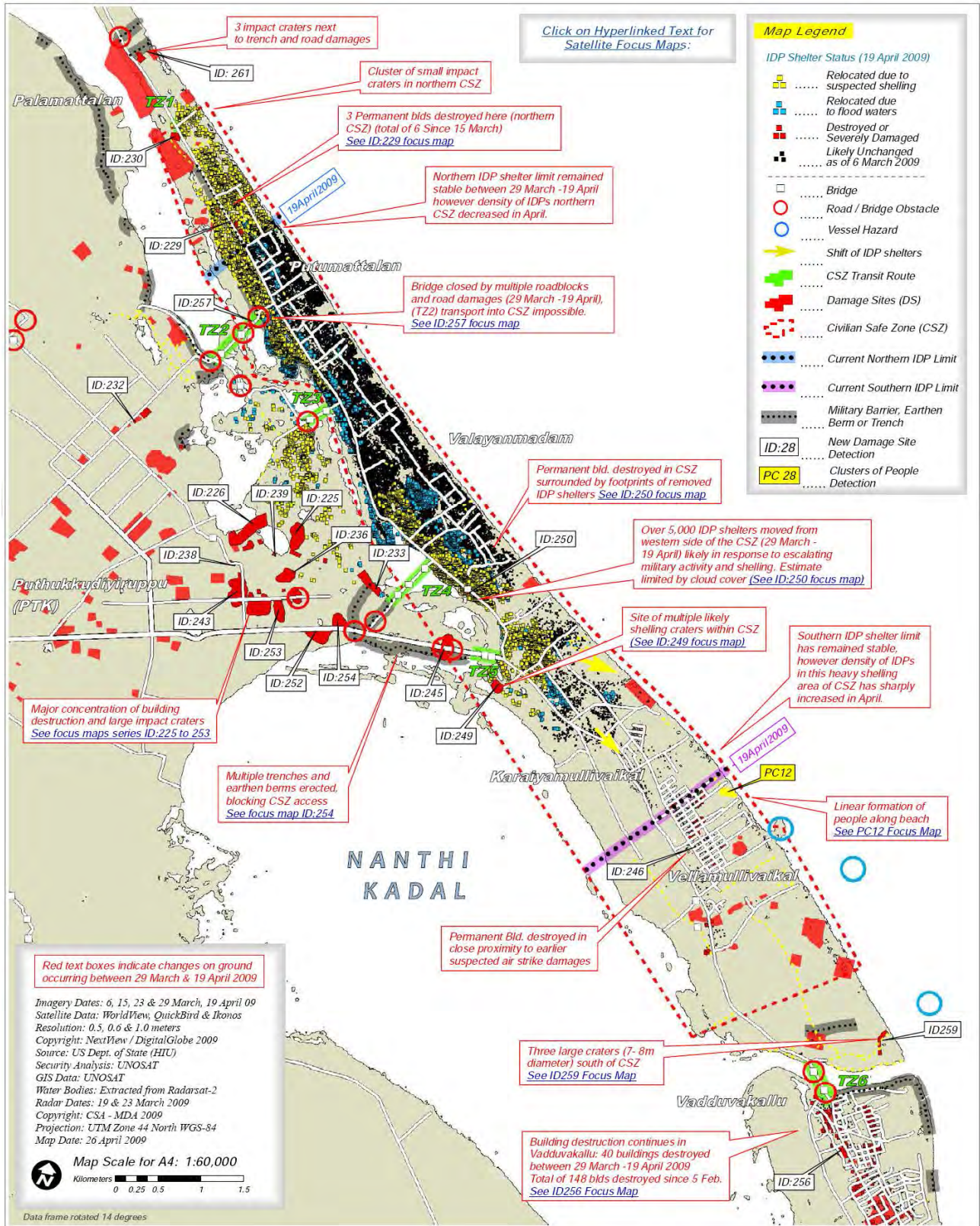


Figure 9.4-2: Assessment by UNITAR/UNOSAT of 19 April 2009 satellite imagery – Source: unitar.org

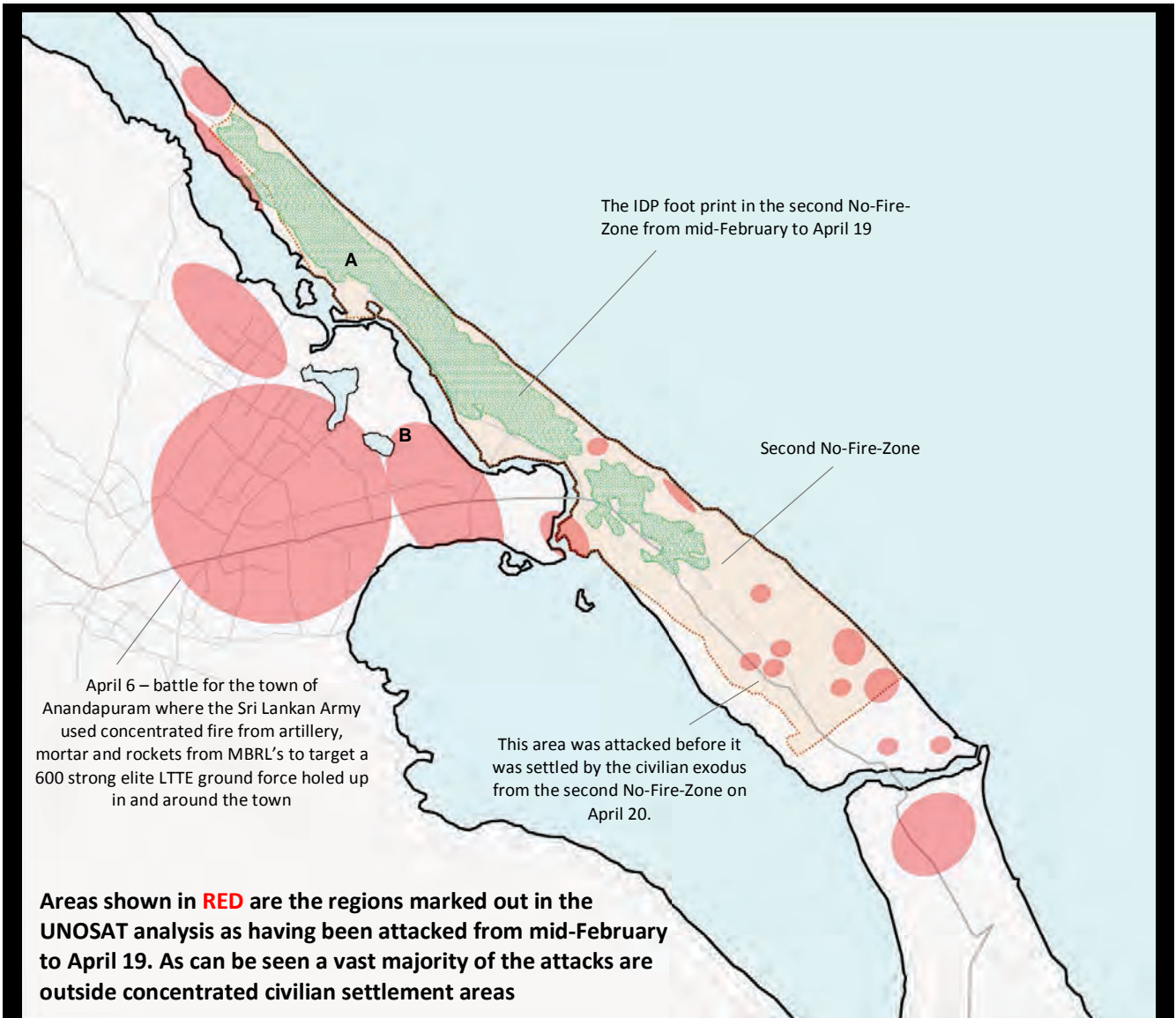


Figure 9.4-3: Graphical illustration of the areas that have been attacked between mid-February to April 19, the information is based on data from Figure 9.4-2 – Source: earth.google.com



× 200 m



Figure 9.4-4: (TOP) 81mm mortar crater, taken by TamilNet. Images were taken on 12 May 2009. The person standing up gives an indication of diameter of crater. Note peripheral ejecta of soil along the raised rim of the crater. (BOTTOM) Mortar craters in the second No-Fire-Zone as seen from satellite imagery. Images were taken on 24 May 2009, and represent 81mm and 120mm shell craters – Source: [tamilnet.com](http://tamilnet.com) & [earth.google.com](http://earth.google.com)



× 200 m



**Figure 9.4-5:** (TOP) 130mm artillery shell crater, taken by TamilNet. Images were taken on 27 July 2007. The person standing up gives an indication of diameter of crater. Note peripheral ejecta of soil along the raised rim of the crater. (BOTTOM) Artillery craters in the second No-Fire-Zone as seen from satellite imagery. Images were taken on 24 May 2009, and represent 152mm and 130mm shell craters – **Source:** [tamilnet.com](http://tamilnet.com) & [earth.google.com](http://earth.google.com)

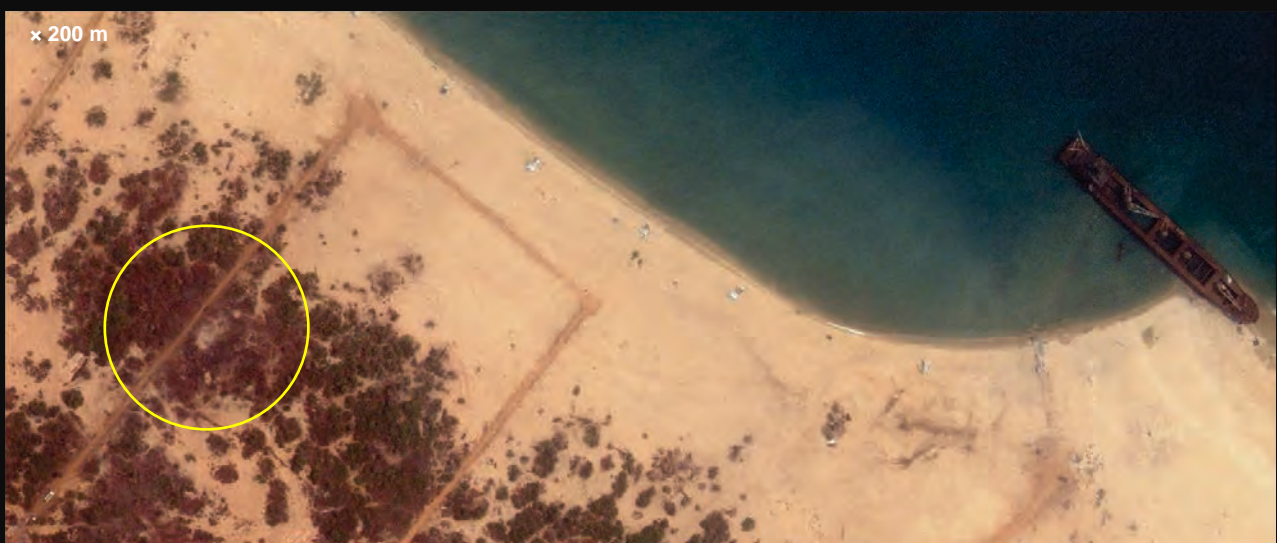


Figure 9.4-6: (TOP) An area razed by MBRL rockets, taken by The Times. Images were taken on 24 May 2009. Note discolouration of the soil due to intense heat and the burnt trees. (BOTTOM) The same site as seen from satellite imagery. Images were taken on 24 May 2009. The discolouration of the soil and burnt trees are clearly distinguishable from the surrounding vegetation and soil – Source: [thetimes.co.uk](http://thetimes.co.uk) & [earth.google.com](http://earth.google.com)



