HLG

Hewage Law Group
Administrative Tribunals Services Division

Public Policy Matters

Mailing Address: 2581 River Mist Road, Ottawa, Ontario, K2J 6G1, Canada.
Telephone: + 1 613 612 7615 | e-mail: nx_hewage@laurentian.ca

Neville Hewage, Ph.D.
Law Society Ontario License #: P15799

BY E-MAIL sandhya@guidemediation.com

July 06, 2020.

Ms. Sandhya Kohli, LLB, MA, LLM
Integrity Commissioner
York Region District School Board
Guide Corp.,
Workplace Conflict & Conciliation
Tel: 416-231-9051

Dear Ms. Kohli

Re: Formal Complaint against Juanita Nathan, Chair and all Trustees (Collectively Board)

I have attached formal complaint against Juanita Nathan,, Chair of the Board and Trustees Bob McRoberts, Elizabeth Terrell-Tracey, Cynthia Cordova, David Sherman, Ron Lynn, Allan Tam, Linda Gilbert, Corrie McBain, Cindy Liang, Nadeem Mahmood , Dr. Elizabeth Sinclair, Lauri Hoeg (collectively Board) of the York Region District School Board for breaching of Members Code of Conduct.

I have not attached Exhibit 04 impact statements of students since they do not require determining the breach of the *Code.* However, I will submit a few of them during proceedings to determine the impact of the breach.

I am joining with complainants, residents of York Region **Redacted** for this action.

I am the contact person on behalf of the complainants.

Please acknowledge receipt of this complaint.

I look forward to hearing from you.

Yours very truly,

Neville Hewage

Neville Hewage, Ph.D.
Adjunct Professor and Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.

York Region District School Board
Code of Conduct — Formal Complaint Form

COMPLAINT OF ___Neville Hewage___

I, Neville Hewage_____ (full name), of the (City, Town etc.) _Ottawa, City of

Ottawa_____ (municipality of residence) in the Province of Ontario.

STATE THE FOLLOWING:

1. I have personal knowledge of the facts as set out in this affidavit, because

_____Please refer Schedule A_____

_____.

(insert reasons e.g. I work for... I attended a meeting at which... etc.)

2. I have reasonable and probable grounds to believe that:

__Please refer Schedule A_____ (specify name of Trustee) a member of the York

Region District School Board, has contravened

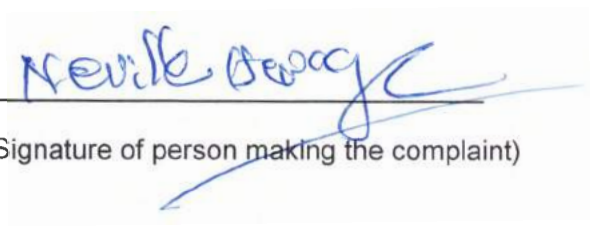
section(s)__4.1, 4.3, 4.5 , 7.1, 13.1, 13.2, 13.3 _ (specify section(s)) of the Trustee

Code of Conduct. The particulars of which are as follows:

(Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space please use the attached Schedule A form and check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B etc. and attach them to this form.)

Please see the attached Schedule "A" ☐Attached

July ~~Ontario:~~ 05 , 2020 Ottawa, at the City/Town of in the Province of Ontario



_____

(Signature of person making the complaint)

Schedule "A"

(Additional Information)

To the complaint form required under the Complaint Protocol – Formal Complaint of York Region District School Board Code of Conduct for Trustees.

(If more than one page is required, please photocopy this blank page and mark each additional page as 2 of #, 3 of #, etc. at the top right corner.)

Please refer Schedule A

(Signature of Person Making the Complaint)

Formal Complaint to the Integrity Commissioner
Against Chair and Board

Integrity Commissioner
York Region District School Board

Formal Complaint to the Integrity Commissioner
York Region District School Board
(Complaint Protocol for the Board Member Code of Conduct)

Schedule A

Neville Hewage**,** Ph.D.
Adjunct Professor
Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.
LSO No. P15799

Please submit all correspondence to:

2581 River Mist Road
Ottawa ON K2J 6G1
Tel: 613 612 7615
Email: nx_hewage@laurentian.ca

Ms. Sandhya Kohli, LLB, MA, LLM
Integrity Commissioner
York Region District School Board
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email: sandhya@guidemediation.com
Tel: 416-231-9051

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List of Exhibits

Exhibit 01	Tamil LTTE Atrocities Center for International Security and Cooperation (CISAC), a research center at the Freeman Spogli Institute for International Studies of Stanford University, USA.
Exhibit 02-01	Instructions received from Global Affairs Canada to City of Toronto regarding proposed Tamil Genocide Proclamation Government of Canada has not recognized Tamil Genocide
Exhibit 02-02	Mayor John Tory says proclamation of (Alleged) Tamil Genocide is Political
Exhibit 03	Submission to the Committee on Regulations and Private Bills against Bill 104 *Tamil Genocide Education Week Act*, 2019.
Exhibit 04	Students' impact statements after releasing the Tamil Genocide twitter message on May 18, 2020. (Not attached with this submission)

Schedule A

FINDING OF FACTS

01. Founded in 1976, the Liberation Tigers of Tamil Eelam (LTTE) is a Sri Lankan-based Tamil terrorist organization that seeks the creation of an independent homeland called "Tamil Eelam" for Sri Lanka's only about 18 % ethnic Tamil minority living in North and East. Over the years, the LTTE has waged a violent secessionist campaign with the help of ground, air, and naval forces, as well as a dedicated suicide bomber wing. Tamil LTTE is a proscribed Terrorist organization, 32 countries, including Canada.

02. Tamil LTTE tactics have included full military operations, terror attacks against civilian centres, and political assassinations, including those of Indian Prime Minister Rajiv Gandhi and Sri Lankan President Ranasinghe Premadasa.

03. Tamil LTTE terrorist activities caused billions of dollars of massive destruction to Sri Lanka's economy. A large number of innocent civilians were killed as results of indiscriminate attacks on civilians' centers across the country.

04. Sinhalese villagers living in North and East district's boundaries were massacred, and, as a part of "ethnic cleansing," Muslims living in Jaffna (North of Sri Lanka) were ordered to quit. At least 30,000 were driven out at just three-hour notice.

05. A program of the Center for International Security and Cooperation (CISAC), a research center at the Freeman Spogli Institute for International Studies of Stanford University, USA, recorded the most notable attacks and the atrocities of Tamil LTTE terrorists.[1] Please also see **Exhibit 01.**

06. A responsible government cannot tolerate any longer Tamil LTTE brutality and have no option other than destroying the Tamil terrorist group.

[1] https://cisac.fsi.stanford.edu/mappingmilitants/profiles/liberation-tigers-tamil-elam#highlight_text_16261

07. The latest reason for the military action was triggered against the separatist Tamil LTTE group as a result of closing the water dam (*Marvil Aru*), which is providing a lifeline for over millions of people living in neighbouring districts.

08. Tamil LTTE was militarily defeated on May 18, 2009, which ended the civil war by killing a ruthless terrorist leader, Velupillai Prabhakaran. Alleged Tamil Genocide Memorial Day activities are scheduled every year, May 18, to commiserate the death of terrorist leaders.

09. During the three decades of armed conflict, civilians all ethnic groups, Sinhalese, Tamils, Moor, Muslims, were affected.

10. The Tamil LTTE had an extensive network of fundraisers, political and propaganda officers, and arms procurers operating in Sri Lanka and within the Tamil diaspora in Canada. Although the Tamil LTTE was militarily defeated on May 18, 2009, subversion, destabilization, and fundraising continues, particularly within the diaspora.[2]

11. Many organizations arose in Canada, post-war by militarily defeating Tamil LTTE in May 2009, some calling for reconciliation and others professing to continue this struggle for a separate state. (Alleged) Tamil Genocide claim is an LTTE campaign against Sri Lanka.

12. Some of them are campaigning to take revenge against Sri Lanka government for the death of their terrorist leader Velupillai Prabhakaran, in recognizing the final phase of the war in May 2009, as a genocide, same as proposed on *Bill 104 Tamil Genocide Education Week Act.*

13. The conflict against the Tamil LTTE terrorist group should be studied in its entirety and not only during its final months.

Bill 104, *Tamil Genocide Education Week Act*, 2019

14. Bill 104 *Tamil Genocide Education Week Act*, 2019 introduced by Mr. Vijay Thanigasalam, MPP Scarborough Rough Park, to the legislative assembly of Ontario. The majority of members in the Ontario legislature (65 members) refrained voting for Bill 104 during the second reading. Therefore, Bill 104 has been referred to the Standing committee on

[2] https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#46

Regulations and Private Bills. The committee does not have any agendas set related to this matter. Further, the committee has not published any reports associated with this matter. (as of July 06, 2020)

15. Mr. Vijay Thanigasalam is promoting the Tamil Nationalist agenda in Canada. He has posted the Tamil LTTE terrorist leader's photo on his Facebook page. It stated as follows, "Happy 57th Birthday to our National Leader Hon. V. Pirapaharan."

Figure 1: Mr. Thanigasalm's Facebook post

16. Tamil LTTE forcibly recruited child soldiers, and over 50% of its cadre consists of child soldiers. There are numerous reports on Tamil LTTE child soldiers, and they were sexually abused by LTTE higher rankers and utilized them for forced labour such as digging trenches, also use them as scapegoats in the battle filed. Later, child soldiers brainwashed and convert them to be suicide bombers.

17. The Tamil LTTE were listed as a party recruiting and using children in hostilities in the Annex to the United Nation Secretary-General's annual report on children and an armed conflict between 2003 and 2007.[3]

18. Global Affairs Canada advised that the City of Toronto should refrain from proclaiming on Tami Genocide Memorial Day. It also stated that Tamil Genocide had not been recognized, and it categorized as armed conflict. **(Exhibit 02 -01)** However, Mayor John Tory has proclaimed (alleged) Tamil Genocide Memorial Day, stating his decision is political. **(Exhibit 02 -02)**

19. Also, protocol II added in 1977 to the Convention. It has given authority to defend any action against the state (Right to defend). Tamil LTTE terrorism is a separatist agenda against Sri Lanka, and the state has a clear mandate to defend any aggression.

20. The International Court of Justice and International Criminal Court are the only legal entity that can determine Genocide. Alleged Tamil genocide claims have not considered for hearing before the International Criminal Court (ICC) or International Court of Justice (ICJ). LTTE sympathizers in the Tamil diaspora failed to proceed alleged genocide claims against Sri Lanka due to a lack of sufficient evidence. Since the decade of their efforts were not successful in proper legal means, LTTE supporters in Tamil diaspora utilized various other informal mechanisms such as municipality proclamation, inclusion to the School Board (curriculum) to obtain recognition for alleged Tamil Genocide.

21. Alleged Tamil Genocide is a politically motivated divisive campaign against all members in the Sri Lankan community living peacefully in Canada.

22. *Tamil Genocide Education Week Act*, 2019, was challenged and further argued, it was failed in legal test to establish Genocide. Please refer to **Exhibit 03** for detailed submission to the Committee on Regulations and Private Bill to the Legislative Assembly of Ontario.

[3] https://www.refworld.org/docid/486cb131c.html

23. There is an enormous amount of unproductive speculation about Genocide. And indeed, given the prevalence in the world of today, there is no shortage of acts that may look-like within the paragraphs of Article II of the Convention. Racial and religious discrimination, apartheid-like policies, and persecution of ethnic minorities, indigenous peoples, migrant workers and refugees, in many countries are examples of the unproductive speculation about the Genocide. *Bill 104* is clear unproductive speculation about the Genocide.

24. Canada's Prime Minister Justin Trudeau issued a statement on May 18, 2020, remembering the loss of all valuable human life during 26 years of armed conflict.[4]

25. A fight against Tamil LTTE terrorists is purely armed conflict and does not meet the threshold to establish Genocide.

26. Further, a constitutional challenge also brought forward against Bill 104. It has been submitted to the Committee on Regulations and Private Bills of the Legislative Assembly, Ontario. Bill 104 proposer, Mr. Vijay Thanigaslam, is yet to respond to the constitutional question.

27. Genocide is the highest crime on the planet. The International Criminal Court (ICC) and the International Court of Justice (ICJ) are the only judicial entity in the investigation of acts of aggression such as Genocide. Legislative Assembly of Ontario and Parliament of Canada have no judicial authority to investigate Genocide claims.

28. Neither (alleged) Tamil Genocide under investigation nor considered for investigation. Therefore, (alleged) Tamil Genocide claim is not substantiated before the Canadian and International Humanitarian Law.

29. It is now a well-established fact that politically motivated *Tamil Genocide Education Week Act*, 2019, will not become a law of Ontario.

[4] https://pm.gc.ca/en/news/statements/2019/05/18/statement-prime-minister-10th-anniversary-end-armed-conflict-sri-lanka

York Region District School Board

30. On May 18, 2020, the York Region District School Board (YRDSB) issued a message on Twitter regarding (alleged) the Tamil Genocide.

> "Today is Tamil Genocide Remembrance Day, which marks the end of the war in Sri Lanka and honours the innocent lives lost and those displaced. Today is a reminder of this trauma and grief for many in our Tamil community."

31. On May 23, 2019, Mr. Thanigasalam publicly acknowledged the United Nations, and any national government has not recognized such "Genocide." [5]

32. ISSUES ARISING FROM BOARD MEMBER CODE OF CONDUCT

I have found a Chair and Trustees collectively and/or individually have contravened the Member Code of Conduct (*Code*) of the YRDSB.

33. ISSUE 1

Are Chair and Trustees Contravened to Section 4.1, 4.3, 4.5, Board Member Code of Conduct?

SECTION 4: Integrity and Dignity of Office

1. Trustees shall serve and be seen to serve their school communities in a constructive, respectful, conscientious and diligent manner.

3. Trustees shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.

- [5] https://www.toronto.com/news-story/9363753-scarborough-mpp-says-bill-on-sri-lankan-genocide-will-speed-healing/

5. Trustees, as ethical leaders of the Board, must at all times uphold the dignity of the office and conduct themselves in a professional manner that will not discredit or compromise the integrity of the Board.

34. ISSUE 2

Are Chair and Board Members contravened to the Section 7.1 Board Member Code of Conduct?

SECTION 7: Use of Board Property, Services and Other Resources

1. No Trustee should use, or permit the use of Board staff members, Board events, Board facilities, Board funds, Board information and Board infrastructure or other resources such as, but not limited to Board-owned materials, websites, Board-provisioned technology and social media platforms for activities other than the business of the Board. Such requests should be made through the Director of Education.

35. ISSUE 3

Are Chair and Board Members Contravened to the Section 13.1, 13.2, 13.3 Board Member Code of Conduct

SECTION 13: Discreditable Conduct

1. All Trustees have to treat members of the public, one another, and staff members respectfully and without abuse, bullying or intimidation.

2. The Ontario Human Rights Code, Occupational Health and Safety Act and all associated Board policies and procedures apply.

3. This section applies to all forms of written and oral communication.

ANALYSIS AND CONCLUSIONS

36. ISSUE 01

Contravention of Section 4.1, 4.3, 4.5

The following questions are arising from breach of Trustees' Code of conduct.

4.1 Did Chair and trustees collectively and/or individually fail to serve their school communities in a constructive, respectful, conscientious and diligent manner when issuing twitter message on May 18, 2020, regarding (alleged) Tamil Genocide?

4.3 Did Trustees discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board?

4.5 Did Trustees, as ethical leaders of the Board, at all times upheld the dignity of the office and their conduct discharge in a professional manner? Did Board chair and Trustees discredit or compromise the integrity of the Board?

To have better certainty, I will address a breach of 4.1, 4.3 and 4.5 together here.

37. Members Code of conduct does not define "integrity." However, the Oxford Dictionary Companion to Philosophy defines as follows.

> "The quality of a person who can be counted upon to give precedence to moral considerations, even when there is strong inducement to let self-interest or some clamant desire overrides them, or where the betrayal of moral principle might pass undetected. To have integrity is to have an unconditional and steady commitment to moral values and obligations. For such a person, the fundamental question of whether to conduct life on the plane of self-concern or of moral seriousness has been decisively resolved, though particular life situations will doubtless."

38. In other words, the Commissioner must need to be determined whether Trustees had not a steady commitment to moral values to establish contravention to *Code* 4.1, 4.3, 4.5.

39. As I presented on para 22 **(Exhibit 03)** (alleged), Tamil Genocide has not established, and it is a politically motivated publicity stunt. Sri Lankan origin ethnic racialized students are studying in YRDSB schools. Alleged Tamil Genocide claims severely affected young children,

specifically Singhalese origin from Sri Lanka. Many students were bullied, marginalized, and intimidated for being Sinhalese, or just for being from Sri Lanka. **(Exhibit 04, Note: Not attached with this submission)**

40. By issuing an (alleged), Tamil Genocide twitter message has proved that they failed to maintain a steady commitment to moral values.

41. Further, the school board has not adequately studied 26 years of armed conflict in Sri Lanka. The Board is in bias and wrong opinion recognizing armed conflict as a Tamil genocide. The Board is failed to address the issue in a constructive, respectful, conscientious and diligent manner. Further, YRDSB also has an opportunity to verify and obtain opinions about alleged Genocide claims with Global Affairs Canada. The YRDSB is failed to take diligent actions for this (alleged Tamil Genocide) sensitive matter.

42. Further, Mr. Thanigasalm, who is a proposer of Bill 104, also admitted that the Tamil genocide has not yet recognized by the UN or any national government.[6] The armed conflict will not be recognized as Genocide. All legal means, it has been proved; it was an armed conflict between Tamil LTTE terrorists and State (Sri Lanka).

43. The definition of Genocide has a specific meaning in the legal context, under Convention, on the Prevention and Punishment of the Crime of Genocide (Convention), approved and proposed for signature and ratification or accession by the United Nations General Assembly resolution 260 A (III) of 9, December 1948. (The Convention entered into force: January 12, 1951, in accordance with article XIII.)

44. Therefore, YRDSB must not use the term "Genocide" for their publications or school system arbitrarily. It will damage the integrity of the whole education system.

45. The Board has issued a twitter message based on false information and misinformation without properly analyzing facts on the issue. Also, twitter message evident that YRDSB is failed to act conscientious and diligent manner.

[6] *Supra Note 5*

46. This concluded Chair and Trustees are collectively have contravened section 4.1 of the *Code.*

47. The controversial Twitter message issued on May 18, 2020, is evident that Trustees and Board bias in opinion about (Alleged) Tamil Genocide. Whether the biases are originated from an unconscious manner is not a factor to determine a breach of the C*ode.*

48. Chair and Trustees have failed to discharge their duties impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board. The controversial Twitter message has eroded public confidence. Further, the issuance of Twitter message adversely affected the Sinhalese Sri Lankan ethnic origins students in the YRDSB.

49. As a result, Chair and Trustees have contravened to section 4.3 of the *Code.*

50. Chair and Trustees have failed to discharge their responsibilities professional manner. *The Code* does not define "professional manner." However, the Oxford dictionary described it as follows, "connected with the standards that are expected in a particular profession."

51. Trustees are in an authoritative and decision-making position, and it is necessary to maintain the standard of their profession. Trustees are responsible for communicating correctly, and precisely matters are affecting all communities of the school board. It indicates its professionalism.

52. Alleged Tamil Genocide is unproductive speculation about the Genocide and driven by a politically motivated agenda. Trustees failed to identify and analyze false narrative and misinformation provided to them by certain individuals. Now, it can be concluded that Trustees have been unable to discharge their duties and responsibilities professional manner.

53. As a result, the Chair and Trustees are collectively contravened section 4.5 of the *Code.*

54. ISSUE 02

Are Chair and Board members contravened to the Section 7.1 Board member Code of Conduct?

SECTION 7: Use of Board Property, Services and Other Resources

1. No Trustee should use, or permit the use of Board staff members, Board events, Board facilities, Board funds, Board information and Board infrastructure or other resources such as, but not limited to Board-owned materials, websites, Board-provisioned technology and social media platforms for activities other than the business of the Board.

55. It is a fact that YRDSB issued a Twitter message regarding the (alleged) Tamil Genocide on May 18, 2020.

56 To establish a violation of section 7 of the *Code,* the Commissioner must find the business of the Board and its causal connection with issuing a Twitter message.

57. (Alleged) Tamil Genocide is unproductive speculation about the Genocide. YRDSB is one of the most diverse school boards in Canada. There is no shortage of look-like conflicts compare to Geneva Convention Article II across the globe. However, the YRDSB selective on issuing a Twitter message on May 18, 2020, regarding (alleged) Tamil Genocide.

58. Further, there are thousands of similar conflicts that exist across the globe. But YRDSB was not issued Twitter messages for all other look-like conflicts (Article II of the *Geneva Convention.*) Therefore, it can be concluded that (alleged) Tamil Genocide Twitter message is not a regular business of the Board. It has a very selective approach.

59. Many Sri Lanka origin Sinhalese students, and parents are reluctant to report such incidents (bullied) due to further reprisal from other individuals. The Tamil LTTE armed conflict last three decades. The armed conflict ended ten years ago. Almost 40 years after the Tamil Genocide claim surface in Canada for only political reasons. Further, most of the Sri Lankan ethnic origin students bourn in Canada and have no idea about Tamil LTTE armed conflicts.

Alleged Tamil Genocide is severely effecting free, constructive and open learning environments at the YRDSB.

60. I have established that Tamil Genocide is unproductive speculation. This allegation does not stand against the authorities of the law. The YRDSB is also failed to identify the difference between armed conflict and Genocide. The alleged genocide allegation widely affected by Sri Lankan origin students and their parents. Therefore, a controversial Twitter message is failed to treat members of the public, one another, and respectfully. Many students were bullied, intimidated and physiologically depressed with regards to the action of the Board. (Please refer to **Exhibit 04,** Note: Not attached with this submission) Further, the YRDSB has failed in creating an environment that is free from discrimination and harassment.

61. Alleged Tamil Genocide is not investigated and no under investigation. The only legal entity, the International Court of Justice (ICJ) or International Criminal Court (ICC), has the authority to investigate Genocide. Neither ICJ nor ICC determined Genocide committed against Tamils in Sri Lanka by a state. I have established that Tamil Genocide claims are unproductive speculation.

62. Global Affairs Canada – South Asia Desk advised to the City of Toronto that the courts should determine whether a Genocide has taken place and that legal to be met for Genocide in international law is a very high one. Further, it states the Government of Canada has not officially recognized it. **(Exhibit 02)**

63. Bill 104, *Tamil Genocide Education Week* 2019, is facing numerous challenges of its factual accuracy. The facts are containing on the Bill 104 widely disputed. Further, Bill 104 is also facing a constitutional challenge. (Alleged) Tamil Genocide is a separatist campaign against Sri Lanka.

64. However, YRDSB announced (alleged) Tamil Genocide on a Twitter platform on May 18, 2020. It is a violation, use of YRDSB property, a social media platform to spread misinformation and /or false information about the Tamil Genocide.

65. The YRDSB involved in misinformation and/ or false information campaigns lead by a few groups of individuals and utilized school board resources other than school board business.

66. Chair and Trustees have used YRDSB facilities such as social media platforms, the Twitter account for the selective purpose, i.e. issuing (alleged) Tamil Genocide Twitter message contravened to section 7.1 of the *Code.*

67. ISSUE 3

Are Chair and Board members contravened to Section 13.1, 13.2, 13.3 Board member Code of Conduct?

SECTION 13: Discreditable Conduct

1. All Trustees have a duty to treat members of the public, one another, and staff members respectfully and without abuse, bullying or intimidation.

2. The Ontario Human Rights Code, Occupational Health and Safety Act and all associated Board policies and procedures apply.

3. This section applies to all forms of written and oral communication.

68. The *Code* sections 13.1, 13.2 and 13.3 are connected and also need to be addressed together.

69. . May 18, 2020 twitter message regarding (alleged) Tamil Genocide is written communication.

70. (Alleged) Tamil Genocide twitter message on May 18, 2020, adversely affected Sri Lankan Singhalese origin students studying in the school board. Please refer to their impact statements. **(Exhibit 04,** Note: Not attached with this submission**)**

71. The twitter message embedded with specific details of a series of incidents (from consultation, negotiation, and the decision to issue alleged Tamil Genocide statement and to post on the YRDSB Twitter account) that together are evidence of a pattern of conduct of the Board. It also reflects the discrimination against racialized individuals, Sri Lankan Sinhalese origin

studying in YRDSB schools. The incidents resulted in the racialized students, Sri Lankan origin Sinhalese being placed in a position of relative disadvantage.

72. There must be a nexus between the acts complained of and a prohibited ground (race and place of origin) of discrimination[7]. Whether such a nexus exists in any particular case is a mixed question of law and fact, though one with a substantial factual component. I am therefore required to determine whether, on the evidence adduced in support of the complaint, a *prima facie* case has been established as to the existence of such a nexus.

73. To establish a *prima case,* I must establish nexus between prohibited ground, different treatment and pattern of conduct for the alleged conduct of the Board.

74. None of the students' testimony was immediately or obviously untrustworthy, and it provided a basis on which I could conclude that there was a sufficient nexus between the events complained of and a prohibited ground of discrimination based on race or ethnic origin. I have found that such a nexus did exist as a matter of fact and law in this instance, only that there is a *prima case* that that nexus did exist.

75. The testimonies of the students were alleged that releasing of Twitter message on May 18, 2020, by the Board has apparent intent to treat specific student population Sinhalese (Sri Lankan origin) differently. All other recognized Genocide identified base on the country or location such as the Rwanda Genocide, Armenia Genocide. Similarly, naming the Holocaust for Jews genocide primarily are determined locations in the German. However, calling Genocide based on ethnicity is not a recognized practise in the world. Now it can be concluded that naming specific ethnic groups (Tamil) as Genocide has a direct link with the prohibited grounds since it is severely affecting Sinhalese students in the YRDSB. This concludes that the Board treats Sri Lanka origin, Sinhalese students, differently.

76. The essential elements to prove discrimination under the *Human Rights Code*, a pattern of conduct, nexus between prohibited ground, different treatment and the *prima case* are established.

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[7] see *Duong v. Garai (c.o.b. Langstaff Auto Repairs)*, [2000] O.H.R.B.I.D. No. 15 (Q.L.) (Ont. Bd. Inq. – M.D. Garfield), at para. 32.

77. Therefore, the Chair and the Board have contravened section 13.1, 13.2, 13.3 of the *Code.*

78. **Note:** I do recognize that Integrity Commissioner has no judicial authority the same as Ontario Human Rights Tribunal to investigate the alleged violation of the *Ontario Human Rights Code.* The Commissioner may find contravention under 13.1 of the *Code.*

CONCLUSION

79. By the foregoing and for all of the reasons set out above, Chair and Board individually or/and collectively breached *Members Code of Conduct* of the York Region District School Board.

REMEDIES

80. Collectively all complainants request that YRDSB refrain from issuing future Tamil Genocide statements.

81. Once the Tamil Genocide is legally established with a competent judicial entity, we have no objection issuance of statements with regards to (alleged) Tamil Genocide on YRDSB platforms and its publications.

82. The YRDSB shall issue a clarification with regards to the (alleged) Tamil Genocide Twitter message released on May 18, 2020. Complainants are requested that YRDSB should announce on its Twitter account, (alleged) Tamil Genocide is not recognized by Canada and anywhere in the world to educate students and members of the public.

83. Complainants are also requested that Ontario Curriculum Grade 9 and 10, Canadian and World Studies Geography, History, Civics (Politics) must teach how to differentiate armed conflicts and Genocide with established principles. It will help students to analyze the differences between armed conflicts and Genocide and mitigate unproductive speculation about the Genocide. Example: (alleged) Tamil Genocide.

84. Complainants have strongly believed proper education is the only way to mitigate misinformation, false information, and unproductive speculation about the Genocide. It will help to eliminate politically motivated alleged Genocide campaigns in Canada and build ethnic harmony between communities.

85. We should protect our children from politically motivated alleged Genocide campaigns and their predatory practices.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Submitted at the York Region, Ontario, on July 06, 2020.

Collectively Complainants

NEVILLE HEWAGE, Ph.D.
Adjunct Professor – Law and Justice
Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.
LSO No. P15799

Mailing Address:
2581 River Mist Road
Ottawa ON K2J 6G1
Tel: 613 612 7615
Email: nx_hewage@laurentian.ca

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Formal Complaint to the Integrity Commissioner
York Region District School Board
(Complaint Protocol for the Board Member Code of Conduct)

York Region District School Board
Integrity Commissioner

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NEVILLE HEWAGE, Ph.D.
Adjunct Professor – Law and Justice
Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.
LSO No. P15799

Please submit all correspondence to:

2581 River Mist Road
Ottawa ON K2J 6G1
Tel: 613 612 7615
Email: nx_hewage@laurentian.ca

Exhibit 01

Formed	May 22, 1972
Disbanded	May 17, 2009
First Attack	July 23, 1983: LTTE ambush an army patrol convoy outside Jaffna; this is considered the first attack of the Sri Lankan civil war (13 dead). [1]
Last Attack	May 9, 2009: Attack on civilians in Mullaitivu, Northern Province, Sri Lanka [9 dead, 19 wounded]. [2]
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MAPPING TAMIL SPEAKING MILITANT ORGANIZAION LTTE:

http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/225#note4

NARRATIVE SUMMARY

The Liberation Tigers of Tamil Eelam (LTTE), commonly known as the Tamil Tigers, were a separatist militant organization fighting for an independent homeland for Sri Lanka's Tamil minority in northern Sri Lanka.

Velupillai Prabhakaran founded the group in 1972 and by the late 1980s was the dominant Tamil militant group in Sri Lanka. After a number of failed negotiations, the Sri Lankan government declared an all-out offensive against the LTTE in 2006. By May 2009, government forces had defeated the LTTE and killed Prabhakaran. An estimated 70,000 people were killed during the conflict between the LTTE and the Sri Lankan government. [3]

The LTTE is recognized for having carried out a number of high-profile assassinations, including the assassination of Sri Lankan President Ranasinghe Premadasa in 1993 and the former Indian Prime Minister Rajiv Gandhi in 1991. The LTTE consisted of a highly developed military wing and a secondary political wing. The military wing had a naval group, an airborne unit, an intelligence wing, and even a specialized suicide terrorist unit. The group was also notorious for its use of women and children in combat.

The LTTE was largely supported by the Tamil diaspora overseas; although in the 1980s, the LTTE received supplies and training from the Indian Intelligence services. The LTTE was suspected of having links with a number of Islamist groups, such as the Moro Islamic Liberation Front (MILF) in the Philippines and the Taliban in Afghanistan; these links, however, were largely restricted to arms transfers and other commercial activities. The LTTE also earned a portion of their annual $200-300 million revenue from taxation and extortion in LTTE-controlled areas in northern and eastern Sri Lanka.

The LTTE was disbanded in 2009 after their military defeat by the Sri Lankan government and some 6,000 LTTE members were rehabilitated and re-integrated into society. [4] The Sri Lankan government stated in 2011 that the international network of the LTTE was still searching to revive the organization.

MAJOR ATTACKS

1. May 14, 1985: Gunfire attack on Sri Lankan Buddhist holy site in Anaradhapura. (146 killed (BBC) (GTD: 86 killed, 100 wounded)).[66]
2. May 3, 1986: Bomb planted on Sri Lankan Air flight carrying British, French, and Japanese tourists, at the Colombo airport set to fly to the Maldives. (14-16 killed, 23-39 wounded).[67]
3. April 21, 1987: Car bomb explodes at a bus station in Colombo, killing civilians. (113-150 killed, 200 wounded).[68]
4. June 2, 1987: Aranthalawa massacre of Buddhist monks on a bus in Eastern Sri Lanka. (33 killed).[69]
5. July 5, 1987: A soldier drove an explosive-filled truck into a Sri Lankan Army camp in Nelliady, northern Jaffna, followed by a ground attack by a group of LTTE soldiers. (40 killed (GTD: 20 dead, 27 wounded)).[70]
6. October 10, 1988: Massacre in Mahakongaskada Village of civilians. (44-45 killed, 17 wounded).[71]
7. June 11, 1990: Massacre of Police Officers in Kalmunai in eastern Sri Lanka. (144 killed (GTD); most other sources claim over 600).[72]
8. August 3, 1990: Kattankudy mosque massacre; LTTE highly suspected but has not yet claimed official responsibility (112-150 killed).[73]
9. May 21, 1991: Assassination of Rajiv Gandhi, former Prime Minister of India, and 14-18 others by a female suicide bomber, in Sriperumbudur, Tamil Nadu. The LTTE did not officially claim responsibility. (15-19 killed).[74]
10. October 16, 1992: Motorcycle-based suicide attack in Colombo killed Chief Sri Lankan Navy Commander Vice Admiral Fernando and four other Navy personnel. (5 killed).[75]
11. May 1, 1993: Sri Lankan President Ranasinghe Premadasa is killed by a suicide bomber along with 23 others during a May Day rally in Colombo. (24 killed).[76]
12. October 24, 1994: Female suicide bomber assassinates Gamini Dissanyake, Leader of the Opposition and United National Party candidate for the Presidential Elections, during a Colombo elections rally, (59 dead).[77]
13. October 20, 1995: Explosion in Orugodawatte crude oil company by a suicide unit of four, killing 23 soldiers and two civilians. Fourteen storage tanks were destroyed, causing $61 million in damage. (25 killed, 32 injured).[78]
14. October 22, 1995: Attack in Thamanagama fishing village and three other Eastern Sri Lankan villages. (50-66 killed).[79]
15. November 24, 1995: Two female suicide bombers attack the Sri Lankan army headquarters in Colombo. (16 killed, 52 wounded).[80]
16. December 23, 1995: Army ambush in Batticaloa district that killed 32 Sri Lankan troops, and a government-reported 60 rebels. (92-93 killed, 34 wounded).[81]
17. January 31, 1996: A suicide bomber detonates an explosives-loaded truck at the Central Bank in Colombo. (91 dead, 1400 injured).[82]

18. July 18, 1996: LTTE took control of a Sri Lankan army camp in the northeastern town of Mullaitivu. (1200 soldiers killed (BBC and Guardian)/150+ troops and 34 rebels killed (Reuters)).[83]
19. July 24, 1996: Explosive attack on a commuter train near Colombo. (60-61 killed, 391-600 wounded).[84]
20. September 30, 1998: Major LTTE offensive on Sri Lankan Army at key city Kilinochchi, former LTTE base, near the Sri Lankan army's major Elephant Pass base, killing over 600-900 (varied estimates) Sri Lankan soldiers. (900 killed (varied estimates)).[85]
21. July 29, 1999: Neelan Thiruchelvam, a moderate Tamil MP member of TULF and involved in the government-backed peace process, was killed in a suicide attack in Colombo. (3 killed, 5 injured).[86]
22. September 18, 1999: Attack on three villages in Sri Lanka's Eastern Province in an apparent retaliation for Sri Lankan army attacks on Tamil civilians early that week. (50 killed).[87]
23. December 18, 1999: Assasination attempt on Sri Lankan President Chandrika Kumaratunga, who was injured in two bombings while campaigning for a second term during election rallies in Colombo. (15-34 killed).[88]
24. April 23, 2000: Tigers take control of key Sri Lankan Army base in Jaffna, Elephant Pass, which they had been fighting to seek control since the Army takeover of the former LTTE stronghold in the Jaffna peninsula in 1995. (79 soldiers killed, 400+ injured, and 150 LTTE members injured).[89]
25. June 7, 2000: Senior Sri Lankan Industry Minister CV Gooneratne assassinated in Colombo by a suicide bomber. (20-21 killed).[90]
26. July 7, 2004: First suicide bombing in three years. LTTE female soldier in an apparent attempt to assassinate high-profile Hindu Affairs Minister Douglas Devananda, a voracious LTTE critic. (5 killed, 9 injured).[91]
27. October 25, 2005: Foreign Minister Lakshman Kadirgamar, a key player in the peace process and close aide of President Chandrika Kumaratunga, was assassinated at his home in a suicide attack in Colombo. (1 killed).[92]
28. April 9, 2006: Over 100 killed during a 2 week period, the most intensified fighting since the 2002 truce. (100+ killed).[93]
29. June 15, 2006: Evidence suggests that the LTTE was responsible for a bus bombing in Aduradhapura district. (64 killed, 84 wounded).[94]
30. October 16, 2006: Suicide bombing attack on Sri Lankan naval convoy buses in northeast region of Dambulla, one of the deadliest since 2002 peace. (95 killed).[95]
31. May 9, 2009: Attack on civilians in Mullaitivu, Northern Province, Sri Lanka. (9 killed, 19 wounded).[96]

LEADERSHIP

The LTTE's leadership was divided between the group's military wing and its secondary political wing. A central governing committee led by Prabhakaran oversaw all activities of the LTTE, both political and military. [5] The military wing of the LTTE was further divided into sub-groups: the group's naval wing, known as the Sea Tigers, was led by Colonel Soosai, its airborne group, known as the Air Tigers, was led by Prabhakaran's son, a suicide bombers unit, known as the Black Tigers, an elite fighting wing, and an intelligence unit led by Pottu

Amman. [6] B. Nadesan, Prabhakaran's political advisors, was responsible for the political activities of the group.

