

## **Evidence of war crimes committed by the Government of Sri Lanka**

### **Executive summary**

TAG requests the Tribunal to consider the following evidence of war crimes and other serious violations of human rights by the Government of Sri Lanka (GoSL), its security forces, and paramilitaries against Tamil citizens, and to recommend appropriate courses of action under international law to establish full accountability for the crimes, and to bring the perpetrators to justice.

The UN system, particularly the Secretary General and his senior staff, as well as of members of the international community, have largely failed in this regard, as pointed out by Professor Francis A Boyle, professor of international law at the University of Illinois College of Law, in a detailed series of writings included as part of TAG's submission.

TAG has been documenting and collecting evidence for the past eighteen months, and is including in its submission five specific areas:

1. **Satellite Image Analysis:** TAG will establish using four different Satellite images (from 5<sup>th</sup> Feb, 6<sup>th</sup> March, 16<sup>th</sup> March , and 27<sup>th</sup> March), eye-witness testimony, BBC video interview with Gotabhaya Rajapakse, and photos supported by affidavits, that Sri Lanka military committed war crimes by deliberately targeting hospitals where civilians were receiving treatment.

It is important first to record that the Defense Secretary Gotbhaya Rajapakse, who was the senior most civilian official in charge of the prosecution of the war against the LTTE, was open in declaring his intention to attack hospitals. In a BBC interview he stated that hospitals outside the No Fire Zone were legitimate targets for attack by the army.

The charge will be based on the following legal framework: As set forth in the 1907 Hague Conventions and 1948 Geneva Conventions, and as promulgated in the Rome Statute and ad hoc international tribunals in Rwanda and Yugoslavia, military attacks on protected objects such as medical institutions, in international or non-international armed conflicts are strictly prohibited. These prohibitions are now universally considered a peremptory norm of customary international humanitarian law, whereby presence of combatants within the medical complex do not revoke the right.

- Eyewitness testimony establishes PTK was operating as a hospital during the month of February and first 2 weeks of March
- Satellite images establish PTK hospital complex was shelled, and likely aeri ally bombarded between 02/05-03/06 and between 03/06-03/15, multiple large shell impact craters visible from roofs, buildings partially or fully destroyed.
- Eye witness accounts, human rights reports, and state department report establish that by 03/15, SLA had captured PTK hospital.
- The shelling is shown consistent with the SLA pattern of capturing LTTE-controlled territory by shelling, and then advancing.
- State department report establishes that between 03/15 - 05/06, PTK was under SLA-control. Eye-witness testimony establishes that SLA used PTK hospital compound as a forward military position to shell either LTTE positions, civilian areas and IDP camps, or both.
- Satellite image evidence indicates By 05/06, there is a 10-Mortar Lazy W formation in the Northeast of PTK hospital compound visible. This was the SLA's and was used to shell LTTE positions, civilian areas and IDP camps, or both.
- Between 05/06-05/27, there is evidence of additional shelling, from cross-fire between SLA and LTTE.

2. **Authenticity of execution video:** TAG will establish authenticity of the Channel-4 broadcast of a video showing Sri Lanka Army (SLA) soldiers extra-judicially executing unarmed Tamils stripped naked, blind folded and hands tied behind. Affidavits from a Colorado based forensic experts, results from independent analysis carried out by British newspaper Times Online, consulting inputs from Nokia (Mobile phone manufacturer) experts will be used and a point-by-point rebuttal of technical response from Colombo-selected experts.

The war-crime charge will be based on the following: Summary executions violate Common Article 3 to the Four Geneva Conventions of 1949, to which Sri Lanka is a contracting Party, prohibiting in subsection I(d) "... the carrying out of executions without previous judgment pronounced by a regularly constituted court...." Violations of the Geneva Conventions are war crimes.

Key findings of the independent forensic analysis.

- No evidence of tampering or editing was discovered with either the video or audio portions of *Video*.

- The quality of the *Video* is consistent for some, if not most, camera cell phones that were in service during and before the date and times indicated in the *Video*'s header information in Exhibit 1A+.
- The exaggerated color brightness of the blood pools and blindfolds in the *Video* are recording artifacts that are consistent with some, if not most, camera cell phones.
- Field testing with selected camera cell phones of similar audio and video qualities, that were in use prior to 18 July 2009 (per header information in Exhibit 1A+), were able to record an AK-47 (Romanian manufacturer w/16-barrel, semi-auto operation), gun shot with factory 7.62x39mm ammo, with each camera cell phone being positioned in a similar camera field of view of the 2<sup>nd</sup> gun shot, or 10 feet away from the muzzle, without any distortion of the audio.
- Ballistics Report confirms both victims' body responses to being shot, appear consistent with being shot with an AK-47 style rifle with 7.62x39mm FMJ ammunition.
- Ballistics Report confirms that the blood pooled around the previous victim with the white shirt and with the victim of the 2<sup>nd</sup> shooting appears to be consistent with blood from the brain, which would contain high amounts of oxygen giving the blood its bright color.