Figure 9.4-7: Locations of LTTE heavy artillery in relation to the civilian settlement foot-print during the last week of the war – Source: army.lk & earth.google.com



Figure 9.4-8: Examples of the some of the heavy calibre weaponry recovered from the Vellamullivaikal and Karayamullivaikal areas on 18 May 2009 – Source: army.lk



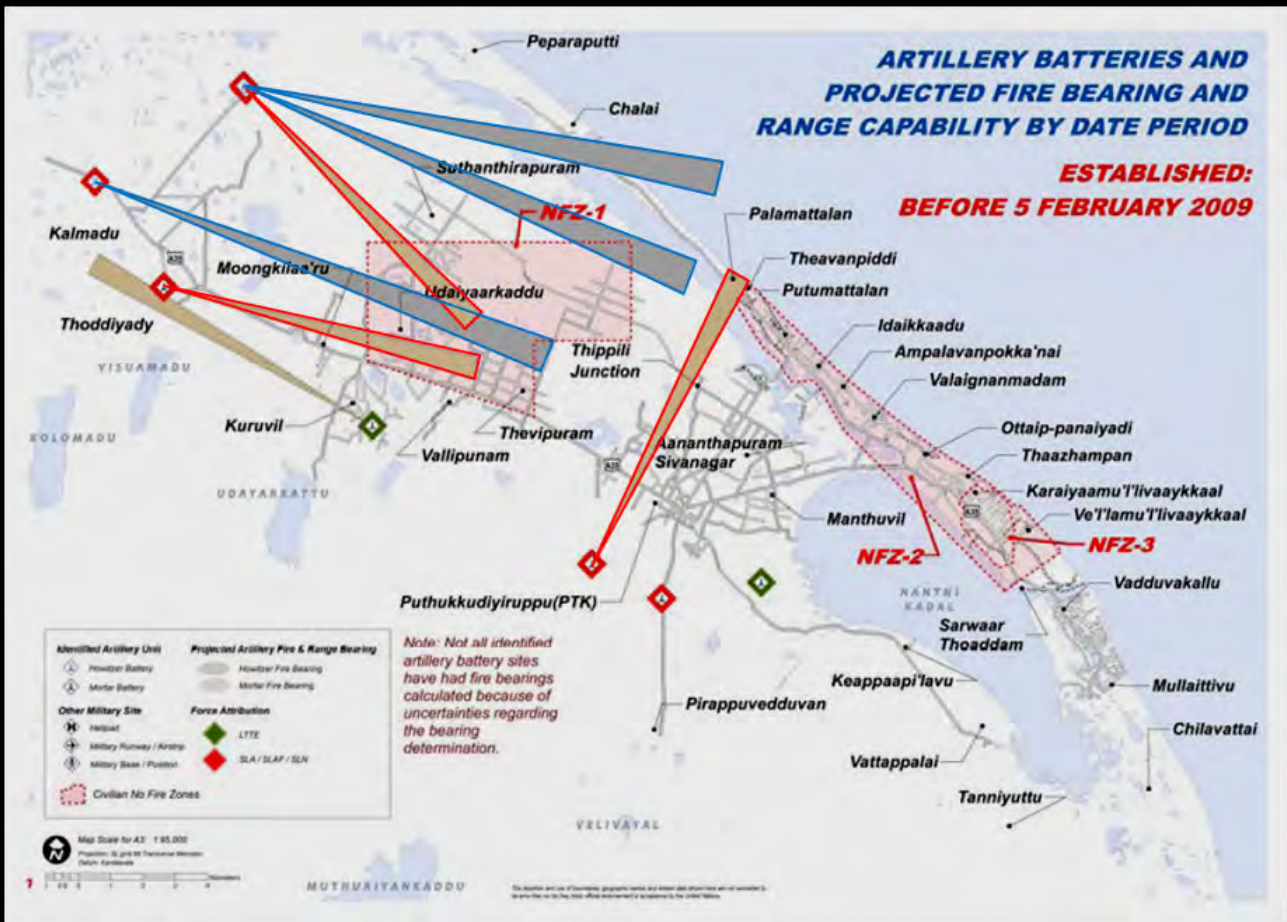


Figure 9.4-9: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period before 5 February 2009 – Source: unitar.org (BOTTOM) the forward defence lines during this period

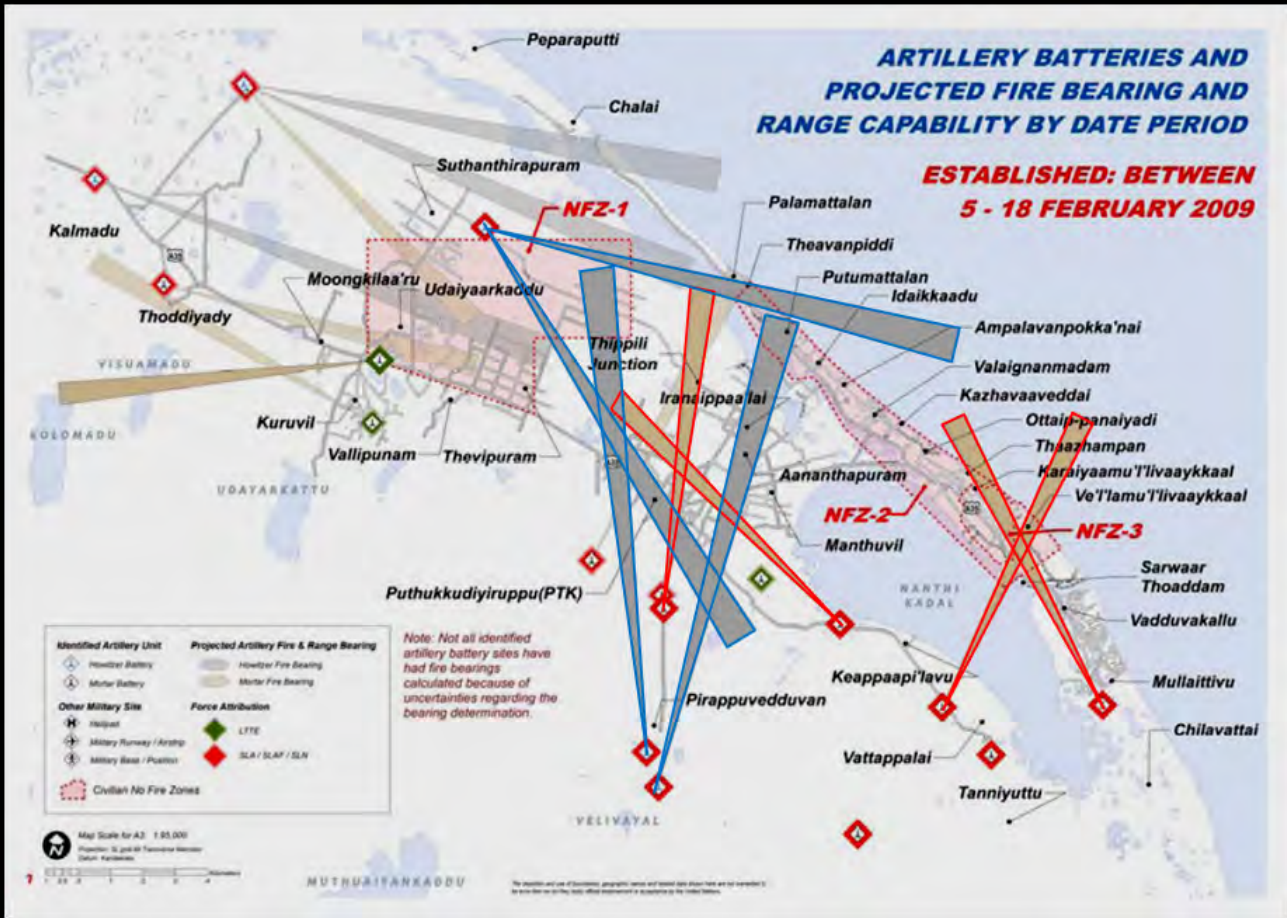


Figure 9.4-10: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period covering 5 – 18 February 2009 – Source: unitar.org (BOTTOM) the forward defence lines during this period

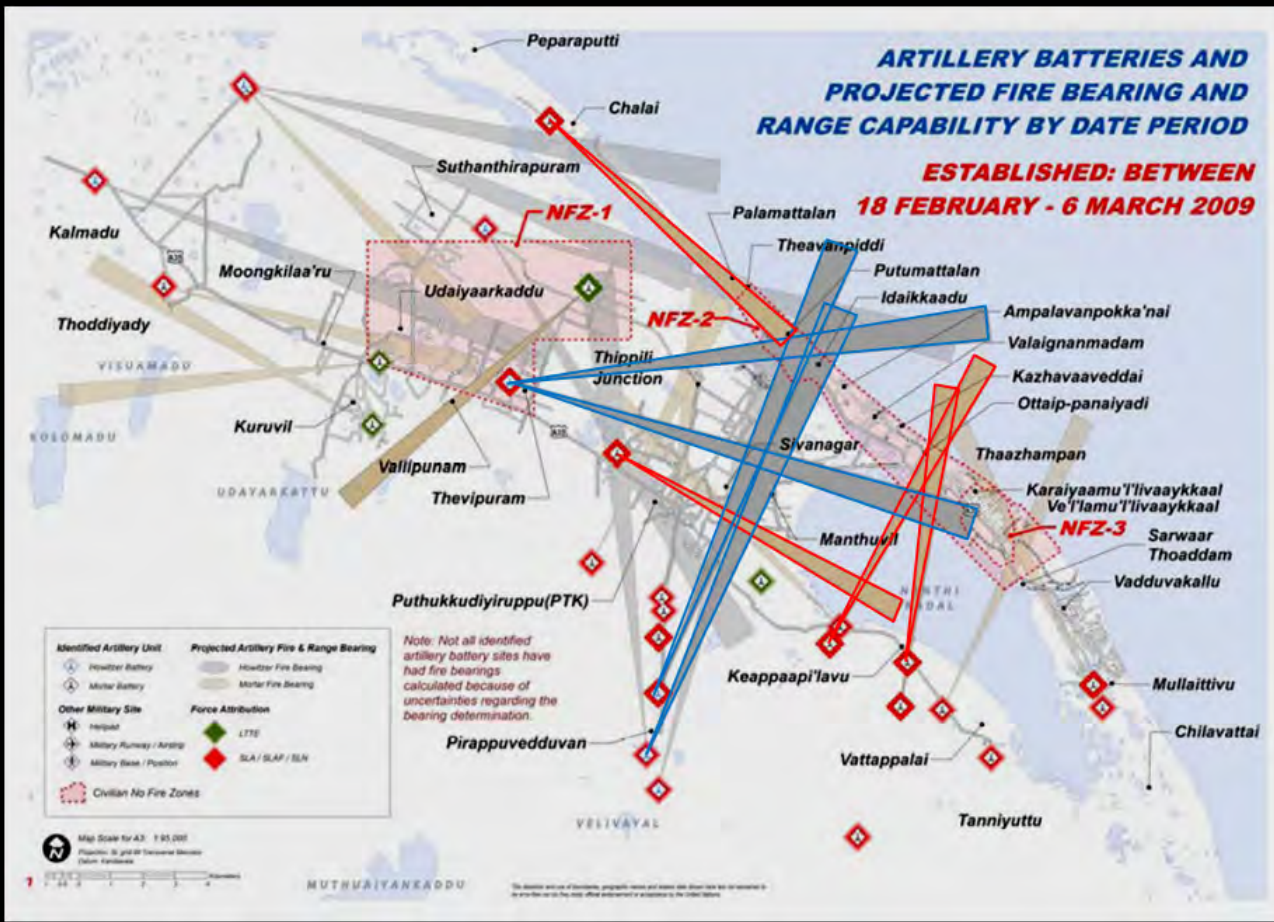


Figure 9.4-11: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period covering 18 February – 6 March 2009 – Source: unitar.org (BOTTOM) the forward defence lines during this period