1. Velupillai Prabhakaran (1976 to 2009): Prabhakaran was LTTE's founder and chief leader. He was the head of the central governing committee of the LTTE, which controlled the LTTE's military wing and subordinate political wing. Prabhakaran was killed on May 19, 2009 in an ambush by Sri Lankan forces as he was trying to flee the area in northern Karayamullavaikkal. His death is generally considered to mark the official end of the organization's existence and the Sri Lankan civil war. [7]

2. Shanmugalingam Sivashankar, commonly known as Pottu Amman (1981 to 2009): Amman was the LTTE Intelligence Wing Chief and was second-in-command after Prabhakaran. He was also killed in the May 19, 2009 ambush along with Prabhakaran. [8]

3. Thillaiyampalam Sivanesan, commonly known as Soosai (1981 to 2009): Colonel Soosai headed the LTTE's naval division, known as the "Sea Tigers." He was one of Prabhakran's chief military strategists. He was killed alongside Prabhakaran on May 19, 2009. [9]

4. Balasingham Nadesan (1992 to 2009): Nadesan was Prabhakran's chief political advisor. He was formerly head of the LTTE police force in 1992, and then named chief of the political wing in 2007. Nadesan was killed in the army ambush on May 19, 2009 along with Prabhakran. [10]

IDEOLOGY & GOALS

- Nationalist

The LTTE's primary goal was to attain an independent state for Sri Lankan Tamils, known as "Tamil Eelam", in the Northern and Eastern Sri Lanka, where the majority of Sri Lankan Tamils reside. [11] The majority of Sri Lankans are Sinhalese Buddhists; a 2001 census revealed that 82% of Sri Lankans are Sinhalese, 9.4% are Tamil, and 7.9% are Sri Lankan Moor. [12] After Sri Lanka became independent from the British in 1948, the majority Sinhalese practiced discrimination towards the Tamils, who were favored by the British during colonial rule. For example, in 1972, the Sinhalese declared Buddhism as Sri Lanka's national religion. [13]

Prabhakan, the group's leader, stressed that "a struggle for Eelam is a demand of the Tamil people", not only of the LTTE. Although separatist ideology has dominated the LTTE's characterization, Prabhakran stated in a 2002 press conference that the LTTE's desired self determination entailed autonomy and self-rule, not necessarily statehood and cessation from the rest of Sri Lanka. [14]

NAME CHANGES

- May 22, 1972: Tamil New Tigers. Prabhakaran founds the Tamil New Tigers, the LTTE's predecessor, in 1972.

- May 5, 1976: Liberation Tigers of Tamil Eelam. Prabhakaran establishes the Liberation Tigers of Tamil Eelam in 1976 and disbands the Tamil New Tigers.

SIZE ESTIMATES

- Unknown: 11,664 (Commissioner General of Rehabilitation Maj. Gen Sudantha Ranasinghe)[15]
- February 1, 2002: 6,000-9,000 (Presidential spokesperson Harim Peiris, stating estimated LTTE strength before the February 2002 ceasefire)[16]
- December 31, 2002: 16,000 (Presidential spokesperson Harim Peiris, stating estimated LTTE strength by the end of 2002 ceasefire.)[17]
- January 8, 2004: 18,000 (Sri Lankan President Chandrika Kumaratunga's Office)[18]
- December 29, 2007: 3,000 (South Asia Terrorism Portal)[19]
- January 11, 2008: 4,500 (South Asian Terrorism Portal)[20]

DESIGNATED/LISTED

Over 32 different states have listed the LTTE as a terrorist organization, including Malaysia, the US, India, the UK, the EU, Canada, etc. [21] The LTTE was designated a "foreign terrorist organization" by the US government under the Anti-Terrorism and Effective Death Penalty Act of 1996. The LTTE was re-designated in October 2003 and currently maintains this status. [22]
The LTTE is listed as a "proscribed terrorist group" by the UK government under the Terrorism Act of 2000. [23]
The EU has also listed LTTE on their list of terrorist organizations as per the Council Common Position 2009/67/CFSP. [24] It was re-listed in 2011 after a review of its listed terrorist organizations. [25]
Since 1992, the LTTE has been included in a list of terrorist organizations by the Indian government under The Unlawful Activities (Prevention) Act, 1967. [26]
In 2006, Canada listed the LTTE as a terrorist organization pursuant to its criminal code. [27]

- Indian Ministry of Home Affairs: 1992 to Present
- British Outlawed Foreign Groups: 2000 to Present
- U.S. State Department Foreign Terrorist Organizations: October 2003 to Present
- EU Designated Terrorist Organizations: 2006 to Present

RESOURCES

The LTTE had an annual budget of around $200-$300 million, most of which was obtained from the global Sri Lankan diaspora. [28]

The main financial body of the LTTE is the Aiyanna Group, responsible for monitoring financial flows and revenue, including donations from overseas Tamil communities and LTTE supporters. In 2009, overseas Sri Lankans sent an estimated $2.8 million to the LTTE. [29]

The LTTE also secured a significant amount of its funding from criminal activities, including piracy, human and drug trafficking, arms smuggling, and other petty crimes. The Sri Lankan Ministry of Defense reported that the LTTE hijacked several ships in the waters just outside Sri

Lanka, such as the Irish Mona (2005), the Athena (2007), Princess Kash (1998), and MV Farah III (2007). [30] The LTTE also controlled the majority of smuggling of Tamil people to Western countries; for example, it generally costs between $10,000-40,000 for a Sri Lankan Tamil to get to Canada illegally. [31] The LTTE was also known to levy an "exit tax" for individuals trying to leave Tamil-controlled areas. The Sri Lankan Ministry of Defense also reported that the LTTE was actively involved in the illicit drug trade and smuggled heroin from Burma and other Southeast Asian countries to Western Europe. [32] Other petty crimes committed by the LTTE include passport forgery, credit card fraud, and the theft of aid donations to Tamil-controlled areas. [33]

Around 20% of the LTTE's funding came from internal sources, including extortion, taxation, and payments for protection. [34] One of the main sources of internal revenue for the LTTE came from custom duties passing through areas controlled by the LTTE. These customs duties ranged from 10-30% of the cost of the items. [35]The LTTE also engaged in commercial ventures with little success. [36]

The Office of Overseas Purchases, also known as the KP Department, functions as the main procurement body of the LTTE, and is believed to obtain arsenal from various countries as well as operate a fleet of deep-sea vessels. Captured weapons from the Sri Lankan army constitute approximately 60-70% of the LTTE's arsenal. Additional high tech weaponry is purchased using overseas funds. [37]

Although the LTTE was officially disbanded in 2009 after the death of its leader Prabhakaran, a US State Department report in August 2011 claims that the LTTE's international network of financial support continues to exist, and that its overseas divisions continue to acquire weapons. [38]

EXTERNAL INFLUENCES

Overseas funding is mainly provided by the large Sri Lankan diaspora, which has continued to grow since Sri Lanka's 1948 independence. [39] During the 1970s and 1980s, the LTTE's main financial support came from the Tamils who fled Sri Lanka to India, Malaysia, Europe, and North America. [40] The Indian state of Tamil Nadu became a crucial transit point for low-technology arms, narcotics, contraband, and more, given its geographic closeness to Sri Lanka and control of the regional waters by the LTTE Sea Tigers.
India's Intelligence service, known as the Research and Analysis Wing (RAW), is believed to have provided training and weaponry to the LTTE up until the mid-1980s. RAW withdrew its support of the LTTE in the 1980s, as LTTE began to make alliances with radical separatist groups in the Indian state of Tamil Nadu. [41]

Cambodia was a crucial source for LTTE arms procurement, contributing an estimated five to ten percent towards the LTTE's total arsenal. Thailand also served as an important source of manpower, as well as a strategic base for arms procurement.

GEOGRAPHICAL LOCATIONS

The activities of the Tamil Tigers were primarily based in the Northern and Eastern regions of Sri Lanka, where the majority of Sri Lankan Tamils reside. However many of the group's major attacks were carried out in the capital of Colombo, and violent attacks occurred throughout Sri Lanka. [42]

The Sri Lankan Tamil Diaspora, and widespread funding sources that accompanied it, allowed the LTTE to carry out its operations in a range of countries. Tamil Nadu was a crucial transit point for low-technology arms, narcotics, contraband, and more, given the geographic closeness to Sri Lanka and control of the regional waters by the LTTE Sea Tigers. The LTTE carried out a number of significant attacks in India, including the assassination of former Prime Minister Rajiv Gandhi in 1991. [43]

The UK was a crucial component of overseas LTTE operations, via front organizations and pro-LTTE groups in the country. This includes Sri Lankan Tamil newspapers and other publications. The LTTE disseminates propaganda messages from headquarters of these various organizations in the UK to Europe and North America, primarily for fund-raising purposes. [44] Forty percent of overall LTTE funding was allegedly sourced from the United Kingdom, and its headquarters are known as the "British Tamil Association." There were biannual public pro-LTTE demonstrations, and there were allegedly a number of UK MPs supporting the group [45] Cambodia was a crucial source for LTTE arms procurement, estimated to contribute between five to ten per cent of LTTE total arsenal. Thailand, with a community of 10,000 Tamils, had a key LTTE arms shipping base. [46]

The LTTE also maintained a presence in South Africa that included propaganda, fund-raising, training camps, weapons procurement, and shipping activity. [47] South Africa has a large and politically active Sri Lankan Tamil community and hence a great deal of LTTE influence. This is believed to have lead to the formation of a South African Tamil Tigers, trained by both LTTE personnel as well as military organizations from the Apartheid era. The LTTE spread their influence by highlighting commonalities between the South African Tamils and the Sri Lankan Tamils. Politically, the LTTE tried to gain the support of various important South African political leaders, including those in the ANC. {[48] The LTTE did not attempt to actively mobilize the Sri Lankan Tamil community in the Middle East to the extent that t did in other overseas propaganda and fund-raising operations. [49]

TARGETS & TACTICS

The LTTE is organized hierarchically under the leadership of the group's founder, Prabhakaran. The LTTE maintains army, navy, and air capabilities, but is most well-known for its use of suicide operations by a small, special armed group called the Black Tigers. The Black Tigers use traditional land and sea tactics, as well as guerrilla warfare and targeted bombings and assassinations, particularly in the northern and eastern areas of Sri Lanka. They are one of the first organizations to utilize suicide attacks on a large scale. For example, former Indian leader Rajeev Gandhi was assassinated in 1991 by a female suicide bomber from the LTTE. [50]According to Jane's Intelligence Review, the LTTE carried out 168 suicide attacks between 1980-2000. [51]

LTTE attacks targeted individuals and groups who did not support their overarching goal of attaining an independent Tamil state, which included the Sri Lankan military, Sri Lankan and Indian politicians, police, and sometimes various civilian populations. The LTTE also targeted Sri Lankan Tamil politicians who did not support the LTTE and their goals, as well as other rival Tamil militant groups in Sri Lanka. Some of the group's most controversial suicide attacks include the assassinations of former Indian Prime Minister Rajiv Gandhi, and former Sri Lankan President Ranasinghe Premadasa. [52] The majority of LTTE victims were Sinhalese Buddhists.

The LTTE also attacked symbols of national importance to the Sri Lankan state, such as the Sri Lankan Central Bank and the country's world-trade center. [53]
One of the LTTE's primary tactics was to create front organizations and gangs to project its influence, procure funds from these overseas Sri Lankan Tamil diaspora communities, and then use these funds to purchase arms. [54]

The LTTE also adopted guerilla tactics that were initially very effective against the Sri Lankan government. LTTE forces would often ambush government troops and attack in "waves," meaning here that the LTTE would first swarm the enemy and then engage in suicide bombings, which would often confuse and scare Sri Lankan government forces. [55]

POLITICAL ACTIVITIES

The LTTE is one of several violent offshoots of the Tamil United Liberation Front (TULF), formerly the Tamil United Front (TUF). TUF was formed in the early 1970s from groups such as the Tamil Congress and the Federal Party. [56] When it officially called for the formation of an independent Tamil state in 1976, the group's name was changed to the Tamil United Liberation Front. Several more radical militant Tamil groups, including Prabhakaran's LTTE, emerged from the TULF. [57]

The LTTE formed its political front, The People's Front of Liberation Tigers, in 1989, during a time in which the LTTE was in negotiations with the Sri Lankan government. Yogaratnam Yogi was the party's General Secretary. It has, until recently, been a registered political party in Sri Lanka. However they have rarely been active in local politics. Although they were listed on a few local ballots in 2008, the government deregistered the party in 2011. [58]

The LTTE demonstrated its willingness to negotiate with the Sri Lankan government on several occasions; although, the LTTE often used talks and agreements to enhance its own position, re-arm, and get rid of its competitors. [59] The first set of talks with the government took place in 1985 in Bhutan, and was followed by an accord between India and Sri Lanka in 1987. The Indian government agreed to intervene in the Sri Lankan conflict and provide a peacekeeping force to ensure that the LTTE disarmed. The Indians were unable to subdue the LTTE and withdrew in 1990, giving the LTTE time to re-group and eliminate dissenters among the Tamil population. [60] Peace talks continued throughout the 1990s and were largely unsuccessful.

During this period, the LTTE adopted "hit-and-run" tactics wherein peace talks were alternated with bouts of violence and clashes between the LTTE and government forces. [61] The most significant negotiation occurred in February 2002 when Norway, serving as a mediator, helped secure a ceasefire between the LTTE and the Sri Lankan government. However, after six rounds

of additional talks in Thailand and Japan, the LTTE announced the suspension of further talks in 2003. [62] Some experts believe this was a tactical move to garner further concessions from the Sri Lankan government. The LTTE has since cited the Sri Lankan government's exclusion of the group from an international aid conference, continued military occupation of Tamil-settled areas, and marginalization in government economic policies as the primary reasons for the breakdown of the ceasefire. [63] After the breakdown of another round of peace talks in 2006, the Sri Lankan government launched an all-out offensive against the LTTE. [64] On May 17, 2009, an LTTE representative conceded the defeat of the LTTE by government forces. Prabhakaran was killed by government forces on May 18, 2009, bringing an immediate end to the conflict and the LTTE. [65]

RELATIONSHIPS WITH OTHER GROUPS

Tamil militant groups began to emerge in 1970s, the first of which was the "Tamil Students Movement" that protested the limited admission of Tamil students to universities. By 1972, the original student movement broke up into smaller, militant groups such as the Tamil New Tigers (TNT), the LTTE's predecessor, and the Tamil Eelam Liberation Organization (TELO). [97] By the late 1980s, there were over thirty different Tamil militant groups. The most significant groups were the LTTE, the Eelam People's Revolutionary Liberation Front (EPRLF), TELO, the Eelam Revolutionary Organization of Students (EROS), and the People's Liberation Organization of Tamil Eelam (PLOTE). By 1987, the LTTE was the dominant group. TELO especially was repeatedly attacked by the LTTE during the 1987 war against India, as well as members of PLOTE and EPRLF.[98]

In March 2004, Colonel Vinayagamoorthy Maralitharan, commonly known as "Karuna Amman," broke away from the LTTE and formed an underground organization and political party with a band of his supporters. His organization's military wing is called the Tamil National Front and its political wing is known as the Tamileela Makkal Viduthalai Pulligal (TMVP), allied with the Eelam National Democratic Liberation Front (ENDLF). By April 2004, the LTTE had essentially subdued the breakaway faction; however, Colonel Karuna escaped with a small group of supporters and regrouped in Colombo. [99] In 2006, Colonel Karuna allied with the Sri Lankan government, delivering a huge blow to the LTTE. [100]

The LTTE has developed relationships with various Islamist groups because of its criminal activities in the informal arms market, rather than any form of ideological affinity. By the 1990s, the LTTE had developed a close relationship with the Kurdish Support Group in France and had modeled their diaspora funding efforts after the Kurdish example. The LTTE's acquisition of 11 Greek surface to air missiles was reportedly a result of the LTTE's relationship with the PKK. [101] Furthermore, it is believed that Otharad Cargo, an LTTE-operated cargo company based in Dubai, received military hardware from the Sharjah network, a large Taliban weapons-procurement operation. [102] In Karachi, Pakistan, the LTTE registered a front company that obtained weapons for both the LTTE and Pakistani militant groups. An LTTE shipping fleet was also involved in providing logistical support for the Al Qaeda-affiliated Pakistani group Harakat-al Mujahideen. [103]

The LTTE also established a presence in Eritrea, which is known to be a major shipment point in the informal arms market. It is suspected that the LTTE has interactions with Al Qaeda affiliated groups in the Eritrean Network. A US Senate Foreign Relations Committee report in December 2006 claims that the Eritrean government directly supports the LTTE. The LTTE also maintains relationships with the Moro Islamic Liberation Front (MILF) and Aby Sayyaf in the Philippines in activities related to fund transfers and training operations. [104]

COMMUNITY RELATIONSHIPS

Support for the LTTE was primarily based around the disenfranchised Tamil population in the north of Sri Lanka, and later the Tamils who escaped to the south. [105] In the territory it controlled, the LTTE established some civil administration, including postal services, courts, police, banks, radio, etc. These structures collect taxes and administer the rule of law. [106] The LTTE was notorious for actively recruiting women and children from among the Tamil community. It was thought that women constituted 20-30% of the LTTE's fighting cadre and that an estimated 4,000 female members were killed during the 26 years of the Sri Lankan conflict. [107] A female LTTE suicide bomber carried out the assassination of former Indian Prime Minister Rajeev Gandhi. The LTTE also actively used children as part of their front-line troops. [108] The LTTE's recruitment of child soldiers led to discontent among the Tamil community. According to UNICEF, the LTTE has recruited over 5,800 child soldiers since 2001. Many of these children were abducted from refugee camps and orphanages in Tamil-controlled areas. [109]

REFERENCES

1. ^ "Terrorist Organization Profile: Liberation Tigers of Tamil Eelam (LTTE)", Global Terrorism Database, National Consortium for the Study of Terrorism and Responses to Terrorism. Web. Accessed 22 July 2013. <http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=362>
2. ^ "Terrorist Organization Profile: Liberation Tigers of Tamil Eelam (LTTE)", Global Terrorism Database, National Consortium for the Study of Terrorism and Responses to Terrorism. Web. Accessed 22 July 2013. <http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=362>
3. ^ Bajoria, Jayshree. "The Sri Lankan Conflict." Council on Foreign Relations. 18 May 2009. Web. Accessed 22 July 2013. <http://www.cfr.org/terrorist-organizations-and-networks/sri-lankan-conflict/p11407>
4. ^ "LTTE international network still active: Lanka PM." The Economic Times. 9 April 2011. Web. Accessed 22 July 2013. <articles.economictimes.indiatimes.com/2011-04-09/news/29400675_1_d-m-jayaratne-ltte-internationalnetwork>
5. ^ "Liberation Tigers of Tamil Eelam." South Asia Terrorism Portal. Web. Accessed 22 July 2013. <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/LTTE.HTM>
6. ^ "Liberation Tigers of Tamil Eelam." South Asia Terrorism Portal. Web. Accessed 22 July 2013. <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/LTTE.HTM>
7. ^ "Colombo: Tamil Tiger Leader Killed in Ambush", Time.com, 18 May 2009. Web. Accessed 22 July 2013. <http://www.time.com/time/world/article/0,8599,1899160,00.html>
8. ^ "Short Profile of LTTE intelligence head, Pottu", Srilankanguardian.org. Web. Accessed 22 July 2013. <http://www.srilankaguardian.org/2007/08/short-profile-of-ltte-intelligence-head.html>
9. ^ "LTTE leadership wiped out", Sifynews.com, 18 May 2009. Web. Accessed 22 July 2013. <http://www.sify.com/news/ltte-leadership-wiped-out-news-international-jfsrEbffefg.html>
10. ^ "LTTE leadership wiped out", Sifynews.com, 18 May 2009. Web. Accessed 22 July 2013. <http://www.sify.com/news/ltte-leadership-wiped-out-news-international-jfsrEbffefg.html>
11. ^ "Liberation Tigers of Tamil Eelam." South Asia Terrorism Portal. Web. Accessed 22 July 2013. <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/LTTE.HTM>
12. ^ Bajoria, Jayshree. "The Sri Lankan Conflict." Council on Foreign Relations. 18 May 2009. Web. Accessed 22 July 2013. <http://www.cfr.org/terrorist-organizations-and-networks/sri-lankan-conflict/p11407>
13. ^ Bajoria, Jayshree. "The Sri Lankan Conflict." Council on Foreign Relations. 18 May 2009. Web. Accessed 22 July 2013. <http://www.cfr.org/terrorist-organizations-and-networks/sri-lankan-conflict/p11407>

14. ^ “Press Conference at Killinochi.” Eelam News. 10 April 2002. Web. Accessed 22 July 2013. <http://www.eelamview.com/2011/11/17/hon-v-prabhakaran-press-conference-at-killinochi-2002/>
15. ^ Sriyanada, Shanika. "Sri Lankan experience proves nothing is impossible." Sunday Observer. 6 May 2011. Web. Accessed 14 May 2012.
16. ^ "Liberation Tigers of Tamil Eelam (LTTE)." SATP. South Asian Terrorism Database, Web. Accessed 14 May 2012.
17. ^ "Liberation Tigers of Tamil Eelam (LTTE)." SATP. South Asian Terrorism Database, Web. Accessed 14 May 2012.
18. ^ "Liberation Tigers of Tamil Eelam (LTTE)." SATP. South Asian Terrorism Database, n.d. Web. Accessed 14 May 2012.
19. ^ "Liberation Tigers of Tamil Eelam (LTTE)." South Asian Terrorism Portal. N.p., n.d. Web. Accessed 22 Aug. 2012.
20. ^ "Liberation Tigers of Tamil Eelam (LTTE)." South Asian Terrorism Portal. N.p., n.d. Web. Accessed 22 Aug. 2012.
21. ^ “The LTTE in Brief.” Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
22. ^ "Background Note: Sri Lanka", US Department of State, 6 April 2011. Web. Accessed 22 July 2013. <http://www.state.gov/r/pa/ei/bgn/5249.html>
23. ^ "Proscribed terrorist group,” UK Home Office. Web. Accessed 22 July 2013. <http://www.homeoffice.gov.uk/publications/counter-terrorism/proscribed-terror-groups/proscribed-groups?view=Binary>
24. ^ "Council Common Position 2009/67/CFSP of 26 January 2009 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2008/586/CFSP,” European Union. Web. Accessed 22 July 2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:01:EN:HTML
25. ^ http://www.dailymirror.lk/news/9962-eu-re-lists-ltte-as-terror-group-.html>
26. ^ “The LTTE in Brief.” Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
27. ^ “Listing the LTTE as a Terrorist Group.” Asian Tribune. 11 April 2006. Web. Accessed 22 July 2013. <http://www.asiantribune.com/listing-ltte-terrorist-group>
28. ^ "The Sri Lankan Tamil Diaspora after the LTTE." International Crisis Group: Asia Report N°186, 23 Feb 2010. Web. Accessed 10 Mar 2012. <http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/186 The Sri Lankan Tamil Diaspora after the LTTE.pdf>
29. ^ “Feeding the Tiger - How Sri Lankan insurgents fund their war,” Jane’s Intelligence Review. 1 September, 2007. Web. Accessed 26 February 2012. <http://www4.janes.com/subscribe/jir/doc_view.jsp?K2DocKey=/content1/janesdata/mags/jir/history/jir2007/jir10212.htm@current&Prod_Name=JIR&QueryText=%3CAND%3E%28%3COR%3E%28%28%5B80%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+body%29%2C+%28%5B100%5D+%28%5B100%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+title%29+%3CAND%3E+%28%5B100%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+body%29%29%29%29>
30. ^ “The LTTE in Brief.” Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
31. ^ “The LTTE in Brief.” Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
32. ^ “The LTTE in Brief.” Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
33. ^ “The LTTE in Brief.” Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
34. ^ Manoharan, N. “Financial Fodder – Internal Sources of LTTE Funds.” Institute of Peace and Conflict Studies. 16 October 2004. Web. Accessed 22 July 2013. <http://www.ipcs.org/article/terrorism-in-sri-lanka/financial-fodder-internal-sources-of-ltte-funds-1527.html>
35. ^ Manoharan, N. “Financial Fodder – Internal Sources of LTTE Funds.” Institute of Peace and Conflict Studies. 16 October 2004. Web. Accessed 22 July 2013. <http://www.ipcs.org/article/terrorism-in-sri-lanka/financial-fodder-internal-sources-of-ltte-funds-1527.html>
36. ^ Manoharan, N. “Financial Fodder – Internal Sources of LTTE Funds.” Institute of Peace and Conflict Studies. 16 October 2004. Web. Accessed 22 July 2013. <http://www.ipcs.org/article/terrorism-in-sri-lanka/financial-fodder-internal-sources-of-ltte-funds-1527.html>
37. ^ “Feeding the Tiger - How Sri Lankan insurgents fund their war,” Jane’s Intelligence Review. 1 September, 2007. Web. Accessed 26 February 2012. <http://www4.janes.com/subscribe/jir/doc_view.jsp?K2DocKey=/content1/janesdata/mags/jir/history/jir2007/jir10212.htm@current&Prod_Name=JIR&QueryText=%3CAND%3E%28%3COR%3E%28%28%5B80%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+body%29%2C+%28%5B100%5D+%28%5B100%5D%28

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38. ^ "Sri Lanka Assessment 2012." South Asia Terrorism Portal. Web. Accessed 26 February, 2012. <http://www.satp.org/satporgtp/countries/shrilanka/index.html>
39. ^ "The Sri Lankan Tamil Diaspora after the LTTE." International Crisis Group: Asia Report N°186, 23 Feb 2010. Web. Accessed 10 Mar 2012. <http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/186 The Sri Lankan Tamil Diaspora after the LTTE.pdf>
40. ^ "The Sri Lankan Tamil Diaspora after the LTTE." International Crisis Group: Asia Report N°186, 23 Feb 2010. Web. Accessed 10 Mar 2012. <http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/186 The Sri Lankan Tamil Diaspora after the LTTE.pdf>
41. ^ Bajoria, Jayshree. "The Sri Lankan Conflict." Council on Foreign Relations. 18 May 2009. Web. Accessed 22 July 2013. <http://www.cfr.org/terrorist-organizations-and-networks/sri-lankan-conflict/p11407>
42. ^ Bajoria, Jayshree. "The Sri Lankan Conflict." Council on Foreign Relations. 18 May 2009. Web. Accessed 22 July 2013. <http://www.cfr.org/terrorist-organizations-and-networks/sri-lankan-conflict/p11407>
43. ^ "1991: Bomb kills India's Former Leader Rajiv Gandhi." BBC News. 21 May 1991. Web. Accessed 22 July 2013. <http://news.bbc.co.uk/onthisday/hi/dates/stories/may/21/newsid_2504000/2504739.stm>
44. ^ Gunaratna, Rohan. "International and Regional Implications of the Sri Lankan Tamil Insurgency." Tamil Nation. N.p., 2 December 1998. Web. Accessed 28 Feb 2012. <http://tamilnation.co/ltte/98rohan.htm>
45. ^ Waduge, Shenali. "Why are UK MPs supporting LTTE terrorism?." Sri Lanka Guardian n.d., n. pag. Web. Accessed 10 Mar. 2012. <http://www.srilankaguardian.org/2011/10/why-are-uk-mps-supporting-ltte.html>
46. ^ "Feeding the Tiger - How Sri Lankan insurgents fund their war," Jane's Intelligence Review. 1 September, 2007. Web. Accessed 26 February 2012. <http://www4.janes.com/subscribe/jir/doc_view.jsp?K2DocKey=/content1/janesdata/mags/jir/history/jir2007/jir10212.htm@current&Prod_Name=JIR&QueryText=%3CAND%3E%28%3COR%3E%28%28%5B80%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+body%29%2C+%28%5B100%5D+%28%5B100%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+title%29+%3CAND%3E+%28%5B100%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+body%29%29%29%29>
47. ^ Gunaratna, Rohan, "South African LTTE Connections Exposed", Sinhaya. Web. Accessed 22 July 2013. <http://www.sinhaya.com/SA_Connection.htm>
48. ^ Gunaratna, Rohan, "South African LTTE Connections Exposed", Sinhaya. Web. Accessed 22 July 2013. <http://www.sinhaya.com/SA_Connection.htm>
49. ^ Shanaka, Jayasekara. "Tamil Tiger Links with Islamist Terrorist Groups." International Institute for Counter-Terrorism. N.p., 3 February 2008. Web. Accessed 19 Feb 2012. <http://www.ict.org.il/Articles/tabid/66/Articlsid/277/Default.asp&xgt>
50. ^ "1991: Bomb kills India's Former Leader Rajiv Gandhi." BBC News. 21 May 1991. Web. Accessed 22 July 2013. <http://news.bbc.co.uk/onthisday/hi/dates/stories/may/21/newsid_2504000/2504739.stm>
51. ^ "The LTTE in Brief." Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
52. ^ "The LTTE in Brief." Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
53. ^ Hedges, Matthew and Dr. Theodore Karasik. "Evolving Terorrist Tactics, Techniques, and Procedures (TTP) Migration Across South Asia, Caucasus, and the Middle East." Institute of Near East and Gulf Military Analysis. May 2010. Web. Accessed 22 July 2013. <http://terror-mirror.com/books/etrrep014.pdf>
54. ^ "Feeding the Tiger - How Sri Lankan insurgents fund their war," Jane's Intelligence Review. 1 September, 2007. Web. Accessed 26 February 2012. <http://www4.janes.com/subscribe/jir/doc_view.jsp?K2DocKey=/content1/janesdata/mags/jir/history/jir2007/jir10212.htm@current&Prod_Name=JIR&QueryText=%3CAND%3E%28%3COR%3E%28%28%5B80%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+body%29%2C+%28%5B100%5D+%28%5B100%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+title%29+%3CAND%3E+%28%5B100%5D%28+ltte+%3CAND%3E+budget%29+%3CIN%3E+body%29%29%29%29>
55. ^ Hedges, Matthew and Dr. Theodore Karasik. "Evolving Terorrist Tactics, Techniques, and Procedures (TTP) Migration Across South Asia, Caucasus, and the Middle East." Institute of Near East and Gulf Military Analysis. May 2010. Web. Accessed 22 July 2013. <http://terror-mirror.com/books/etrrep014.pdf>
56. ^ Rotberg, Robert I. "Creating peace in Sri Lanka: civil war and reconciliation. Brookings Institution Press." 1999. Web. Accessed 22 July 2013. <http://books.google.com/books?hl=en&lr=&id=GsAkOjSilgoC&oi=fnd&pg=PR9&dq=origins of sri lankan civil war&ots=tfZUtltkXg&sig=cndFXSBGJCxf_OehxYo9Nfj3MHE>

57. ^ Russell R. Ross and Andrea Matles Savada. “Sri Lanka: A Country Study. Washington: GPO for the Library of Congress, 1988.” Web. Accessed 22 July 2013. <http://countrystudies.us/sri-lanka/69.htm>
58. ^ Bandara, Kelum. "LTTE party to be dissolved." Daily Mirror, 22 Aug 2011. Web. Accessed 1 Mar. 2012. <http://dailymirror.lk/top-story/13139-ltte-party-to-be-dissolved-.html>
59. ^ Cronin, Audrey. “How Terrorism Ends.” Princeton: Princeton University Press, 2009: 59.
60. ^ Cronin, Audrey. “How Terrorism Ends.” Princeton: Princeton University Press, 2009: 58.
61. ^ Cronin, Audrey. “How Terrorism Ends.” Princeton: Princeton University Press, 2009: 58.
62. ^ Cronin, Audrey. “How Terrorism Ends.” Princeton: Princeton University Press, 2009: 60.
63. ^ “Liberation Tigers of Tamil Eelam.” South Asia Terrorism Portal. Web. Accessed 22 July 2013. <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/LTTE.HTM>
64. ^ Smith, Neil A. “Understanding Sri Lanka’s Defeat of the Tamil Tigers.” National Defense University. Web. Accessed 23 July 2013. <www.ndu.edu/press/understanding-sri-lanka.html>
65. ^ Smith, Neil A. “Understanding Sri Lanka’s Defeat of the Tamil Tigers.” National Defense University. Web. Accessed 23 July 2013. <www.ndu.edu/press/understanding-sri-lanka.html>
66. ^ "Timeline of the Tamil conflict." BBC News. BBC, 04 Sep 2000. Web. 4 Apr 2012. <http://news.bbc.co.uk/2/hi/south_asia/51435.stm> "Terrorist Organization Profile: Liberation Tigers of Tamil Eelam (LTTE)", Global Terrorism Database, National Consortium .
67. ^ "Letter sent by the Permanent Representative of Sri Lanka to the Centre for Human Rights." Office of the United Nations High Commissioner for Human Rights. 09 Aug 1994. Web. 4 Apr 2012.
68. ^ "1987:The Bubble Bursts." UTHR Sri Lanka. N.p., n.d. Web. 4 Apr 2012. <http://www.uthr.org/BP/volume1/Chapter6.htm>
69. ^ Fernando, Elmo. "LTTE massacre site is haven for Tamil victims." BBCSinhala. BBC, 28 Jan 2005. Web. 6 Apr 2012. <http://www.bbc.co.uk/sinhala/highlights/story/2005/01/050128_elmo_ampara.shtml>
70. ^ "Suicide Attacks by the LTTE", South Asia Terrorism Portal. Web. Accessed 3 April 2012. <http://www.satp.org/satporgtp/countries/shrilanka/database/data_suicide_killings.htm>
71. ^ "LTTE - The Terrorism Most Foul." Ministry of Defence, Public Security, Law & Order. Democratic Socialist Republic of Sri Lanka, 2009. Web. 9 Apr 2012. <http://www.defence.lk/LTTE/20110603MOT_4.asp>
72. ^ "Recalling the saddest day in Lankan Police history". Lanka Newspapers. Lanka Newspapers. 2011. Web. Accessed 9 April 2012. <http://www.lankanewspapers.com/news/2011/6/67843.html>
73. ^ "Tamils kill 110 Muslims at 2 Sri Lankan Mosques." The New York Times. 5 August 1990. Web. Accessed 22 July 2013. <http://www.nytimes.com/1990/08/05/world/tamils-kill-110-muslims-at-2-sri-lankan-mosques.html>
74. ^ "Rajiv Gandhi Assasination." Reuters. 18 October 2012. Web. Accessed 22 July 2013.
75. ^ "Attacks Blamed on Sri Lanka's Tamil Tigers." Reuters. 2 February 2008. Web. Accessed 22 July 2013. <http://www.reuters.com/article/2008/02/02/us-srilanka-attacks-idUSSP33257120080202>
76. ^ "Attacks Blamed on Sri Lanka's Tamil Tigers." Reuters. 2 February 2008. Web. Accessed 22 July 2013. <http://www.reuters.com/article/2008/02/02/us-srilanka-attacks-idUSSP33257120080202>
77. ^ "Attacks Blamed on Sri Lanka's Tamil Tigers." Reuters. 2 February 2008. Web. Accessed 22 July 2013. <http://www.reuters.com/article/2008/02/02/us-srilanka-attacks-idUSSP33257120080202>
78. ^ "Suicide Attacks by the LTTE", South Asia Terrorism Portal. Web. Accessed 3 April 2012. <http://www.satp.org/satporgtp/countries/shrilanka/database/data_suicide_killings.htm>
79. ^ "Suicide Attacks by the LTTE", South Asia Terrorism Portal. Web. Accessed 3 April 2012. <http://www.satp.org/satporgtp/countries/shrilanka/database/data_suicide_killings.htm>
80. ^ "Suicide Attacks by the LTTE", South Asia Terrorism Portal. Web. Accessed 3 April 2012. <http://www.satp.org/satporgtp/countries/shrilanka/database/data_suicide_killings.htm>
81. ^ "Incidents: Sri Lanka." Global Terrorism Database. Web. Accessed 22 July 2013. <http://www.start.umd.edu/gtd/search/Results.aspx?search=sri+lanka&sa.x=-537&sa.y=-138&sa=Search>
82. ^ "Suicide Attacks by the LTTE", South Asia Terrorism Portal. Web. Accessed 3 April 2012. <http://www.satp.org/satporgtp/countries/shrilanka/database/data_suicide_killings.htm>
83. ^ "Attacks Blamed on Sri Lanka's Tamil Tigers." Reuters. 2 February 2008. Web. Accessed 22 July 2013. <http://www.reuters.com/article/2008/02/02/us-srilanka-attacks-idUSSP33257120080202>
84. ^ "Incidents: Sri Lanka." Global Terrorism Database. Web. Accessed 22 July 2013. <http://www.start.umd.edu/gtd/search/Results.aspx?search=sri+lanka&sa.x=-537&sa.y=-138&sa=Search>
85. ^ "Attacks Blamed on Sri Lanka's Tamil Tigers." Reuters. 2 February 2008. Web. Accessed 22 July 2013. <http://www.reuters.com/article/2008/02/02/us-srilanka-attacks-idUSSP33257120080202>http://www.cidcm.umd.edu/mar/chronology.asp?groupId=78002
86. ^ "Suicide Attacks by the LTTE", South Asia Terrorism Portal. Web. Accessed 3 April 2012. <http://www.satp.org/satporgtp/countries/shrilanka/database/data_suicide_killings.htm>
87. ^ "South Asia Sri Lanka Rebels Kill 50." BBC News. 18 September 1999. Web. Accessed 22 July 2013. <http://news.bbc.co.uk/2/hi/south_asia/450856.stm>