3. **Trincomalee Students killing:** Five male Tamil students were killed in Trincomalee, a big harbor town on the Northeast coast under the control of and heavily garrisoned by the Sri Lankan armed forces and with profound ethnic tensions, on January 2, 2006. The area where the incident took place held an estimated 50 military personnel, including Navy checkpoints on each side, and a police superintendent was in the vicinity, yet there has been no effective inquiry into the incident and the family of the boy who pursued legal remedy has been forced to flee the island for their own safety. 12 Special Task Force (STF - militarized police) members who were initially arrested were quickly released.

A pre-staged effort to terrorize the Tamil population of the city by attacking innocents in a very public venue is a likely explanation of the incident. Close coordination between separate branches of the security forces - the army, navy, STF and police - in the incident lead to the supposition that the effort was directed from a high level in the Defense Ministry (the police report to the Minister of Defense).

U.S. State Department Report said: "On January five Tamil youths were shot execution-style in a coastal High security zone in Trincomalee heavily controlled by the police Special Task Force (STF) and the Sri Lanka Navy (SLN). Although civil groups and

members of the government widely suspected police STF involvement in the incident, a ballistic report indicated that standard-issue STF guns had not killed the individuals, and the case was dropped. Some credible observers believe the STF committed the killings using non-standard issue weapons. + <http://www.state.gov/g/drl/rls/hrrpt/2006/78875.htm>

This document provides a body of evidence, including

- personal affidavit from Ragihar's father, and
- independent eyewitness accounts and other material evidence put forth by the Independent NGO, UTHR.

Evidence points to the culpability of SSP Kapila Jayasekera, Naval officer Udawatte Veerkody, DIG Abeywardena, and the leader of the killer team Vas Perera, and former DIG HMGB Kotakadeniya among others.

TAG urges the Tribunal to

- rule that the Trinco-5 killings constitute war-crimes under the Common Article 3 of the four Geneva Conventions of 1949 to which Sri Lanka is a contracting party, and
- to take steps to urge the international community to prosecute the perpetrators of this crime, and their superiors under the doctrine of command responsibility.

4. **Professor Francis A Boyles' legal analysis** of events and the reaction of the international community, including the United Nations. Boyle provides a comparative legal study of Sri Lanka's war with similar crimes committed by Nation States in the past.

Professor Boyle notes that under the terms of the UN Charter Chapter XV, the (named) UN officials are independent of the UN security council. These officials have a separate and independent obligation to uphold the Purposes and Principles of the UN Charter, no matter what the UN security Council members might tell them to do. + One of the Purposes of the UN is promoting and encouraging respect for human rights. +

Professor Boyle lists several instances where the Secretary General (SG), Ban Ki Moon, and his senior staff were complicit, + and gave the SL Government the time and cover to commit its war crimes.

The most serious examples occurred during the Government's final offensive in 2009. Professor Boyle refers specifically to reports that Mr. Nambiar, the SG's chief of staff, instructed UN staff

in SL who had informed him that more than 20,000 civilians had been killed, that the UN should keep a low profile and that they should play a sustaining role that was compatible with the government.

The SG and his staff have remained silent about these allegations and about new charge, now confirmed by the former army commander General Fonseka, that some LTTE leaders and their families, who surrendered under white flag during that time, under surrender arrangements negotiated with the Sri Lankan Government by Mr. Nambiar among others, were killed in cold blood by the army.

Similarly, UN has remained silent about new evidence, that has come to light about satellite imagery of attacks on hospitals and execution like killings of Tamils.

Professor Boyle also calls the decision of the SG not to visit SL during the several months of slaughter of civilians a violation of the UN Charter by the Secretary General himself.

5. **Model Indictment** produced early 2009, and submitted to the U.S. Justice Department. The document provides a record of crimes committed on Tamil civilians from 1948, till the beginning of 2009. The document lists 12 counts of genocide, 13 counts of torture, and 94 counts of war-crimes. This document will be used to assist TAG's future work in charging Sri Lanka for genocide.