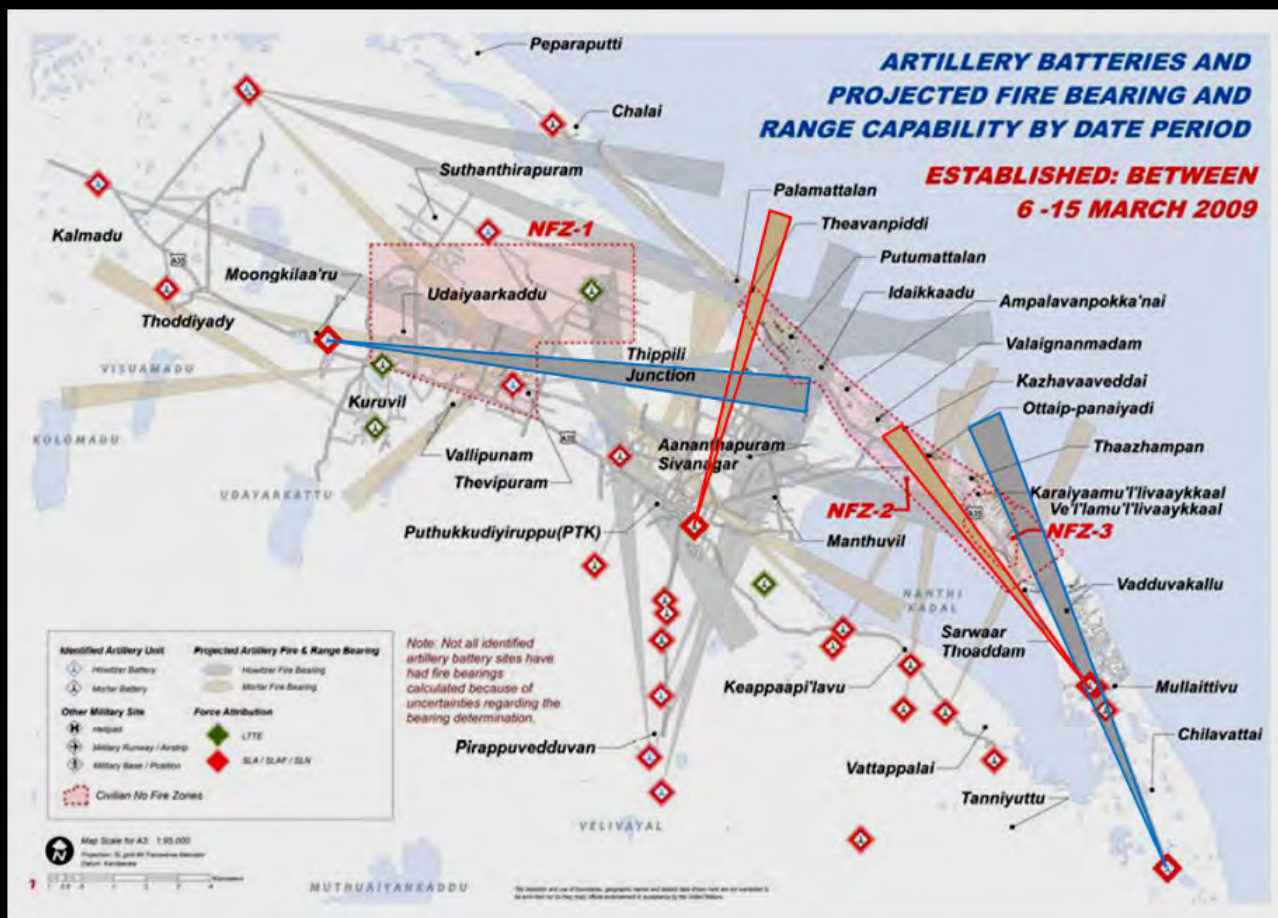


Figure 9.4-12: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period covering 6 – 15 March 2009 – Source: unitar.org (BOTTOM) the forward defence lines during this period

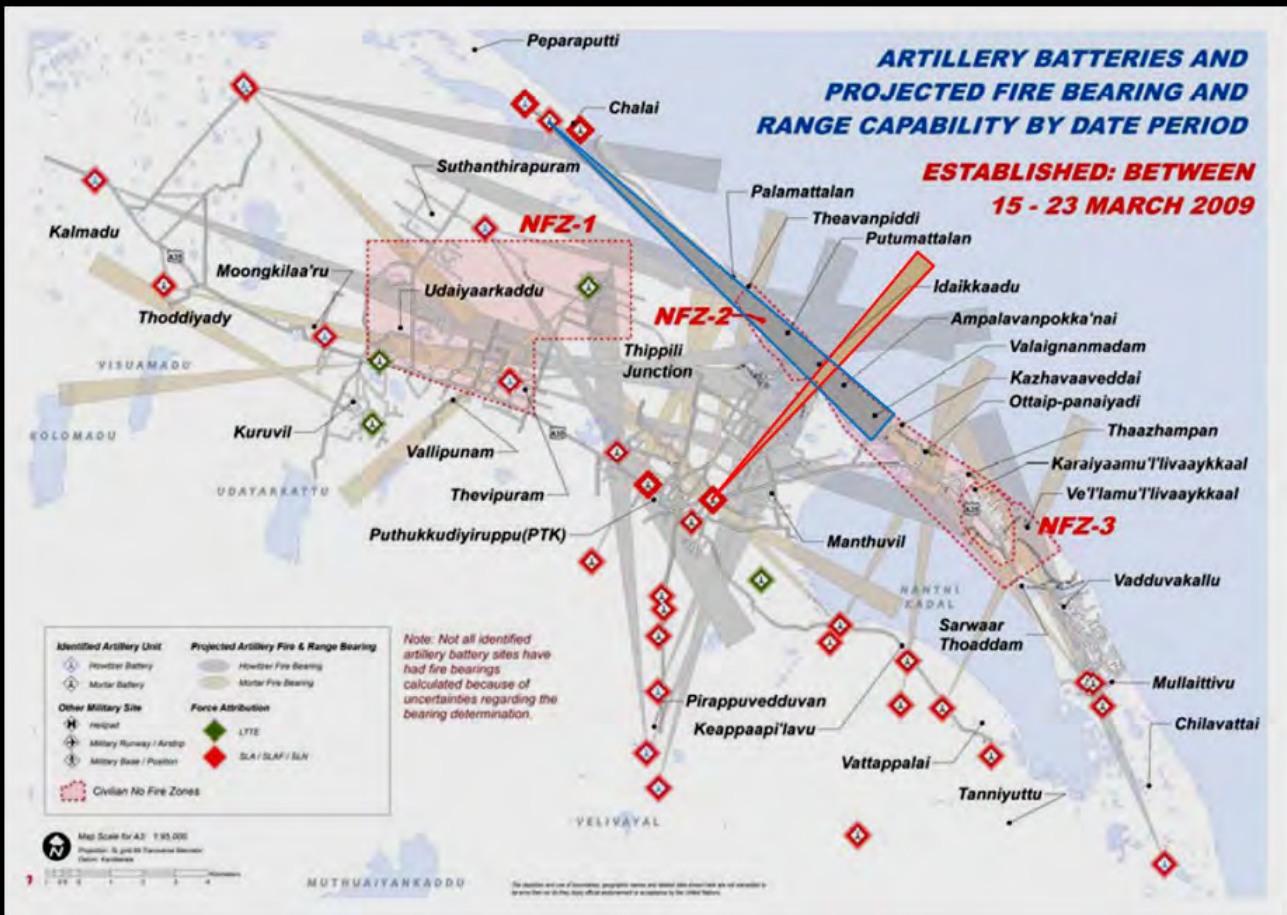


Figure 9.4-13: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period covering 15 – 23 March 2009 – Source: unitar.org (BOTTOM) the forward defence lines during this period