88. ^ "Attacks Blamed on Sri Lanka's Tamil Tigers." Reuters. 2 February 2008. Web. Accessed 22 July 2013. <http://www.reuters.com/article/2008/02/02/us-srilanka-attacks-idUSSP33257120080202>
89. ^ "Rebels Take Sri Lanka Army Base." BBC News. 23 April 2000. Web. Accessed 22 July 2013. <http://news.bbc.co.uk/2/hi/south_asia/723599.stm>
90. ^ "Bomb Kills Sri Lankan Minister." BBC News. 7 June 2000. Web. Accessed 22 July 2013. <http://news.bbc.co.uk/2/hi/south_asia/780461.stm>
91. ^ "Suicide Attacks by the LTTE", South Asia Terrorism Portal. Web. Accessed 3 April 2012. <http://www.satp.org/satporgtp/countries/shrilanka/database/data_suicide_killings.htm>
92. ^ "Senior Sri Lanka Minister Killed." BBC News. 25 October 2005. Web. Accessed 22 July 2013. <http://news.bbc.co.uk/2/hi/south_asia/4147196.stm>
93. ^ "Chronology for Sri Lankan Tamils in Sri Lanka." Center for International Development and Conflict Management. Web. Accessed 22 July 2013. <http://www.cidcm.umd.edu/mar/chronology.asp?groupId=78002>
94. ^ "Chronology for Sri Lankan Tamils in Sri Lanka." Center for International Development and Conflict Management. Web. Accessed 22 July 2013. <http://www.cidcm.umd.edu/mar/chronology.asp?groupId=78002> http://www.start.umd.edu/gtd/search/IncidentSummary
95. ^ "Fighter jets pound suspected rebel camp after suicide bombing kills 95 sailors." USA Today. 16 October 2006. Web. Accessed 22 July 2013. <http://usatoday30.usatoday.com/news/world/2006-10-17-sri-lanka_x.htm?csp=34>
96. ^ "Terrorist Organization Profile: Liberation Tigers of Tamil Eelam (LTTE)", Global Terrorism Database, National Consortium for the Study of Terrorism and Responses to Terrorism. Web. Accessed 22 July 2013. <http://www.start.umd.edu/gtd/search/Results.aspx?
97. ^ "Liberation Tigers of Tamil Eelam." South Asia Terrorism Portal. Web. Accessed 22 July 2013. <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/LTTE.HTM>
98. ^ Cronin, Audrey. "How Terrorism Ends." Princeton: Princeton University Press, 2009: 58.
99. ^ Singh, Ajit Kumar. "Colonel's Control." Outlook India. 27 March 2007. Web. Accessed 23 July 2013. <www.outlookindia.com/article.aspx?234246>
100. ^ Cronin, Audrey. "How Terrorism Ends." Princeton: Princeton University Press, 2009: 61.
101. ^ Jayasekara, Shanaka. "Tamil Tiger Links with Islamist Terrorist Groups." International Institute for Counter-Terrorism. 3 February 2008. Web. Accessed 23 July 2013. <<http://www.ict.org.il/Articles/tabid/66/Articlsid/277/Default.asp&xgt>
102. ^ Jayasekara, Shanaka. "Tamil Tiger Links with Islamist Terrorist Groups." International Institute for Counter-Terrorism. 3 February 2008. Web. Accessed 23 July 2013. <<http://www.ict.org.il/Articles/tabid/66/Articlsid/277/Default.asp&xgt>
103. ^ Jayasekara, Shanaka. "Tamil Tiger Links with Islamist Terrorist Groups." International Institute for Counter-Terrorism. 3 February 2008. Web. Accessed 23 July 2013. <<http://www.ict.org.il/Articles/tabid/66/Articlsid/277/Default.asp&xgt>
104. ^ Jayasekara, Shanaka. "Tamil Tiger Links with Islamist Terrorist Groups." International Institute for Counter-Terrorism. 3 February 2008. Web. Accessed 23 July 2013. <<http://www.ict.org.il/Articles/tabid/66/Articlsid/277/Default.asp&xgt>
105. ^ Rotberg, Robert I., "Creating peace in Sri Lanka: civil war and reconstruction." Web. Accessed 22 Jult 2013. <http://books.google.com/books?hl=en&lr=&id=GsAkOjSilgoC&oi=fnd&pg=PR9&dq=origins+of+sri+lankan+civil+war&ots=tfZUtltkXg&sig=cndFXSBGJCxf_OehxYo9Nfj3MHE#v=onepage&q&f=false>
106. ^ "Liberation Tigers of Tamil Eelam." South Asia Terrorism Portal. Web. Accessed 22 July 2013. <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/LTTE.HTM>
107. ^ "The LTTE in Brief." Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
108. ^ "The LTTE in Brief." Ministry of Defense of Sri Lanka. Web. Accessed 22 July 2013. <http://www.defence.lk/pps/LTTEinbrief.pdf>
109. ^ "Liberation Tigers of Tamil Eelam." South Asia Terrorism Portal. Web. Accessed 22 July 2013. <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/LTTE.HTM>
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Exhibit 02 -01

Wendy Liu

From: Bev Kurmey
Sent: April-10-19 11:56 AM
To: Don Peat; Lawvin Hadisi
Subject: FW: 10th Annual Tamil Memorial Day - Request for Proclamation and Message

Hi

Following up on this request that we discussed at our meeting this week. (see below).

This request came in last year and former Councillor Shan reached out to the group. We did no proceed with a proclamation and we are recommending we do not proceed with it this year as such a proclamation may prove to be divisive to the entire Sri-Lankan-Tamil community in Toronto.

The City proclaims Tamil Heritage Month in January and Genocide Remembrance, Condemnation and Prevention Month in April.

Our office reached out to the Government of Canada and a rep from the international desk- South Asia Division suggested this is a very sensitive issue.

- GOC advice suggestion that the courts should make the determination whether a genocide has taken place and that legal test to be med for a genocide in international law is a very high one. GOC has not officially recognized it. The Canada-Sri Lanka relationship is multifaceted, encompassing trade, political, cultural and people-to-people ties. The Sri-Lankan Canadian and Tamil communities in Canada have made and continue to make major cultural, social, economic and political contributions to the pluralistic and multicultural Canadian mosaic. The Government of Canada is committed to strengthening the bilateral relationship with Sri Lanka and contributing to the ever important process of transitional justice, reconciliation and accountability taking place domestically

The date the request is for is May 18. Please let me know how you would like us to proceed with the requester.

Thanks
Bev

From: MayorsMail-Clerks
Sent: April 2, 2019 12:37 PM
To: Bev Kurmey
Subject: FW: 10th Annual Tamil Memorial Day - Request for Proclamation and Message

Hi Bev

I see on JIRA we did not fulfill this request in the past.
Please advise how to proceed.

Thank you
--Harriet

Exhibit 02-02

From: Nancy Macsween
Sent: May 8, 2019 11:34 AM
To: Brad Ross <Brad.Ross@toronto.ca>
Cc: Ulli Watkiss <Ulli.Watkiss@toronto.ca>; Bev Kurmey <Bev.Kurmey@toronto.ca>; Barbara Sullivan <Barbara.Sullivan@toronto.ca>; Laura Diaz <Laura.Diaz@toronto.ca>; Jeff Fielding <Jeff.Fielding@toronto.ca>; Sandra Rodriguez <Sandra.Rodriguez@toronto.ca>
Subject: Tamil Proclamation
Importance: High
Sensitivity: Confidential

Good morning Brad,

We are in the process of rolling up an information note or possibly an issue note since we just received a media inquiry about the proclamation, please let us know how you advise we proceed.

Bev received a request from Elamurukan Kathiravelu, Director of Government Relations, Tamil Memorial Foundation of Canada to issue a "Tamil Memorial Day" proclamation to mark the 10th anniversary of the end of the civil war in Sri Lanka.

We contacted the desk officer responsible for Sri Lanka at Global Affairs Canada who provided advice strongly recommending that the Mayor not recognize one group over another in the conflict, and rather, mark just the 10th anniversary with very general statements regarding the loss of life on both sides of the civil war.

The advice was provided to the Mayor's Office, encouraging that the Mayor instead issue a statement to mark the 10th anniversary of the end of the civil war. The Mayor's office indicated they would move ahead with a proclamation to mark the 10th anniversary.

The Mayor's Office then decided to draft a proclamation on their own, marking "Tamil Genocide Remembrance Day", and sent it to Client Services for printing and framing. Upon seeing the change in the name and the nature of proclamation, our team raised concerns with the Mayor's Press Secretary, explaining the advice we had received from GAC (who ultimately is the authority when it comes to the country's stance on foreign affairs), and the possible implications of using the legal term of 'genocide'. We were informed that the decision to produce this proclamation was political. We strongly recommended they use the neutral language we initially provided.

The Mayor presented the proclamation recognizing "Tamil Genocide Remembrance Day" at a community event on Sunday, May 5.

We received a call this morning from Global Affairs Canada, who had received overnight communication from the Canadian High Commission in Colombo, Sri Lanka, indicating that local media had picked up the proclamation, and concerns were being raised. The Government of Canada has asked us to share a copy of the proclamation, as they are now trying to produce responsive messaging, and may in fact issue a statement to counter the message released by the Mayor.

Currently, the proclamation is not available on the City's website, as it is dated for May 18, 2019. However, Bev just received a call from Deborah Blackstone on your team asking why this is not posted since the Globe and Mail is asking (they saw the proclamation posted here: https://twitter.com/TamilGuardian/status/1125860138089189376). We are in the process of posting the proclamation on our page.

Given these concerns and possible repercussions, we felt this should be brought to your attention right away. Our team is keeping the Mayor's office updated on these developments and we are continuing to monitor the situation.

Please let me know if you have any questions or wish to discuss.

Thank you,

Nancy

Nancy MacSween
Deputy Chief of Protocol
City Clerk's Office, Strategic Protocol & External Relations
City of Toronto

416-392-4674 | nancy.macsween@toronto.ca

Exhibit 03

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Submission against Bill 104, *Tamil Genocide Education Week Act*, 2019

Neville Hewage, Ph.D
Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.
LSO No. P15799

Mailing address:
2581 River Mist Road
Ottawa, ON K2J 6G1
Tel: 613 612 7615
Email: nx_hewage@laurentian.ca

Isaiah Thorning
Committee Clerk
Standing Committee on Regulations and Private Bills
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON
M7A 1A2
Tel.: 416-325-3506
Fax: 416-325-3505
email: comm-regsprbills@ola.org

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01. Ontario provincial legislature has no jurisdiction to pass Bill 104	**Tab 1**
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Background and Finding of Facts

01. Founded in 1976, the Liberation Tigers of Tamil Eelam (LTTE) is a Sri Lankan-based terrorist organization that seeks the creation of an independent homeland called "Tamil Eelam" for Sri Lanka's ethnic Tamil minority living in North and East. Over the years, the LTTE has waged a violent secessionist campaign with the help of ground, air, and naval forces, as well as a dedicated suicide bomber wing.

02. LTTE tactics have included full military operations, terror attacks against civilian centres, and political assassinations, including those of Indian Prime Minister Rajiv Ghandi and Sri Lankan President Ranasinghe Premadasa.

03. LTTE terrorist activities caused billions of dollars of massive destruction to the Sri Lanka economy. A large number of innocent civilians were killed as results of indiscriminate attacks on civilians' centers across the country.

04. Sinhalese villagers living in North and East district's boundaries were massacred, and, as a part of "ethnic cleansing," Muslims living in Jaffna (North of Sri Lanka) were ordered to quit. At least 30,000 were driven out at just three hours' notice.

05. A program of the Center for International Security and Cooperation (CISAC), a research center at the Freeman Spogli Institute for International Studies of Stanford University, USA, recorded the most notable attacks and the atrocities of LTTE terrorists.[1]

06. A responsible government cannot tolerate any longer LTTE brutality and have no option other than destroy the terrorist group.

07. The latest reason for the military action was triggered against the separatist LTTE group as a result of closing the water dam (*Marvil Aru*), which is providing a lifeline for over millions of people living in neighbouring districts.

[1] https://cisac.fsi.stanford.edu/mappingmilitants/profiles/liberation-tigers-tamil-elam#highlight_text_16261

08. LTTE was militarily defeated in May 2009, which ended the civil war by killing a ruthless terrorist leader, Velupillai Prabhakaran on or about May 18, 2009.

09. During the three decades of civil war civilians, all ethnic groups, Sinhalese, Tamils, Moor, Muslims, were affected.

10. The LTTE had an extensive network of fundraisers, political and propaganda officers, and arms procurers operating in Sri Lanka and within the Tamil diaspora in Canada. Although the LTTE was militarily defeated in May 2009, subversion, destabilization, and fundraising continues, particularly within the diaspora. [2]

11. Many organizations arose in Canada, post-war by militarily defeating LTTE in May 2009, some calling for reconciliation and others professing to continue this struggle for a separate state.

12. Some of them are campaigning to take revenge against Sri Lanka government for the death of their terrorist leader Velupillai Prabhakaran, in recognizing the final phase of the war in May 2009, as a genocide, same as proposed on *Bill 104 Tamil Genocide Education Week Act.*

13. The war against the LTTE terrorist group should be studied in its entirety and not only during its final months.

Bill 104, Tamil Genocide Education Week Act, 2019

14. The *Bill 104* states Tamil-Ontarians have families still suffering in their "homeland" in the North and East of the island of Sri Lanka. They have lost their loved ones and have been physically or mentally traumatized by the Genocide that the Sri Lankan state perpetrated against the Tamils during the civil war, which lasted from 1983 to 2009, and especially so in May of 2009.

[2] https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#46

15. *Bill 104* states acts of Genocide against the Tamils started in 1948 after Sri Lanka gained its independence and were perpetrated through Sinhala-Buddhist centric government policies, pogroms, land grabs and ethnic cleansing.

16. *Bill 104* states the United Nations Organization estimates that in May 2009 alone, about 40,000 to 75,000 Tamil civilians were killed. Other estimates place the death toll at 146,679 civilians. These figures only reflect the death toll in 2009 leading up to May 18, the day on which the civil war ended. The loss of Tamil civilian lives during the Genocide, which continued for decades in Sri Lanka, is much higher.

17. *Bill 104* further states, the Sri Lankan state has systematically disenfranchised the Tamil population of their right to vote and to maintain their language, religion and culture. For example, the Sinhala only Act of 1956 made Sinhalese the official language of Sri Lanka, ignoring the 29 percent of the population whose primary language was Tamil, thereby putting them at a serious disadvantage for participating in the public service of Sri Lanka.

18. Legal Issues

Following legal issues arising from the proposed (as claimed) *Bill 104 Tamil Genocide Education Week Act*

- (1) Is Sri Lanka (state) perpetrated alleged Genocide against the Tamils during the civil war (which lasted from 1983 to 2009), and specifically in May of 2009?

- (2) Is the alleged Genocide against Tamils determined by the International Criminal Court or International Court of Justice?

- (3) Does the Ontario Legislature have jurisdiction to determine the alleged Tamil Genocide?

- (4) Is the ideology of creating a separate state for Tamil living in North and East Sri Lanka "Tamil homeland" root cause to the Civil War? Is there any legal basis for the "Tamil homeland"?

- (5) *Bill 104* claims that Genocide against the Tamils started in 1948 through Sinhala-Buddhist centric government policies, pogroms, land grabs and ethnic cleansing. It also states the Tamil population systematically disenfranchised of their right to vote and to maintain their language, religion and culture, e.g. introducing *Sinhala Only Act* 1956.
  Are these allegations having a legal basis for determining Genocide?

- (6) Is death total a factor of determining the alleged Genocide?

19. Legal principles and Analysis

I wish to submit here, legal reasoning against for the Bill 104, *Tamil Genocide Education Week Act.*

I will address (1), (2) and (3) questions together.

(1) Is Sri Lanka (state) perpetrated alleged Genocide against the Tamils during the civil war (which lasted from 1983 to 2009), and specifically in May of 2009?

(2) Is the alleged Genocide against Tamils determined by the International Criminal Court or International Court of Justice?

(3) Does the Ontario Legislature have jurisdiction to determine the alleged Tamil Genocide?

20. Alleged Tamil genocide claims have not considered for hearing before the International Criminal Court (ICC) or International Court of Justice (ICJ). LTTE sympathizers in the Tamil diaspora failed to proceed alleged genocide claims due to a lack of sufficient evidence.

21. Genocide is the most serious crime on the planet. A bar (threshold) of determining Genocide is higher, and genocide allegations cannot be considered lightly. Also, Genocide has a definite legal meaning, and the Ontario Legislature must not use it arbitrarily.

22. Since ICC and ICJ were not convicted of any individuals for alleged genocide claims against Tamils, the Ontario Legislature is required to investigate the validity of alleged genocide claims to pass the legislation Bill 104 *Tamil Genocide Education Week Act.*

23. If Sri Lanka committed any crimes (Genocide), they would be investigated only by the ICC or ICJ. No other institutions have the legal authority to initiate actions against the sovereign state of Sri Lanka.

24. The Ontario Legislature has no jurisdiction to investigate alleged genocide claims.

25. Furthermore, the proposed, *Bill 104,* does not pertain to the topics that fall within provincial jurisdiction**.**

26. Therefore, Genocide claims against Sri Lanka, as cited on *Bill* 104, and *Bill* 104 as a whole, should be dismissed without any further reading. **(Exhibit 01).**
Note: Exhibit 01 provides complete legal reasoning.

27. Now I will address the 4th question here.

> (4) Is the ideology of creating a separate state for Tamils living in North and East Sri Lanka "Tamil homeland" the root cause of the Civil War? Is there any legal basis for Tamil homeland?

28. *Bill 104,* attempts to legitimize North and East of Sri Lanka as a "homeland" of Tamils. The Bill 104 clearly states, "Tamil-Ontarians have families still suffering in their **"homeland"** in the North and East of the island of Sri Lanka."

29. The "Tamil homeland" concept is a separatist agenda against Sri Lanka, and it was a root cause of the three-decade civil war.

30. The constitution of Sri Lanka Chapter I, section 1 and 2 states as follows **(Exhibit 02)**

> **Section 1:**
> Sri Lanka (Ceylon) is a Free, Sovereign, Independent and the Democratic Socialist Republic and shall be known as the Democratic Socialist Republic of Sri Lanka.

Section 2:

The Republic of Sri Lanka is a Unitary State.

31. The constitution is a supreme law in Sri Lanka, and Sri Lanka is a unitary state.

32. The creation of "Tamil homeland" or separate state for Tamil in North and East violates the Sri Lankan constitution. Therefore, there is no legal basis for "Tamil homeland" in Sri Lanka. "Tamil homeland" ideology is a separatist agenda of the LTTE.

33. *Bill 104*, has deliberately included "Tamil homeland" and it is a back-door attempt to legitimize North and East of Sri Lanka as the "Tamil homeland."

34. Ontario Legislature has no authority under international law to recognize the separate state of Tamils or "Tamil homeland." Furthermore, the Ontario Legislature should not interfere with the internal affairs of the sovereign state of Sri Lanka.

35. The creation of a separate state of Tamils and recognizing the North and East part of Sri Lanka as a "Tamil homeland" is directly in line with the LTTE ideologies. Therefore, *Bill 104* is clearly aligned with the LTTE separatist agenda, and the Ontario Legislature should not consider it for the 3rd reading.

36. Therefore, "homeland" claims for Tamils, as cited on *Bill 104,* has no legal standings for alleged genocide claims, and *Bill* 104 as a whole should be dismissed without any further reading.

37. Now I will address the 5th question here.

(5) *Bill 104* states, alleged Genocide against the Tamils started in 1948 through Sinhala-Buddhist centric government policies, pogroms and land grabs. Tamil population systematically disenfranchised of their right to vote and to maintain their language, religion and culture, e.g. introducing Sinhala Only Act 1956

Are these allegations having a legal basis in determining Genocide?

38. *Bill 104* alleged State actions such as Sinhala-Buddhist centric government policies, pogroms and land grabs, systematically disenfranchised their right to vote and to maintain their language, religion and culture. Eg. Introducing *Sinhala Only Act* 1956 resulted in a genocide.

39. This allegation does not stand against the legal test in determining Genocide. Those allegations are plain and bold.

40. Article 6 of Rome Statute states; "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, […]

41. There is an enormous amount of unproductive speculation about Genocide. And indeed, given the prevalence in the world of today, of racial and religious discrimination, of apartheid-like policies, and persecution of ethnic minorities, indigenous peoples, migrant workers and refugees, in many countries and conflicts there is no shortage of acts that may look-like within the paragraphs of Article II of the Convention. *Bill 104* is clear unproductive speculation about the Genocide.

42. By insisting that genocidal intent, if based on a pattern of conduct, be the only reasonable inference, the Court, ICC has developed an effective, realistic and workable approach to the Genocide Convention. I submit where genocidal intent is premised on a pattern of conduct; it must be the only inference that could reasonably be drawn from the acts in question.

43. Such allegations, which notably depend on the assessment of the existence of intent to destroy, in whole or in part, the group of the Tamils living in North and East as such, could be made only the examination of the merits of the evidence, but not speculation.

44. In the *Bosnia* case, the ICJ held that:

> "Neither the intent, as a matter of policy, to render an area 'ethnically homogeneous,' nor the operations that may be carried out to implement such policy, can *as such* be

designated as Genocide. . . [the] deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to the destruction of that group" [3].

45. Furthermore, *Bosnia and Herzegovina v. Serbia and Montenegro* ICJ states […] "would only be capable of constituting the *actus reus* of genocide if it was calculated to bring about the physical destruction." [4]

46. There is no evidence to support any action of the State Sri Lanka has the intent to do physical destruction of the Tamils in North and East.

47. Therefore, the quotation of various policies and its effectiveness, as cited on *Bill 104*, has no legal standings for determining Genocide, and *Bill 104* as a whole, should be dismissed without any further reading.

48. Now I address the question (6) here.

(6) Is death total a factor of determining the alleged Genocide?

49. In my view, we must first address the issue as to whether the alleged genocide claims against Sri Lanka, as stated by *Bill 104,* has "sufficient gravity" to justify further action.

50. The ICC has regard to the Court's previous decisions on the interpretation of the criterion of "gravity" within the meaning of article 17(1) (d) of the Rome Statute. For instance, in *Abu Garda* Pre-Trial Chamber I held that "the gravity in a given case should not be assessed only from a quantitative perspective, i.e. by considering the number of victims; rather, the qualitative dimension of the crime should also be taken into consideration." [5].

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[3] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 123, para. 190; emphasis in the original.

[4] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 140, para. 480.

[5] The Prosecutor v. Bahr Idriss Abu Garda, "Decision on the Confirmation of Charges", 8 February 2010, ICC-02/05-02/09-243-Red (French version notified on 16 March 2010), para. 31.

51. According to the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC) report (Exhibit 03), most of the affected families in North and East, attest that those disappeared have been recruited or forcibly conscripted by the LTTE.

52. There are conflicting reports that were commissioned by 3rd parties. LTTE sympathizers exaggerated the death total. Without any argument, this armed conflict took the lives of many innocents. They are not only Tamils but also Sinhalese, Moor, Muslims, many citizens of Sri Lanka.

53. Since the death total has not been proven, I am not rebutting an exaggerated death total in *Bill 104*.

54. I would like to highlight Lord Naseby PC, President of the All-Party British Sri Lanka Parliamentary Group in the UK Parliament, a statement on Sri Lanka regarding the 40th Sessions of the United Nations Human Rights Council in Geneva. Abstract of the statement as follows:

> "Freedom of Information' Inquiry the despatches of Lt Colonel Gash, the UK's Military attaché in Colombo who saw the war at first hand. It is these despatches that prove beyond any doubt that there never was a policy to kill Tamil civilians and that the Civilian Casualties were only around 5,500 at most.
>
> Finally, from the Sri Lanka Foreign Minister's statement, reference is made to 'the considerable unevenness in the standards of proof applied to the Government of Sri Lanka, compared to those applied to the unsubstantiated allegations made by Sri Lanka's detractors.' How right he was to raise this issue. It is high time that the claim of 40,000 civilians killed was erased from the records."

55. Please also refer to the UK parliament, the House of Lords, Hansard. Subject: Sri Lanka, Question for a short debate on February 05, 2019, Volume 795 [6] (Exhibit 04)

[6] https://hansard.parliament.uk/lords/2019-02-05/debates/2E1B15B0-E8D5-42AF-B53C-240E0473212C/SriLanka

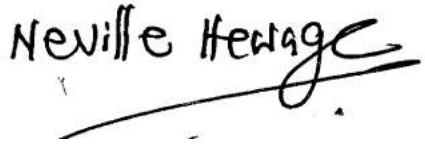
56. I submit that the exaggerated death totals submitted on *Bill 104* have no legal standings for determining Genocide (failed on "sufficient gravity" test), and alleged genocide claims on *Bill 104* and *Bill 104* as a whole, should be dismissed without any further reading.

57. Conclusion

By virtue of the foregoing and for all of the reasons set out above, *Bill 104* has no legal bearing to continue for further reading before the Ontario Legislature. Therefore, Genocide claims against Sri Lanka, as cited on *Bill 104*, and *Bill 104* *Tamil Genocide Education Week Act* as a whole, should be dismissed without any further reading.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Submitted at the City of Ottawa, Province of Ontario
on May 26, 2020.



Neville Hewage, Ph.D
Adjunct Professor – Law and Justice
Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.
LSO No. P15799

2581 River Mist Road
Ottawa, ON K2J 6G1
Tel: 613 612 7615
Email: nx_hewage@laurentian.ca

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Submission against Bill 104, *Tamil Genocide Education Week Act*, 2019

Neville Hewage, Ph.D
Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.
LSO No. P15799

2581 River Mist Road
Ottawa, ON K2J 6G1
Tel: 613 612 7615
Email: nx_hewage@laurentian.ca

Appendix 01

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Submission against Bill 104, *Tamil Genocide Education Week Act*, 2019

Neville Hewage, Ph.D
Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.
LSO No. P15799

2581 River Mist Road
Ottawa, ON K2J 6G1
Tel: 613 612 7615
Email: nx_hewage@laurentian.ca

Committee Clerk
Eric Rennie
Standing Committee on Regulations and Private Bills
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON
M7A 1A2
Tel.: 416-325-3506
Fax: 416-325-3505
email: comm-regsprbills@ola.org

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AUTHORITIES

Convention, on the Prevention and Punishment of the Crime of Genocide, approved and proposed for signature and ratification or accession by the United Nations General Assembly resolution 260 A (III) of 9, December 1948. Entry into force: 12 January 1951, in accordance with article XIII	**Tab 1**
Government of Sri Lanka statement to the Commissioner, United Nation Human Rights Council	**Tab 2**
Mapping Tamil Speaking Militant Organization LTTE – Liberation Tigers of Tamil Eelam	**Tab 3**

BRIEF NARRATIVE TO THE ISSUE

01. Tamil minority living in the Northern part of the country started the armed conflict with Sri Lanka's government, demanding a separation of state which would be called Tamil Eelam.

02. Sri Lanka's main issue is the fight between its government forces and the separatist Tamil minority ethnic group; Liberation Tigers of Tamil Eelam (LTTE), a proscribed terrorist organization in many countries including Canada.

03. This armed conflict has continued since July 23, 1983 up until May 18, 2009 - over 26 years.

04. One of the world most ruthless terrorist organizations, the LTTE was defeated militarily on May 18, 2009, and their leader, Velupillai Prabhakaran, was killed in combat.

05. Bill 104 does not pass the "smell test".

06. In my view, it is an attempt to commemorate the death of this ruthless terrorist leader, Velupillai Prabhakaran, and the dead LTTE cadre in the month of May.

07. Bill 104 is proposed to commemorate the event annually during a seven-day period ending on May 18.

FACTS

08. Bill 104 has been referred to the Standing Committee on Regulations and Private Bills (Committee).

09. Bill 104 introduces **Tamil genocide** Education Week in the Month of May.

10. Bill 104 has claimed a **Tamil genocide** by the Sri Lankan government.

11. The International Criminal Court (ICC) is the relevant judicial entity in the investigation of acts of aggression such as genocide.

12. Neither State, state parties nor the United Nations Security Council (UNSC) have requested an investigation into the alleged Tamil genocide in Sri Lanka to the ICC.

13. Due to lack of reasonable grounds, Sri Lanka's claimed act of aggression towards the Tamils has not been investigated. No one has been convicted. Therefore, the ICC does not recognize it as a genocide.

14. Sri Lanka is engaged willingly and genuinely on reconciliation efforts. Additionally, the ICC does not intend to replace the national criminal system in Sri Lanka if such investigations take place.

15. The definition of genocide has specific meaning in the legal context, under Convention, on the Prevention and Punishment of the Crime of Genocide, approved and proposed for signature and ratification or accession by the United Nations General Assembly resolution 260 A (III) of 9, December 1948. Entry into force: 12 January 1951, in accordance with article XIII (Exhibit 01).

16. The word genocide cannot be used arbitrarily on matters before the Legislative Assembly of Ontario.

LEGAL ISSUES

17. Were Tamil genocide claims against Sri Lanka investigated by the relevant jurisdiction; ICC?

18. As a result of such an investigation, has anyone been convicted for the crime of Tamil genocide and has the ICC recognized it as an act of aggression and subsequently as genocide?

19. Does the Standing Committee of the Ontario legislature on Regulations and Private Bills have authority to investigate Tamil genocide claims?

APPLICABLE LAW AND PRINCIPLES

Jurisdiction

20. The International Criminal Court (ICC) is the recognized legal authority and has the power to investigate acts of aggression such as genocide, crimes against humanity, and war crimes.

21. ICC investigates,

- that crimes were committed by a State Party national, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the Court; or

- the alleged crimes were referred to the ICC Prosecutor by the United Nations Security Council (UNSC) pursuant to a resolution adopted under chapter VII of the UN charter.[1]

[1] International Criminal Court Jurisdiction. https://www.icc-cpi.int/about/how-the-court-works/Pages/default.aspx#legalProcess

22. As of July 17th, 2018, a situation in which an act of aggression would appear to have occurred could be referred to the Court by the Security Council, acting under Chapter VII of the United Nations Charter, irrespective as to whether it involves States Parties or non-States Parties.[2]

23. In the absence of a UNSC referral of an act of aggression, the Prosecutor may initiate an investigation on her own initiative or upon request from a State party. The Prosecutor shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. Where no such determination has been made within six months after the date of notification to the UNSC by the Prosecutor of the situation, the prosecutor may nonetheless proceed with the investigation, provided that the Pre-Trial Division has authorized the commencement of the investigation. Also, under these circumstances, the Court shall not exercise its jurisdiction regarding a crime of aggression when committed by a national or on the territory of a State Party that has not ratified the relevant treaties.[3]

Complementarity

24. The ICC is intended to complement, not to replace, national criminal systems; it prosecutes cases only when States are unwilling or unable to do so genuinely.[4]

Cooperation

25. As a judicial institution, the ICC does not have its own police force or enforcement body; thus, it relies on cooperation with countries worldwide for support, particularly for making arrests, transferring arrested persons to the ICC detention centre in the Hague, freezing suspects' assets, and enforcing sentences.[5]

[2] International Criminal Court Jurisdiction, *Supra* note 1
[3] International Criminal Court Jurisdiction, *Supra* note 1
[4] International Criminal Court Jurisdiction, *Supra* note 1
[5] International Criminal Court Jurisdiction, *Supra* note 1

26. While not a United Nations organization, the Court has a cooperation agreement with the United Nations. When a situation is not within the Court's jurisdiction, the United Nations Security Council can refer the situation to the ICC granting it jurisdiction.[6]

27. In accordance with article 112 of the *Rome Statute*, the ICC adopts the Rules of Procedure and Evidence and the Elements of Crime.[7]

28. Canada is a signatory to the United Nations treaty, *Rome Statute* of the International Criminal court. [8]

ANALYSIS

- Were Tamil genocide claims against Sri Lanka investigated by the relevant jurisdiction; ICC?

- As a result of the investigation, has anyone been convicted for the claimed Tamil genocide and has the ICC recognized it as an act of aggression and subsequently as genocide?

- Does the Standing Committee on Regulations and Private Bills have authority to investigate Tamil genocide claims?

29. I will address all three legal questions together.

30. Any Private Member (i.e., a Member who is not the Speaker or a Cabinet Minister) may introduce a Private Member's Public Bill. Such a bill may pertain to any topic within provincial

[6] International Criminal Court Jurisdiction, *Supra* note 1
[7] International Criminal Court - https://www.icc-cpi.int/asp
[8] United Nations Treaty 10 - https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en

jurisdiction, but, only in accordance with the Standing Orders of the Legislative Assembly, the *Legislative Assembly Act,* and the *Constitution Act*, 1867 [9]

31. Bill 104 has introduced, for the proclamation of the alleged **Tamil genocide** and the education week in May, every year.

32. If any crimes (genocide) were committed by Sri Lanka, they would be investigated only by the International Criminal Court. No other institutions have legal authority to initiate actions against the sovereign state of Sri Lanka.

33. As cited on bill 104, Tamil genocide claims have not been submitted to the International Criminal Court by the United Nations Security Council pursuant to a resolution adopted under chapter VII of the UN charter.

34. In the absence of UNSC referral of an act of aggression, the ICC Prosecutor may initiate an investigation on her own initiative or upon request from a State Party. In this case Canada is a relevant state party. Canada, however, has not requested to investigate the genocide claims against Sri Lanka.

35. The ICC Pre-Trial Division has not authorized the commencement of the investigation against Sri Lanka.

36. In June 2014, the UN Human Rights Council (UNHRC) High Commissioner appointed three distinguished experts, Mr. Martti Ahtisaari, former President of Finland; Ms. Silvia Cartwright, former High Court judge of New Zealand; and Ms. Asma Jahangir, former President of the Human Rights Commission of Pakistan, to play a supportive and advisory role, as well as to provide independent verification throughout the investigation. [10]

[9] How an Ontario Bill Becomes Law - https://www.ola.org/sites/default/files/common/how-bills-become-law-en.pdf
[10] United Nations Human Rights Council - UNHRC Investigation on Sri Lanka. https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx

37. In its report submission to the Human Rights Council, dated September 15, 2015, Sri Lanka is committed willingly and genuinely to reconciliation efforts as well as investigative action [11] (Exhibit 02). As such, the ICC will not investigate genocide claims against Sri Lanka. It also does not intend to replace the criminal system of the State.

38. If jurisdiction issues arise, the United Nations Security Council will refer them to the ICC granting it jurisdiction. The United Nations Security Council, however, has not granted jurisdiction to ICC to investigate the genocide claims against Sri Lanka. No such action has been taken either.

39. Finally, genocide claims against Sri Lanka have not even been submitted to the ICC, the matter has not been investigated and no anyone has been convicted for an act of aggression (the Tamil genocide). The Tamil genocide claim is therefore not sustained against Sri Lanka.

CONCLUSION

40. Bill 104 is expected to become a law in Ontario and genocide claims cannot be used arbitrarily.

41 Since **Genocide claims are not established** against Sri Lanka as cited on Bill 104, the Committee **is required to investigate the validity of its claims** in order to pass the legislation.

42. The Committee is part of the Legislative Assembly of Ontario.

43. The Legislative Assembly of Ontario is not a State party to the United Nations' treaty - *Rome statute* of the International Criminal Court.

[11] https://www.ohchr.org/Documents/HRBodies/HRCouncil/OISL/ResponseSriLanka15092015.pdf

44. The United Nations Security Council has not referred the Legislative Assembly of Ontario to investigate the Tamil genocide claims against Sri Lanka. The Standing Committee therefore has no jurisdiction to investigate the these claims.

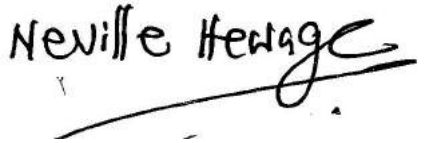
45. Furthermore, Ontario legislature shall not proceed with the unsubstantiated and patently false narrative provided in Bill 104 regarding the *Tamil genocide Education Week Act.*

46. During the armed conflict, Human Rights violations occurred on behalf of both parties and they do not meet the threshold required to establish the genocide claims against Sri Lanka.