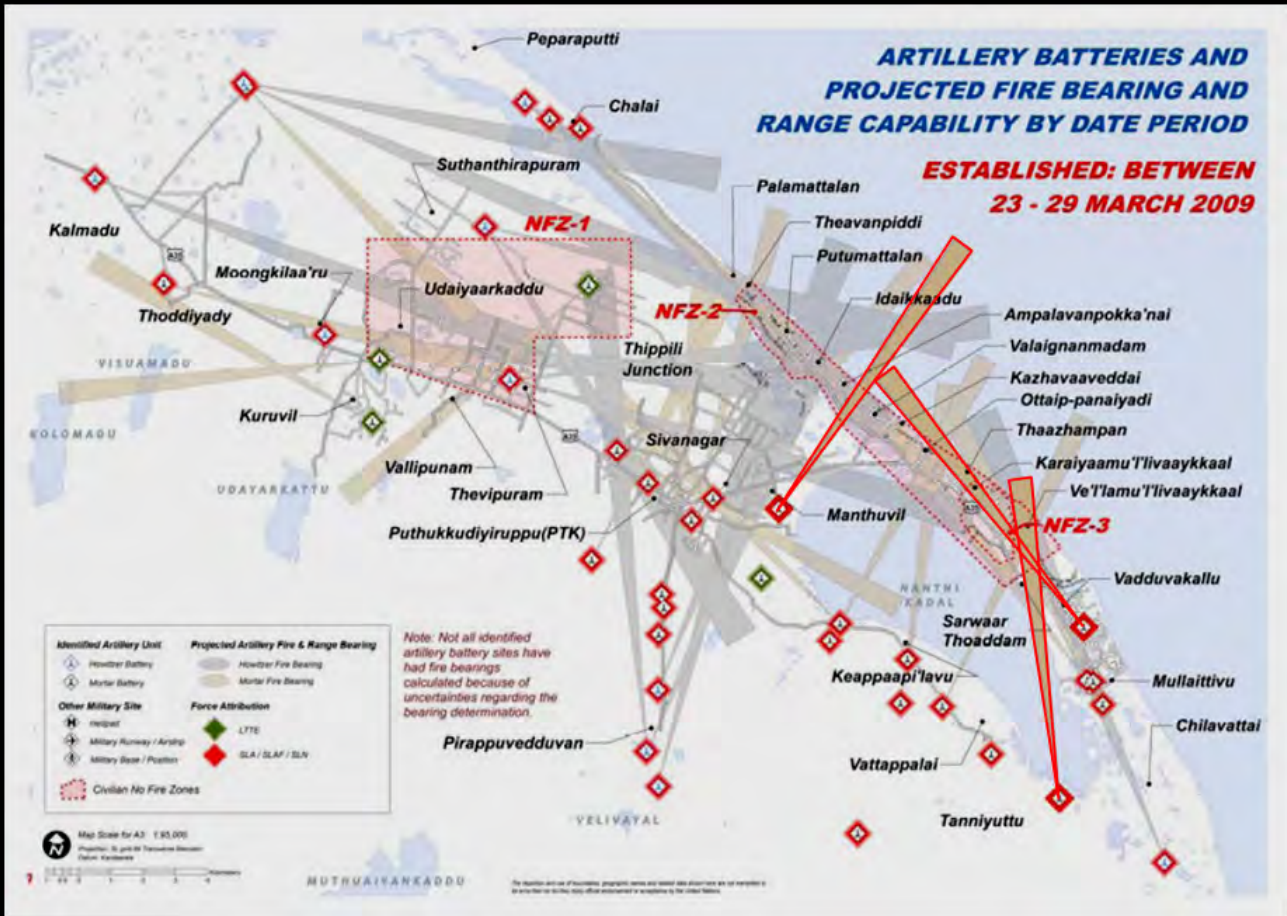


Figure 9.4-14: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period covering 23 – 29 March 2009 – Source: unitar.org (BOTTOM) the forward defence lines during this period

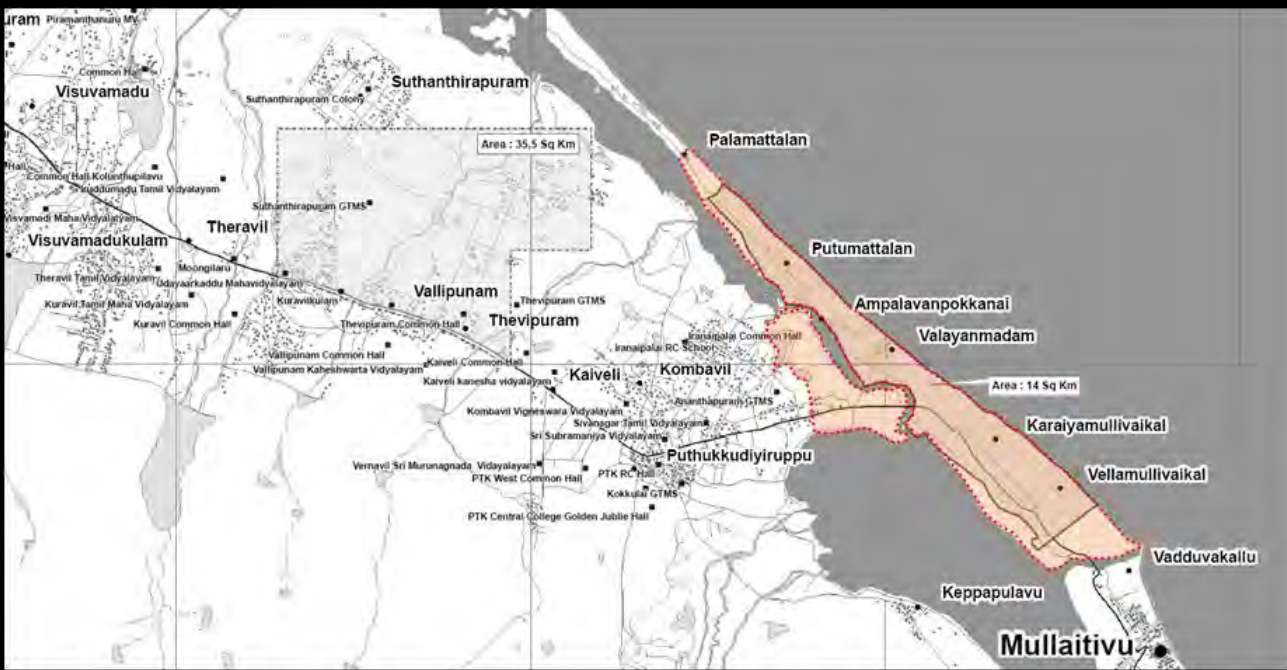
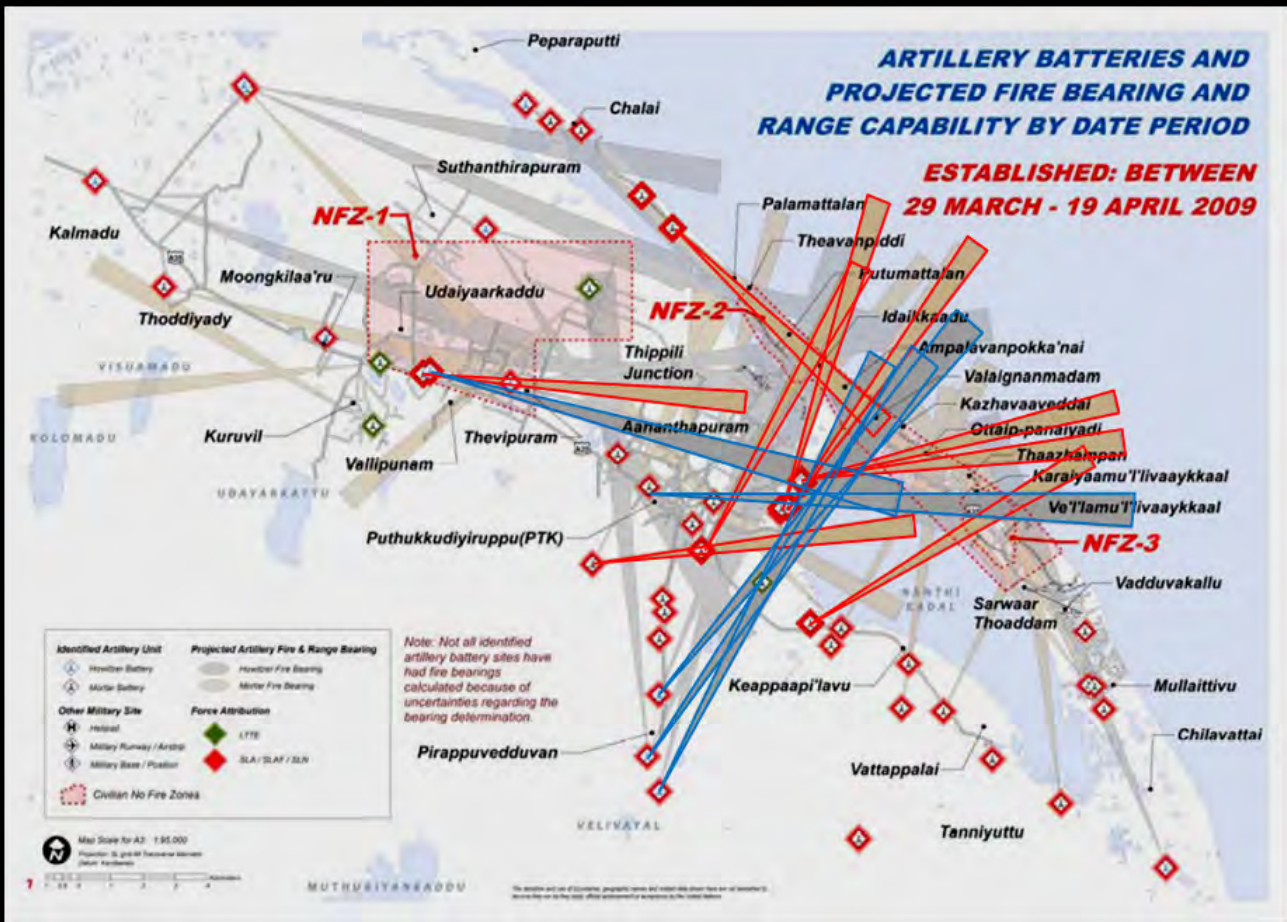


Figure 9.4-15: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period covering 29 March – 19 April – Source: unitar.org 2009 (BOTTOM) the forward defence lines during this period

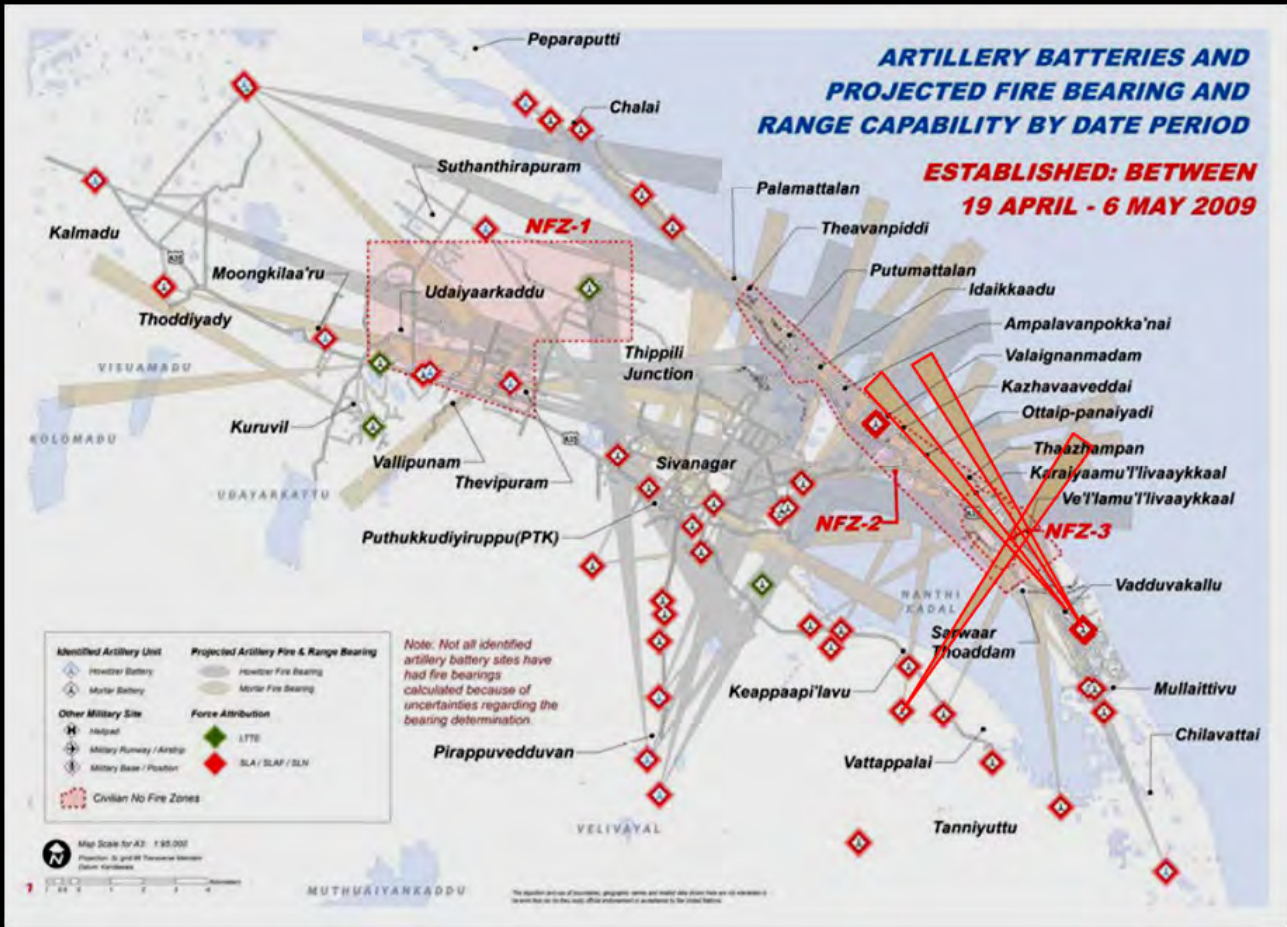


Figure 9.4-16: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period covering 19 April – 6 May 2009 – Source: unitar.org (BOTTOM) the forward defence lines during this period



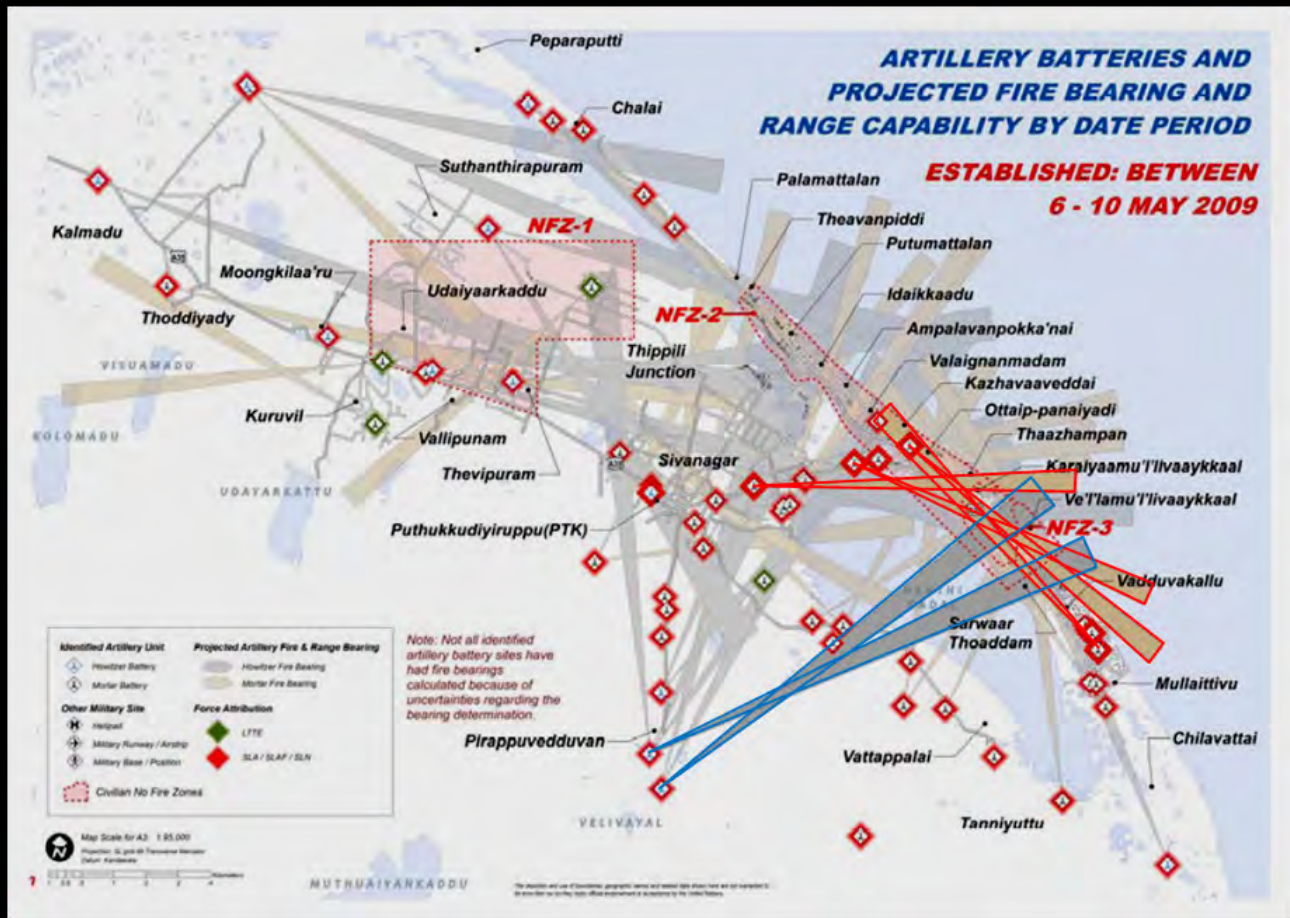


Figure 9.4-17: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period covering 6 – 10 May 2009 – Source: unitar.org (BOTTOM) the forward defence lines during this period

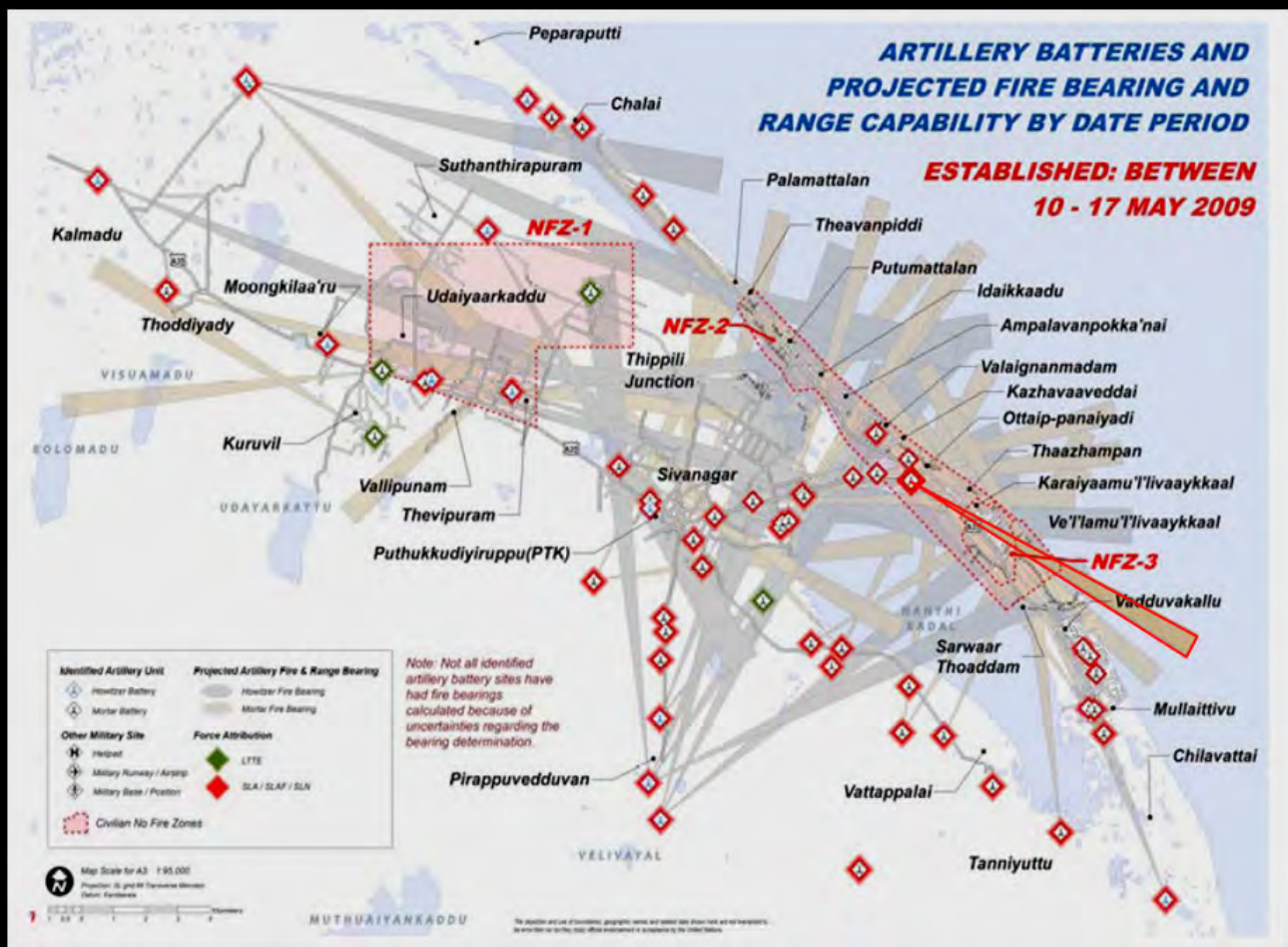


Figure 9.4-18: (TOP) UNOSAT illustrations of artillery batteries and projected fire bearing for the period covering 10 – 17 May 2009 – Source: unitar.org (BOTTOM) the forward defence lines during this period