47. Given the facts on Bill 104, the Tamil genocide claim has failed against the legal test and should, thus, not be considered for 3rd reading.

48. Furthermore, the proposed, bill 104, does not pertain to the topics that fall within provincial jurisdiction. Therefore, Genocide claims against Sri Lanka, as cited on Bill 104, and Bill 104 as a whole, should be dismissed without any further hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED
Dated at the City of Ottawa, Ontario
October 21, 2019



Neville Hewage, Ph.D
Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.
LSO No. P15799

2581 River Mist Road
Ottawa, ON K2J 6G1
Tel: 613 612 7615
Email: nx_hewage@laurentian.ca

Tab 02

Government of Sri Lanka statement to the Commissioner, United Nation Human Rights Council

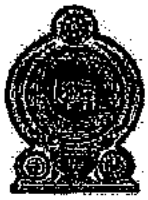
Ref: 279/2015 Ref. HR/3T

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and with reference to the unedited advance copy of the Report of the Office of the High Commissioner for Human Rights (A/HRC/30/61), and the Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/SRP.2), has the honour to forward herewith a copy of a Note Verbale No. UN/HR/1/30 dated 15th September 2015, received from the Ministry of Foreign Affairs of Sri Lanka, containing the comments of the Government.

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 15th September 2015.

Office of the High Commissioner for Human Rights (OHCHR)
Palais Wilson
Geneva.



Ref. No. : UN/HR/1/30

The Ministry of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and with reference to the latter's Note dated 10 September 2015 conveying an unedited advance copy of the Report of the Office of the High Commissioner for Human Rights (A/HRC/30/61) and the Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/SRP.2) has the honour to submit the following comments:

The Government of Sri Lanka,

-takes note of the Report of the Office of the High Commissioner for Human Rights (A/HRC/30/61), and the recommendations made by the High Commissioner;

-is pleased and encouraged by the High Commissioner's recognition of the efforts of the new Government since the Presidential election of 8 January 2015 in dealing with issues of concern for the people of Sri Lanka relating to human rights, rule of law, governance, justice, institutional and legal reform and reconciliation;

-appreciates the due recognition given to the Government's constructive engagement with the High Commissioner and OHCHR aimed at addressing post-conflict issues that impact on achieving reconciliation;

-remains firm in its conviction to take all possible measures to ensure non-recurrence in keeping with the mandate given by the people of the country twice this year, 2015, at the Presidential election in January and the Parliamentary election in August;

-will ensure dialogue and wide consultations with all stakeholders especially the victims of conflict, communities, political parties, civil society representatives, the military as well as the High Commissioner and his Office, bilateral partners, and other international organistions in putting in place mechanisms and measures that will facilitate the right to know, right to justice, reparations and guaranteeing non-recurrence with the aim of achieving reconciliation and durable peace to ensure long-term progress of all her citizens;

-takes note also of the Report of the OHCHR Investigation on Sri Lanka (OISL), recognises fully that this Report represents a human rights investigation and not a criminal investigation, and will ensure that its content as well as recommendations receive due attention of the relevant authorities including the new mechanisms that are envisaged to be set up;

-remains open to continuing its engagement with the High Commissioner and his Office as well as the systems and procedures of the Human Rights Council, aimed at taking steps to safeguard and uphold the human rights of all her citizens.

The Ministry of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.

Colombo, 15th September 2015

Office of the
United Nations High Commissioner for Human Rights
Geneva

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Submission against Bill 104, *Tamil Genocide Education Week Act*, 2019

Neville Hewage, Ph.D
Research Fellow – Public Policy and Governance
International Centre for Interdisciplinary Research in Law
Laurentian University
Sudbury, Ontario.
LSO No. P15799

2581 River Mist Road
Ottawa, ON K2J 6G1
Tel: 613 612 7615
Email: nx_hewage@laurentian.ca

Appendix 02

THE CONSTITUTION

OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

(As amended up to 15th May 2015)

Revised Edition – 2015

Published by the Parliament Secretariat

Printed at the Department of Government Printing

This unofficial edition edited by the Bills Office of the Legislative Services Department of Parliament of Sri Lanka reproduces the text of the Constitution of the Democratic Socialist Republic of Sri Lanka as amended by Parliament from time to time up to the Nineteenth Amendment to the Constitution. The footnotes below the text indicate the particular Amendments to the Constitution by which such Amendments have been made.

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SVASTI

The PEOPLE OF SRI LANKA having, by their Mandate freely expressed and granted on the Sixth day of the waxing moon in the month of Adhi Nikini in the year Two Thousand Five Hundred and Twenty one of the Buddhist Era (being Thursday the Twenty first day of the month of July in the year One Thousand Nine Hundred and Seventy seven), entrusted to and empowered their Representatives elected on that day to draft, adopt and operate a new Republican Constitution in order to achieve the goals of a DEMOCRATIC SOCIALIST REPUBLIC, and having solemnly resolved by the grant of such Mandate and the confidence reposed in their said Representatives who were elected by an overwhelming majority, to constitute SRI LANKA into a DEMOCRATIC SOCIALIST REPUBLIC whilst ratifying the immutable republican principles of REPRESENTATIVE DEMOCRACY and assuring to all People s FREEDOM, EQUALITY, JUSTICE , FUNDAMENTAL HUMAN RIGHTS and the INDEPENDENCE OF THE JUDICIARY as the intangible heritage that guarantees the dignity and well-being of succeeding generations of the People of SRI LANKA and of all the People of the World, who come to share with those generations the effort of working for the creation and preservation of a JUST AND FREE SOCIETY :

WE, THE FREELY ELECTED REPRESENTATIVES OF THE PEOPLE OF SRI LANKA, in pursuance of such Mandate, humbly acknowledging our obligations to our People and gratefully remembering their heroic and unremitting struggle to regain and preserve their rights and privileges so that the Dignity and Freedom of the Individual may be assured, Just, Social, Economic and Cultural Order attained, the Unity of the Country restored, and Concord established with other Nations,

do hereby adopt and enact

this

CONSTITUTION

as the

SUPREME LAW

of the

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

CHAPTER I

THE PEOPLE, THE STATE AND SOVEREIGNTY

The State.

1. Sri Lanka (Ceylon) is a Free, Sovereign, Independent and Democratic Socialist Republic and shall be known as the Democratic Socialist Republic of Sri Lanka.

Unitary State.

2. The Republic of Sri Lanka is a Unitary State.

Sovereignty of the People.

3. In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise.

Exercise of Sovereignty.

4. The Sovereignty of the People shall be exercised and enjoyed in the following manner :–

(a) the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and by the People at a Referendum ;

(b) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People ;

(c) the judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law ;

(d) the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided; and

(e) the franchise shall be exercisable at the election of the President of the Republic and of the Members of Parliament and at every Referendum by every citizen who has attained the age of eighteen years and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors.

Appendix 03

Report of the

COMMISSION OF INQUIRY ON LESSONS LEARNT AND RECONCILIATION

November 2011

Members of the Commission

Chitta Ranjan de Silva Esquire, P.C. Chairman

Dr. Amrith Rohan Perera Esquire, P.C.

Professor Karunaratne Hangawatte Esquire,

Chandirapal Chanmugam Esquire,

Hewa Matara Gamage Siripala Palihakkara Esquire,

Mrs. Manohari Ramanathan

Maxwell Parakrama Paranagama Esquire,

Mohamed Thowfeek Mohamed Bafiq Esquire.

P.O. No. CA/3/3/24

BY HIS EXCELLENCY MAHINDA RAJAPAKSA
PRESIDENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

TO :

1. Chitta Ranjan de Silva Esquire, P.C.
2. Dr. Amrith Rohan Perera Esquire, P.C.
3. Professor Mohamed Thahir Mohamed Jiffry Esquire
4. Professor Karunaratna Hangawatta Esquire
5. Chandirapal Chanmugam Esquire
6. Hewa Matara Gamage Siripala Palihakkara Esquire
7. Mrs. Manohari Ramanathan
8. Maxwell Parakrama Paranagama Esquire

GREETINGS

WHEREAS I am of the opinion that an opportune moment has arrived to reflect on the conflict phase and the sufferings the country has gone through as a whole and having regard

to the common aspirations of all we have collectively resolved that our people are assured an era of peace, harmony and prosperity;

WHEREAS it has become necessary that while we as an independent and proud nation of multi ethnic polity undertake a journey of common goals in a spirit of co-operation, partnership and friendship we also learn from this recent history lessons that would ensure that there will be no recurrence of any internecine conflict in the future;

WHEREAS, I am of the opinion that it is in the interest of public welfare, to appoint a Commission of Inquiry for the purposes hereinafter mentioned;

NOW THEREFORE I, Mahinda Rajapaksa, President, reposing great trust and confidence in your prudence, ability, independence and fidelity, do in pursuance of the provisions of Section 2 of the Commissions of Inquiry Act (Chapter 393), by these presents appoint you, the said;

1. **Chitta Ranjan de Silva Esquire, P.C.**
2. **Dr. Amrith Rohan Perera Esquire, P.C.**
3. **Professor Mohamed Thahir Mohamed Jiffry Esquire**
4. **Professor Karunaratna Hangawatta Esquire**
5. **Chandirapal Chanmugam Esquire**
6. **Hewa Matara Gamage Siripala Palihakkara Esquire**
7. **Mrs. Manohari Ramanathan**
8. **Maxwell Parakrama Paranagama Esquire**

to be my Commissioners, to inquire and report on the following matters that may have taken place during the period between 21st February 2002 and 19th May 2009, namely;

(i) the facts and circumstances which led to the failure of the ceasefire agreement operationalized on 21st February 2002 and the sequence of events that followed thereafter up to the 19th of May 2009;

(ii) whether any person, group or institution directly or indirectly bear responsibility in this regard;

(iii) the lessons we would learn from those events and their attendant concerns, in order to ensure that there will be no recurrence;

(iv) the methodology whereby restitution to any person affected by those events or their dependants or their heirs, can be effected;

(v) the institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future, and to promote further national unity and reconciliation among all communities, and to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant

AND I do hereby appoint you the said **Chitta Ranjan de Silva Esquire, President's Counsel and retired Attorney General** to be the Chairman of the said Commission;

AND I do hereby authorize and empower you the said Commissioners, to hold all such inquiries and to make all such investigations into the aforesaid matters as may appear to you to be necessary, and require you to transmit to me within six months from the date hereof, a report thereon under your hand, setting out the findings of inquiries and your recommendations relating thereto;

AND I do hereby direct that such part of any inquiry relating to the aforesaid matters as you may in your discretion determine, shall not be held in public;

AND I do hereby require and direct all Public Officers and other persons to whom you may apply for such assistance or information for the purpose of your inquiries or investigations, to render all such assistance and furnish all such information as may be properly rendered and furnished in that behalf;

AND I do hereby declare that the provisions of Section 14 of the Commissions of Inquiry Act (Chapter 393) shall apply to the Commission;

GIVEN at Colombo, under the seal of the Democratic Socialist Republic of Sri Lanka, this Fifteenth day of May, Two Thousand and Ten.

By His Excellency's command,

Lalith Weeratunga
Secretary to the President

P.O. No. CA/3/3/24

BY HIS EXCELLENCY MAHINDA RAJAPAKSA
PRESIDENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

TO : Chitta Ranjan de Silva Esquire, P.C.
(Chairman of the Commission of Inquiry)

GREETINGS !

WHEREAS, in pursuance of the provisions of section 2 of the Commissions of Inquiry Act, a Commission of Inquiry was appointed by me by Warrant dated May 15, 2010;

AND WHEREAS, you were appointed as the Chairman of the said Commission of Inquiry;

AND WHEREAS, Professor Mohamed Thahir Mohamed Jiffry Esquire, who was appointed a Commissioner of the said Commission of Inquiry, has not been able to discharge the duties & responsibilities of the position due to ill health, and it is necessary therefore to fill the vacancy so created;

NOW THEREFORE, I, Mahinda Rajapaksa, President of the Democratic Socialist Republic of Sri Lanka, reposing great trust and confidence in his prudence, ability and fidelity, do in pursuance of the provisions of section 3 of the Commissions of Inquiry Act, by these presents, appoint **Mohamed Thowfeek Mohamed Bafiq Esquire**, to be a Commissioner of the Commission of Inquiry constituted in terms of the Warrant referred to above.

Given at Colombo under the Seal of the Democratic Socialist Republic of Sri Lanka, on this Sixth day of September, Two Thousand and Ten.

By His Excellency's command,

Lalith Weeratunga
Secretary to the President

පරීක්ෂණ කොමිෂන් සභා පනතේ 2 වන වගන්තිය යටතේ අතිගරු ජනාධිපතිතුමන් විසින් පත්කරන ලද උගත් පාඩම් සහ ප්‍රතිසන්ධානය පිළිබඳ වූ ජනාධිපති පරීක්ෂණ කොමිෂන් සභාව

விசாரணை ஆணைக்குழுக்கள் சட்டத்தின் 2 ஆம் பிரிவின் கீழ் அதிமேதகு சனாதிபதி அவர்களினால் நியமிக்கப்பட்ட கற்றுக்கொண்ட பாடங்களும் நல்லிணக்கமும் பற்றிய சனாதிபதி விசாரணை ஆணைக்குழு

COMMISSION OF INQUIRY ON LESSONS LEARNT AND RECONCILIATION APPOINTED BY HIS EXCELLENCY THE PRESIDENT IN TERMS OF SECTION 2 OF THE COMMISSIONS OF INQUIRY ACT

මගේ අංකය
எனது இல
My No

ඔබේ අංකය
உமது இல
Your No.

දිනය
திகதி
Date. 15th November, 2011

Mr. C.R de Silva, PC
(Chairman)
Dr. A. Rohan Perera, PC
(Member)
Prof. Karu Hangawatte
(Member)
Mr. C.Chanmugam
(Member)
Mr. H.M.G.S Palihakkara
(Member)
Mrs. Manohari Ramanathan
(Member)
Mr. M.P Paranagama
(Member)
Mr. M.T.M. Bafiq
(Member)
Mr. S. B. Atugoda
(Secretary)

His Excellency Mahinda Rajapaksa
President of the Democratic Socialist Republic of Sri Lanka
Colombo.

Your Excellency,

We have the honour to refer to the Proclamation issued by Your Excellency on 15th May 2010 in pursuance of the provisions of Section 2 of the Commissions of Inquiry Act (Chapter 393) and letter of 7th September 2010, appointing the undersigned as Your Excellency's Commissioners for the purpose of inquiring into and reporting on matters enumerated in the Terms of Reference included in the Proclamation.

We hereby submit to Your Excellency, our Report thereon.

Please accept Excellency the assurances of our highest consideration.

ලක්ෂ්මන් කදිර්ගාමර් ජාත්‍යන්තර සබඳතා හා උපායමාර්ගික අධ්‍යයන ආයතනය, අංක 24, හෝර්ටන් පෙදෙස, කොළඹ 07. දුරකතනය
லக்ஷ்மன் கதிர்காமர் சர்வதேசத் தொடர்புகளும், உபாய ஆய்வுகளுக்குமான நிறுவகம், இல.24 ஹோர்டன் பிளேஸ், கொழும்பு 07 தொலைபேசி:
Lakshman Kadirgamar Institute of International Relations and Strategic Studies , No.24 Horton Place Colombo 07. Telephone:
011 2673408
011 3135782
Fax: **011 2674637; 011 2696819** email: llrc@sltnet.lk Web: www.llrc.lk

C.R de Silva .....

Chairman

Members

Dr. A.R Perera .....

Professor K. Hangawatte .....

C. Chanmugam .....

H.M. G.S. Palihakkara .....

Mrs. M.Ramanathan .....

M.P. Paranagama .....

M.T.M Bafiq .....

15th November 2011

15th November 2011

Abbreviations and Acronyms

CARE	Cooperative for Assistance and Relief Everywhere
CCHA	Consultative Committee on Humanitarian Assistance
CDS	Chief of Defence Staff
CFA	Ceasefire Agreement
CGES	Commissioner General of Essential Services
DMI	Director Military Intelligence
DS	Divisional Secretariat
ENDLF	Eelam National Democratic Liberation Front
EPDP	Eelam People's Democratic Party
EPRLF	Eelam People's Revolutionary Liberation Front
FDL	Forward Defence Line
FTR	Family Tracing and Reunification Unit
GA	Government Agent
GN	Grama Niladhari
GOSL	Government of Sri Lanka
HR	Human Rights
HSZ	High Security Zone
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IHL	International Humanitarian Law
IMF	International Monetary Fund
INGO	International Non-governmental Organization
JOC	Joint Operations Command
KKS	Kankesanthurai
LTTE	Liberation Tigers of Tamil Eelam
MOD	Ministry of Defence
MPCS	Multi Purpose Cooperative Societies
NCO	Non-Commissioned Officer
NGO	Non-governmental Organization
NFZ	No Fire Zone
PHI	Public Health Inspector

PLOTE	People's Liberation Organisation of Tamil Eelam
PTA	Prevention of Terrorism Act
PTF	Presidential Task Force for Resettlement, Development and Security in the Northern Province
PTK	Puthukkudiyiruppu
RDS	Rural Development Society
REPPIA	Rehabilitation of Persons, Properties and Industries Authority
SCOPP	Secretariat for Coordinating the Peace Process
SEZ	Special Economic Zone
SIHRN	Sub Committee for Immediate Humanitarian Needs
SLA	Sri Lanka Army
SLMM	Sri Lanka Monitoring Mission
STF	Special Task Force
TELO	Tamil Eelam Liberation Organisation
TMVP	Tamil Makkal Viduthalai Pulikal
UAV	Unmanned Aerial Vehicle
UNHCR	United Nations High Commissioner for Refugees
UNOCHA	UN Office of the Coordinator for Humanitarian Affairs
UN RC/HC	UN Resident and Humanitarian Coordinator
WFP	World Food Program

ACKNOWLEDGEMENTS

In presenting this final report, the Commission wishes to place on record its sincere thanks to all those who, in different ways, extended their support to the work of the Commission.

The Commission thanks all those who sent in written submissions, and those who presented themselves before the Commission and shared their views, on matters relevant to the mandate of the Commission. Particular mention is made of the general public who travelled from afar and those who are residing abroad and volunteered to appear before the Commission to share their views. The Commission also wishes to thank all those whose expertise in their respective fields assisted it in its deliberations.

It was a source of encouragement for the Commissioners to see the enthusiasm shown by a large number of members of the public who followed the public sessions of the Commission held in Colombo and the districts.

The Commission thanks both the print and electronic media, for the wide coverage they gave to the proceedings of the Commission, held both in Colombo and, also, in very remote areas of the country.

In fulfilling its mandate the Commission needed to visit several parts of the country, and had to seek the assistance of many Government officials and other institutions, both in Colombo and the other districts, with regard to logistics. The willing support extended by these officials, greatly facilitated the work of the Commission, and the Commission expresses its thanks to all of them.

In conclusion, the Commission wishes to express its sincere thanks to the former and present Secretary of the Commission, Senior staff members, Consultants and to all other members of the Secretariat staff, and the interpreters and translators who performed their duties with a sense of responsibility and dedication, even beyond their call of duty, to our complete satisfaction.

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3.2	Map showing LTTE dominated area in the Eastern Province. Source : Ministry of Defence
3.3	Map of the sequence of the Eastern operations. Source: Ministry of Defence
3.4	Map showing LTTE dominated areas in the Wanni. Source : Ministry of Defence
3.5	Map of the sequence of the Wanni operations. Source : Ministry of Defence
3.6	Map showing the NFZs.

Chapter 4 - Humanitarian Law Issues

4.1 Letter from Air Force Commander dated 29 September 2011

4.2 Copy of leaflet dropped by the SLA. Source : Sri Lanka Army

4.3 SLA letter No. DMI/INT/200A/16b (Vol. 30 – 65) dated 19 January 2009 to the ICRC .

4.4 SLA letter No. DMI/INT/200A/16b(Vol. 30-125) dated 11 February, 2009 to the ICRC.

4.5 Director Military Intelligence letter No. DMI/INT/200A/16b (Vol. 31-16) dated 8 May 2009 to Joint Operations Headquarters . ICRC Vavuniya had also been informed.

4.6 Copies of leaflets dropped by the SLA . Source SLA

4.7 (i-ii) Two letters dated 4th February 2009 from UN Chief Security Adviser to Chief of Defense Staff

4.8 UAV footage showing LTTE gun positions

4.9 UAV footage

4.10 ICRC letter No. COL/09/234/LSC/EPP/PCA dated 24 January 2009 to the Commander of the Army

4.10 ICRC letter No. COL/09/234/LSC/EPP/PCA dated 24 January 2009 to the Commander of the Army

4.11 ICRC letter No. COL/09/334/EPP/PCA dated 1 February 2009 to Chief of Defence Staff

4.12 Presidential Task Force for Resettlement, , Development & Security – Northern Province , letter No. PTF/NP/1/7 dated 6 April, 2011 furnishing detailed account of the humanitarian relief provided to civilian population in Jaffna and Wanni districts.

4.13 Letter dated 22 June 2011 from WFP

4.14 Medical supplies sent to the conflict areas and acknowledged by the Regional Medical Supplies Division, Trincomalee. Source : Ministry of Health

4.15 List of Missing Persons who surrendered in May 2009

4.16 Invitation letters to Amnesty International, Human Rights Watch and International Crisis Group

4.17 Reply received from Amnesty International, Human Rights Watch,and International Crisis Group and the Response by the Commission.

4.18 Full report by Dr. Chathura de Silva

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PREAMBLE

The Lessons Learnt and Reconciliation Commission (LLRC) was appointed by His Excellency President Mahinda Rajapaksa in terms of the Presidential Warrant dated 15th May 2010.[1] The Commission's mandate was to look back at the conflict Sri Lanka suffered as well as to look ahead for an era of healing and peace building in the country.

Sri Lanka now faces a moment of unprecedented opportunity. Rarely does such an opportunity come along without equally important attendant challenges. This is especially true of any meaningful effort towards post-conflict peace building following a protracted conflict. Sri Lanka's case is no exception. Terrorism and violence have ended. Time and space have been created for healing and building sustainable peace and security so that the fruits of democracy and citizenship can be equitably enjoyed by all Sri Lankans. To this end, the success of ending armed conflict must be invested in an all-inclusive political process of dialogue and accommodation so that the conflict by other means will not continue.

The Commission was gratified to learn from people who appeared before it, that the promise of the present opportunity far outweighs the burden of attendant challenges.

Having listened to these views from all corners of the country and from all strata of society, the Commission is inclined to share this optimism despite some uncertainties that still loom. However, if these expectations were to become a reality in the form of a multi-ethnic nation at peace with itself in a democratic Sri Lanka, the Government and all political leaders must manifest political will and sincerity of purpose to take the necessary decisions to ensure the good-faith implementation of the Commission's recommendations.

Based on what it heard from the people, the Commission is confident that the citizens are ready and willing to support consensual approaches advancing national interest, national reconciliation, justice and equality for all citizens, so long as the political leaders take the lead in a spirit of tolerance, accommodation and compromise.

The required decisions in this regard touch upon a broad spectrum of issues that are the subject matter of comment and recommendations contained in the present report. These relate to a number of vital questions that are indispensable to any good-faith attempt at reconciliation and peace-building.

[1] The Proclamation is at Annex 1

The Commission hopes that its observations and recommendations would provide pointers to areas where such decisions are needed, sooner rather than later. These areas include governance, devolution, human rights, international humanitarian law, socio economic development, livelihood issues, issues affecting hearts and minds, leadership issues and many more.

While not being an exhaustive agenda to address, let alone cure, all ills of post conflict Sri Lanka, the recommendations of the Commission could nevertheless constitute a framework for action by all stakeholders, in particular the Government, political parties and community leaders. This framework would go a long way in constructing a platform for consolidating post conflict peace and security as well as amity and cooperation within and between the diverse communities in Sri Lanka.

The Commission therefore urges that effect be given to its recommendations and encourages the promotion of public awareness of the contents and implementation of these measures. Such a course of action would help all communities to live in peace and harmony and ensure that no room is left for terrorism and violence to raise their ugly head again.

In formulating its recommendations, the Commission took into account *inter alia* the following, based on the citizens' views it heard*:*

- Historical, social and political factors that point to the causes of ethnic and citizen grievances;
- The facts and circumstances which led to the failure of the ceasefire agreement in 2002, with a view to finding lessons that can be learnt to avoid such failures in the future;
- Sri Lanka's experience in dealing with terrorism and the effects of the culture of violence on good governance, law and order and civilian life;
- The events that unfolded from February, 2002 to May, 2009, and specially the incidents that took place during the armed conflict after the Mavil Aru incident; these events and incidents were examined in the context of the International Humanitarian Law and the Human Rights Law and related, *inter alia*, to the following:

    - obligation to educate the members of the armed forces in the relevant aspects of Human Rights and International Humanitarian Law;
    - measures taken to safeguard civilians and to avoid civilian casualties during military operations;
    - establishment of No Fire Zones and the LTTE strategy of using human shields;

- supply of humanitarian relief including food and medicine to civilians in conflict areas;
- medical facilities and medical supplies during the final stages of the conflict;
- conduct of the Security Forces during the movement of civilians and combatants to cleared areas;
- alleged disappearances;
- allegations concerning abductions;
- treatment of detainees; and,
- conscription of children by the LTTE and other armed groups.

- Issues relating to land matters, specially as regards settling the returnees and resettlement of the IDPs;
- Restitution/Compensatory Relief:
- Post Conflict issues that affect vulnerable groups and the citizens at large; and
- Policies and measures that will promote reconciliation through healing, amity and unity.

A summary of the principal observations and recommendations is set out in Chapter 9.

Chapter 1 - Introduction and Methodology

Section	Paragraph Numbers
Establishment of the Commission	**1.1 – 1.4**
The Mandate	**1.5 – 1.7**
Methodology	**1.8 – 1.22**

Chapter 1 - Introduction and Methodology

Establishment of the Commission

1.1 The following eight members were appointed to the Commission by His Excellency President Mahinda Rajapaksa by Proclamation dated 15th May 2010[2].

Chitta Ranjan de Silva Esquire, P.C., Chairman
Dr. Amrith Rohan Perera Esquire, P.C.,
Professor. Mohamed Thahir Mohamed Jiffry Esquire,
Professor. Karunaratna Hangawatte Esquire,
Chandirapal Chanmugam Esquire,
Hewa Matara Gamage Siripala Palihakkara Esquire,
Mrs. Manohari Ramanathan,
Maxwell Parakrama Paranagama Esquire

1.2 One of the members appointed, Professor M.T.M. Jiffry, was unable to serve on the Commission due to failing health and resigned with effect from 31st August, 2010. Mr. Mohamed Thowfeeq Mohamed Bafiq Esquire, Senior Attorney at Law, replaced him with effect from 7th September, 2010.

1.3 Mr. S.M. Samarakoon, was appointed Secretary to the Commission. He resigned from this position with effect from 7th September, 2010 and was succeeded by Mr. S.B. Atugoda, with effect from 14th September, 2010.

1.4 The Commission held its first meeting on 11th June, 2010. Its Secretariat was established at the Lakshman Kadirgamar Institute of Strategic Studies and International Relations, No. 24, Horton Place, Colombo 7.

The Mandate

1.5 In the Mandate, contained in the Proclamation, the Commissioners were to "inquire and report on the following matters that may have taken place during the period between 21st February 2002 and 19th May 2009, namely;

i. The facts and circumstances which led to the failure of the Ceasefire Agreement operationalized on 21st February 2002 and the sequence of events that followed thereafter up to the 19th of May 2009;

[2] See Annex 1

ii. Whether any person, group or institution directly or indirectly bear responsibility in this regard;

iii. The lessons we would learn from those events and their attendant concerns, in order to ensure that there will be no recurrence;

iv. The methodology whereby restitution to pay persons affected by those events or their dependants or their heirs, can be effected;

v. The institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future, and to promote further national unity and reconciliation among communities and; to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of the Warrant.".

1.6 Under the Warrant establishing the Commission, the President noted *inter alia* that an opportune moment has arrived to reflect on the conflict phase and the sufferings that the country has gone through as a whole during this period. The President also noted that a need has arisen to learn from this recent history, lessons that would ensure that there will be no recurrence of any internecine conflict in the future and that people are assured of an era of peace, harmony and prosperity.

1.7 Accordingly, the work of the Commission proceeded, acknowledging a clear need to heal the wounds of the past and to make recommendations to reconcile the nation by recognizing all victims of conflict, providing redress to them and thereby promoting national unity, peace and harmony.

Methodology

1.8 The Commission invited representations from the public through notices in the print and electronic media. A copy of the notice is at Annex 1.1. Public notices were also disseminated in the affected areas well in advance of the hearings of the Commission in such areas. In response to these notices, the Commission received a large number of representations from the public. (Annex 1.2). Many of them requested for an opportunity to express their views before the Commission on matters referred to in the Warrant. (The list of persons who appeared before the Commission is at Annex 1.3). The Commission considered both written and oral presentations without distinction.

1.9 The primary source of information for the Commission's work was the general public of Sri Lanka, particularly those from the conflict affected areas and a number of national organizations and civil society groups who expressed their concerns and views in

response to the Commission's public notices inviting such views. In addition, the Commission also took into account, where appropriate and relevant to its mandate, a range of issues raised in published material in the form of reports by national and international organizations, including the report of the UN Secretary - General's Panel of Experts on Accountability in Sri Lanka.

1.10 Although the Commission was constituted by Presidential Warrant dated 15th May, 2010, setting in place the requisite modalities including institutional and administrative arrangements relating to the functions of the Commission took up a considerable period of time. After the completion of such arrangements the Commission commenced hearings on 11th August 2010. The hearings were held in public and open to the print and electronic media unless the person making representations before the Commission requested otherwise. The procedure adopted at the public hearings was to first inform the representer that he or she could be heard in public or in camera. Some representers elected to make submissions in camera. Thereafter the Commissioners proceeded to interact through questions with the representer to clarify any matters that arose consequent to the representations made or which they felt were relevant to the terms of the Warrant.

1.11 The Commission provided every opportunity to persons to make representations in a language of their choice, while providing for simultaneous translation to English. The Commission thus recognized the salutary effect, particularly on affected persons, of being able to relate their stories in a language of their choice. For the purposes of the Report the Commission utilized the English scripts of the simultaneous English translation.

1.12 The Commission decided to consult and hear the views of persons who would have personal experience and knowledge on different aspects of matters referred to in the Warrant. Invitations were also extended to local NGOs as well as NGOs based outside Sri Lanka, that have produced reports on the situation in this country pertaining to matters relevant to the Warrant. However, it is a matter of regret that despite the invitation extended in good faith, seeking a constructive dialogue on what the Commission considered as issues of common concern falling under the purview of its Mandate, this invitation has not been reciprocated by three organizations[3]. As the public sittings progressed and consequent to the wide media coverage, there was a keen response from members of the public to express their views before the Commission.

[3] Human Rights Watch, Amnesty International and International Crisis Group

1.13 The Commission took several steps to make its work transparent. The hearings were open to the public and the media, except when a person making representations requested confidentiality. The Commission facilitated the media to video and audio tape the public proceedings. In addition the Commission maintained a web site, since August 2010, where the schedule of Commission visits and transcripts of public hearings, public representations and other information regarding the Commission were published.

1.14 Among those who made representations before the Commission were members of the public, public servants including those who had served in the affected areas during the conflict period, affected individuals, representatives of the armed forces, senior officials who were associated with the peace process, political leaders, religious leaders, members of civil society, journalists, academics and other professionals, former LTTE cadres and former members of other armed groups.

1.15 In addition to the public sittings in Colombo, the Commission undertook field visits to areas affected by the conflict. A list of places visited by the Commission is at Annex 1.4. The Commission was of the view that in order to ascertain first-hand the ground realities, it was imperative to have public sittings *in situ*. This was also with a view to reaching out to the people in the affected areas and to enable them to highlight their grievances. These people would otherwise have faced considerable difficulties in travelling to Colombo to make their representations. Through this process the Commission was able to acknowledge the suffering of the people in the affected areas and provide an opportunity for them to tell their stories in familiar surroundings. This approach focused on the restorative dimensions of the Commission's Mandate.

1.16 In certain instances where the general public who appeared before the Commission articulated grievances or complaints requesting the Commission to do what it can to provide relief and where the Commission felt such expeditious action would help redress such grievances and provide relief to the party concerned, the Commission took the liberty to refer the matter to the Attorney General requesting appropriate investigation and action.

1.17 In addition to scheduled public meetings, the Commissioners also made it a point to have unscheduled, impromptu meetings to speak with members of the public to obtain first hand information about the situation. Where possible, the Commission sought clarifications from persons who appeared before the Commission or provided material to the Commission through informal meetings both in Colombo and during its follow up visits to the provinces.

1.18 On the 13th of September 2010 the Commission made its Interim Recommendations to His Excellency the President, covering a range of issues relating to Detention, Law and Order, Land, Administration and Language, which in the view of the Commission deserved urgent attention. The Commission also expressed the view that immediate action on these matters would provide relief and engender a sense of confidence among the people affected by the conflict and also provide an impetus to the reconciliation process. The Commission's Interim Recommendations are attached at Annex 1.5.

1.19 The hearings held throughout the country and the public attention it generated particularly through the provincial media, resulted in a substantial increase in public awareness and interest in the work of the Commission. As such, the Commission had to extend the deadline for making representations in order to accommodate a continuous flow of requests from the public. In the light of these developments and the consequent increase in representations made to the Commission, it became clear that it was not feasible to conclude its work within the time period specified in the original Warrant. Accordingly, by Warrant dated 3rd November 2010 issued by His Excellency the President, the time limit for rendering the final Report of the Commission was extended until 15th May 2011.

1.20 The Commission continued its public hearings until the 31st of January 2011. The Commission also continued to receive written representations until the 13th of June 2011.

1.21 As the process of analyzing the large volume of material gathered progressed, it was evident to the Commission that there were several specific areas and issues which required further elucidation/clarification, before the Commission could make an assessment of the matters, for inclusion in the report. Accordingly the Commission invited several public officials, military officials, experts and members of the public to appear before the Commission, some on several occasions. Follow up visits to some of the provinces were also arranged. All of this made it necessary for the Commission to seek a further extension of time. By Warrant dated 10th May 2011 issued by His Excellency the President the time limit was extended until 15th November 2011.

1.22 The Commission was conscious of the fact that the remit of the Commission required it to report on matters that may have taken place during the period between 21st February 2002 and 19th May 2009. At the same time it also recognized that the causes underlying the grievances of different communities had its genesis in the period prior to

the time frame referred to in the Warrant. The Commission accordingly provided a degree of flexibility to the representers in this regard.

1.23 The material placed before the Commission covered a broad range of complex issues of a multidisciplinary nature, resulting in a need for the Commission to identify the issues which the Commission deemed necessary to deal with, in terms of the Mandate and its stated objectives. Accordingly the Commission identified the issues that it believed to be relevant and proceeded in working on these areas in relatively self contained Chapters with cross references to other Chapters, where required. The Commission was of the view that this approach would facilitate a better understanding of the issues, and assist in implementation of recommendations.

Chapter 2 - Ceasefire Agreement

Section	Paragraph Numbers
Introduction	**2.1 – 2.2**
Background to the Ceasefire Agreement	**2.3 – 2.7**
Political and Security Dimensions	**2.8 – 2.10**
Negotiating Process	**2.11 – 2.13**
Resulting Impact on the Provisions of the CFA	**2.14 – 2.20**
Demarcation of Territory	
Vulnerability of Other Groups	
Political Activities of the LTTE	
Jurisdiction of the SLMM	
Vacation of Public Buildings	
Absence of any Human Rights Component	
Factors which had a bearing on the Implementation of the CFA	**2.21 – 2.24**
Negative Impact on the Muslim Community	
Role of the Facilitator	
Economic and Social Dimensions	**2.25 – 2.31**
Observations of the Commission	**2.32 – 2.61**
Impact of Divisive Party Politics	
Facilitator's Role in the Negotiating Process and Implementation	
Impact of the Process on the Implementation	

Chapter 2 - Ceasefire Agreement

Introduction

2.1 The Warrant requires the Commission to inquire into and report on the facts and circumstances which led to the failure of the Ceasefire Agreement (CFA) operationalised on 21st February 2002 and the sequence of events that followed thereafter up to 19th of May 2009.

2.2 In carrying out this task, the Commission sought the views of key officials, *inter alia*, those who had served the Secretariat for Co-ordinating the Peace Process (SCOPP) and were closely involved with the working of the CFA, as well as officials of the Defence establishment and others. The Commission was therefore able to benefit from a wide range of views expressed by these persons with regard to,

i) The background to the CFA;
ii) Political and Security Dimensions;
iii) The Negotiating process ;
iv) The resulting impact on the provisions of the CFA;
v) Factors which had a bearing on the implementation of the CFA; and
vi) Economic and Social Dimensions of the CFA

which helped the Commission in reaching its conclusions regarding the facts and circumstances which led to the failure of the CFA.

Background to the Ceasefire Agreement

2.3 The Commission heard representations to the effect that the reasons for the uprising were frustrations due to *inter alia* economic stagnation, perceptions of discrimination due to the introduction of standardization in education/employment, non-implementation of language policy, devolution and the failure to confer a substantial degree of political autonomy to the Northern and Eastern Provinces to conduct their own affairs. It was stated that even though successive administrations in post-independent Sri Lanka had attempted to find solutions to these problems as far back as early 1950, nothing durable was achieved due to divisive party politics and lack of a bi-partisan approach to vital national issues.[1] In this context reference was made to the

[1] Mr. Bernard Gunatilleke before the LLRC at Colombo on 11th August 2010.

Bandaranaike - Chelvanayakam Pact of 1956, the Dudley Senanayake – Chelvanayakam Pact of 1957, which did not bear any fruit culminating in the Vadukkodai Resolution in 1976 which referred to a separate Tamil state. It was argued that from this incipient phase the Tamil youth movement had graduated to a terrorist movement. It was further stated that the CFA was signed under tense conditions and wide publicity or public awareness programs had not been carried out.

2.4 It was emphasized that a bi-partisan approach to vital national issues was a *sine qua non* in order to arrive at a durable solution.[2] Whether it was the Bandaranaike-Chelvanayakam (BC) pact, the Dudley Senanayake-Chelvanayakam (DC) pact, the All Party Conference of 1984, the 13th Amendment of 1987, the Parliamentary Select Committee 1992 Report or the proposed draft constitution of 2000 the opposition parties always opposed the proposals. Further, the point was also made that the leadership of the minority parties had failed to make use of the opportunities made available to them,[3] thus pointing to a collective failure in the political leadership in the North and the South. Reference was also made to the various administrative arrangements which were experimented with by the political leadership of the times, such as the District Political Authority System of 1973/1974, and the District Development Council system in 1979/1980. It was contended that given the absence of political will, these arrangements, political or administrative, had no lasting impact on the political landscape of the country.

2.5 Ever since the unattended and unsolved grievances of the Tamils – relating to economic opportunity, political space and identity, particularly to the use of the Tamil language in dealing with the State - took the form of an armed struggle, especially after the targeted attacks on the Tamil population in July 1983, the Governments in power sought to engage the Tamil militant groups in talks.

2.6 Prior to the CFA of 2002, there were several attempts at reaching agreement on ceasefires and holding peace talks. Among them were –

- the Thimpu talks of the mid 1980s
- in 1989/1990 under President Ranasinghe Premadasa;
- in 1994/1995 under President Chandrika Kumaranatunga;

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[2] Mr. Godfrey Gunatilleke before the LLRC at Colombo on 12th August 2010.
[3] Mr. Austin Fernando before the LLRC at Colombo on 18th August, 2010.

- in 2000/2001 also under President Chandrika Kumaranatunga which did not get off the ground.

2.7 The CFA of February 2002 was the last attempt. However, there was a significant change in the political environment when the CFA was concluded. The Government of the day was a co-habitation Government where the President and the Prime Minister were from different political parties. This posed difficulties and impacted negatively on the structure and implementation of the CFA. It is in this backdrop that the CFA of 2002 must be examined.

Political and Security Dimensions

2.8 In dealing with the facts and circumstances which led to the failure of the CFA, the representers underlined the need to appreciate the overall military and political environment under which the CFA was signed. Reference was made to a series of events which had taken place in early 2000, such as the fall of Elephant Pass, the failure of operation "Agnikheela," resulting in the death of over 2000 soldiers and approximately 500 injured, and most importantly the attack against the Katunayake Air Force Base as well as the Civilian International Airport in Katunayake (Bandaranaike International Airport) in July 2001 which resulted in extensive damage to property including several civilian aircraft on the ground. It was stated that these events had a negative impact on the economy. Thus it was pointed out that it was a politically and militarily, weak Government that was constrained to sit at the negotiating table with the LTTE as equal partners.[4]

2.9 Some representers stated that a ceasefire had been declared unilaterally by the LTTE on the eve of Christmas 2001. They further stated that a ceasefire was going on, at the ground level, informally, without a formal document. In this context they further pointed out that a formal agreement was thought to be required as early as possible to avoid situations which could jeopardize the ceasefire.[5]

2.10 The attention of the Commission was also drawn to the unusual configuration which prevailed in the then political landscape between the Executive and the Legislature with the President representing one political party and the Prime Minister and the Cabinet another which was characterized as a "co-habitation Government". It was explained that in effect, the Government formed in 2002, under the Prime Ministership of Mr.

[4] Mr. Bernard Gunatilleke before the LLRC at Colombo on 11th August 2010.
[5] *Ibid.*

Ranil Wickremesinghe was a politically tenuous one, teetering on a very slim majority. According to the Constitution, the President had the power to dissolve Parliament after one year of the election which brought the Government into office. Hence it was pointed out that the expected life span of the then incumbent Wickremesinghe Government was a minimum of one year and anything more depended solely on the prevailing political circumstances. This aspect was referred to as an additional factor which explains the inordinate urgency of the then Government to conclude a ceasefire agreement in order to formalize the prevailing situation on the ground, rather than engaging all relevant stakeholders and going through a long drawn out negotiation process.[6]

Negotiating Process

2.11 Several senior officials familiar with the CFA process, stated that the factors set out above, had a direct impact on the negotiating process resulting in somewhat unusual procedures being resorted to in negotiating the CFA. It was further pointed out in this context that prior to the Norwegian facilitators arriving in Sri Lanka with the text, they had had discussions in London, with Mr. Anton Balasingham the Chief Negotiator for the LTTE, and had got the draft text endorsed by him. It was also stated that when specific proposals having an important bearing on the defence and security interests of the State were being made, the Norwegian facilitators had responded that in the interest of preserving the pre-negotiated text, and to conclude the Agreement with a sense of urgency, any amendments should be kept to the bare minimum.[7] In this context it was also pointed out that this position was confirmed by Anton Balasingham in his book *"War and Peace: Armed Struggle and Peace Efforts of Liberation Tigers".*

2.12 It was emphasized that this extraordinary procedure had resulted, in a situation where there was no reference to the need for the parties to use the ceasefire to pave the way for talks on substantive issues to find a negotiated settlement. Specific obligations for the prohibition of unlawful importation of arms, ammunition as well as other war related material had not been included. While the LTTE members were allowed to do political work in the Government held areas, State agencies and other political parties however, were not allowed to work in the LTTE – dominated uncleared areas of Mullaittivu and Kilinochchi. Further forcible conscription of child combatants and other

[6] Mr. Mr. Bernard Gunatilleke before the LLRC at Colombo on 12th August 2010
[7] Mr. Austin Fernando before the LLRC at Colombo on 18th August 2010

human rights violations were not included as prohibited activities during the ceasefire period.[8]

2.13 Accordingly, it was contended that priority had been given to finalizing and having an agreement in place as early as possible, instead of going through the draft text carefully and attempting to address and accommodate concerns of critical importance to the security and stability of the State. This had resulted in the emergence of a one sided agreement favourable to the LTTE.[9]

Resulting Impact on the Provisions of the CFA

2.14 It was submitted to the Commission that the factors outlined above, relating to the negotiating process had had a direct impact on the overall balance of the agreement. In this regard several representers emphasized that an agreement between two parties must be a realistic and a fair one in order to be workable. A number of provisions of the CFA were referred to by these representers to highlight the element of imbalance and the unrealistic nature of the CFA and these are set out below.

Demarcation of Territory

2.15 It was stated that the CFA was structured on demarcating the territory of Sri Lanka into LTTE controlled and government controlled areas. This had the effect of undermining the territorial integrity of the State. It was also contended that the attempts to demarcate 'no go' areas/exclusion zones in respect of the movement of the Sri Lanka Navy, off the coast of certain parts of the Eastern seaboard, allowed the LTTE to facilitate illicit smuggling of weapons and war material.[10]

Vulnerability of Other Groups

2.16 It was stated that there were armed groups such as the EPDP, PLOTE and EPRLF who had engaged in violence earlier, but had joined the democratic process. Members of these groups had been allowed by successive Governments to retain arms to protect themselves. Immediately after the CFA was signed, they were required to give up their arms and they became vulnerable given the fact that LTTE cadres were permitted to openly carry arms.[11]

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[8] *Ibid*.
[9] Mr. Bernard Gunatilleke before the LLRC at Colombo on 11th August 2010
[10] Mr. Austin Fernando before the LLRC at Colombo on 18th August, 2010
[11] Mr. Javid Yusuf before the LLRC at Colombo on 25th October 2010

Political Activities by the LTTE

2.17 Under the CFA, LTTE cadres were permitted to engage in 'political work' in the cleared areas in the North and East, whereby the LTTE was able to extend its influence into areas they did not previously control in the North and East. There was no corresponding access for the Government or other political parties, into the uncleared areas dominated by the LTTE. The issue of reciprocity taken up by the Government had not been accommodated.[12]

Jurisdiction of the Sri Lanka Monitoring Mission (SLMM)

2.18 The SLMM was established consequent to the CFA and in terms of the Status of Mission Agreement (SOMA) between the Government of Sri Lanka (GOSL) and Norway dated 18th March 2002. All districts in the Northern and Eastern provinces were subject to monitoring by the SLMM except for the Mullaittivu and Kilinochchi Districts dominated by the LTTE.[13] It was emphasized that this was an uneven provision for the reason that people who lived in those areas as equal citizens were deprived of any kind of relief due to the failure in monitoring the LTTE violations of the said CFA.

Vacation of Public Buildings

2.19 It was pointed out to the Commission that the deadlines given to the Security Forces for vacation of public buildings were totally unrealistic. It was stated in this regard that where the Security Forces had occupied public buildings and places of religious worship they were required in terms of the CFA[14] to vacate such premises within a prescribed period. This was viewed as an unrealistic deadline for the reason that it was not feasible for the Security Forces to find alternative places to move into within a short period of time as prescribed by the agreement. It was stated that this was also reflective of a failure to take into due account the overall national security dimension during the negotiating process.[15]

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[12] Mr. Javid Yusuf before the LLRC at Colombo on 25th October 2010

[13] *Ibid.*

[14] Article 2.2 - The Parties shall refrain from engaging in activities or propagating ideas that could offend cultural or religious sensitivities. Places of worship (temples, churches, mosques and other holy sites, etc.) currently held by the forces of either of the Parties shall be vacated by D-day + 30 and made accessible to the public. Places of worship which are situated in "High Security Zones" shall be vacated by all armed personnel and maintained in good order by civilian workers, even when they are not made accessible to the public.

Article 2.3 - Beginning on the date on which this Agreement enters into force, school buildings occupied by either Party shall be vacated and returned to their intended use. This activity shall be completed by D-day + 160 at the latest.

Article 2.4 - A schedule indicating the return of all other public buildings to their intended use shall be drawn up by the Parties and published at the latest by D-day + 30.

[15] Mr. Austin Fernando before the LLRC at Colombo on 18th August 2010.

Absence of any Human Rights Component

2.20 Attention of the Commission was also drawn to what was referred to as "a significant lacuna" in the provisions of the CFA namely the absence of a Human Rights component, resulting in a failure to bind the LTTE to the observance of Human Rights norms. Most importantly the critical issue of conscription of child combatants by the LTTE could not be dealt with in any manner under the agreement. An international Human Rights expert, Mr. Ian Martin, former Secretary General of Amnesty International who had made a study of the incorporation of the Human Rights dimension into the CFA, had made certain recommendations in that regard. However this initiative was rejected by Mr. Anton Balasingham who objected to an international scrutiny of the human rights situation in the North and the East. It was contended that this strategy was adopted by the LTTE to dominate areas in the North and the East and to prevent any violations of human rights in these areas from being scrutinized, with regard to the LTTE's compliance with accepted human rights norms and standards.[16]

Factors which had a bearing on the Implementation of the CFA

Negative impact on the Muslim Community

2.21 Representers who appeared before the Commission stated that the implementation of the CFA had negatively impacted on the Muslim Community. It was stated in this regard that 1/3 of the Muslims live in the Eastern Province. Though they were not directly involved with the armed conflict between the State and the LTTE, it was stressed that the consequences of the conflict had an impact on the Muslim Community. According to these representations, an unfortunate aspect was that once the CFA was signed, the Law Enforcement Agencies had acted with an element of restraint with regard to certain law and order issues which had arisen, in order not to cause any tensions which could have the effect of undermining the CFA. It was stated that as a result, there were incidents which could have been dealt with as pure law and order issues and were not so addressed, thereby letting them escalate into situations which caused tension between the Muslim Community and the Tamil Community. Reference was made in this regard to photographs which were supposed to have appeared in the media where members of the Security Forces were seen to be watching, when attacks against the Muslim Community were being carried out by the LTTE. Particular mention was made of the serious incidents in April 2002 in Muttur creating heightened tension in the whole of

[16] Mr. Bernard Gunatilleke before the LLRC at Colombo on 11th August, 2010; Dr. Mrs. Hiranthi Wijemanne before the LLRC on 12th August, 2010.

the Eastern Province. It was contended however that one could not entirely blame the Security Forces because they were under strict orders not to do anything to jeopardize the CFA.[17]

2.22 Another aspect brought to the attention of the Commission was the fact that the Muslim Community had felt "short-changed" during the peace process, because their demand that a separate independent delegation of Muslims be allowed to take part in the negotiations was not accommodated. It was asserted that the Muslim Community had been promised that a separate delegation would be allowed to take part as an independent delegation from the second round of talks. However the "second round" had never become a reality, because the subsequent talks had been re-designated as the "second session of the first round – the third session of the first round and so forth" although those sessions had no interconnection in terms of the subject matter[18]. Thus it was contended that the Muslim Community had the perception that this was a deliberate attempt to exclude them from the negotiation process, which resulted in the erosion of confidence of the Muslims in the CFA.

Role of the Facilitator

2.23 It was contended before the Commission that the role that Norway played both as facilitator of the peace process and the Head of the SLMM, resulted in a conflict of functions and had a negative impact in ensuring compliance with the CFA. [19]It was pointed out that the element of "neutrality" expected of a facilitator, resulted in the SLMM headed by Norway failing to exercise sufficient control or influence over the parties with regard to violations of the CFA. Consequently the SLMM was reduced to a role of a record keeper merely tallying the CFA violations, without being able to ensure effective compliance by the parties.

2.24 It was emphasized that the above factors taken collectively point to a lesson to be learnt – i.e. that if unrealistic and unworkable provisions are included in an agreement which is designed to create confidence and pave the way for substantive negotiations, it would have the reverse effect of generating an erosion of confidence amongst the parties, finally working to the detriment of the negotiating process and defeating the very objective of such an agreement. It was therefore pointed out that the lack of inclusivity

[17] Mr. Javid Yusuf before the LLRC at Colombo on 25th October 2010
[18] *ibid*
[19] *ibid*

and attention to detail resulting from the sense of urgency in concluding the agreement, had been major contributory factors leading to the failure of the CFA.[20]

Economic and Social Dimensions

2.25 The CFA negotiations took place when Sri Lanka's economy was in a troubled phase. Over the preceding decades Sri Lanka had run a series of budget deficits. Military/Defence expenditures were rising and adding to Government expenditures. Government revenues were not sufficient and the country's total expenditure was excessive. To meet the resulting deficits, the Government had been borrowing from the general public, banks, as well as from foreign sources.[21]

2.26 In 2001, the economy battered by successive high budget deficits, showed a negative growth for the first time. The country's foreign reserves were running low. Inflation was rising. An International Monetary Fund (IMF) stabilization package was negotiated in April 2001 to bolster the economy, but not without pain as the benefits would come in the long term. The Government looked for a "peace dividend" to give hope to a war weary populace. It was necessary to get the peace process under way so that donor pledges of foreign aid and foreign investment would provide the necessary funding for the country to grow to its potential. There was pressure to sign the CFA as presented despite some infirmities. These were left to be resolved on the run. However, this was not to be, as events unfolded.[22]

2.27 In considering certain other factors that had a bearing on the CFA, it would be pertinent to refer to its economic dimensions which were brought to the attention of the Commission. It was pointed out that an important rationale of any ceasefire agreement is to generate an economic dividend i.e. to provide the people more opportunities, and more trickle down benefits from the market economy.

2.28 It was also stated that the Government of the day, proceeded on the assumption that an economic dividend would provide support for the Government and to the peace process from the Southern electorate in Sri Lanka. This was premised on the fact that the peace package, and the accompanying aid flow would give rise to an economic revival which would improve the living standards in the South. Furthermore, it was stated that the people in the North and the East would also be the beneficiaries of the projected

[20] Mr. Bernard Gunatilleke before the LLRC at Colombo on 11th August 2010
[21] Dr. Saman Kelegama before the LLRC at Colombo on 29th September 2010
[22] Mr. Bernard Gunatilleke before the LLRC at Colombo on 11th August 2010

economic dividend. It was explained that the expectation was that with the trickling down of such benefits, the people in these areas would gradually distance themselves from the LTTE, which was essential if the peace process was to succeed.[23]

2.29 However it had transpired that the expected substantial economic dividend in Southern Sri Lanka did not materialize due to a number of factors. Among these, was what was described as a "costly stabilization programme" under the IMF package that had been introduced at the time of the CFA. It was further explained that bringing down the budget deficit involved the pruning of expenditures under the Samurdhi Scheme, reducing the cost of the fertilizer subsidy scheme, reversing losses in State-run energy enterprises, electricity, water supply and telecommunication sectors by bringing charges more in line with costs, and realistic pricing for petroleum reflecting international prices. It was further stated that, defence-related expenditure had not come down substantially as was envisaged, because a significant amount of funds from the Defence budget savings had been diverted for the rehabilitation of Internally Displaced Persons (IDPs).[24]

2.30 As far as the North and the East were concerned, it was further pointed out that the foreign aid that was allocated to these areas, did not go into the projects that directly touched the people i.e. micro projects, small and medium industries. They had been very much focused towards large infrastructure projects. Accordingly it was stressed that what was expected in the form of an economic dividend in the North and the East did not materialize either. Thus, according to this view, an essential pre-requisite for the success of a peace process was lacking.[25]

2.31 Another factor brought to the attention of the Commission was the failure of certain institutional mechanisms established under the CFA such as the Sub Committee for Immediate Humanitarian Needs (SIHRN) for the North and the East set up with the objective of providing civilian relief. It transpired that the Government of Sri Lanka had proposed nearly 400 projects for the North and the East and the LTTE had proposed 80 projects. The Government was negotiating with the World Bank for the management of a fund for the providing of such relief. It was pointed out that the LTTE never allowed the SIHRN mechanism to get off the ground. It was thus contended that the collapse of

[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid.*

institutions such as SIHRN further frustrated the realization of the economic dividend for the people of the North and the East.[26]

Observations of the Commission

2.32 The Commission did not have the benefit of the views of the Hon. Ranil Wickremasinghe, the former Prime Minister who signed the CFA on behalf of the Government. Though invited, there was no response from him. Former President, Mrs. Chandrika Kumaratunga also was invited. There was an exchange of correspondence on this invitation, but she did not come before the Commission to give her views. The Tamil National Alliance (TNA) too, was invited by the Commission to present their views. However no representative of the TNA came before the Commission.

2.33 Having considered the material pertaining to the CFA presented to the Commission as well as related literature and data in the public domain, the Commission makes the following observations on the facts and circumstances which led to the failure of the CFA.

Impact of Divisive Party Politics on the CFA

2.34 The Commission is constrained to observe that one of the reasons for the failure of the CFA, is the partisan approach to vital national issues on the part of political parties which has dominated the political landscape of Sri Lanka since Independence. In a situation which required all political parties to close ranks on a critical issue affecting the entire nation and generations to come, there was an abject failure of the political leadership, to develop a culture of consensual decision making on national issues. The Commission is of the view, that the exceptional political situation which prevailed at the time, namely the Executive President belonging to one political party and the Prime Minister and the Cabinet belonging to another, provided an unique opportunity for the two major political parties in the South to close ranks and to speak with one voice on the critical national issue. In the Commission's view had such a bi-partisan approach been adopted not only in relation to the implementation of the CFA, but including the negotiation of the CFA itself, the story of the CFA would have been different.

2.35 In this connection it is pertinent to note that a proposal had been made by the Sri Lanka Freedom Party (SLFP) by letter dated 31st May 2002, suggesting that a joint committee

[26] Mr. Bernard Gunatilleke before the LLRC at Colombo on 11th August 2010.

headed by the President and the Prime Minister be appointed to overlook the implementation of the CFA.[27] However, it appears that this offer had not been accepted.

2.36 The material before the Commission is that the President who is the Commander in Chief of the Armed Forces was by-passed and kept completely out of the picture during the entire period leading up to the signing of the CFA. The Commission notes in this regard, that when the then President was handed over a copy of the CFA, she had requested time to study it, but had been informed that it was too late as the document had already been signed.[28] In fact at that stage, the CFA had become a *fait accompli*. The consequence of this failure to take the Head of State into confidence and to keep her briefed and to seek her views, was to circumvent an important component of the Executive limb of Government. Had the President, been consulted, as Commander in Chief of the Armed Forces, she would have been duty bound to ensure that national security concerns were incorporated into the CFA process.

2.37 An unfortunate consequence of the failure to adopt a bi-partisan approach is that it contributed to the public at large not being supportive of the CFA and the peace process, despite their yearning for peace. Failure to engage in the widest possible consultative process through parliamentary debate and inter-party consultations including different Tamil political groups resulted in a perception that the agreement was thrust upon the public and a consequent erosion of public support. Indeed during the commissions visit to Jaffna one representer, a leading academic in the Northern Province, did state that the proposals of the United National Party (UNP) administration during the CFA period, seemed to lack sincerity in Tamil minds, because that administration while in opposition had successfully thwarted the passage in Parliament of the year 2000 constitutional amendments.[29]

2.38 The lack of inclusivity in the CFA process has been sought to be explained on the ground that it was imperative to finalize the draft CFA within the shortest possible time irrespective of the difficulties, rather than allowing the *de facto* ceasefire on the ground to unravel.[30] Furthermore it has been stated that the political relationship that existed between the Executive President and the Prime Minister was also not conducive for a wider consultative process.

[27] Mr. Javid Yusuf before the LLRC at Colombo on 25th October 2010
[28] Mr. Javid Yusuf before the LLRC at Colombo on 25th October 2010
[29] Professor Ratnajeevan Hoole before the LLRC at Jaffna on 12th November 2010
[30] Mr. Bernard Gunatilleke before the LLRC at Colombo on 11th August 2010

2.39 The Commission finds itself unable to accept this line of argument as a justification for the failure to ensure that all limbs of Government acted in concert on such a vital national issue. In negotiating an instrument such as the CFA which had a critical impact on the future of the Nation, an overall inclusive approach and adherence to established constitutional practices where different limbs of Government functioned in concert, rather than at cross purposes, was vital. Having said this, the Commission does recognize that inclusivity needs to be tempered with practicality. Expediency is also an important factor to be taken into account in this regard. However in this instance, in particular, the failure to consult the Executive President shows that the pendulum had swung to one extreme, disturbing the delicate balance that needed to be preserved in respect of vital national issues. Consequently this jeopardized the entire CFA process.

Facilitator's Role in the Negotiation Process and Implementation of CFA

2.40 When inviting third party facilitation, it is of critical importance that the parties concerned have a clear perception as to the role and functions of the facilitator. A facilitator must function as a neutral agent, and even-handedly persuade the parties concerned, through exertion of its influence, to reach a compromise settlement and should not in any way give an appearance of even a semblance of partiality. The effective discharge of this function requires that the third party facilitator functions in a manner that inspires confidence among the parties concerned and also does not undertake any other functions which would be incompatible with its role as facilitator. Any such incompatibility would compromise the balance that needs to be preserved in carrying out facilitatory functions.

2.41 These considerations would also require that when negotiating an agreement where the facilitator is tasked with presenting a text for the consideration of the two parties, that a 'neutral text' be placed for the consideration and discussion by the parties. The challenge before the facilitator is to nudge and encourage the two parties to move from their respective entrenched positions and come to middle ground, resulting in a compromise negotiated text which would ultimately emerge through this process. It is a trite observation that a compromise solution leaves neither party entirely satisfied nor entirely dissatisfied but reasonably satisfied about the outcome. This is the very essence of a compromise, the achievement of which is the principal challenge for a facilitator.

2.42 In the present instance, the procedure followed was a complete departure from such established principles and practices as set out above. It is clear to the Commission from the material placed before it that what was presented to the Government in the form of

a draft CFA, was a compromise text with the LTTE with a more or less 'take it or leave it' approach. It is unfortunate that the adherence to these established principles appear to have been sacrificed for the ostensible purpose of keeping the LTTE in the negotiating process, at great cost to the general acceptance of the CFA and the sustainability of the peace process.

2.43 Another factor which appeared to have impacted the effective implementation of the CFA, was the dual roles Norway took on as the facilitator of the peace process on the one hand and the Head of the SLMM on the other.[31] This had led to a situation of conflict of interest. As stated earlier, a facilitator must play a neutral role in a manner which inspires confidence between the parties as well as the people. The function of the Head of a Monitoring Mission should be to exercise effective control in the process of monitoring verification of compliance with an agreement. When a facilitator is entrusted with the task of monitoring, its neutrality and independence will necessarily be compromised. The Commission is of the view that Norway failed to effectively monitor compliance with the CFA on the basis that by such action its neutral role as a facilitator will be compromised. Consequently Norway failed to effectively monitor compliance with the CFA in situations which required strong action in the light of the continuous violations of the CFA committed by the parties, mainly the LTTE.

2.44 This was an untenable situation which should have been addressed by the Government at the very inception, but perhaps overlooked given the perceived sense of urgency which had prevailed at the time. The deficient verification mechanism arising from a conflict of interest in the roles of facilitator and Head of SLMM contributed in a significant way to the eventual breakdown of the CFA.

Impact of the Process on the Implementation of the CFA

2.45 The Ceasefire Agreement as referred to above, was largely unworkable, unrealistic and failed to provide a platform for sustainable peace in the longer term. The Commission is of the view that negotiating on issues with defence and security implications such as the timeframes for vacating public buildings and places of religious worship by the Security Forces should have been attempted in a more inclusive and comprehensive manner through greater consultation with the Defence authorities and after obtaining their inputs. However it appears that such an important process went by default.

[31] Mr. Javid Yusuf before the LLRC at Colombo on 25th October 2010

2.46 The unbalanced nature of the CFA, had resulted in the SLMM being unable to take any action in respect of CFA violations. In addition, the uncleared areas dominated by the LTTE were not accessible for investigation by the SLMM. Thus the LTTE had remained insulated in these areas where violations of the CFA were committed, with the SLMM opting to turn a blind eye under the pretext of the expected neutrality of the facilitator, who in this case was also the Head of the SLMM. The Commission also takes cognizance of the fact that even with regard to violations committed with impunity by the LTTE within areas under Government control, the law enforcement agencies of the State were rendered powerless. The SLMM were either unable or unwilling to assist the law enforcement authorities of the State in such situations. The Commission is constrained to observe from the material placed before it that this conduct on the part of the Facilitator/SLMM was totally unacceptable. The Commission further observes that besides the political assassinations carried out by the LTTE such as that of Foreign Minister Lakshman Kadirgamar, the perpetrators sought safe haven in the LTTE - controlled areas after commission of crime. This was the position even with regard to persons committing crimes which were not directly related to the conflict, as illustrated in the case where the police had to seek the assistance of the SLMM to apprehend a pedophile who had committed offences in the South and sought sanctuary in the LTTE – controlled areas.[32] The police requests for SLMM assistance were futile. Thus it appears to the Commission that the lack of proper overall verification and an enforcement mechanism effective throughout the country coupled with a lack of commitment on the part of the SLMM to implement any form of verification and enforcement, resulted in an erosion of public confidence in the CFA and contributed in a decisive manner to its failure.

2.47 The CFA also provided the LTTE with an opportunity to be equal partners with the Government of Sri Lanka at the negotiating table.[33] The Commission recognizes that while it was necessary that the LTTE be a party to the CFA, so that they are made to undertake obligations under the agreement, it is questionable whether the according of parity of status to the LTTE, on par with the legitimate Government, with all the trappings normally accorded to a State entity, and thereby conferring a degree of legitimacy to the LTTE before the international community, was in fact necessary to achieve the objective of the peace process. The Commission takes a view that this was not justified and only provided the LTTE a convenient excuse to resile from its commitments to the peace process. This is clearly illustrated by the episodes where the

[32] Dr. Mrs. Hiranthi Wijemanne before the LLRC at Colombo on 12th August 2010
[33] Mr. Bernard Gunatilleke before the LLRC at Colombo on 11th August, 2010

LTTE having arrived in Oslo, Norway in June 2006 failed to appear at the negotiating table on the specious ground that the Government delegation was not at Ministerial level, and its decision to finally suspend their participation in the peace negotiations on the ground that they were not invited by the United States Government to the *Preparatory Washington Donor Conference in April 2003.* [34]

2.48 The Commission also takes the view that there is usually an underlying strategy and objective when negotiating any agreement. In the case of a ceasefire agreement, such strategy must essentially lead to the negotiation of core substantive issues towards a lasting permanent settlement. In the case of the CFA the search for a political settlement and the identification and discussion of core substantive issues relating to such a settlement, appears to have been sidelined. The focus appears to have been on transitional issues, such as how to maintain the ceasefire on the ground and merely record violations. The LTTE strategy appears to have been to focus on issues which they referred to as 'existential issues'. On the part of the Government it appears that it too adopted the strategy of one step at a time as the Government itself was politically weak.[35]

2.49 The most alarming factor to emerge from this was that with the conclusion of the CFA, the entire country was categorized into areas, under the control of the LTTE and those under the control of the Government. Such categorization appears to have encouraged the LTTE to drag on the negotiating process as long as possible, discussing peripheral issues without discussing the core political issues, with the objective of strengthening their military capability in the intervening period. These developments were unacceptable and unprecedented for the reason that they amounted to territorial concessions upfront to a non state entity. This position was further compounded by the lack of any commitment on the part of the LTTE to lasting peace.

2.50 Considering the actions of the LTTE immediately prior to the signing of the CFA, it is clear to the Commission that the LTTE was totally disinterested in a negotiated settlement short of the creation of a separate state, and they used the peace process to buy time to militarily recoup themselves to achieve their objective through violent means. During the Jaffna hearings the attention of the Commission was drawn to the fact that key LTTE personnel had made speeches that the ceasefire was only to prepare for the final battle which they would soon launch. The representer thus concluded that there was no sincerity from anyone. It is regrettable that the Government failed to

[34] *Ibid.*
[35] Mr. Austin Fernando before the LLRC at Colombo on 18th August 2010

appreciate the *modus operandi* of the LTTE and take steps to pressurize the LTTE in the least, to adhere to the provisions of the CFA or in the alternative if this object could not be achieved, to resile from this one sided agreement. The failure of the Government in this regard helped the LTTE to enhance its military capability.

2.51 It is also a matter of concern for the Commission that the interests of the Muslim Community were not given due recognition in the CFA process. While the Muslim Community was formally not a party to the agreement, they were certainly an affected party – the tragic incidents which occurred in the Eastern Province as well as the ethnic cleansing which had been perpetrated by the LTTE in Jaffna and Mannar as far back as 1990 speak unequivocally to the fact that the security and other concerns of the Muslim Community should have been high on the agenda of the peace process. Although the Government was expected to represent all communities, given the equal status accorded to the LTTE, it was imperative in the CFA context that the Muslim Community as an affected party should have been given effective representation in the entire CFA process. Instead the Muslim representation was relegated to that of a mere observer. In this regard it transpires that the LTTE had taken up the position that the negotiations be confined between the Government and the LTTE, which held itself out as the sole representative of the Tamil speaking people which according to them included the Muslims. The LTTE was thus fundamentally opposed to the participation of a Muslim delegation. It is the view of the Commission that there appears to have been a failure on the part of the Government and the facilitator in surmounting the strategic obstacles by way of procedural objections placed by the LTTE.

2.52 It appears to the Commission that the political negotiations which was the expected follow-up of the CFA process never materialized. Firstly from 2002 - 2005 the whole country was categorized into two distinct areas. This led to an apparent legitimization of the territorial claims of the LTTE. The CFA violations were perpetrated mainly by the LTTE. They were largely violations that occurred within the territory dominated by the LTTE, such as concerted campaigns of abductions, forcible conscription of children, extortion etc. Since 2005, there was essentially a declaration of war with the assassination of Foreign Minister Lakshman Kadirigamar, the killing of a large number of unarmed military personnel returning on home leave, the Kebitigollewa massacre of civilians, the attempted assassination of the then Army Commander etc. These were clear indications of a lack of commitment on the part of the LTTE for any serious attempt at a negotiated settlement. In fact the ceasefire period had been used by the LTTE to strengthen its military capability *inter alia*, to acquire air power, to build air strips, to

build submarines etc and to raise funds by burdening the people through illegal taxation. The closure of the Mavil Aru anicut by the LTTE and cutting off the water supply to thousands of farmers in the East, was a clear indication that the LTTE were intent on achieving a separate state through military means, rather than a negotiated settlement. Therefore walking away from the peace process and the consequent failure of the CFA was the natural outcome of the intransigence of the LTTE.

2.53 Another matter on which the Commission wishes to make some observations is the issue whether the CFA and the peace process provided some positive fallout by giving respite to the security forces and the country as a whole from the conflict and also that in the long term, it had led to the break-up of the LTTE.

2.54 Whilst no doubt there appears to have been at least initially an overall improvement in the general environment in the country, nevertheless the attendant relaxation of security measures during this period, appears to have given the LTTE a heaven-sent opportunity to strengthen themselves militarily, as described above. The so-called 'ceasefire period' was also marked by targeted killings of political leaders and other personalities, so clearly manifested in the cold-blooded assassination of Foreign Minister Lakshman Kadirgamar.

2.55 One view expressed before the Commission was that despite the shortcomings of the CFA, it had the salutary effect of keeping a terrorist group such as the LTTE at the negotiating table for a considerable period leading to the surfacing of internal differences within the movement, which may have lain dormant had they continued to be in active combat. This line of reasoning was sought to be justified by citing the 'implosion within' that took place with the breakaway of the Karuna faction.

2.56 The contrary view was that the ruthless nature of the LTTE leader Prabhakaran had already sown the seeds of dissension within the movement. The disenchantment with the leadership had been exacerbated with the cold blooded elimination of key LTTE leaders. There was also, in addition, the important factor of discrimination against cadres from the Eastern Province led by Mr. Vinayagamoorthy Muralitharan, which had provided the fighting strength of the LTTE as against the perceived favourable treatment accorded to Northern cadres. The conclusion to be drawn from this, it was argued was that the LTTE break up was a matter of time, irrespective of whether there was a CFA in place or not.

2.57 It would be reasonable to conclude that the internal implosion of the LTTE may have taken place in any event, whilst the CFA and the accompanying peace process may

however, have acted as a catalyst in accelerating the process towards the breakup of the LTTE.

2.58 Clearly, the CFA brought about a short lived respite to a country and people who had suffered decades of terrorism and counter violence. However unstable and eventually unproductive, the CFA gave an opportunity, albeit without necessarily providing a sound political or security framework, for all parties concerned to make an effort to lay a foundation for a process leading to a negotiated solution. However, as the events unfolded it was clear that none of this materialized.

2.59 Conceptual flaws and implementational deficits of the CFA process and its failure to provide locomotion to a sustainable peace process indicate that it was not proven to be a successful model for peace-making between State and non-State actors. The clearly manifest LTTE disinterest in any negotiated solution other than its declared goal of Eelam and the absence of consensual approaches to vital national issues among different political parties including Tamil political parties within the 'mainstream' democratic system of the country, too contributed to this unhappy and damaging experience.

2.60 The LTTE clearly capitalized on the CFA deficiencies both conceptual and implementational, and consolidated the territorial rewards, and recognition accorded to them; benefited from the parity of status and the lack of reciprocity; exploited the absence of any provisions to start political negotiations, let alone decommissioning of weapons; abused the provisions of the CFA to exclude legitimate maritime activity by the Sri Lanka Navy thus facilitating illicit arms trafficking in contravention of national and international law, including UNSC *Res. 1373 of 2001***;** benefited from the absence of any credible verification regime to deter violations; insidiously abused the total absence of any human rights obligations, let alone an effective regime against the abhorrent practice of employing child soldiers.

2.61 Apart from the reasons pointed out above, the Commission is of the view that the failure of the CFA is mainly due to the disinclination of the LTTE to terminate the conflict and enter the political process.