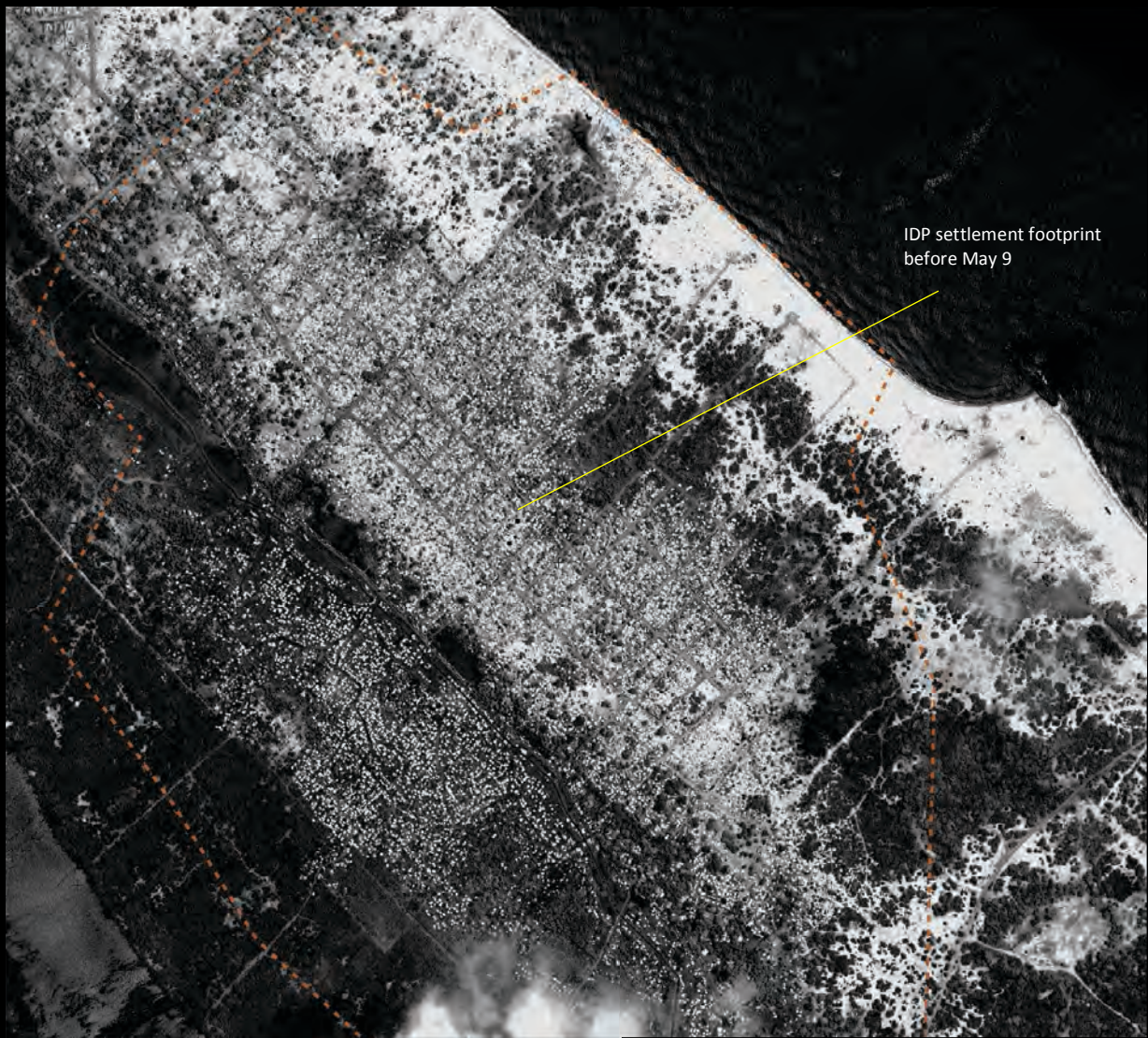


Figure 9.4-19: Satellite image of the IDP settlement footprint on 6 May 2009 – Source: unitar.org

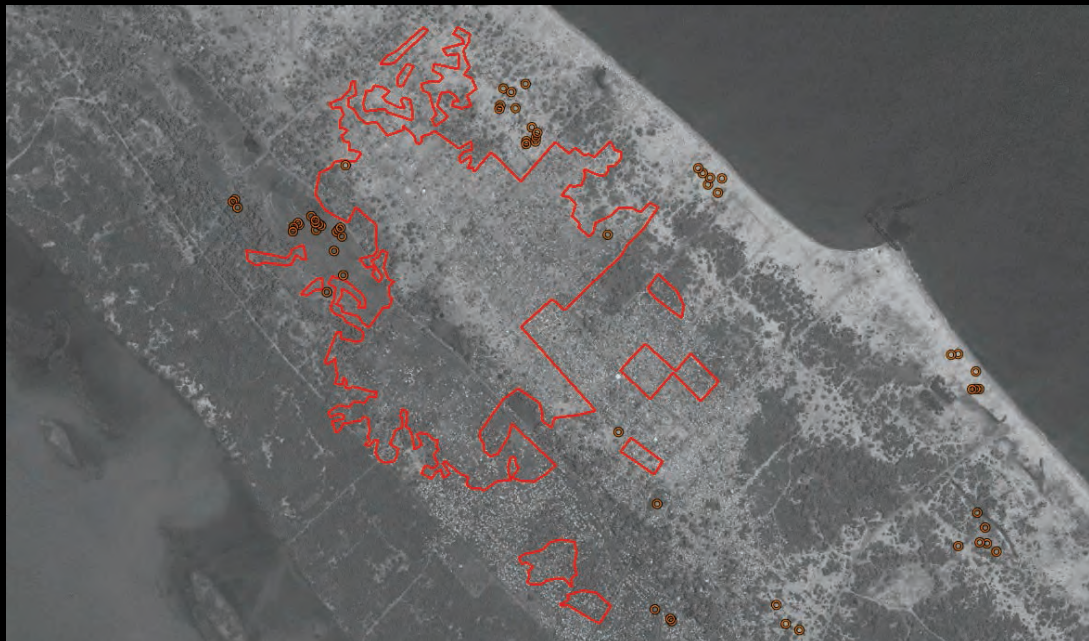


Figure 9.4-20: Annotated satellite image of the IDP footprint on 10 May 2009. The analysis was undertaken by the AAAS and shows the mortar craters that were identified on the image – Source: AAAS.org

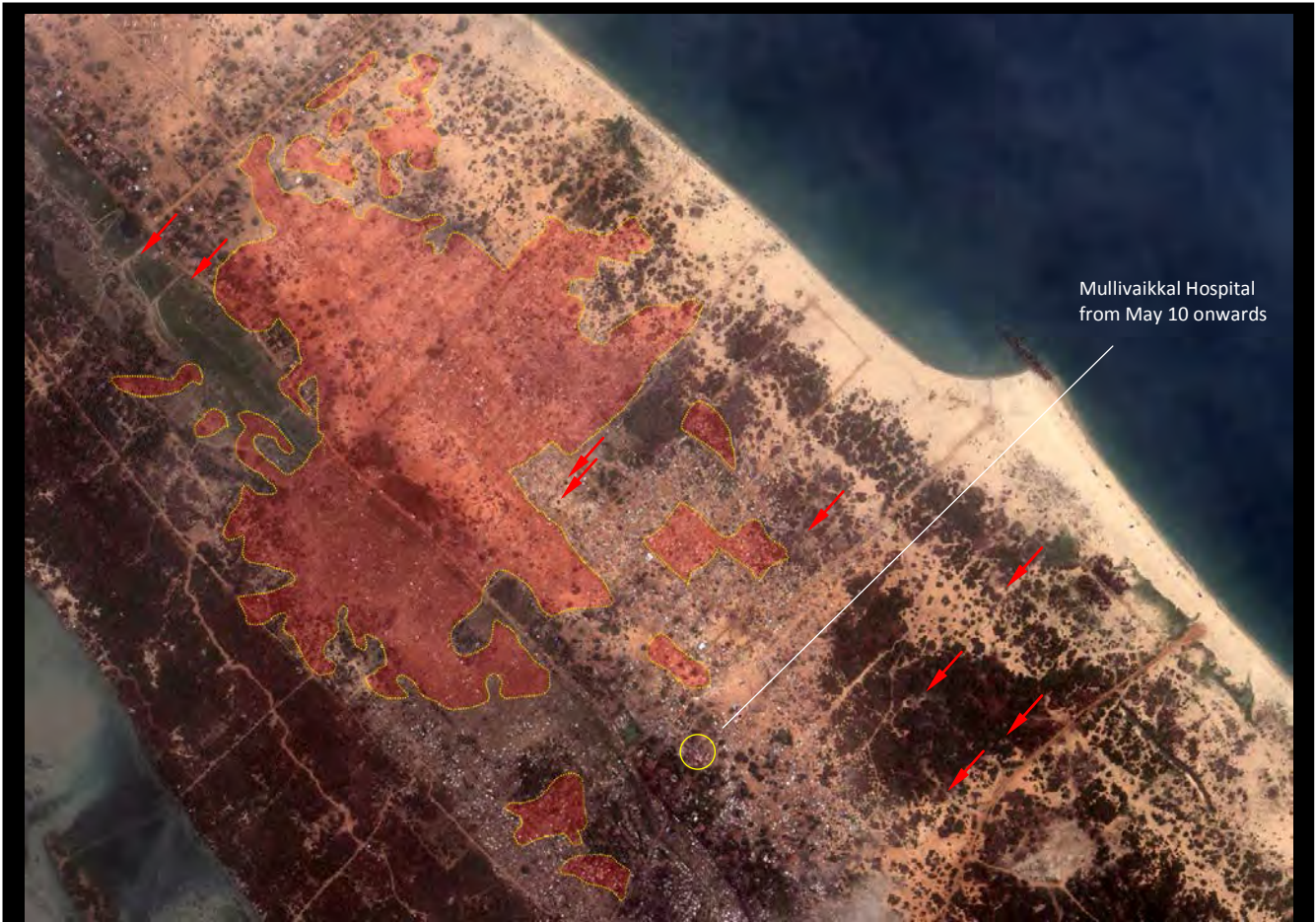
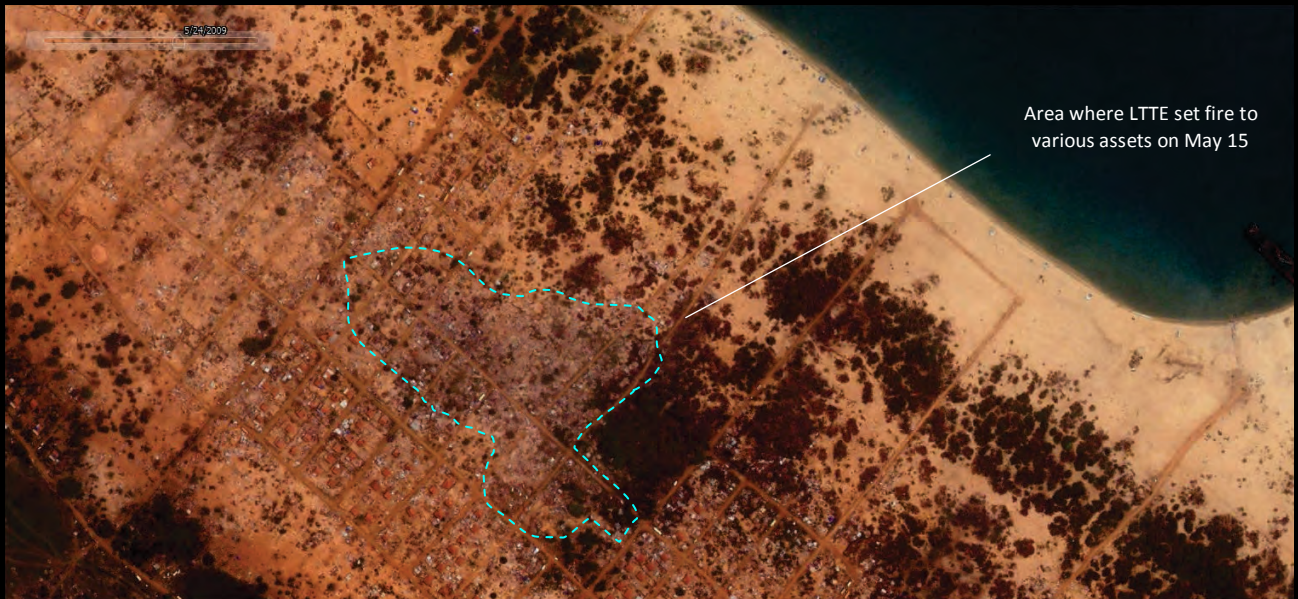


Figure 9.4-21: Artillery impact craters (RED) in the second No-Fire-Zone in relation to the IDP settlement site on May 6



Figure 9.4-22: Mortar impact craters (WHITE) in the second No-Fire-Zone in relation to the IDP settlement site on May 6



**Figure 9.4-23:** The areas in the third No-Fire-Zone that were affected by the LTTE fire on May 15 – Source: [earth.google.com](http://earth.google.com)