Chapter 3 - Overview of Security Forces Operations

Section	Paragraph Numbers
Background	**3.1 – 3.6**
Eastern Operations	**3.7 – 3.12**
Wanni Operations	**3.13 – 3.19**
The Strategy	
Clearing the Area	
Security Forces Casualties and LTTE Casualties	**3.20**

Chapter 3 - Overview of Security Forces Operations[1]

Background

3.1 Consequent to the events that took place after the CFA in 2002, the possibility of a political settlement was fast receding.

3.2 Several persons made representations before the Commission highlighting some of the major factors that led to the complete breakdown of the CFA and the escalation of the conflict.[2]

3.3 The attention of the Commission was drawn to the fact that after 2005 there was essentially a declaration of war as was manifested by the killing of key political and military leaders and the massacre of civilians such as the Kebithigollewa massacre.[3]

3.4 Representations were also made to apprise the Commission of the fact that the planned *modus operandi* of the LTTE was to blockade Trincomalee which would have prevented relief supplies going to Jaffna from Trincomalee. The only available supply route at the time was the sea route.

3.5 On 21st July 2006, the LTTE had interrupted the water supply by closing the Mavil Aru anicut resulting in 45,000 acres of paddy land in the Trincomalee District being deprived of water. 25,486 persons from 5,800 families had been affected by this act.

3.6 On 12th August 2006, the LTTE had attempted to break through Muhamalai[4] and enter the Jaffna peninsula which attack had been repulsed by the Security Forces with a counter offensive. After some initial setbacks due to heavy resistance from the LTTE, the Security Forces had been successful in their counter offensive and in re-establishing the Forward Defence Line (FDL) in Muhamalai.

[1] The material contained in this chapter is based on comprehensive briefings received by the Commission from Senior Defence Officials and Senior Military Officials, in addition to the representations received during Public Hearings from Defence and Senior Military Officials as well as from Senior Public Officials who had served in the conflict affected areas and members of the Public. Dates are approximate.

[2] Refer Chapter 2 on the Ceasefire Agreement.

[3] For details of attacks on key political leader/attacks on civilians/civilian installations and military installations refer Annex 3.1

[4] At that time, Muhamalai had been the Entry and Exit point to the Jaffna Peninsula.

Eastern Operations

3.7 The first step of the Eastern Operation had been to regain control of Mavil Aru and to re-open the Mavil Aru anicut – this had happened on 10th August 2006.

3.8 At this time,[5] there had been a significant LTTE presence in the Eastern Province, in the area south of Weli Oya going down to Pottuvil, and extending to the Western boundaries of Maha Oya and Ampara[6].

3.9 According to material placed before the Commission by Senior Military Officials, the Eastern Operations had been launched on 28th July 2006, from Mavil Aru and were concluded in July 2007 with the capture of Batticaloa West. Due to the strong LTTE presence in the jungles of the Eastern Province, the operation involved searching for LTTE hideouts in vast tracts of jungle and taking them on. As such fighting had not necessarily taken place in highly populated civilian areas except during the Vakarai operations.

3.10 According to the briefings received from Senior Military and Defence Officials the Security Forces had conducted their operations in the Eastern Province in the following manner[7]:

Mavilaru –	28th July 2006 to 8th August 2006[8],
Muttur/Kaddaiparichchan -	2nd August 2006 to 6th August 2006[9],
Sampoor –	27th August 2006 to 4th September 2006[10],
Gangai/Manirasakulam –	1st October 2006 to 10th October 2006[11],
Vakarai/Kathiraveli –	30th October 2006 to 21st January 2007[12],

[5] July/August 2006

[6] For details see map Annex 3.2. Source: Ministry of Defence

[7] Details are from material provided by Senior Defence and Senior Military Officials.

[8] This had been a counter offensive to an LTTE attack.

[9] Muttur had some civilian villages and was under Government control when the LTTE had launched an attack on the Naval Base and Army detachment in Kaddaiparichchan.

[10] Sampoor area had been an area dominated by the LTTE from where the LTTE fired at the Trincomalee harbour and other installations (e.g. Prima).

[11] Area dominated by the LTTE.

[12] The operation had been carried out by Special Forces of the Army supported by infantry. The strategy of the Security Forces had been to draw the LTTE into the jungle areas rather than have direct confrontation where civilian casualties could occur. The distance that the Security Forces had had to cover was over 40 kilometers of LTTE dominated areas. There had been around 15,000 civilians living in the Vakarai – Kathiraveli area. After the operations in Sampoor and adjacent areas approximately 30,000 civilians had moved to Vakarai – Kathiraveli area. About 10,000 had managed to cross to government held areas initially but the LTTE had used the rest as a human shield and evacuation attempts by INGOs had not materialized due to LTTE objections. However by mid December 2006 the LTTE had lost control over the civilians and within a matter of days nearly 25,000 civilians had crossed over to Government held areas and the balance had moved to Government held areas when the fall of Vakarai had been imminent. – Source: Ministry of Defence.

Kaddawana –	2nd February to 7th February 2007,[13]
Kumburuppiddi –	21st February to 25th February 2007[14],
Batticaloa West (Phase I) –	24th February 2007 to 11th April 2007[15],
Peraru –	1st March 2007 to 8th March 2007[16]
Batticaloa West (Phase II) –	25th April 2007 to 10th July 2007[17]

3.11 According to material placed before the Commission by Senior Military Officials, the Eastern Operations had concluded on the 10th of July 2007[18].[19]

3.12 The total area cleared in the East over a period of nearly one year had been approximately 6,000 sq kms with a population of approximately 212,486 people. In clearing the East the Security Forces had to traverse approximately 55 kms North to South[20] and approximately 17 kms West to East.[21]

Wanni Operations[22]

The Strategy

3.13 Whilst the Eastern Operations were continuing, the Wanni operations had commenced in late February 2007[23], with the launch of the 57 Division, West of Vavuniya. The operations had continued with part of the 57 Division moving towards the Madhu area. While they were progressing to the Madhu area, towards the end of September (23rd September 2007) Task Force 1[24] had been launched North of Mannar. [This was a newly raised formation, which later became 58 Division.] Special Forces in the meantime had captured the Silavaturai area in order to secure the Western coastline to prevent the LTTE from launching attacks from their bases on the Western coastline. Task Force 1 had moved North along the coast with the objective of re-capturing Pooneryn. Subsequently, on 7th January 2008, 59 Division had been launched South of Mullaittivu, to conduct operations in that area moving up to Mullaittivu. Thereafter, there had been

[13] Jungle areas dominated by LTTE
[14] *Ibid*
[15] Had been vast jungle areas where Security Forces had encountered heavy resistance from LTTE.
[16] LTTE dominated areas.
[17] Had been vast jungle areas where Security Forces had encountered heavy resistance from LTTE.
[18] For a map of the sequence of the Eastern operations refer Annex 3.3. Source : Ministry of Defence
[19] According to Senior Military Officials 22 Division, 23 Division, the Commando Brigade and Special Forces Brigade participated in the Eastern Operations. A Division consists of approx 5,000 men and a Brigade consists of 2,500 to 3,000 men.
[20] Foul Point to Panichchankerni
[21] Kandalkadu to Kaladicheni
[22] Wanni refers to the following districts – Mullaitivu, Mannar, Kilinochchi, and Vavuniya.
[23] For a map indicating LTTE dominated areas in the Wanni as at February 2007 refer Annex 3.4. Source Ministry of Defence
[24] According to material placed before the Commission a Task Force consists of 4,500 – 5,000 men.

other formations - Task Force 2, (launched 2nd June 2008) Task Force 3 (launched 3rd October 2008), Task Force 4 (launched 19th December 2008) that had taken part in the operations North of Vavuniya. From the Northern side (i.e. Jaffna side) the 53 and 55 Divisions had conducted operations.

Clearing the Area[25]

3.14 Initially operations had been conducted mainly West of A9 in the jungle, – Vavuniya, Madhu area (Madhu area captured on 24th April 2008). From the Western edge Task Force 1 had continued their operations capturing Adampan (9th May 2008), the rice bowl area (1st June 2008), Vidataltivu area (16th July 2008 – Vidatalativu was a major LTTE Boat Landing point to which military supplies had been delivered) going up to Mulangavil.

3.15 The 59 Division which had been launched on 7th January 2008, moved North of Weli Oya area towards Mullaittivu. It had captured Mungam Base (a strong LTTE Base) on 30th May 2008; Nittikaikulam on 27th July 2008, Alampil on 4th December 2008, Mulliyawalai on 26th December 2008 and Mullaittivu on 25th January 2009.

3.16 Task Forces 2, 3, and 4 had cleared the area North of Omanthai supporting the 57 Division and the 59 Division. While these operations were progressing, Task Force 1 had moved North West along the coast capturing Vellankulam on 12th August 2008; and moving further North to Pooneryn (captured on 15th November 2008) and coming down to Paranthan (captured on 1st January 2009). From Paranthan, part of Task Force 1 had gone further North to provide support for the 53 Division and 55 Division to re-capture Elephant Pass (9th January 2009). The rest of Task Force 1 (re-named 58 Division) had come down to Killinochchi to meet up with the 57 Division which had come up North by that time - capturing Tunukkai on 22nd August 2008 and Mallavi on 2nd September 2008[26]. The 57 Division with the support of the 58 Division had captured Killinochchi on 2nd January 2009. When the 58 Division which had proceeded North reached Elephant Pass, the 53 and 55 Divisions had moved South from Muhamalai having captured Sorampattu on 8th January 2009. According to Senior Military Officials, the 53 Division and the 55 Division had been deployed in Muhamalai – the strategy had been for these two Divisions to defend the Jaffna Peninsula. However, as the operations progressed the 53 Division and 55 Division had broken out from Muhamalai and had come down to

[25] For a map depicting the sequence of the Wanni operations refer Annex 3.5.
[26] According to Senior Military Officials who briefed the Commission, Tunnukai and Mallavi had been the largest townships after Killinochchi.

Elephant Pass to link up with the 58 Division and captured Elephant Pass on 9th January 2009.

3.17 The Security Forces had taken over the A9 road on 9th January 2009 after the capture of Elephant Pass. Once the A9 had been taken over, from the Eastern side the Mullaittivu area operations had been strengthened with the 53 Division being moved to Mullaittivu. According to material placed before the Commission by Senior Military Officials, by this time (i.e. January 2009) the civilian population had been confined to the North Eastern part of the Wanni and the LTTE had also been congregating into those areas. At this stage it had become necessary for the Security Forces to re-evaluate the Rules of Engagement and change the *modus operandi*. The Government had, *inter alia*, decided to demarcate No Fire Zones from time to time for the protection of civilians and civilian objects.[27] The use of heavy weapons also had been restricted with the establishment of the No Fire Zones. In addition several Safe Areas had also been demarcated at the request of the UN/ICRC.[28] After the capture of Killinochchi and taking over the A9, the Security Forces (57 Division and 58 Division) had moved Eastwards on the A35 road towards Visuamadu, Puthukudiyirippu area.

3.18 The 58 Division supported by the 57 Division had continued Eastwards capturing Tharmapuram on 15th January 2009, Visuamadu on 28th January 2009 and Thamarakulam on 3rd February 2009. Whilst the 58 Division and 57 Division had moved Eastwards on the A35, the 59 Division and Task Force 4 had been moving up Northwards and captured Udayakattukulam on 25th January 2009.[29] In the meantime, the 55 Division had been tasked to clear South of Elephant Pass, coming North to South along the Eastern Coast, capturing Chundikulum on 21st January 2009, Chalai (LTTE boat landing point) on 7th February 2009 and Kuppilankulam on 11th February 2009. Senior Military Officials briefed the Commission that operations around Puthukudiyirippu area had continued for a very long time as Puthukudiyiruppu had been an LTTE stronghold (a built up area which had been fortified by the LTTE) from where there had been heavy resistance and the Security Forces had suffered many casualties and had to pull back and re-launch their operations after consolidation. The Commission was briefed that the civilians who had been in this area had moved to Puthumatthalan[30] when the fighting had intensified in the Puthukudiyiruppu area. Puthukudiyiruppu was finally captured on 5th April 2009. After the capture of Puthukudiyiruppu the dimension of the conflict had

[27] Refer Annex 3.6 indicating the NFZs
[28] Source : Ministry of Defence
[29] According to Senior Military Officials who briefed the Commission Udayakattukulam was the largest LTTE training facility.
[30] The NFZ at Puthumathalan had been declared on 11th February 2009.

changed again, as the civilians had been confined into a narrow stretch of land from Puthumatthalan to Vellamullivaikkal across from the Nanthi Kadal Lagoon. Again the Rules of Engagement had been changed in view of the close proximity of civilians to the conflict. Aerial attacks had been stopped[31] and orders were that operations were to be conducted only with the use of small arms.[32] Thereafter Puthumatthalan had been captured on 21st April 2009, Vellamullivaikkal on 14th May 2009 and Karaiyamullivaikkal on 18th May 2009 which had then brought an end to the operations.

3.19 The total area re-captured in the Wanni over a period of nearly two and a half years had been 7,753 sq kms. It had involved the troops traversing over 97 kms West to East of the island[33], and 93 kms South to North of the Island[34].

Security Forces Casualties and LTTE Casualties[35]

3.20 According to the material placed before the Commission, from July 2006 to May 2009, the Security Forces had lost 5,556 personnel in action, 28,414 were wounded and 169 were missing in action. The LTTE had lost 22,247 cadres of which 11,812 had been identified by name.

[31] 27th April 2009 – Government of Sri Lanka Press Release dated 27th April 2011
[32] Source: Ministry of Defence
[33] Mannar to Mullaittivu – Source: Ministry of Defence
[34] Vavuniya to Nagarkovil (near Muhamalai Defence lines) – Source: Ministry of Defence
[35] Source Ministry of Defence – LTTE casualties had been established through the uniforms they wore or through the neck tag and sometimes through intercepted radio messages.

Chapter 4 – Humanitarian Law Issues

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Chapter 4 – Humanitarian Law Issues

SECTION 1

Principles of International Humanitarian Law

Introduction – International Legal Framework

4.1 The primary aim of International Humanitarian Law (IHL) is to protect the victims of armed conflict and to regulate the conduct of hostilities based on striking a balance between principles of humanity and military necessity. Until the mid 19th century, laws of war remained customary principles and were recognized as binding upon States in their customary law character, because they corresponded to the demands of civilization. As observed by Dr. Jacob Kellenberger, President of the International Committee of the Red Cross (ICRC) in his introduction to the ICRC publication Customary International Humanitarian Law[1] **"**All civilizations have developed rules aimed at minimizing violence - even this institutionalized form of violence that we call war - since limiting violence is the very essence of civilization".[2]

4.2 The Four Geneva Conventions of 1949 which followed the conclusion of the Second World War, constitute the foundation of international humanitarian law in force today. The adoption of the two 1977 Protocols additional to the 1949 Geneva Conventions, Protocol (I) applicable to international armed conflicts and Protocol (II) applicable to non international armed conflicts sought to bring up to date, both the rules governing the conduct of hostilities and those protecting war victims, taking into account contemporary realities.[3] More recently, other important conventions have been added to the corpus of treaty law pertaining to IHL. These include the 1980 Convention on Certain Conventional Weapons and its Five Protocols (CCW Convention); the 1997 Ottawa Convention on the Prohibition of Anti Personnel Landmines; the 1999 Protocol to the 1954 Convention for the Protection of Cultural Property in the event of Armed

[1] Customary International Humanitarian Law; Vol 1 Rules; Jean-Marie Henckaerts and Louise Doswald-Beck ICRC (Cambridge) 2005

[2] In the 19th century, Henry Dunant a pioneer of contemporary international humanitarian law called for "some international principles, sanctioned by a convention and inviolate in character" to protect the wounded in the battlefield and all those trying to help them. Thus Dunant took humanitarian law a decisive step forward, from its customary character and ushered in the international conventional framework for IHL. The cornerstone of the conventional framework of IHL was the adoption in 1864 of the Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field. The Treaty was revised in 1906 and again in 1929 and 1949. The result is the Four Geneva Conventions of 1949. States also had adopted a series of treaties governing the conduct of hostilities: the Declaration of St. Petersburg in 1868; the Hague Conventions of 1899 and 1907 and the Geneva Protocol of 1925 which bans the use of chemical and bacteriological weapons.

[3] Sri Lanka is a State Party to the 1949 Geneva Conventions. However it is not a State Party to the Additional Protocols I & II of 1977.

Conflict; and the 2000 Optional Protocol on the Involvement of Children in Armed Conflict.

4.3 Despite the progress in codifying IHL, customary humanitarian law remains relevant in the regulation of the conduct of hostilities for a number of reasons. The Geneva Conventions of 1949 enjoy near universal adherence, but this is not yet the case for other major Conventions including the Additional Protocols of 1977. While the Conventions apply only in respect of States that have ratified them, rules of customary international humanitarian law on the other hand, bind States without the need for formal adherence. Further, where Treaty Law is silent or ambiguous, well established principles of customary International Humanitarian Law would perform an important role in addressing such gaps or ambiguities.

4.4 Some Principles of International Humanitarian Law applicable in non international armed conflicts or in "internal conflict" situations, are shrouded in uncertainty and a number of legal concepts remain vague and undefined. Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol (II) applicable to non international armed conflicts, contain only the most rudimentary set of rules unlike, in the case of the Geneva Conventions and Additional Protocol (I) applicable to international armed conflicts.

4.5 From a legal perspective, the critical failure of the Protocols to provide a precise definition of the term "civilian", "civilian population" and a similar lack of clarity with regard to the term "take a direct part in hostilities" has contributed to a substantial degree of ambiguity, leaving, vital terms which have a bearing on core IHL principles such as the Principle of Distinction (see further below), to be dealt with largely on a case by case basis. This aspect assumes a heightened degree of uncertainty in the context of the complexities involved and the challenges posed by the very nature of non international armed conflicts involving non State armed groups. It is often the case that the non State armed groups do not intentionally, as a matter of strategy distinguish themselves from the civilian population and conceal their identity among the civilians until the very moment of attack, placing civilians in peril. This leads to a position where the civilian, either willingly or in some cases unwillingly, becomes part and parcel of an overall combat strategy of the non State armed groups, and thereby placing at risk the protection the civilian is entitled under IHL.[4]

[4] Please see further Section III paragraphs [332-336].

4.6 Given this uncertainty surrounding the legal notions involved and the rudimentary nature of the international legal framework in its application to conflicts between States and non State armed groups, the applicability of core IHL principles to internal conflicts must essentially be determined through recourse to well established principles of customary IHL. It must also be borne in mind that the question whether a practice or usage has crystallized into a customary principle of law cannot be lightly presumed, unless the requisite threshold set by International Law is first satisfied. It is well established that a "usage could only be considered as having acquired the character of a customary rule of international law only after two tests are satisfied, namely (1) the material aspect, that there must be acts which give birth to the customary rule; and (2) the psychological aspect, better known as the *opinio juris cive necesitatis*, that is the mental conviction that such recourse is the result of a compulsory rule."[5]

Core IHL Principles

(i) Principle of Distinction

Distinction between Civilians and Combatants

4.7 The Principle of Distinction requires that the parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians. International Conventions,[6] prohibit making the civilian population as well as individual civilians, the object of attack.

4.8 Alleged violations of this principle have been condemned by States irrespective of whether the conflict was international or non international in character. The UN Security Council has condemned and called for an end to alleged attacks against civilians in the context of numerous conflicts, both international and non international. In a resolution adopted in 2000 on the Protection of Civilians in Armed Conflicts, the UN Security Council re-affirmed its strong condemnation of the deliberate targeting of civilians in all situations of armed conflict.[7] Similarly, the UN General Assembly Resolution on Respect for Human Rights in Armed Conflicts adopted in 1968, declared the Principle of Distinction to be applicable in all armed conflicts.[8] Further, the

[5] Briggs 45 AJIL (1951) pp. 728 to 731
[6] The Ottawa Convention banning Anti-Personnel landmines states, for instance, that the Convention is based, inter alia, on 'the principle that a distinction must be made between civilians and combatants.' See also Additional Protocol II.
[7] UNSC Resolution 1296
[8] UNGA Resolution 2444 (XXIII)

jurisprudence of the International Court of Justice[9] and other Tribunals such as those established by the UN Security Council provide further evidence that the obligation to make a distinction between civilians and combatants is a customary law obligation in respect of both international and non-international armed conflicts. It is important to note in this connection that the use of the phrase "directed against" implies that, what is prohibited under the Principle of Distinction is the deliberate targeting of civilians.

Distinction between Civilian Objects and Military Objectives

4.9 Ancillary to the Principle of Distinction is the rule that the parties to the conflict must at all times distinguish between civilian objects and military objectives. State practice establishes this rule as a norm of customary international law applicable in both international and non international armed conflict.[10]

4.10 In interpreting this rule, several States have asserted that it only prohibits direct attacks against civilian objects and does not deal with the question of incidental damage resulting from attacks directed against military objectives.[11] The purpose of these statements is to emphasize the fact that an attack which affects civilian objects is not unlawful, as long as it is targeted against a military objective and the incidental damage to civilian objects is not excessive. These considerations are implicit in the use of the formulation "attacks directed against civilians".

4.11 A number of subsidiary rules have emerged in State practice concerning precautions to be taken in the case of attack, such as, the requirement that in the conduct of military operations constant care must be taken to spare the civilian population, civilians and civilian objects and that all feasible precautions must be taken to avoid and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects and that effective advance warning be given of attacks which may affect the civilian population, unless circumstances do not permit the giving of such warning.

4.12 In the practical application of these rules, State practice shows that a number of States have made it clear that the obligation to take all "feasible precautions" is limited to those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.[12]

[9] ICJ, Nuclear Weapons Case, Advisory Opinion

[10] The rule has been expressly included in more recent treaty law applicable in non international armed conflicts, namely Amended Protocol (II) to the Convention on Certain Conventional Weapons (CCW Convention) and Protocol (III) to the CCW Convention made applicable to non-international armed conflicts.

[11] Customary International Humanitarian Law. Vol 1; Rules: Ch. 2, p. 29, fn. 31

[12] Customary International Humanitarian Law. Vol 1; Rules; Ch. 5, p.54, fn. 20

4.13 With regard to the rule pertaining to the choice of attack a State has emphasized that the obligation to select an objective the attack on which may be expected to cause the least danger to civilian lives and to civilian objects, is not an absolute obligation, as it only applies "when a choice is possible" and thus "an attacker may comply with it, if it is possible to do so, subject to mission accomplishment and allowable risk, or he may determine that it is impossible to make such a determination".[13]

4.14 The broad conclusion to be drawn from the above is, that while the essence of these core principles need to be fully respected and complied with, nevertheless a margin of discretion is left to decisions to be made *in situ*, by Field Commanders amidst the 'heat and confusion' of a conflict. Military commanders and others responsible for planning, deciding upon or executing attacks, necessarily have to reach decisions on the basis of their assessment of the information from all sources which is available to them at the relevant time.[14]

(ii) Principle of Proportionality

4.15 The Principle of Proportionality is a corollary of the Principle of Distinction and stipulates that the launching of an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

4.16 Inherent in this requirement is the fact that a Field Commander has to assess the military advantage anticipated, relative to the civilian casualties anticipated. In the practical application of the principle, doubts have been expressed whether the principle could be precisely applied across the board in all armed conflict situations. Much would depend on the circumstances of each case. While judicial interpretation has been somewhat lacking, it would be relevant to note that the ICTY Prosecutor's Committee which reviewed the NATO bombing campaign in Yugoslavia stated in its report 'it may be necessary to resolve them on a case by case basis and the answers may differ depending on the background and values of the decision maker.'[15] This statement underlines the inherent subjectivity involved in the application of the Rule of Proportionality.

[13] See practice of the United States. Customary International Law. Vol 1; Rules; Ch. 5, p. 67, fn. 103
[14] Customary International Humanitarian Law. Vol.1; Rules; Chapter 4, p. 50, footnote 33
[15] Final Report to the Prosecutor by the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia Part II paragraph 57

4.17 It is not surprising therefore that in the interpretation and application of the Principle of Proportionality, States have been conscious of the need to preserve the operational flexibility of military operations. Thus several States have expressed the view that the term 'military advantage' refers to the advantage anticipated from the military attack considered as a whole and not only from isolated or particular parts of that attack.[16] Further, upon ratification of International Conventions applicable to international armed conflicts,[17] some States have asserted that they interpreted the term "concrete and direct military advantage anticipated" as meaning that there is a bona fide expectation that the attack would make "a relevant and proportionate contribution" to the objective of the military attack involved.[18] It would also be pertinent to note in this regard that the view has also been expressed by some States that the term 'military advantage' includes the security of the attacking forces.[19]

(iii) Supply of Humanitarian Relief including food, and medicine to civilians and respect for the protection of Humanitarian Relief, Personnel and Objects

4.18 It is a requirement of IHL, that parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. Accordingly IHL prohibits the starvation of the civilian population as a method of warfare. Corollary to this prohibition is the rule requiring respect for and protection of humanitarian personnel and relief objects. The safety and security of humanitarian relief personnel is an indispensable condition for the delivery of humanitarian relief to civilian populations in need, threatened with starvation.[20]

4.19 IHL requires the consent of the parties to a conflict as being essential in order for relief actions to take place[21]. Further, while consent may not be withheld for arbitrary reasons, State practice recognizes that the State concerned exercises control over the relief action and has a central coordinating role to perform in the distribution of relief within its territory. In addition, humanitarian relief personnel must respect domestic laws on access to territory and must respect the security requirements in place in the host State.[22]

[16] Customary International Humanitarian Law. Vol 1; Rules; Ch.4, p. 49 fn. 27
[17] Such as Additional Protocol (I) of 1977
[18] Customary International Humanitarian Law. Vol 1; Rules; Ch. 4, p. 50, fn. 31
[19] Customary International Humanitarian Law Vol. 1; Rules; Ch.4, p. 50, fn. .30
[20] In a Resolution 1296 adopted in 2000 on Protection of Civilians in Armed Conflicts, the UN Security Council called upon all parties to an armed conflict including non-State parties "to ensure the safety, security and freedom of movement of humanitarian relief personnel".
[21] This is recognized in both Additional Protocols (I) and (II) to the Geneva Conventions.
[22] Customary International Humanitarian Law. Vol. 1; Rules; Ch. 17. p. 197, fn.80 and 81

(iv) Safety/Prohibited Zones

4.20 Directing an attack against a zone established to shelter the civilians, the wounded and the sick from the effects of hostilities is prohibited under IHL. In a Resolution adopted in 1970 on Basic Principles for the Protection of Civilian Populations in Armed Conflicts, the UN General Assembly stated that "places or areas designated for the sole protection of civilians, such as hospital zones, or similar refuge, should not be objects of military operations"[23]. This requirement flows from the broad humanitarian principle of protection of the civilian and the non combatant from the effects of conflict.

4.21 Practice of States show that such Zones have been agreed upon in both international and non-international armed conflicts. Normally safety zones are established on the basis of mutually negotiated agreements premised on the principle that zones established to shelter the civilians, the wounded and the sick must not be attacked.[24] Thus Additional Protocol (I) provides in Article 60(3) that "the subject of such an agreement shall normally be in a zone which fulfills the following conditions:

a. All combatants as well as mobile weapons and mobile military equipment must have been evacuated;
b. No hostile use shall be made of fixed military installations or establishments;
c. No acts of hostility shall be committed by the authorities or by the population; and
d. Any activity linked to the military effort must have ceased."

4.22 As discussed later, all these concrete requirements which may be of relatively easy application in the context of international conflicts, presents a different set of challenges in the context of internal conflicts between the State and the non-State armed groups.

(v) Principles applicable to Surrender and Treatment of 'Persons hors de combat'

4.23 It is acknowledged that the respect for and protection of persons who are in the power of an adverse party is a cornerstone of IHL.

4.24 This rule set forth in Additional Protocol I to the Geneva Conventions of 1949 is also implicit in Common Article 3 of the Geneva Conventions and in Additional Protocol II. The rule requires, in particular that persons protected including those placed hors de combat by sickness, wounds, detention, or any other cause be treated humanely when

[23] UN General Assembly Resolution 2675(xxv)
[24] Customary International Humanitarian Law. Vol 1; Rules; Ch. 11 p.119

they "have fallen into the power of the enemy".[25] The requirement of humane treatment is an overarching concept. It is generally understood that the detailed rules found in IHL and Human Rights law give expression to the meaning of 'humane treatment'. These principles are also considered to be part of customary IHL through State practice.

4.25 Under customary IHL an intention to surrender must be clearly expressed. It has been stated that the general tenet that emerges from State practice is that a clear indication of unconditional surrender renders a person hors de combat and such intention is generally shown by laying down one's weapons and raising one's hands. Other examples such as emerging from one's position displaying a white flag are also mentioned in military manuals.[26]

4.26 On the practical aspects of the implementation of this rule, States have pointed out that it may not be possible to accept surrender from a unit while under fire from another position.[27] Hence it has been stated that a party which 'accepts' surrender is not required to go out to receive surrender; instead the party offering surrender has to come forward and submit to the control of the enemy forces. States have also taken up the position that an offer of surrender has to be made at a time when it can be received and properly acted upon and that a last minute surrender to an on rushing force may be difficult to accept. It is also recognized that an attempt to surrender in the midst of a hard-fought battle is neither easily communicated nor received.[28] The issue is one of reasonableness.

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[25] It is the object of Article 23 (c) of the Hague Regulations of 1907, which forbids the killing or wounding of any enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion.

[26] Customary International Humanitarian Law. Vol 1; Rules; Ch.15 p.168

[27] See further Customary International Humanitarian Law. Vol 1; Rules, Chapter 15 page 168

[28] It is pertinent to note that the US Department of Defense referring to a situation that arose during the Gulf War underlined the need for an unequivocal manifestation of an intent to surrender, and stated:

> "In the course of the breaching operations, the Iraqi defenders were given the opportunity to surrender, as indicated by the large number of enemy prisoners of war taken by the division. However, soldiers must make their intent to surrender clear and unequivocal, and do so rapidly. Fighting from fortified emplacements is not a manifestation of an intent to surrender and a soldier who fights until the very last possible moment assumes certain risks. His opponent either may not see his surrender, may not recognize his actions as an attempt to surrender in the heat and confusion of battle, or may find it difficult (if not impossible) to halt an onrushing assault to accept a soldier's last-minute effort at surrender." *(*Extract from the United States Department of Defense*:* Final Report to Congress on the Conduct of the Persian Gulf War. Annex O. The Role of the Law of War. 10 April 1992. ILM. Vol. 31. 1992. Pp. 642 and 643)
>
> Furthermore States have also taken up the position that retreating combatants if they do not communicate an offer of surrender, whether armed or not, are still subject to attack and there is no obligation to offer an opportunity to surrender before an attack. It is clear from State practice that what is forbidden is the deliberate attack against persons 'hors de combat' not the mere causing of death or injury to them as the incidental consequence of attacks not aimed at them per se. *http://www.icrc.org/customary-ihl/eng/docs/v2_cou_us_rule47* .

4.27 IHL obligates a party to a conflict to accept the surrender of enemy personnel. Once a person has been accepted as 'Hors de Combat' certain fundamental guarantees flow from the Geneva Conventions, and State Practice. States are obliged to treat them in accordance with the provisions of the said Conventions and on the basis of customary IHL. These requirements are supplemented by a series of ancillary rules *inter alia*, the prohibition of violence to life and person, in particular murder of all kinds in relation to civilians and persons hors de combat; the prohibition of torture, cruel and inhuman treatment and outrages upon, personal dignity, in particular humiliating and degrading treatment of persons hors de combat; taking of steps to prevent disappearances including through registration of persons deprived of their liberty; provision of adequate food, water, clothing and medical treatment to persons deprived of their liberty; and recording of personal details of persons deprived of their liberty.

4.28 The treatment of IHL Principles in this Section is not meant to be an exhaustive treatment of the entire subject but seeks to highlight the core principles of IHL against which the Sri Lanka experience may be evaluated.

SECTION II

Sri Lanka Experience

Introduction

4.29 The Core IHL Principles set out in Section I of this Chapter are being examined in the context of the events that have taken place since the breakdown of the Ceasefire, until the end of the conflict.[29]

4.30 IHL is commonly regarded as the body of law applicable during the entire phase of a conflict.[30] While recognizing the general validity of this statement, considering the substantial volume of material pertaining to the final phase of the conflict placed before the Commission, it would be practical to examine the material before it, placing special emphasis on the conduct of hostilities in the aforesaid phase, in particular during the period January to May 2009.

4.31 In the representations made before the Commission, there were four main areas involving the discharge of humanitarian obligations of the State which were scrutinized by the Commission. viz:-

(i) Obligation to educate the members of the Armed Forces in the relevant aspects of Human Rights (HR) and International Humanitarian Law.

(ii) Measures to safeguard civilians/avoid civilian casualties during military operations;

(iii) Supply of humanitarian relief, including food and medicine to civilians in conflict areas; and

(iv) Conduct of the Security Forces during the movement of civilians and combatants to cleared areas.

[29] Refer Chapter 3 on Overview of Security Forces Operations and Annex 3.1; and Chapter 5 on Human Rights and its Annexes.

[30] For e.g. International Criminal Tribunal for the former Yugoslavia in Prosecutor V. Tadic Judgment. Appeals Chamber July 1999 Case No. IT-94-1-A. 38ILM 1518 (1999) stated that IHL applies from the initiation of armed conflicts and extends beyond the cessation of hostilities, until a general conclusion of peace is reached.

Education and Training in IHL and HR

4.32 Principal Conventions in the field of IHL, specify that the obligation to teach IHL to Armed Forces applies in times of peace, as in times of armed conflict.[31]

4.33 Material was placed before the Commission by Senior Defence Officials that, since 2003 the Sri Lanka Army had introduced educational courses in Human Rights and Humanitarian Law to the members of the Sri Lanka Army. This programme had been initiated with the assistance of the International Committee of the Red Cross. The material discloses that a separate Directorate had been established at the Sri Lanka Army Headquarters called the Directorate of Human Rights and Humanitarian Law, vested with the responsibility of ensuring compliance with obligations under International Humanitarian Law and Human Rights obligations. This task had been carried out by a system of training, monitoring of soldiers and reporting, within the Army. Human Rights cells had been established at every level from Security Headquarters, Divisional Headquarters, Task Forces, Battalion Headquarters and at field level. The Human Rights Cells were said to have assembled fortnightly at respective Headquarters.[32]

4.34 It was stated in the course of these representations that a special training school in International Humanitarian Law and Human Rights had been opened by the Army at Kukulegange, Agalawatte in the Kalutara District. It was further stated that throughout the operations, Non Commissioned Officers (NCOs) had been trained and sent to the field to train soldiers who were engaged in combat.[33] This training had been done through the conduct of seminars and training courses**.** Similar programs had been extended to the Sri Lanka Navy and Air Force.

4.35 The ICRC Annual Report of 2009 states that the Sri Lankan army ran its own IHL teaching and training programme, developed with ICRC assistance. Members of the army at the Staff College, the Peace Support Training Centre and the Cadet Academy had participated in ICRC organized IHL dissemination sessions, as had army and navy personnel involved in active operations in the field. The ICRC Report also states that *ad hoc* arrangements had been made with local commanders for members of the Police and Home Guard to participate in ICRC organized IHL dissemination sessions.

[31] The relevant principles were first codified in the 1906 and 1929 Geneva Conventions and have subsequently been re-stated in the 1949 Geneva Conventions and their Additional Protocols, as well as in certain other Conventions such as the Hague Convention for the Protection of Cultural Property (Art 25); Protocol to the Hague Convention for the Protection of Cultural Property (Art 30); Convention on Certain Conventional Weapons (Art 6)

[32] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010

[33] *ibid*

Measures to safeguard civilians and avoid civilian casualties during military operations

The application of the Principles of Distinction and Proportionality

4.36 Senior Defence Officials who appeared before the Commission stated that the Security Council had decided to pursue a strategy aimed at avoiding civilian casualties in the conduct of military operations. Accordingly, all operational orders to the Army, Navy and Air Force had clearly directed that, every possible step be taken to avoid civilian casualties.[34] It is incumbent on the Commission to make an assessment of the practical implementation of this strategy in the light of the material placed before it.

4.37 The requirement for the proper identification of military targets and minimizing of civilian casualties is a cornerstone of the Principle of Distinction between civilians and combatants. In this context it has been stated before the Commission that Special Forces personnel had been deployed on long range reconnaissance patrols and given the specific task of ascertaining, confirming or reconfirming LTTE targets that had been given by the Directorate of Military Intelligence or the Sri Lanka Air Force Intelligence. It was further stated that these personnel had, in small groups, penetrated through LTTE defenses and had provided accurate information with the help of Global Positioning Systems (GPS) and other sophisticated means. It was pointed out that through this process, the Security Forces had been able to clearly identify the LTTE targets and thereby avoid or minimize civilian casualties.[35]

4.38 The material placed before the Commission in response to a query as to the procedure adopted to engage identified LTTE targets in the No Fire Zone in the case of LTTE attacks, states the following:

'Situation report from ground troops.
Identification of personnel with weapons only
UAV missions with help of SLAF
Target acquisition on precision guided mechanism.'[36]

4.39 Elaborating on the procedure followed by the Sri Lanka Air Force in carrying out air strikes, it was stated before the Commission that any air strike consequent to requests from the Intelligence branches of the Security Forces or the Ground Troops, had to be carried out only after following well laid out procedures. It was stated that when a target was planned, not only normal digital maps, but also aerial photographs had been

[34] *ibid.*
[35] Major General Kamal Gunaratne before the LLRC on 8th September 2010
[36] Source: Ministry of Defence

used. Furthermore, it was stated that a thorough survey of the area of the target had been carried out by utilizing Unmanned Aerial Vehicles (UAVs). Beechcraft had also been deployed in the target area, in order to ascertain that civilians were not present in the location or to avoid protected places such as hospitals, kovils and churches etc. It was explained that air strikes could only be carried out with the approval of the Air Force Commander.[37]

4.40 The Commander of the Air Force briefed the Commission on the targeting procedure adopted by the Air Force. He stated that the LTTE targets were observed for at least one week before initiating action. He explained the procedure as follows: "DMI (Director, Military Intelligence) confirmation, revalidation, day recce, night recce. We match our weapons to the target and then my approval is obtained, the air crew is briefed and then engagement under observation of the UAV or any other surveillance asset that we decide to use …" He also went on to state "sometimes some of the targets – we know very well that there are certain terrorist leaders hiding here; there is a training camp there- but we had to stop operations, and wait without taking those targets because there were civilian habitations close to these targets……"

He explained that the pilots were well trained to identify and take on pin point targets and that all attacks were filmed by these aircraft enabling operations to be reviewed.[38]

4.41 The Commission was also briefed in detail by Senior Air Force officials on the use of UAVs.[39] They stated that, the Armed Forces had used information on civilian movements obtained through UAV technology to a great extent, in order to prevent civilian casualties. It was stated that the Air Force used the aerial vehicles extensively, to spot LTTE movements and to give the Army, Navy and Air Force valuable intelligence so that the attack took on only LTTE targets.[40] The Commission was advised that the Sri Lanka Air Force had invested in several state of the art surveillance devices at a very high cost.[41] It was also pointed out that during the final phase of the military operation, UAVs were specially used in real time mode where the pilots, the Field Commanders and the Director Operations at the Air Force Head Quarters could all view the target simultaneously, in order to monitor the movements of the civilians with a view to avoiding civilian casualties.[42]

[37] Mr. Gotabhaya Rajapakse before the LLRC at Colombo on 17th August 2010
[38] Air Chief Marshal WDRMJ Goonetilleke before the LLRC at Colombo on 8th September 2010
[39] The Commission was shown UAV footage on 11th January 2011
[40] Mr. Gotabhaya Rajapakse before the LLRC at Colombo on 17th August 2010
[41] Annex 4.1. Letter from Air Force Commander dated 29th September 2011
[42] Meeting with Director Air Operations on 11th January 2011

Establishment of No Fire Zones (NFZs)/LTTE Strategy of using Human Shields

4.42 Material was placed before the Commission on the establishment of NFZs during the final phase of the conflict. This assumes special importance in relation to the obligation on the State to provide maximum possible safety to civilians in accordance with the IHL principles. It was explained that this step was taken by the Government after discussion with the Security Council, with a view to providing such protection to civilians. Accordingly, certain areas had been earmarked as NFZs so that civilians could come into those safe areas and to enable the Security Forces to conduct their operations, respecting such Zones.[43]

4.43 Explaining the procedure that had been followed with regard to these Zones, it was stated that the Security Forces had made loudspeaker announcements and had dropped leaflets from the air informing the people about the creation of the NFZs and requesting all civilians to assemble at these Zones.[44] [45] It was submitted that when the conflict intensified after the Government regained control of Kilinochchi on 2nd January 2009, the LTTE were using civilians as a human shield. They were not allowing the civilians to come out of the conflict areas into the Government held areas. The LTTE were gradually taking the civilians along with them.[46]

4.44 The Commission heard representations on the strategy of the LTTE to utilize NFZs for the purpose of using civilians as a human shield. The First NFZ was established North-East of Visuamadu. (Referred to as "First No Fire Zone" or "First NFZ")[47] When the LTTE realized that the measures taken by the Government to open a safe corridor for civilians to move to Government held areas will endanger their strategy, the LTTE had taken the civilians to Puthumatthalan. When the Government had realized that the LTTE had taken the civilians from the First NFZ at Visuamadu to Puthumatthalan which was a narrow strip of land, the Government had shifted the NFZ to Puthumatthalan on 11th February 2009. (Referred to as "Second No Fire Zone" or "Second NFZ")[48] When the troops had got close to the Puthumatthalan NFZ, the LTTE had shifted their position further down to Vellamullivaikkal. They had taken the civilians with them.

[43] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010

[44] Annex 4.2 .copy of leaflet that had been dropped

[45] A former Senior LTTE cadre who came before the Commission, and who had been in the NFZs also stated that the Air Force had dropped leaflets from the air advising people of the establishment of NFZs and had used the radio and other media as well for making such announcements. Transcript No. LLRC/IS/28.02.11/01

[46] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August, 2010

[47] Annex 4.3 copy of letter from the Commander of the Army to the Head of Delegation ICRC dated 19th January 2009. Several one kilometer radius Safe Areas were also said to have been demarcated to protect hospitals and INGO offices. Source Ministry of Defence

[48] Annex 4.4 copy of letter from the Commander of the Army to the Head of Delegation ICRC dated 11th February 2009.

Vellamullivaikkal was then declared the Final NFZ on 8th May 2009.[49](Referred to as "Third No Fire Zone" or "Third NFZ".) It was stated that the Government was compelled to shift the NFZ several times in view of the strategy adopted by the LTTE of using the civilians as a human shield.

4.45 This aspect was further explained by a high ranking Defence Official[50] in the following manner:

> " … When we came closer to the borders of the NFZ[51], initially nearly 20,000 people escaped from the NFZ. We had adopted a method, and we had briefed the front line troops that we have earmarked a corridor for the IDPs to come out from the place, then we had arrangements to receive them and bring them back to Kilinochchi, feed them, register them and send them down to Vavuniya. We used loudhailers and announced along the NFZ border asking the civilians to come out and we indicated the safe areas for them to come out and we dropped leaflets into these areas giving even maps indicating the points from where they could come.[52] **…**….. we received about 20,000 civilians coming out of the first NFZ. Then the LTTE immediately realized the danger, - they knew if they allowed it, all the civilians will come to the government held areas. So then they started to take action to prevent that, and sent a suicide cadre with the civilians coming out of the NFZ and you can remember she exploded herself, which killed many civilians and also the unarmed security personnel who were assisting the civilians. Also a lot of civilians tried to escape from this area to the government held area. We have many occasions that were reported that the LTTE was firing and preventing their escape. Once they realized that this will endanger their motives that they will no longer be able to use them (civilians) as human shields they took all the civilians from the NFZ and took them to Puthumatthalan a very thin area. When we realized that the LTTE had taken all the civilians from the NFZ out to another place, we shifted the NFZ to that area. We could have ignored that fact and asked the people to remain in the First NFZ but we knew that they cannot resist the LTTE because they took all the civilians to another place by force. Then the government decided to shift the NFZ to the other area(Second No Fire Zone) and when the troops got closer to the Second NFZ they shifted further down and so we also shifted the NFZ (to Third No Fire Zone) - Thrice we had to shift the NFZ".[53]

According to the material placed before the Commission, the Security Forces had continued to air drop leaflets within the Second and Third No Fire Zones encouraging

[49] Annex 4.5 copy of a letter from Director Military Intelligence to Joint Operations Headquarters dated 8th May 2009. ICRC Vavuniya had also been informed.
[50] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010
[51] First NFZ
[52] A ceasefire period had been declared from 29th January 2009 to 1st February 2009 to provide an opportunity for the civilians to enter into the GOSL held areas from all military fronts. Source: Ministry of Defence.
[53] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010

people to move to Government held areas and assuring them that the Army was ready to receive them.[54] The material also discloses that civilians had continued to move to Government held areas from the Second and Third No Fire Zones.[55]

4.46 Several persons who came before the Commission also made detailed representations concerning the LTTE strategy of using civilians as a human shield.

4.47 A civilian who had been displaced with his family since August 2006 stated that the LTTE always mingled with the people even in the NFZs. Civilians therefore had tried to escape and move out of the NFZs into safe areas during the night. He further explained that when this happened, the LTTE fired and then the Army returned fire to the place where the LTTE firing came from.[56] On being further questioned on this aspect he stated that when civilians tried to move into Government held areas from the first NFZ, the LTTE prevented them from doing so, and forced them to move to the next NFZ, with the view of using them as a human shield. He further stated that the Army had never initiated attacks into the NFZs – the Army only returned fire to where the LTTE firing came from. According to him the aerial bombing also had been to neutralize LTTE positions within the NFZ from where attacks on the Security Forces were being carried out.[57] He explained that the LTTE used civilian installations within the NFZ (e.g. Hospitals) to attack the Security Forces.[58] A Government doctor who had served for over 20 years, initially in Jaffna and later in the LTTE dominated areas of the Wanni, and from March 2009 to the end of the conflict at the makeshift hospital at Mullaivaikkal, commented at length on the last stages of the conflict. According to him civilians who wanted to move towards safer areas to avoid getting trapped inside the conflict zone were prevented from doing so. This he said was presumably because the LTTE wanted civilians to be there in anticipation of a breathing space in the form of any possible humanitarian intervention in the name of security to civilians. He added that the presence of civilians was also necessary to continue with conscription and rightly or otherwise justify the continuation of the war effort to the people.[59]

4.48 A resident of Kilinochchi making representations regarding his missing son, who had been conscripted by the LTTE in February 2000, stated, “During the war, as the Army advanced I moved towards Visuamadu. From Visuamadu to Moonkilaru to

[54] Annex 4.6 copy of leaflet dropped. Source: Ministry of Defence
[55] Schedule of Daily movement of civilians to GOSL held areas – Source Ministry of Defence
[56] Representations made by a civilian before the LLRC, Transcript No. LLRC/IS/10.03.11/01
[57] Several other civilians also in the course of their representations stated that the Army had not initiated attacks but returned fire to the places from which the LTTE was firing.
[58] *Ibid.*
[59] Dr. S. Sivapalan before the LLRC at Colombo on 24th November 2010

Suhandirapuram, Udayarkattu, Mathalan, Pokkanai and I went along that path and finally I went to the sea coast."

He further stated that as they reached Wattuwal the Army had taken them. In response to a question posed by the Commission as to whether any person or any group obstructed his movement after he left Kilinochchi until he reached Wattuwal he stated:

> "I was trying to take the coastal track to go through the coast, …….. there was shelling at the same time continuously, so the LTTE told us not to go along the beach…..we were moving and the LTTE was also following us behind. There wasn't anybody to obstruct us, we were on the move and the LTTE was also following us."[60]

4.49 A senior ex LTTE cadre in the course of his representations to the Commission stated that had the LTTE allowed the people who were converged in the narrow area between Mathalan and Pokkanai to go out, the casualties could have been avoided.[61]

4.50 A Government Official, who had been serving in the Wanni for over 20 years, describing his experience in the Puthumatthalan area, stated that the LTTE had placed heavy artillery in Ampalavanapokkanai amongst the civilians.[62]

4.51 Several civilians who were interviewed by the Commission stated that right up to the final stages, the LTTE had used heavy artillery from civilian populated areas in the NFZs to start firing at the Security Forces.[63]

4.52 A resident of Kilinochchi who had been detained at the Omanthai Detention Centre stated:

> "I left Wattuwal on 15th May 2009 and came over to the Army side. During the last stages of the war the LTTE had (stitched) trousers and shirts out of bed sheets. The LTTE were using civilian clothes. The Army was moving from all four sides. The LTTE and the civilians were staying together"[64].

4.53 A civilian, who was interviewed by the Commission referring to the Mullaivaikkal East area, stated that at the last stages there was no space at all and the LTTE and the

[60] Representations made by a civilian before the LLRC at Kilinochchi on 18th September 2010. Transcript No. LLRC/FV/18.09.10/01
[61] Representations made by a civilian before the LLRC at Kayts on 14th November 2010. Transcript No. LLRC/FV/14.11.10/01
[62] Representations made by a government official before the LLRC. Transcript No. LLRC/FV/20.08.11/01.
[63] Interviews at Mullaittivu and Vavuniya on 20th and 21st August 2011
[64] Representations made in camera

civilians had been in a very congested area and the LTTE had continued to fire at the Army from this area and the Army had returned fire.[65]

The First No Fire Zone and Surrounding Areas

4.54 While the Commission heard representations from Senior Defence Officials as to the creation of the NFZs and how civilians were able to move out of the First No Fire Zone into Government held areas,[66] the Commission also heard representations from civilians regarding their experiences within the First No Fire Zone and surrounding areas.

4.55 A civilian who had been in Suhandirapuram until January 2009 stated that on one occasion they had heard shelling and when they had come out of their bunkers they had seen the bodies of about 8 or 9 people lying on the ground, so they had then decided to move from Suhandirapuram to Thevipuram.[67]

4.56 Another civilian[68] explained that what really happened was that although the Government had declared that Suhandirapuram was a safe area it had in fact been dangerous because shells were falling from both sides. The LTTE had asked them to move out of the area and at the same time the Government had made an announcement to surrender to the armed forces. He went on to state that a part of the 'population' was able to surrender to the Army at Suhandirapuram and Udayarkattu while the rest of the people had to move with the LTTE wherever the LTTE wanted them to move. While they were surrendering he stated that there had been a bomb blast and he had heard that 10 or 12 Army personnel had been injured or died and that the public were also affected.

4.57 Yet another civilian stated:

> 'we cannot digest and we cannot forget the untold sufferings that we have experienced during the last stages. The Government announced a security area. The first security area was declared at Udayakattu by the Government. So we went there; we got caught there and we went through a lot of difficulties in that area. We started getting displaced from place to place. Whenever the Government announces certain areas we went to take shelter there and we went through difficulties. And we cannot forget the people who died in that

[65] Representations made by a civilian before the LLRC. Transcript No LLRC/FV/20.08.11/01

[66] According to Defence Ministry Sources over 25,000 civilians had been able to move to Government of Sri Lanka held areas

[67] Representations made by a civilian before the LLRC at Kandawalai on 19 September 2010. Transcript No. LLRC/FV/19.09.10/01

[68] Representations made by a civilian before the LLRC at Kandawalai on 19 September 2010. Transcript No. LLRC/FV/19.09.10/01

security area. I could have taken a photograph but the situation was not that conducive to take photographs. We were trying to save our lives.'[69]

4.58 Another civilian making representations during the sittings of the Commission held at the Poonagary Divisional Secretariat on 19th September 2010 stated:

> "The Government created an area of security in Thevipuram, Suhandirapuram and Visuamadu. People from Mannar, Mullaittivu and Kilinochchi came to this security area. The LTTE infiltrated this security zone and they came inside along with the ordinary people and used it as a base to attack the Army. When this happened the Army retaliated and this act of the Government despite the announcement that they have already announced the area as a security zone, how can they start retaliating when the civilian population was there and this is the main question we wish to pose to you as this cannot be justified. The Government again announced a new security zone including Puthumatthalan and Wattuwal. From my point of view it is the Government that gave the LTTE an opportunity to use the civilian population as pawns and as a human shield."

On being questioned by the Commission as to what he meant by the statement that the Government gave an opportunity to the LTTE to use civilians as pawns and human shields, he responded :

> 'it was the Government that first announced Thevipuram, Visuamadu and Suhandirapuram as security zones which the people can trust and go and settle. Our people trusted this announcement and on that basis they went there. If the Government had not made that announcement saying that this is the security zone and you go there, our people would have found their own ways of reaching the Government security controlled area.'

On further questioning he said :

> '….the people went into that area because the Government had made the announcement that it was a safe place. As a result of this that area became besieged by the LTTE. What I think is that the Government gave them an opportunity, where the LTTE could consolidate their position including their cadres as well as their arms and ammunition in this particular area'.[70]

4.59 Material was made available to the Commission which indicated that in a letter addressed to the Chief of Defense Staff (CDS) dated 4th February 2009, the Chief Security Adviser, for Sri Lanka of the United Nations, Colombo had brought to the attention of

[69] Representations made by a civilian before the LLRC at Neervely on 11th Nov. 2010. Transcript No. LLRC/FV/11.11.10/02
[70] Representations made by a civilian before the LLRC at Poonagary on 19th September 2010 Transcript No. LLRC/FV/19.09.10/02

the CDS certain concerns regarding the safety of its staff in the NFZ based on reports from civilians that large numbers had been killed in the NFZ by indirect fire 'in the past 24 hours'.[71] In the letter he had also referred to the fact that on 25th January 2009 the Security Forces Head Quarters had ordered the UN out of the NFZ to a different location close to Puthukudiyiruppu (PTK) hospital as it had become unsafe in the NFZ due mainly to indirect fire.

4.60 The letter also states that the LTTE had tried to take two UN trucks off the UN staff and that two other trucks had apparently been taken by the LTTE previously and were being used by the LTTE.

The Second and Third No Fire Zones and Surrounding Areas - Breaching of Bunds

4.61 A civilian[72] who made representations before the Commission and who had entered the Second NFZ on the 15th of February 2009 and remained there until evacuated by the Army on 23rd April, on being questioned by the Commission as to what transpired during this long period of time in the Second NFZ (i.e. 15th February to 23rd April 2009) he stated that it was in the narrow land area demarcated as the Second NFZ that the concentration of LTTE activity was – they had had their heavy artillery from which they had fired at the Security Forces, they had continued their conscription campaign very aggressively targeting young children and males in order to continue the conflict, and they had obtained all their supplies into this area.

4.62 The Commission was also shown extensive UAV footage of LTTE mobile artillery in the NFZs and the construction of contiguous bunds in the NFZs by the LTTE.[73]

4.63 Several other civilians who came before the Commission stated that family members had been conscripted by the LTTE during this time.[74] A journalist who had been in the Wanni during the last stages of the conflict also briefed the Commission at length with

[71] Annex 4.7 Two letters dated 4th February 2009 from UN Chief Security Adviser to Chief of Defense Staff
[72] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/10.03.11/01
[73] [73] See Annex 4.8 .for UAV footage showing LTTE gun positions
[74] Examples :
Representations made by civilians before the LLRC:
- at Jaffna on 12th November 2010. Transcript No…LLRC/FV/12.11.03/02. – child forcibly taken by the LTTE – Feb. 2009;
- at Kayts on 14th November 2010. Transcript No. LLRC/FV/14.11.10/01 – child forcibly taken by the LTTE – 21st Feb.2009;
- at Poonagary on 19th September 2010 Transcript No. LLRC/FV/19.09.10/02 – 'at a particular point in Pokkanai my son went missing My son is 17 years. The LTTE took him'.
- at Kandawalai on 19th September 2010. Transcript No. LLRC/FV/19.09.10/01 – husband had been conscripted when they were at Pokkanai.;
- At Mullaittivu on 20th September 2010. Transcript No. LLRC/FV/20.09.10/02 – daughter 16 years conscripted by LTTE on 25th February 2009 and subsequently suffered injury.
- Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/10.03.11/1 – LTTE tried to take 13 year old daughter.

the use of video footage which he had taken, as to how young children were aggressively conscripted by the LTTE and the dilemma faced by their parents.[75]

4.64 There was also material placed before the Commission that at this stage, LTTE cadres had been fighting in civilian clothes.[76] The journalist mentioned above also described in detail again with video footage how the LTTE used civilians as combatants[77]**.** During its visit to the Detention Centres in Omanthai and Boossa, the Commission heard from several detainees that they had been engaged in support services for the LTTE.[78]

Breaching the Bund – Evacuating Civilians.

4.65 The Commission was briefed in detail by Defence and Military Officials as to the approach adopted by the Security Forces to protect civilian lives in the final phase of the operations during which the LTTE continued to use civilians as a human shield. It was explained to the Commission how the earth bunds put up by the LTTE to prevent civilians from moving into Government held areas were breached by the Security Forces. In this regard it was stated that at the final stage, the civilians as well as the LTTE were confined to a narrow stretch of land from Puthumatthalan going down to Vellamullivaikkal. Due to the precautions taken to avoid civilian casualties, the Army had been virtually inching forward and progress had been very slow, the last stretch taking over a month to capture, even though it had been only a matter of a few kilometers. The NFZ (Second NFZ) had been surrounded by earth bunds.[79]

4.66 A high ranking Defence Official[80] explained the difficulties faced by the Security Forces in Puthumatthalan :

> "When we moved to the second area (Second NFZ) it was a very small area where the LTTE could guard them (civilians) and also it is surrounded by water, so that is a difficulty that we had, and the difficulty that the civilians had, because they had to cross the lagoon and come to the government held areas. Again our strategy was gradually to come closer to the area so that they can cross, but when we moved the Army had to use only their personal weapons, identify the target and then shoot and that was a very difficult task and we

[75] Mr.Saman Kumara Ramawickrema before the LLRC at Colombo on 13th January 2011

[76] Representations made by an ex LTTE member, Transcript No LLRC/IS/28.02.11/01. – referring to the point at which he surrendered after the capture of Puthumatthalan on 20th April 2009- stated that the LTTE cadres were in casuals. He also referred to the gradual disintegration of the LTTE structure where there was no one to control the military wing. When questioned by the Commission as to whether the LTTE cadres were in uniform at the time he surrendered he responded ' No uniforms. All were in civil'.

[77] Ramawickrema above

[78] Representations made in camera by 5 ex LTTE cadres.

[79] Lt. General Jagath Jayasuriya, before the LLRC at Colombo on 8th September 2010

[80] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010

sacrificed a lot of our soldiers because of that.[81] It was a very difficult period and that is why we took such a long time, even the public was agitated as to why we are taking so long time to clear the rest. In order to prevent deaths and casualties, we took a very long time to clear a very small area compared to the speed at which we cleared the other areas. We gradually squeezed them and reduced the area so that they (LTTE) could not hold the area any longer and that is why they allowed the civilians to come out."

4.67 In this regard the Commission also visited the Ranaviru Sevana[82] and heard representations from soldiers who had been on the battlefield during the last stages of the conflict and had suffered injury as a result of the conflict. An injured soldier stated that during the New Year period they were ordered not to open fire and on New Year's day 14th April 2009[83] they were ready to receive the civilians and while they were receiving the civilians the LTTE cadres also came along with them and had started shooting at them and he had suffered injury as a result of this shooting. When questioned by the Commission as to whether the Army retaliated, he stated that they did not counter attack as the civilians were there.[84]

4.68 It was stated by a Senior Military Official that the Army had sent reconnaissance groups to gather details and then using this information they had infiltrated the NFZ and had attacked the LTTE from the rear, using only small arms so that the firing is towards the Army, minimizing injury to civilians. It was further stated, that the Army had used this method to breach the bunds and when the civilians had realized that the Army had taken control of the area they had started running in large numbers towards the Government held area[85]. It was submitted that when this happened, the LTTE prevented the civilians from coming to the Government held area, by gathering them into places and firing at them.[86]

4.69 A senior Field Commander[87] elaborated on the method resorted to breach the bund and facilitate the civilians to cross over to Government held areas. Referring to the capture of Puthumatthalan and the land area below Puthumatthalan, he stated that they were aware that there were about 100,000 civilians in the area. He emphasized that they

[81] According to material presented by the Ministry of Defence, during the period March 2009 to May 2009 alone the Army had lost 1,212 men and 6,447 wounded and 10 missing (Source Ministry of Defence)
[82] Ranaviru Sevana is a rehabilitation centre for wounded service personnel
[83] The period from 12th April 2009 to 14th April 2009 had been declared by the GOSL as a cease fire period – Source Ministry of Defence
[84] Representations made in camera
[85] UAV footage. Vide Annex 4.9[86]Lt. General Jagath Jayasuriya before the LLRC on 8th September 2010
[86]Lt. General Jagath Jayasuriya before the LLRC on 8th September 2010
[87] Major General Shavendra Silva before the LLRC on 8th September 2010

wanted to first find the area in which the majority of civilians were. He went on to describe the operation in the following manner:

> ” we went up to the lagoon from the Puthukudiyiruppu side and we were at the edge of the lagoon, on the other side of the lagoon was Puthumatthalan.”

He explained that the gap between the point at which the Army was and Puthumatthalan was about a kilometer, but in certain places it was more. He said that where the Puthumatthalan hospital was situated there was a road from the Puthukudyiruppu side.

> “From there, keeping that as a center line, I breached on either side. Karaiyamullivaikkal - I wanted to have that area into two parts and that is how we went about the operation. We found the majority of the civilians when we went there.”

He further stated that in the early part of April and even during the Sinhalese and Tamil New Year period, they had not been carrying out any operations but were gathering information. Reconnaissance groups had been sent to observe the habits of the LTTE. He said their Division had put speakers and played the latest Tamil songs to show the civilians that the Army was around and to give them a psychological boost, because by that time the civilians had been very worried. They had continuously made announcements saying that the Army would rescue them very soon. He observed that many of the LTTE leaders had been killed during the encirclement operation in Puthukudiyiruppu.

He explained:

> ”So those were not so called ground commanders; field commanders like us. All the field commanders had been killed by that time at Puthukudiyiruppu. So it was the LTTE leadership and I heard the voice of Pottu Amman and maybe the people around Soosai was there. …. they were not ground fighters. … they were the people who were basically looking after the operation when we entered Puthumatthalan, Mullaivaikkal and Karaiyamullivaikkal. Since they would have been inexperienced they did not have much of a grip on the cadres and by that time the cadres also were escaping and coming to our side.”

Experiences of civilians in the Second and Third NFZs and surrounding areas

4.70 The Commission also heard from civilians who shared their experiences during this period.

4.71 A civilian who came before the Commission in Poonagary stated that during the last stages the LTTE had told them not to leave and confined them to a particular area. He went on to state that because 'high security zones' were created they were able to move into those areas with confidence and that was how they escaped. He explained that there was a boundary beyond which they were unable to go and when questioned further he clarified 'at some point close to the hospital a huge bund was erected….that was a very big bund and nobody can withdraw from that.' On being asked how they escaped he commented 'because of our ability we were able to cross this bund and come to the safe side.'[88]

4.72 A former senior LTTE cadre who had crossed to Army lines on 20th April 2009 at Puthumatthalan, with several thousands of people, describing the events leading up to the evacuation, stated that as the Army got close to Puthumatthalan, he was behind the Puthumatthalan Hospital, there was heavy shelling from the Army on the night of April 19th and early hours of 20th April. By around mid morning, he said the shelling had ceased and the Army had captured the area and the LTTE had retreated and they had been able to cross to Army lines across an open field. He also stated that the Army shelling was to neutralize the gun positions of the LTTE which were located behind the civilians and he stated that the civilians were aware that the shelling by the Army was for the purpose of capturing the area and releasing them. He stated that while crossing the field he saw several dismembered dead bodies. He also stated that at this time one could not readily identify LTTE cadres from civilians as LTTE cadres were fighting in civil clothes.

On being questioned by the Commission whether the area where the shelling occurred was in the No Fire Zone he stated that it was not in the no fire zone.[89]

4.73 Another civilian who came before the Commission stated that he and part of his family had been evacuated from bunkers in the Puthumatthalan area when the Army captured it. When asked as to what type of weapons were used by the two parties at this stage, he said that the LTTE used Shells and RPGs while the Army used shells and there were aerial attacks by the Air Force.[90]

4.74 Yet another civilian who was interviewed by the Commission who had been working at the Puthumatthalan Hospital until the 18th March 2009 stated "there was a lot of

[88] Representations made by a civilian before the LLRC at Poonagary on 19th September 2010. Transcript No. LLRC/FV/19.09.10/02

[89] Representations made by an ex-LTTE member before the LLRC. Transcript No. LLRC/IS/28.02.11/01

[90] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/10.03.11/01

shelling, lot of people who had sustained injuries came to the hospital; a lot of people died."[91]

4.75 Another civilian who was interviewed by the Commission stated that the LTTE had gun boats in Valayanmadam area as well as heavy artillery. He went on to state that when the LTTE fired one round there were two return rounds from the Army.[92] He added that the LTTE had been using heavy artillery even in the Mullaivaikkal area. According to him around the 10th May 2009, the people were confined in a very small area in Mullaivaikkal East with no space at all.

4.76 A detainee at Boossa who had surrendered on 15th May 2009 when recounting his experiences stated that there was widespread shelling on that day and the only corridor was Wattuwal from which they escaped.[93]

4.77 Another detainee at Omanthai who crossed over to the Government held area on 15th May 2009 stated, 'the Army was signaling to us, there was no fighting (i.e. from where the army was signaling) - but behind us there was fighting. There was severe fighting in Mullaivaikkal….'[94]

4.78 Yet another detainee at Omanthai recounting how he had come to the Nanthi Kadal coast on 14th May 2009 stated that he thought the shells were coming from Puthukudiyiruppu and Mathalan areas and that shells were also coming from Mullaittivu. He went on to add that the shells were coming from both the LTTE and Army areas so he could not say exactly from where they originated. He said 'People were running in all directions, vehicles were burning and we were also running and we came to the Nanthi Kadal coast.'[95]

4.79 A civilian who made representations to the Commission regarding her missing child stated that they had crossed over to the Army held area on the 16th of May 2009. She went on to state that while they were proceeding through from Mullaivaikkal to Mullaittivu they had all got into the water, the LTTE had started firing to prevent them from leaving and the Army had returned fire. When asked by the Commission who fired the shells she stated that there was shelling from both sides[96].

[91] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/21.08.11/01
[92] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/20.08.11/01
[93] Representations made in camera
[94] Representations made in camera
[95] Representations made in camera
[96] Representations made by a civilian before the LLRC at Mullaittivu on 20th September 2010 and representations made before the LLRC. Transcript No. LLRC/IS/20.08.11/01

4.80 A hospital worker at the Mullaivaikkal hospital who had crossed over to the Government held area on 16th May 2009 stated that there was intense shelling at the time. She further stated that during the time when she was staying in Mullaivaikkal there had been 'continuous' shelling and many people had died.[97]

4.81 Another civilian who made representations before the Commission stated that at some point in Mullaivaikkal his wife had lost her life and when questioned as to how she died he responded that it was due to the activities of the LTTE who had dug deep pits and she had fallen into one of the pits and died. He went on to say that they had come over to the Army held area very carefully and cautiously.[98]

4.82 A detainee at Omanthai who made representations to the Commission stated that the fighting had been intense on the 16th May and there was intense shelling from all directions and they could not differentiate who was firing.[99]

Safety of Civilians

4.83 Representations were also made to the Commission by other civilians who were caught up in the theatre of conflict and who were making efforts to get into areas of safety. Representations were made both with regard to the dangers that the civilians were exposed to due to LTTE firing at civilians who were attempting to cross to Government held areas, as well as the dangers that the civilians were exposed to due to cross fire.

4.84 A former senior LTTE cadre making representations before the Commission stated:

> "……when the war reached its height lot of people lost their lives. People got caught in the crossfire between the two sides resulting in many lives being lost. Myself and other members of the family went up to the point of death. After January 2009,[100] fighting areas were not clearly defined because the dimension of the war has expanded to that extent. The people were highly confused and worried as to what to do and where to go. The number of deaths increased and the people underwent tremendous hardships. It is true that everybody tried to save themselves in an appropriate way. I cannot forget that period in all my life. I was amongst the thousands of people who were determined to escape the war……..people had extreme hardships including loss of life and property. I decided that we can survive by surrendering to the Government."[101]

[97] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/20.08.11/01
[98] Representations made by a civilian before the LLRC at Poonagary on 19th September 2010. Transcript No. LLRC/FV/19.09.10/01
[99] Representations made in camera
[100] Kilinochchi captured on 2nd January 2009
[101] Representations made by an ex – LTTE member at Kayts on 14th November 2010. Transcript No. LLRC/FV/14.11.10/01

When asked by the Commission as to what he meant when he said the people were highly confused – he stated that after January 2009, the people knew that the LTTE would lose and the civilians felt trapped because they were not being allowed to move to Government held areas, and therefore they did not know what to do. He also said that he himself had being given the task by the LTTE of persuading people not to go into Government held areas.

In response to questions posed by the Commission, he stated that:

> "…..what really happened was that at the last stage of the battle, the people converged to a very narrow area of Mathalan and Pokkanai. The LTTE launched their shelling attacks on the Army from these places. The Government forces retaliated to the spot that the LTTE was staying, as a result there was a number of deaths which is why I referred to both sides. At the last phase of the battle if the LTTE had allowed these people to go out, all these casualties could have been avoided"

On further inquiry, he stated that it was true that during the last days of the conflict, the LTTE shot at civilians in order to prevent them from crossing.

4.85 A doctor serving in Puthumatthalan from February to April 2009, and thereafter at Mullaivaikkal Hospital also stated that after entering the NFZs and when the fighting intensified, the people tried to use whatever routes possible to escape and when they did try to escape they were shot at by the LTTE.[102]

4.86 A detainee from Omanthai who had crossed over to the Government held area in April 2009 stated that the LTTE shot people who were trying to escape from the LTTE control and went on to add that the LTTE shot women who were wearing gold necklaces.[103]

4.87 Another detainee stated that on 21st April 2009 he had made an attempt to cross over to the Government held area and his wife's sister had lost her leg due to the LTTE deliberately shooting at her. He went on to state that with great difficulty they had managed to get her on the ICRC ship as at one stage the LTTE did not accept them maintaining the disabled.[104].

4.88 Yet another detainee at the Omanthai Detention Centre stated:

> "we were asked to surrender with our families to the Army – after we surrendered to the Army, we were given assistance" He further stated "…..the LTTE shelled the front area to

[102] Dr T. Sathiamoorthy before the LLRC at Colombo 19th November 2010
[103] Representations made in camera
[104] Representation made in camera

prevent movement. During the crossover, many were killed and injured. At the time I surrendered my wife and child were injured. In order to surrender to the Army, we had to walk a long distance before reaching the Army side. On 16th May 2009, about 5,000 persons crossed to Army lines "[105]

4.89 A Government doctor who had served in the Wanni during the last stages of the conflict stated:

"On the verge of a definite victory over the LTTE, the Security Forces very unfortunately were in a difficult situation to differentiate between the civilians and the LTTE and rushed to annihilate the LTTE. It is also true that the State Forces were engaged in an operation to take out the civilians from the clutches of the LTTE, but sadly the civilians got caught in between and suffered immensely."[106]

4.90 A senior public official[107] who served in Kilinochchi during 2008/2009 stated that when the Army captured Mullaittivu[108] she had moved with the people to Puthukudiyiruppu. She stated that there was no way to survive with the shelling and other problems – with the confrontation between the Army and the LTTE. She described a shelling incident while she was in Mulliyawalai area,[109] where she had a Government residence. She said both parties were shelling at each other and the civilians were in the middle. On the left hand side were Army officials she stated, while on the right hand side there was the LTTE. Continuing she stated:

"one day at about 1 o'clock there was shelling although she could not identify by whom the shelling was – but about 13 people had been injured and about 30 shells had fallen in the area……Even though we have bunkers, sometimes we could not move to the bunkers as suddenly both sides start fighting. The people got caught in the middle. This is the problem that the people faced. All the time the people were with the LTTE they were not allowed to move. When the safe zones were declared, the LTTE also went to that area – how can you say that it is a safe zone – the LTTE mixed with the people. Even in Puthukudiyirippu office when we held meetings the LTTE were also there with my staff. Whoever tried to escape, the LTTE would open fire. The people in the uncleared area moved with the LTTE as the Army commenced operations and advanced from Mannar. When the confrontation advanced to one area, the people moved to another area…….when fighting comes to that area they move to another area. Finally they came to Puthumatthalan."[110]

[105] Representations made in camera
[106] Dr. S. Sivapalan before the LLRC at Colombo on 24th November. 2010
[107] Mrs. Imelda Sukumar before the LLRC at Colombo on 4th November 2010
[108] Mullaittivu captured on 25th January 2009
[109] Mulliyawalai was captured on 26th December 2008
[110] Puthumatthalan NFZ declared on 11th February 2009

4.91 Referring to events in the month of April 2009, a mother of 7 children stated that "we were in a place called Mathalan and there was shelling going on so we were in a state of tension. Finally I managed to trace 5 of my children but 2 are still missing,…..We thought we would all die but we escaped. We were running in fear because there was continuous shelling." In response to a question as to who was shelling – she stated "we can't tell you definitely because shells were being fired by both sides – Tigers and Army."[111]

4.92 A doctor who was at the Mullaivaikkal hospital until the 15th May 2009, when asked what the reaction of the LTTE was when people started moving to the Government held areas, responded by saying that the LTTE prevented them from doing so. He stated that sometimes the LTTE had fired at the people and even beaten them. He explained that the Security Forces were on the other side of the dried lagoon and it was the lagoon that separated the LTTE held area and the Government held area. He added that when the people had to move from the LTTE held area to the Government held area, they had to cross around 300-500 meters in open terrain and in some areas the water had been neck deep. Explaining further he stated that sometimes large numbers of civilians 100 - 200 and sometimes even 500 tried to cross and when this happened, the LTTE started to fire at the Government forces across this 300 - 500 meter open terrain and the Government forces returned fire. This crossfire, he added, had created panic among the civilians and the civilians then remained within the LTTE held area. He further stated that a few civilians had died in this process but was unable to give the exact number.