Figure 9.4-24: Damage to buildings due to artillery. Destroyed buildings generally have load-bearing interior and exterior walls left intact with the roof removed. Area Vadduvakallu – Source: [earth.google.com](http://earth.google.com)



Figure 9.4-25: Damage to buildings due to mortar – See the qualitative differences in the damage pattern. House damaged by mortar shells have most of their roofs intact. Area Karaiyamullivaikal – Source: [earth.google.com](http://earth.google.com)



Figure 9.4-26: A shot of the third No-Fire-Zone illustrating the location of the zoom boxes in relation to the IDP settlement footprint on May 6. The images below show the zoom boxes A to D. The former IDP settlement site is marked in RED – Source: [earth.google.com](http://earth.google.com)









**Figure 9.4-27:** Artillery (RED), mortar (WHITE) and rocket (YELLOW) impact craters in a selected area of Mullivaikal. Areas A1 and A2 have been zoomed in for analysis in Figures 9.4-30 and 9.4-31 – **Source: earth.google.com**



**Figure 9.4-28:** Artillery (RED) and mortar (WHITE) impact craters in a selected area of Anandapuram in Puthukkudiyiruppu. Areas B1 and B2 have been zoomed in for analysis in Figures 9.4-32 and 9.4-33 – **Source: earth.google.com**



**Figure 9.4-29:** Artillery (RED) and rocket (YELLOW) impact craters in a selected area of Anandapuram in Puthukkudiyiruppu. Areas C1 and C2 have been zoomed in for analysis in Figures 9.4-34 and 9.4-35 – **Source: earth.google.com**

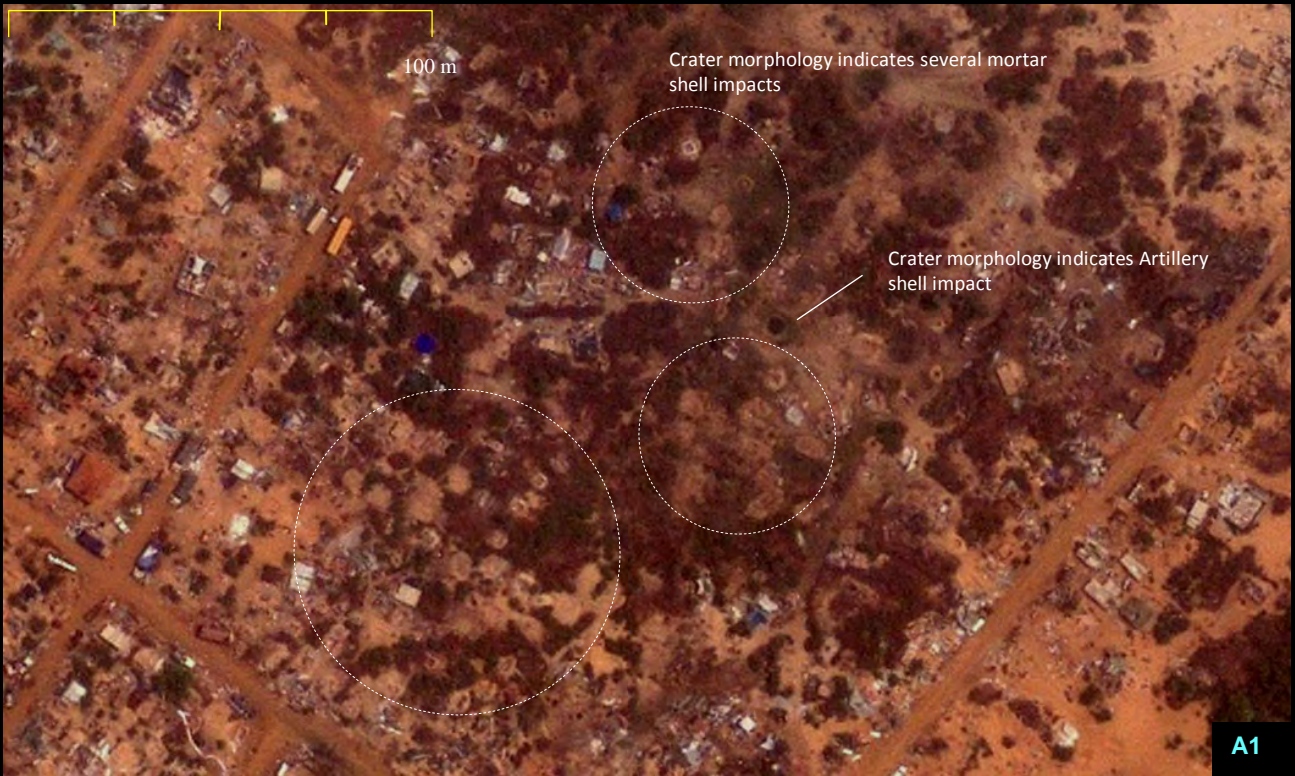


Figure 9.4-30: Zoomed in area A1 from Figure 9.4-27



Figure 9.4-31: Zoomed in area A2 from Figure 9.4-27



Figure 9.4-32: Zoomed in area B1 from Figure 9.4-28



Figure 9.4-33: Zoomed in area B2 from Figure 9.4-28



Figure 9.4-34: Zoomed in area C1 from Figure 9.4-29



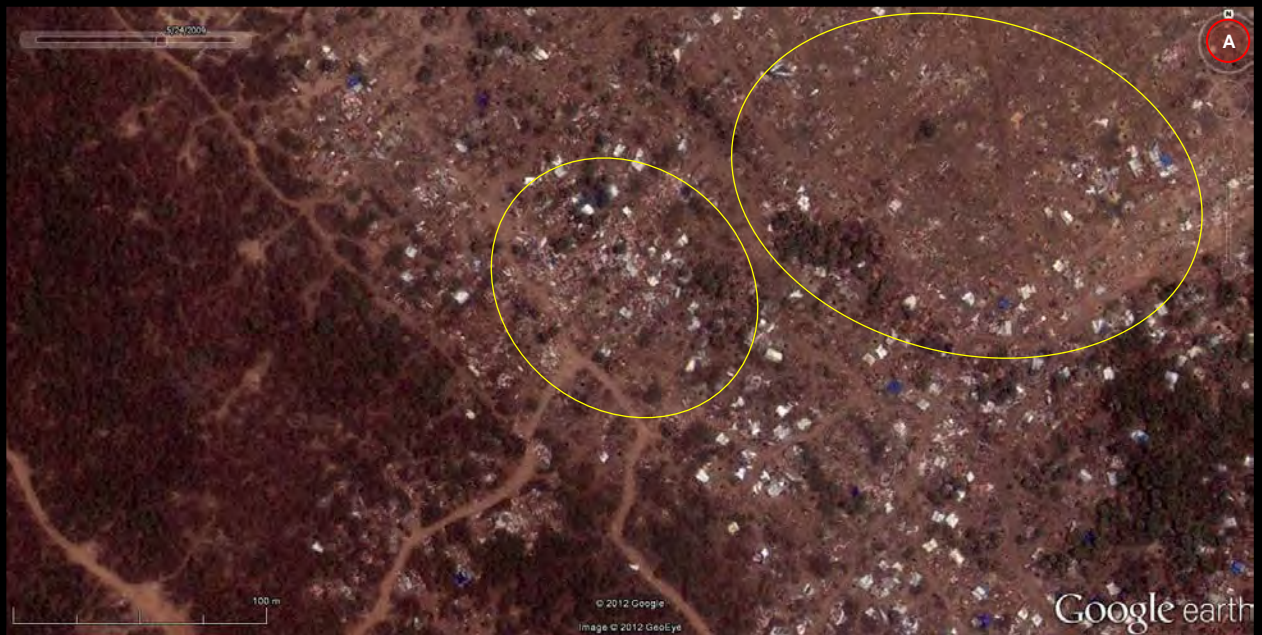
Figure 9.4-35: Zoomed in area C2 from Figure 9.4-29



Figure 9.4-36: Map showing the civilian exodus on May 9/10. Also marked on the satellite image are the two Mullivaikkal hospitals in the No-Fire-Zone – Source: earth.google.com



Figure 9.4-37: A shot of the third No-Fire-Zone illustrating the location of the zoom boxes in relation to the IDP settlement footprint on May 12. The images below show the zoom boxes A to G. Areas that have been attacked with mortars are identified by the YELLOW circles – Source: earth.google.com











**Figure 9.4-38:** A satellite image of the area surrounding Uddayarkattu hospital taken on March 13. The satellite image clearly reveals that there appears to be no visible signs of the area having been bombed by 2,000 shells as stated by Dr. Niron. The artillery impact sites are a few hundred meters away from the hospital complex – **Source: earth.google.com**



**Figure 9.4-39:** Zoomed in box from Figure 9.4-38 showing the areas immediately around Uddayarkattu hospital. The satellite image shows that apart from a few dozen mortar impacts north and south of the hospital complex, there appears to be no visible signs of the area being indiscriminately targeted by artillery, rockets or mortars. The artillery impact sites are a few hundred meters away from the hospital complex – **Source: earth.google.com**

- ▼ News
- ▶ 2013
- ▶ 2012
- ▶ 2011
- ▶ 2010
- ▼ 2009
  - ▶ December
  - ▶ November
  - ▶ October
  - ▶ September
  - ▶ August
  - ▶ July
  - ▶ June
  - ▶ May
  - ▼ April
  - ▶ March
  - ▶ February
  - ▶ January
- ▶ 2008
- ▶ 2007
- ▶ 2006
- ▶ 2005
- ▶ 2004
- ▶ 2003
- ▶ 2002
- ▶ 2001
- ▶ 2000
- ▶ 1999
- ▶ 1998
- ▶ 1997
- ▶ Features
- ▶ Opinion
- ▶ Palaka'ni
- ▶ Photo Features
- ▶ TN Transcription
- ▶ Web feeds
- ▶ Feedback
- ▶ Home
- ▶ About us

### SLA fired 5,600 shells within 15 hours: LTTE

[TamilNet, Tuesday, 28 April 2009, 14:22 GMT]  
**Sri Lanka Army (SLA) fired at least 2,600 Multi-Barrel Rocket Launcher (MBRL) rockets, more than 1,000 artillery shells and at least 2,000 heavy mortar shells from 6:00 p.m. Monday till 11:00 a.m. Tuesday, LTTE officials in Vanni told TamilNet. Most of the shells fired by the SLA hit civilian shelters in Mu'li-vaaykkaal, Thaazhampan, Ottaip-panaiyadi and Iraddai-vaaykkaal areas. The Tiger officials put civilian casualty figures at more than 200 killed and said three medical centres treated hundreds of wounded civilians throughout the day. Sri Lanka Air Force (SLAF) bombers attacked Ottaip-panai and iraddai-vaaykkaal areas by deploying cluster bombs, LTTE officials further said.**

LTTE medics, two Thileepan medical centres with first-aid facilities and the makeshift hospital in Mu'li-vaaykkaal run by the RDHS of the two districts, have treated over thousand wounded within the past 3 days, according to Tiger officials.

Independent verification of casualty figures was not possible as shelling continued throughout the day.



Figure 9.4-40: The TamilNet report describing the intense shelling from artillery, rockets and mortar by the Sri Lankan military on April 28 – Source: tamilnet.com

# OTTAIP-PANAIYADI

May 23



March 16



Figure 9.4-41: (TOP) Satellite image of the areas around Ottaip-panaiyadi from May 23. The image clearly shows no visible signs of the kind of damage described by TamilNet from the alleged shelling on April 28 (BOTTOM) The same area on March 16, useful as a source of comparison with the May 23 image. Compare these images with Figure 9.4-43 which shows areas clearly attacked by artillery, rockets and mortars – Source: [earth.google.com](http://earth.google.com)

## THAAZHAMPAN

May 23



March 16



Figure 9.4-42: (TOP) Satellite image of the areas around Thaazhampan on May 23. The image clearly shows no visible signs of the kind of damage described by TamilNet from the alleged shelling on April 28 (BOTTOM) The same area on March 16, useful as a source of comparison with the May 23 image. Compare these images with Figure 9.4-43 which shows areas clearly attacked by artillery, rockets and mortars – **Source: earth.google.com**

# ANANDAPURAM

May 23



Figure 9.4-43: (TOP) Artillery and mortar craters in the Anandapuram area (BOTTOM) Damage to terrain from rockets fired from MBRL's. The following images were taken on May 23 and are at the same resolution as the images in Figure 9.4-41 and 9.4-42. The impact craters and the general destruction in the surrounding terrain is clearly visible at this resolution – Source: earth.google.com

## 10. Appendix I

Extracts taken from the UTHR(J) website ([www.uthr.org](http://www.uthr.org))

### Mission and statement of purpose

The University Teachers for Human Rights (Jaffna) (UTHR(J)) was formed in 1988 at the University of Jaffna, as part of the national organisation University Teachers for Human Rights. Its public activities as a constituent part of university life came to a standstill following the murder of Dr. Rajani Thiranagama, a key founding member, on 21st September 1989. During the course of 1990 the others who identified openly with the UTHR(J) were forced to leave Jaffna. It continues to function as an organisation upholding the founding spirit of the UTHR(J) with its original aims: to challenge the external and internal terror engulfing the Tamil community as a whole through making the perpetrators accountable, and to create space for humanising the social & political spheres relating to the life of our community. The UTHR(J) is not at present functioning in the University of Jaffna in the manner it did in its early life for reasons well understood.

Our reports deal with several aspects pertaining to violations and are very unorthodox as human rights documents. In order to clarify our position, we once more reiterate the purposes for which these reports are written:

1. To document human rights violations by all forces in order to bring about general awareness and to make violators accountable.
2. To bring out the human background to these violations through a portrayal of individual characters together with an analysis of social pressures and external circumstances governing their behaviour. We try to show that the characters involved, even in the worst violations, are often human, whose actions are governed by mislaid human potential, past choices and oppressive circumstances. It's an endeavour to capture a narrative space for the people who were trapped in the conflict and in their name only many atrocities were justified by the protagonists
3. To leave behind a historical record of this crucial part of our history. Since there is no space in our community to discuss and choose between different options, and the young especially are giving their life even without knowing our recent history, we feel it is necessary to leave a record. Moreover, in this country, we seem to suffer from historical amnesia combined with a moral vacuum, forcing us to re-live an unpleasant history again and again. We trust these records will also help benign minds who in the future would like to make a re- evaluation.
4. As responsible members of an academic institution and citizens of our community, we would like to express our opinions and make room for free expression and an edifying debate. We also seek to highlight the untapped human potential in all communities in our country, for both internal regeneration and to make a success of living in one plural nation.

## 11. Appendix II

### *Extracts from Report of the Secretary-Generals' Panel of Experts on accountability in Sri Lanka*<sup>255</sup>

#### **E. The number of civilian deaths**

**132.** There is no authoritative figure for civilian deaths or injuries in the Vanni in the final phases of the war. Several factors make it very difficult to calculate a reliable casualty figure: (a) the number of persons in the conflict area remains uncertain, although it was likely to have been as many as 330,000; (b) the lack of an accurate count of the number of persons who emerged from the Vanni, due to the lack of transparency in the screening process; (c) lack of certainty on the numbers of LTTE combatants, complicated further by the increase in forced recruitment in the final phase; and (d) the fact that many civilians were buried where they fell, without their deaths being registered, in some cases, unobserved.

**133.** Some have developed estimates based on the statistics of the injured and dead collected by the doctors, which were collated by the hospitals and the District Disaster Management Unit. One estimate is that there were approximately 40,000 surgical procedures and 5,000 amputations performed during the final phase. Depending on the ratio of injuries to deaths, estimated at various times to be 1:2 or 1:3, this could point to a much higher casualty figure. Others have put the estimate at 75,000, a figure obtained by subtracting the number of people who emerged from the conflict zone (approximately 290,000) from the estimate of the number thought to have been in the conflict zone (approximately 330,000 in the NFZ from January, plus approximately the 35,000, who emerged from the LTTE-held areas before that time).

**134. The United Nations Country Team is one source of information; in a document that was never released publicly, it estimated a total figure of 7,721 killed and 18,479 injured from August 2008 up to 13 May 2009**, after which it became too difficult to count. In early February 2009, the United Nations started a process of compiling casualty figures, although efforts were hindered by lack of access. An internal “Crisis Operation Group” was formed to collect reliable information regarding civilian casualties and other humanitarian concerns. **In order to calculate a total casualty figure, the Group took figures from RDHS as the baseline, using reports from national staff of the United Nations and NGOs, inside the Vanni, the ICRC, religious authorities and other sources to cross-check and verify the baseline.** The methodology was quite conservative: if an incident could not be verified by three sources or could have been double-counted, it was dismissed. Figures emanating from sources that could be perceived as biased, such as Tamil Net, were dismissed, as were Government sources outside the Vanni.

**135.** The number calculated by the United Nations Country Team provides a starting point, but is likely to be too low, for several reasons. First, it only accounts for the casualties that were actually observed by the networks of observers who were operational in LTTE controlled areas. Many casualties may not have been observed at all. Second, after the United Nations stopped counting on 13 May, the number of civilian casualties likely grew rapidly. Due to the intensity of the shelling, many civilians were left where they died and were never registered, brought to a hospital or even buried. This means that, in reality, the total number could easily be several times that of the United Nations figure.

**136.** It is worth noting that the United Nations raised casualty figures in private entreaties with the Government, but never publicized its specific estimates. Government officials strongly refuted the figures provided by the United Nations, stating that the numbers were fabricated and that this was not the business of the United Nations. Publicly the United Nations referred to the “heavy toll” of the fighting on civilians, or that the casualty figures were “unacceptably high”, but that the actual figures were not verifiable.<sup>[61]</sup> The decision not to provide specific figures made the issue of civilian casualties less newsworthy. However, this position was maintained by senior United Nations officials until 13 March 2009, when the High Commissioner for Human Rights publicly stated that 2,800 civilians may have been killed and more than 7,000 injured since 20 January, many of them inside the NFZs.<sup>[62]</sup> Pressure from the Government of Sri Lanka and fears of losing access may have resulted in a general under-reporting of violations by United Nations agencies.<sup>[63]</sup> Some have criticized the failure of the United Nations to present figures publicly as events were unfolding, citing it as excessively cautious in comparison with other conflict situations.

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<sup>255</sup> Report of the Secretary-Generals' Panel of Experts on accountability in Sri Lanka, April 2011, See: [LINK](#) (emphasis added)

137. In the limited surveys that have been carried out in the aftermath of the conflict, the percentage of people reporting dead relatives is high. A number of credible sources have estimated that there could have been as many as 40,000 civilian deaths. Two years after the end of the war, there is still no reliable figure for civilian deaths, but multiple sources of information indicate that a range of up to 40,000 civilian deaths cannot be ruled out at this stage. Only a proper investigation can lead to the identification of all of the victims and to the formulation of an accurate figure for the total number of civilian deaths.

**Extracts from *Report of the Secretary-Generals' Internal Review Panel on United Nations action in Sri Lanka*<sup>256</sup>**

*The Crisis Operations Group*

19. It was not until February 2009 that the UNCT established a system for information gathering and analysis. The shelling and killing of civilians witnessed and documented by the two UN international staff who had remained with Convoy 11 in the Wannai throughout the second half of January, presented the UNCT with incontrovertible evidence of the events that other sources were also reporting. However, there was no established reporting process into which this testimony could be usefully fed. Indeed, the RC acknowledged in March 2009 that it was only when the staff returned from Convoy 11 that the UNCT began to consider what to do with such information. 23 In early February, the UNCT remained hesitant in its approach. A small number of individual staff took the initiative to begin compiling the information they had already received and to seek additional data on civilian casualties and humanitarian concerns, as well as on the security situation of the UN national staff and dependents still in the Wannai, to create a body of information that could be used for analysis and advocacy. This initiative led the UNCT to formally establish the UN Crisis Operation Group (COG), composed of representatives from several UN organizations. The COG gathered information from a range of sources, including hospital staff, Government Agents, and UN staff trapped in the Wannai. But the Human Rights Adviser was not included.

20. The COG defined a rigorous methodology for collecting and verifying information on civilian casualties using multiple independent sources for each individual death or injury reported. The methodology would seem to have been of a standard comparable to best-practice on information collection in other conflict situations. **The COG received specific reports of 17,810 people killed and 36,905 injured from January to May 2009.** Reports were received from numerous sources including the regional directors of the health services of Killinochchi and Mullaithivu; medical officers assigned to the PTK hospital; additional government agents from Mullaithivu; eyewitness reports from UN and international NGO national staff; satellite imagery and analysis obtained from UNOSAT; medical staff in receiving military and civilian health facilities at Mannar, Vavuniya, Trincomalee, and Pullmadile; and clergy, education department staff and community leaders. **Once a casualty report was received, the COG would contact other credible sources, independent of the original source, to confirm every single casualty.** The COG would consider a casualty report as 'verified' only when it had been corroborated by three independent sources. **As a result of this methodology, out of the total number of reports of 17,810 killed and 36,905 injured that the COG received, it was able to verify 7,737 killed and 18,479 injured.**

21. The COG was nevertheless certain that it was only receiving reports of a small proportion of the actual number of casualties. In addition, as time went on the number of casualties is thought to have risen dramatically while the capacity of the COG to obtain three independent sources for each casualty became harder. In the last few weeks the intensity of the fighting made the collection of data extremely difficult. **The COG reached grossly underestimated figures for May of 2,013 to 4,394 killed and 5,620 to 12,267 injured. As acknowledged through witness testimonies, satellite imagery and related records, May 2009 saw the worst of the fighting and must have resulted in the highest casualty rates.**

22. Notwithstanding the standard of the methodology for collecting information, there was considerable disagreement within the UNCT on whether to use the figures, and later within UNHQ. One person involved in the data collection said there was great resistance within the UNCT's leadership to the collection of the data and its use. He emphasized that according to the information received the majority of killings were the result of Government action but that UN advocacy did not reflect this, including the USG-level briefings given to the Security Council by the USG-Humanitarian Affairs and the Chef de Cabinet.

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<sup>256</sup> Report of the Secretary-Generals' Internal Review Panel on United Nations action in Sri Lanka, November 2012, See: [LINK](#) (emphasis added)