When asked if the Government forces deliberately fired at the civilians who were crossing, he stated that the Army does not know what is happening in the LTTE held area. He further explained that when the people tried to cross from the LTTE held area to the Government held area, the LTTE fired against the Government forces from areas near where the people were gathered and trying to cross. He added that the Government forces had returned fire because of the LTTE fire. He also stated that the civilians started crossing mostly around midnight when visibility was poor as they could not cross during the daytime. [112]

4.93 A detainee who made representations before the Commission at the Omanthai detention centre, who had crossed the Nanthi Kadal lagoon to Army lines on 14th May 2009, along with about 600 people, stated:

[111] Representations made by a civilian before the LLRC at Kilinochchi on 18th September 2010. Transcript No. LLRC/FV/18.09.11/01

[112] Dr. S. Sivapalan before the LLRC at Colombo on 24th November 2010

"the Army was on the Wattuwal bridge and the LTTE was on the other side but I can't say definitely who was firing the shells. Shells were coming from the LTTE and Army areas, so I can't say exactly from where they originated….." When questioned as to whether apart from shelling there were any other bombings going on he stated "at that time when we were crossing that area[113] there were no planes and there was no aerial bombing".[114]

4.94 Another detainee at Omanthai, referring to a period between 15th April 2009 and the end of the conflict, stated that:

"the condition was such that if the LTTE fired, somebody else could also have fired in the dark. At night when shots are fired the Army thinks that they are being fired upon and they return the fire, but that does not mean and I do not say that the Army deliberately fired at the civilians".[115]

Moving Civilians and Injured LTTE Cadres to Safety

4.95 The Commission heard representations concerning the situation of persons crossing over to Army lines, both from civilians, as well as detainees from the Omanthai Detention Centre who had been active members of the LTTE. In their representations they stated that they had been helped by the Army when crossing to cleared areas, so as to avoid land mines in the area and other dangers.

4.96 A former senior LTTE cadre who appeared before the Commission stated that he had crossed over into the Government held areas with thousands of people on 20th April 2009 at Puthumatthalan, and he further stated that when they had crossed over, they had been treated very well by the Army. He also described to the Commission the way in which the civilians and LTTE cadres had been segregated by the Army and how the Army had arranged to transport civilians to the welfare camps and for the LTTE cadres to surrender. He said that he had surrendered at the Vallipunam School.[116]

4.97 A resident of Kilinochchi stated:

"6,000 of us crossed from Kilinochchi to Vavuniya[117]. There was severe shelling but we went in search of the Army – we went towards the Army, the Army was there on the way – it was they who took us to the Camp. The Army helped us."[118]

[113] The lagoon
[114] Representation made in camera
[115] Representation made in camera
[116] Representations made by an ex-LTTE member before the LLRC at Kayts on 14th November 2010. Transcript No. LLRC/FV/14.11.03/01
[117] The civilian had reached Vavuniya on 02nd February 2009

4.98 At the sittings held at the Poonagary Divisional Secretariat on 19th September 2010, a civilian who recounted the difficulties that they had to undergo during the period of the 30 year conflict, stated that:

> "…by the 23rd April 2009 the Army had entered Puthumatthalan and Ampalavanapokkanai area. It may be on 23rd of 24th morning I suppose, the Army came in there and opened fire and took us from the bunkers safely and took us to safe areas. On 25th along with many other families we were taken to Cheddikulam…"[119]

4.99 A detainee at Omanthai Detention Centre who had crossed to Army lines on 16th May 2009 at Mullaivaikkal, stated that:

> "we moved through the main road, there was a bund at the main road also but that bund was demolished. There was Army on both sides of the road and Army advised us to take the route on the road and not to get down because of the mines. As we proceeded taking this route the Army was there and they provided us water and meals"[120]

4.100 Another detainee at Omanthai Detention Centre who had crossed over to Army lines from Valayanmadam on 23rd April 2009, in response to questions stated that, the crossing to the Army controlled area took place in a very narrow strip called Valayanmadam with land mines on both sides and that the Army had identified the mines. He further stated that about 5,000 people crossed with him.[121]

4.101 A civilian who came before the Commission in Kandawalai stated in the context of his journey to the Government held areas :

> 'as we passed Iranapalai and went to Mathalan area there was sea on one side and the lagoon on the other…it was shallow water and we just managed to go….at one point we could not proceed at all ….we got stuck there so we went to Pokkanai temple and the Army came from both sides, the LTTE had withdrawn from the area and the Army took us to safety, it was neck deep water and the Army held us by our hands and took us.'[122]

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[118] Representations made by a civilian before the LLRC at Killinochchi on 18th September 2010. Transcript No. LLRC/FV/18.09.10/01

[119] Representations made by a civilian before the LLRC at Poonagary on 19th September. 2010. Transcript No. LLRC/FV/19.09.10/01

[120] Representations made in camera

[121] Representations made in camera

[122] Representations made by a civilian before the LLRC at Kandawalai on 19th September 2010. Transcript No. LLRC/FV/19.09.11/01; See also representations made by a civilian before the LLRC at Nedunkerny on 15 August 2010. Transcript No. LLRC/FV/15.08.10/01– 'on 20th April we left Pokkanai, Matalan, we passed the lagoon and came. The army entered, they protected and took us there.'

4.102 Describing the events on 14th May 2009, when about 2,000 people had attempted to go towards Mullaittivu through the Nanthi Kadal lagoon, a detainee at Omanthai Detention Centre stated that:

> "..at that point we could see the Army on the other side signaling to us.".[123]

Describing the events that led to his surrender on 14th May 2009, another detainee at Omanthai stated that he had received an injury at Mullaivaikkal and a member of the public had carried him to the Army point and the Army had taken him to Vavuniya hospital where he had been treated.[124]

4.103 In this context, it would also be relevant to note that a high ranking Defence Official produced a letter from the Head of Delegation of the ICRC to the Commander of the Sri Lanka Navy dated 14th February 2009 referring to the orderly manner in which sea evacuation was carried out.

> "Following the successful medical evacuations by sea that took place on 10 and 12 February, on behalf of the ICRC I wish to express my sincere thanks to you and to the Navy for your valuable and effective collaboration, which helped to save many people's lives.
>
> I know it was a complex operation, which proved to be extremely demanding for all. Your men, either at sea or on land, succeeded in an exemplary manner to carry out their essential task to protect the State and its citizens and simultaneously to care for the sick and wounded. They displayed a strict discipline and respect of rules of engagement and at the same time a very respectful and kind attitude to help those in need.
>
> In that regard in addition to all others who contributed to this medical evacuation, we wish to express our special thanks to the Director General of Operations, at the Navy HQ, the Officiating Commander Eastern Naval Command, in Trincomalee and the Deputy Area Commander North, in Jaffna. They spent many sleepless hours coordinating the operation and played a crucial role to make it a success.
>
> These days demonstrated that soldiering is a noble profession."[125]

[123] Representations made in camera
[124] Representations made in camera
[125] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010. Copy of the letter dated 14th February 2009 from Paul Castella, Head of Delegation ICRC to the Navy Commander was made available by the Ministry of Defence.

Some Specific Instances of Death or Injury to Civilians

4.104 During its field visits, the Commission also heard representations made by a number of civilians concerning death or injury suffered by their next of kin and other civilians during the final phase of the conflict.

4.105 In Kayts three widows testified that their husbands had died of "shelling"; on 23rd March 2009 at Puthumatthalan,[126] on 20th February 2009 at Suhandirapuram[127] and at Mathalan on 7th February 2009[128], but none of them identified by whom the shelling had been carried out.[129]

4.106 A civilian who made representations before the Commission stated:

> "My son in law went missing on the 10th of May 2009. We were coming from Mullaivaikkal by boat. (trying to escape to Jaffna) On our way, the Navy attacked us at Chundikulam. Four people died on the spot."

He went on to state that the time was around 2 a.m. in the morning and that he had been able to escape by getting hold of the hand rail of the boat. He added that thereafter the Navy had come and rescued them and given medical treatment to his son in law who was injured and he was later taken to Trincomalee.[130] He further stated that the Navy had saved him and his daughter and said to him in Tamil 'Father please get into the ship'. On being questioned by the Commission as to how he knew that it was a Navy boat he stated that it was a big boat and he could see it quarter mile away as there was moonlight. When being further questioned as to whether his son in law was a member of the LTTE he had stated that he had worked for the movement.

4.107 Another civilian who came before the Commission on 20th September 2010 at the District Secretariat Mullaittivu, stated as follows:

> "We got displaced on the 10th of May 2009 from Wanni (Mullaivaikkal) and we moved by sea. While we were moving we came across the Navy. We held two white flags and on seeing the Navy we called them "Aiya", "Aiya". There was sudden shelling and 8 died on the spot. The others were taken to Chundikulam and from Chundikulam they were taken to Pulmoddai."

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[126] Representations made by a civilian before the LLRC at Kayts on 14th November 2010. Transcript No. LLRC/FV/14.11.10/01

[127] Representations made by a civilian before the LLRC at Kayts on 14th November 2010. Transcript No. LLRC/FV/14.11.10/01

[128] Representations made by a civilian before the LLRC at Kayts on 14th November 2010. Transcript No. LLRC/FV/14.11.10/01

[129] Refer also representations made by civilians at Neervely on 11th November, 2010. Transcript No. LLRC/FV/11.11.01/02 and at Velanai on 14th November, 2010. Transcript No. LLRC/FV/14.11.10/02;

[130] Representations made by a civilian before the LLRC at Kudathanai East on 13th November 2010. Transcript No. LLRC/FV/13.11.10/01 and at an informal meeting. Transcript No. LLRC/IS/21.08.11/01

On questioning by the Commission, she stated that the Navy had taken them to Chundikulam and the firing had occurred at 3 a.m. in the morning in place called Chalai. They had been trying to escape to Jaffna, and had made a first attempt at about 9 p.m. but the LTTE had fired at them and they had been forced to return to shore and hide the engine of the boat. When asked who fired the shells she stated that the Navy fired the shells. According to her the Navy had apologized as it had been a case of mistaken identity.

She went on to state that there were about 40 to 50 other boats also moving and the persons who were in the boats were fishermen and their families. She also said that while she did not know it for a fact, some of the other boats may have been LTTE boats. She further elaborated that she had come to know that some of the other boats also had been attacked by the Navy. She added that her sister and husband had been on the boat and that the sister's husband had been a sea tiger.

4.108 On being questioned by the Commission regarding the above mentioned alleged incidents, the Navy stated that in the month of May 2009 they were engaged only in surveillance activities and furthermore, the Navy patrol boats were equipped with sophisticated equipment, including radar and night vision cameras which could identify civilians and civilian boats. The Navy also stated that they had intelligence and were experienced in differentiating between LTTE boats and boats carrying civilians.[131]

4.109 During the Commission's visit to Boossa Detention Centre on 30th December 2010, a detainee (a former LTTE Intelligence Officer) brought to the attention of the Commission an instance where it was alleged that on 20th April 2009 at Mathalan Pokkanai, the Army had prevented people from moving and coming onto the Army lines.

> "The LTTE had fired on the Army and there was a body of an Army person lying on the ground. The Army asked the people they kept back to collect that body …… they kept the people there and sent some people to collect the body. Not all the people were prevented from moving. The Army kept some people back…….the Army was on the bund and they were forcing the people to go near that body and retrieve it. The people who refused to go were shot…..the Army kept the young people around them thinking that the LTTE will not shoot at the Army."[132]

4.110 A civilian who came before the Commission in Neervely stated

[131] Source briefing by the Navy to the Commission on 22nd January 2011 and subsequently confirmed in writing.
[132] Representations made in camera

'at an area called Pokkanai when we were waiting in the queue to collect milk powder there was shelling and a lot of people died. Again when we were in a place where the LTTE was selling some short eats, there also again there was shelling and I saw 35-40 people dying on the spot. We cannot easily forget all what we saw there; it is still in our memory.'[133]

On being questioned by the Commission as to when this incident had occurred he stated that it was a couple of days before the date on which a large number of people crossed over at Puthumatthalan area. When further questioned as to who had fired the shells he stated that he could not say for sure but the people were saying that it was from the Navy. At the same time he confirmed that people who had crossed over to Government held areas had been treated very well by the Army.

4.111 Another civilian who appeared before the Commission referred to an incident which occurred in April 2009[134] during which his daughter had also been injured. He stated that they had been told that "thriposha" would be delivered to expectant mothers and children and when the mothers and children went to the particular spot where the "thriposha" was supposed to be distributed, the LTTE were using their walkie talkies and the Army had shelled that particular point and 40 – 45 expectant mothers and children were the casualties.

Casualties during Crossfire

4.112 During the Commission's sittings in Mullaittivu the Commission was briefed by a Military Official on the final phase of the conflict. He stated that in the midst of battle, civilians were trying to cross over to Army lines and the LTTE were firing at them to prevent the civilians from crossing over. The Army too had returned fire, using small arms and during the exchanges of fire, civilians were caught in the cross fire and casualties did occur.

4.113 A high ranking Military Official on being asked to clarify whether shelling had come from both sides stated that when they were going in there (Puthumatthalan), there had been instances where firing had been onto the Army front line which was closer to the NFZ. He added that the Army was also trying to counter some of the fire, so there could have

[133] Representations made by a civilian before the LLRC at Neervaly on 11th November. 2010. Transcript No. LLRC/FV/11.11.10/02 and at an informal meeting Transcript No. LLRC/FV/21.08.11/01.
[134] Representations made by a civilian before the LLRC at Kayts on 14th November. 2010. Transcript No. LLRC/FV/14.11.10/01

been possible instances where cross fire would have taken place. He stated "That's a possibility."[135]

4.114 It would also be relevant in this regard to refer to what was stated by a high ranking Defence Official during his briefing to the Commission[136]

> "…..so you can see from the very beginning there was a very clear military plan, and in parallel to the military plan, we had a plan for humanitarian assistance. Whether it is for the NFZ, the policy level, the principle of zero civilian casualties, restrictions on use of heavy weapons, the training of soldiers, all these were done to prevent civilian casualties. Of course in a situation like a military campaign like this and with an equally strong terrorist group fighting and when they were using civilians as human shields to protect them there could be cases of civilian casualties."

4.115 A Government doctor who came before the Commission stated that when they crossed to the Army area they were helped by the Army without any problems. He went on to say that there could have been crossfire as there was very close engagement between the Army and the LTTE but the Army had not done anything intentionally. He admitted that there could have been casualties as a result of the crossfire and that LTTE shot at people deliberately when they tried to escape. In response to another question by the Commission whether the Army had fired deliberately at civilians, the doctor stated that he had never seen that or heard of any such allegations.[137]

Hospitals / Makeshift Hospitals

4.116 The Commission heard representations regarding the impact of the conflict on the hospitals and makeshift medical facilities in the Wanni during the final stages of the conflict.

Vallipunam Makeshift Hospital

4.117 In the course of these representations a Government doctor who was serving in the Wanni stated that on 5th January 2009 patients from the Mullaittivu General Hospital had been transferred to Vallipunam hospital which was a school converted to a hospital.[138]

[135] Lt. General Jagath Jayasuriya before the LLRC at Colombo on 08th September. 2010
[136] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010
[137] Dr V. Shanmugarajah before the LLRC at Colombo on 19th November. 2010
[138] *Ibid.*

4.118 On 24th January 2009, the ICRC had informed the Commander of the Sri Lanka Army, that on 21st January and 22nd January 2009 shells had hit the Vallipunam hospital resulting in casualties and the hospital had been evacuated and patients transferred to PTK hospital.[139]

4.119 A nursing officer who was attached to the Mullaittivu General Hospital and had served at several medical facilities during the last phase of the conflict stated with regard to the Vallipunam makeshift hospital that on 21st January 2009, after 7 p.m. shells had fallen in the vehicle park at the hospital and a few patients had suffered minor injuries.[140] When questioned further he stated that he did not know from where the shells came. He went on to say that there was a refugee camp close to the hospital which had been hit by the shells and around 40 people had died. He added that while there was no LTTE presence in the hospital premises, there was an LTTE presence about 500 meters away.[141]

4.120 A pharmacist who had been working at the Vallipunam makeshift hospital stated that shells had fallen on the hospital vehicle park which was near the operating theatre but was not sure about the casualties.[142]

Anandapuram Makeshift Hospital

4.121 A nursing officer who served at Anandapuram makeshift hospital stated that the facility had functioned for about 20 days in February 2009. There had been a large LTTE armoury located near the hospital and there had been a Kfir attack on the armoury which had destroyed it. He added that two days later there had been a similar attack on the makeshift hospital but by then the patients had been moved as the Medical Superintendant had decided to shift the hospital after the attack on the armoury.[143]

4.122 Another person who had been employed at the Anandapuram makeshift hospital when questioned by the Commission stated that it was possible that there would have been LTTE installations around the area and the Army may have attacked those areas but there had been no damage to the makeshift hospital.[144]

[139] Letter dated 24th January 2009 from the ICRC to the Commander of the Army – Annex 4.10
[140] Representations by a civilian before the LLRC. Transcript No. LLRC/IS/20.08.11/01 n questioning by the Commission again he stated that 2-3 patients had died.
[141] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07.11/01
[142] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07.11/01
[143] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07.11/01
[144] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07/11/01

Udayarkattu Makeshift Hospital

4.123 A civilian[145] who appeared before the Commission described an event which he said he had observed on 2nd February 2009 from within a 200 meter distance. He stated that Balakumaran a Senior LTTE leader had been leading the operations against the Security Forces from the side of the Udayarkattu Hospital[146] – when the bomb attack took place a part of the hospital was damaged and civilians were injured. In response to questioning by the Commission, he clarified that the reasons for the attack on the hospital was because Balakumaran was operating at that time from the hospital and while there was no permanent LTTE military installation in the hospital, the LTTE had weapons on their shoulders from which they fired at the Security Forces. In response to further questioning as to whether the LTTE was present in the hospital for medical purposes or for operational purposes, he stated that:

> "What I say is, important places like this were being used by the LTTE, they stayed near these important places and did their armed operations."

4.124 On 24th January 2009, the ICRC had informed the Commander of the Sri Lanka Army that on that date, the Udayarkattu Hospital had been hit by one shell while another shell had exploded at the proximity of the hospital compound. It was stated by the ICRC that the hospital authorities had advised that the first shell had led to five civilians being killed and 27 injured.[147]

PTK Hospital

4.125 A former senior LTTE cadre referring to the period in January 2009 before the Army had come to PTK, stated that the PTK hospital was functioning. On further questioning by the Commission he elaborated that there had been some damage to the outside of the hospital due to shells having fallen, although he did not know from which side the shells that damaged the hospital were fired from, as both sides were shelling.[148]

4.126 A Government Doctor who was serving at the Puthukudiyirippu Hospital[149] up to January 2009, when asked whether there was any damage caused to the hospital or to any person in the hospital, he responded:

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[145] Representations made by a civilian before the LLRC .Transcript No. LLRC/IS/10.03.11/01

[146] Udayarkaddu Hospital, Valipunam School (Temp Hospital) and ICRC office were demarcated as 1km radius safe areas on 22 January. 2009

[147] Letter dated 24 January 2009 from the ICRC to the Commander of the Army- Annexe 4.10 See fn. 139

[148] Representations made by an ex-LTTE member before the LLRC. Transcript No. LLRC/IS/28.02.11/01

[149] Puthukudiyiruppu Hospital placed in 1km no safe zone on 23rd January. 2009

> "One or two shells fell within the hospital premises, not on the hospital building but hospital premises in the bare land area, but few people suffered injuries not major injuries"

He went on to say that the ICRC had also been present and when asked whether he knew who had fired the shells he responded:

> "I don't know, but at that time the attacks were very close to the hospital – within 1 km away from the hospital, so an intense battle was going on."

He also stated that the LTTE had gun positions very close to the Hospital premises – about 200 – 300 meters away. [150]

4.127 Another doctor[151] when questioned by the Commission as to when he had left PTK hospital stated it was on 3rd February night/4th morning. He was then asked whether there was any shelling of the hospital and he stated:

> '4th Feb was our Independence Day and there was a talk among the people that the Army was going to take over PTK that night and there was intensive fighting in the area. Fighting was going on 500 meters from the hospital '

He said civilians also moved to the hospital as they thought it would be safe. He was in a bunker but felt as if shells were falling on his head. When questioned as to whether the LTTE had heavy artillery near the hospital he said he could not give the exact distance but it was very close.

4.128 A Government official[152] who was interviewed by the Commission stated that on 3rd February 2009, shells had fallen on the PTK hospital where he was receiving treatment. He further stated that he had been taken in for a dressing and as soon as he was brought out a shell had landed on the theatre and the entire theatre had been damaged. He added that all who could run away had fled screaming. He further stated that he had received the injury when shells had fallen on his residence which had been situated about 500 meters from the hospital on 1st February 2009. He added that his father in law had died due to this incident. When questioned as to who was responsible for the attack on the hospital he stated that he could not say exactly but it was the 'general anticipation' that when a shell lands it had been fired by the Army.

[150] Dr S. Sivapalan before the LLRC at Colombo on 24th November. 2010
[151] Dr T. Vartharajah before the LLRC at Colombo on 30th November 2010
[152] Representations made by a civilian before the LLRC at Colombo on 01st July 2011. Transcript No. LLRC/IS/01.07.11/01

4.129 Another Government official [153] when interviewed by the Commission stated that shells had fallen on the premises of the PTK hospital on 4th February 2009 in which an ambulance driver had also died.

4.130 On 14th January 2011, the ICRC in a letter addressed to the Army Commander stated that on 13th January 2009 at 10.00 a.m. the hospital in PTK had been attacked with artillery. The shell had exploded approximately 2 m from the male medical ward, in the middle of the hospital compound. According to what was stated by the ICRC in its letter the incident had resulted in the injury of one bystander and one patient who was inside the hospital at the time of the attack.[154] On 1st February 2009, the ICRC informed the Army Commander that a shell had hit the Southern end of the compound of the PTK hospital which had resulted in some casualties.[155]

4.131 A vaccination officer attached to the PTK hospital until the 1st week of February 2009 stated that a hospital ward had been damaged due to shells having fallen. When questioned further by the Commission he stated that there was an LTTE Camp at the rear of the hospital – approximately 50 – 100 meters away and it is possible that the LTTE was carrying out military operations from there.[156]

4.132 A nursing officer who had served at PTK hospital stated that in February 2009 the hospital had been functioning with about 400 – 500 patients. He went on to state that around the third week of February shells had fallen in the hospital premises – approximately 5 meters from the theatre and female ward. After this incident the patients had been shifted to the makeshift hospital at Puthumatthalan. When questioned by the Commission he stated that only around 100 patients had been transferred to the Puthumatthalan hospital as the patients with minor injuries had left and the LTTE cadres who were patients had also left.[157]

Makeshift hospital at Puthumatthalan

4.133 A Government official who was interviewed by the Commission and who had been a patient at Puthumatthalan hospital during the month of February 2009, stated that shells had been falling around the hospital.[158] Other civilians and hospital staff also stated that shells had fallen on the hospital premises.[159] An overseer who worked at the

[153] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07.11/01
[154] ICRC letter dated 14th January 2009 to the Army Commander
[155] ICRC letter dated 1st February 2009 to Chief of Defence Staff – Annex 4.11
[156] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07.11/01
[157] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07.11/01
[158] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07.2011/01
[159] Two representations made by civilians before the LLRC. Transcript No. LLRC/IS/20.08.11/01

Puthumatthalan hospital and who had crossed over to the Government held area on 18th March 2009 stated that he had worked at the hospital from 16th February 2009, and until the time he left there had been no damage to the hospital even though both the Army and the LTTE were firing shells at each other.[160]

4.134 During the Commission's sittings at the Omanthai Detention Centre, a detainee stated that on 15th April 2009, the LTTE targeted the Mathalan Hospital with an artillery shell and over ten people had been killed. On being questioned further by the Commission he stated that on that date the hospital was under the control of the LTTE and he further added that the LTTE had erroneously targeted the hospital and had apologized to the relatives of the casualties and given them 'some small help.'[161]

4.135 The civilians interviewed by the Commission stated that the LTTE injured cadres were also being treated at the Puthumatthalan Hospital but they were not carrying arms. A hospital employee who had worked at the Puthumatthalan Hospital stated that there were LTTE positions outside the hospital and that he had seen the LTTE use all types of weapons including those which were mounted on vehicles.[162] Another hospital employee stated that the LTTE was firing from about 20 meters from the Puthumatthalan Hospital.[163] He further stated that a shell had fallen on the theatre of Puthumatthalan Hospital as there had been fighting between both parties. Another civilian stated that the LTTE had mounted heavy artillery at the boundary of the hospital premises.[164]

Makeshift Hospital at Mullaivaikkal

4.136 A doctor serving at Mullaivaikkal Hospital during the last days of the conflict also stated that the LTTE had their Artillery guns about 300-500 meters away from the Mullaivaikkal Hospital. The doctor in response to a question whether any of the hospitals that he served in were shelled, stated that shells had fallen on the surrounding areas of the Mullaivaikkal makeshift hospital. According to him there had been two blasts and there were containers and trucks which were hit by the shells. In response to further questions he stated that the LTTE trucks that were parked in the hospital, which were used to transport their arms and personnel were struck by shells. He added that 4 or 5 people had died when the shell hit the hospital entrance. He further clarified that they

[160] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/21.08.11/01
[161] Representations made in camera
[162] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/21.08.11/01
[163] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/21.08.11/1
[164] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/20.08.11/01

were not patients who were admitted to the hospital, but were people who were standing there at that time. [165]

4.137 A hospital employee who had served in the Mullaivaikkal Hospital from 9th March stated that shells had fallen on the hospital and people had died.[166] A Nursing Officer who was attached to the Mullaivaikkal hospital until the end of April stated that there was shelling in the vicinity of the hospital.[167] A driver attached to the Mullaivaikkal Hospital when interviewed by the Commission stated that one day as he had returned to the hospital and parked the ambulance a shell had fallen on the hospital premises and he had sustained an injury.[168]

4.138 A Nursing Officer who had served at Mullaivaikkal West hospital stated that the hospital had not suffered any damage until the time when he moved to the Army held area on 22nd April 2009.[169]

Wattuwal makeshift medical facility

4.139 A detainee at the Omanthai Detention Centre described his experiences on 16th May 2009, and stated *inter alia* that he was looking after patients at the Wattuwal hospital and that there were about 1,000 patients in the hospital and many doctors and nurses. In order to seek further clarification the Commission interviewed this detainee again. He then stated that it was an LTTE makeshift medical centre and that there had been about 100 patients and a few doctors. He went on to say that the LTTE was in control of the hospital up until about 12 noon on 16th May, when the Army came in and took control of it. On further questioning he added that there had been intense shelling and the hospital had been damaged and people had also suffered injury.[170] He added that it was a temporary facility and it was not housed in a building but under temporary covers.

Protection of Medical Personnel

4.140 During the course of representations made before it, the Commission heard no allegations of direct attacks on medical personnel. However, a doctor who had been the Regional Director of Health Services, Mullaittivu District brought to the attention of the Commission that two days before the end of the conflict on 15th May 2009, he had sustained injuries. About 10 to 15 minutes after this incident while the doctors were

[165] Dr V. Shanmugarajah before the LLRC at Colombo on 19th November 2010
[166] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/20.08.11/01
[167] Representations made by 2 civilians before the LLRC. Transcript No. LLRC/IS/20.08.11/01
[168] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/21.08.11/01
[169] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07.11/01
[170] Representations made in camera

giving him treatment, the Army had arrived and directed the doctors to go to the army held area. Since he could not walk, the doctors and other staff had physically carried him about 2 kms distance and had handed him over to a military hospital in Mullaivaikkal, where he was again given first aid treatment and then sent to Kilinochchi in an army vehicle. The following morning the Army had informed him that he was being sent to Vavuniya. However, he had been detained for more than a week at Kilinochchi. He had sustained a very serious injury and there had been one litre of blood in his lungs and immediate treatment should have been given, but nothing had been done.

4.141 After that the Army at Kilinochchi handed him to the CID at Vavuniya and from Vavuniya on the same day he had been taken to the 4th Floor, in Colombo. On the following day he was admitted to the National Hospital Colombo where he had received proper treatment.[171]

4.142 The Commission sought clarification from relevant government authorities with regard to the above allegation of the doctor. The ASP, CID, Colombo who came before the Commission explaining the reason for the delay in treatment stated, that the doctor had been injured on 15th May 2009. At the time, the hospital had not been functioning in the Mullaivaikkal area. The Kilinochchi hospital too was abandoned by the LTTE who had damaged the surgical theatre and had taken the medical equipment with them when they retreated. Therefore, the situation prevalent at the time was not conducive to any type of surgical intervention. At the height of the war it was a risky journey to make from Vellamullivaikkal which was at the epi-centre of the fighting. During this period when fighting was intense, helicopters could not land due to R.P.G. gun fire from the LTTE. Even the army personnel who were injured had received only field treatment at that time. During this critical time even amputation of limbs were done by para medical officers and that if they had attempted to transport the doctor from Vellamullivaikkal to Vavuniya during May 12th to 20th that it would have jeopardized the lives of many.[172]

[171] Dr T. Vartharajah Before the LLRC at Colombo on 30th November, 2010

[172] The Chief Inspector/OIC, CID, Colombo in his letter dated 02/06/2009 to Director/CID states, that upon admission to Ward No 72 of the National Hospital Colombo, for necessary treatment he had personally contacted the Hospital Director to ensure priority medical attention and protection for his safety. The Neuro-Plastic Surgery Unit of the National Hospital Colombo, had given the surgery date for his nerve injury for August 2009. The doctor had written to the OIC/CID requesting permission to enter a private hospital to expedite surgery. By letter dated 3rd July 2009 the CID has taken necessary steps to grant the doctor's request. It was further stated that the request was subsequently withdrawn, as the surgery date was brought forward at the National Hospital due to the intervention of the CID. Representations made by a CID Officer before the LLRC. Transcript No.LLRC/IS/16.03.11/01.

Supply of humanitarian relief, including food and medicine to civilians in conflict areas

Introduction

4.143 Oral and written material was placed before the Commission by, senior Government officials, senior defence officials and Government doctors pertaining to the provision of a supply chain of food, medical supplies and medical personnel and medical facilities that was undertaken by the Government, with a view to ensuring an unimpeded flow of humanitarian relief to the people in affected areas. The Commission also heard several representations from civilians in the affected areas regarding the situation that prevailed concerning the supply of food, medical supplies and medical facilities during the final phase of the conflict.

4.144 The material before the Commission further disclosed that after the breakdown of the CFA and the subsequent intensification of the conflict, the ground realities were such that the supply of food, medicine and humanitarian supplies had to be addressed on a 'real time' basis. Therefore, in October 2006, the Government had established a Consultative Committee on Humanitarian Assistance (CCHA).[173] According to the Minutes of the CCHA meetings, the CCHA and its Sub Committees had met regularly and discussed important issues concerning humanitarian assistance to the conflict areas so that such issues could be dealt with expeditiously at the highest levels. The CCHA had been chaired by the Minister for Disaster Management and Human Rights. The other members had included Ambassadors of USA, Germany and Japan, the Head of the Delegation of the European Commission, representatives of relevant UN agencies such as United Nations High Commissioner for Refugees (UNHCR), United Nations Office of the Coordinator for Humanitarian Affairs (UNOCHA), World Food Program (WFP) etc. as well as the Chairman of the NGOs Committee, the Commissioner General of Essential Services, Government Agents and Senior Officials of relevant Ministries. There had been five sub-committees[174] that functioned under the CCHA. A high ranking Defence official explained that the CCHA was established as a problem solving mechanism, in cooperation with the Co-chairs and UN Agencies.[175] It was stated that throughout the period of military operations commencing from 2006 onwards until its conclusion, all

[173] Sri Lanka's Humanitarian Effort (SLHE), 2011. Presidential Task Force for Resettlement, Development and Security in the Northern Province (PTFRDS)

[174] Sub Committees: Resettlement & Welfare – co-chaired by Secretary/Ministry of Resettlement and Disaster Relief Services and Country Representative (CR) UNHCR; Logistics & Essential Services – co-chaired by Secretary/Ministry of National Building and Estate Infra-structure Development and CR WFP; Livelihood – co-chaired by Secretary/Ministry of Fisheries & Aquatic Resources & CR ILO; Health – co-chaired by Secretary/Ministry of Health and CR WHO; Education – co-chaired by Secretary/Ministry of Education and CR UNICEF. Source: PTFRDS. SLHE 2011.

[175] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August, 2010

issues pertaining to humanitarian assistance to conflict affected areas had been discussed at CCHA meetings.

4.145 The Commission was also informed that the President had in August 2006, appointed a Senior Public Officer as Commissioner General of Essential Services (CGES), to be in charge of ensuring an uninterrupted supply of food, medicine and other essential items to the affected areas. Furthermore, at the ground level, action had also been taken by the Army to appoint Liaison Officers in the affected areas to work with civilian officials, including the Government Agents, to facilitate the movement of these items. [176]

Delivery of Food, Medical Supplies and Other Essential Items to the conflict areas and the constraints experienced From August 2006 to January 2009

4.146 Material placed before the Commission shows that from August 2006 to the end of January 2009, food, medicine, building materials, fuel and non food items were transported by road to Kilinochchi and Mullaittivu districts. This exercise had been carried out by the Government Agent Vavuniya and the Security Forces Commander Wanni with the assistance of UN Agencies operating in these areas.[177] As the conflict had intensified in the Wanni, the road transport had become increasingly more difficult.

Method of deciding quantities for the supply of Humanitarian Assistance to Uncleared Areas and method of distribution

4.147 According to the material placed before the Commission, quantities of food items to be sent to the Wanni uncleared areas had been decided in consultation with the WPF, the Ministry of Nation Building, the Ministry of Resettlement and the respective Government Agents on the ground,[178] and with regard to medical supplies, the Ministry of Healthcare and Nutrition had made provision for the quarterly supplies to the two districts (Kilinochchi and Mullaittivu) in consultation with the Regional Director of Health Services (RDHS) of the respective districts. It transpires from the material placed before the Commission that even with the deterioration of the prevailing security situation, additional supplies had been sent at their request.[179]

4.148 The material further discloses that transportation had been done by the CGES with the assistance of the Sri Lanka Army and the ICRC. Distribution of the food had been by the

[176] *ibid*.
[177] CGES Response dated 2nd June 2010 to the US Dept of State Report (USSD Report) on Incidents during the recent conflict in Sri Lanka. Annex 4.12
[178] PTRDS: SLHE 2011
[179] *Ibid*.

Multi Purpose Cooperative Societies (MPCS) under the direct supervision of the GAs, WFP and ICRC.[180]

The ground situation in the Wanni

4.149 According to the material placed before the Commission, in August 2008, a central logistics hub[181] to supply food and essential items had been established in Vavuniya. It had been managed by the WFP to facilitate the storage of nearly 5000 MTs of food and non-food items, in order to accelerate supplies to the Wanni. These operational arrangements had been to reduce the turnaround time of the supply fleet to provide more supplies.

4.150 It transpires from the CCHA Meeting Minutes of 8th September 2008 that the UN and INGOs were based in Kilinochchi until September 2008 and co-ordinated their activities with the GAs. The Minutes also disclose that in September 2008 a decision had been taken by the Government to relocate the UN and INGOs to Vavuniya and the Government had requested them to continue to complement efforts taken by Government through the GAs. It appears from the Minutes that, some concerns had been raised on how humanitarian convoys could be used without an international presence in the affected areas of Kilinochchi and Mullaittivu. It had then been explained that the food assistance would go through Government channels. The WFP would take the food to either Vavuniya or Kilinochchi, and then arrangements would be made for the GA Kilinochchi to collect the food and distribute through the co-operative societies. It had been further explained at the Meeting that the MPCSs moved with the people and this had been the case even in the Eastern Province.[182]

4.151 Material placed before the Commission disclosed that the Government had made strenuous efforts to keep the road open for more than three days a week to allow food convoys. During the latter part of 2008, supplying of essential items into the Wanni had become progressively more complex. This had been due to the fact that the land route had to be changed due to security reasons. This had caused concerns both to the Government and the UN.[183] According to the material before the Commission the Security Forces had quickly opened alternate routes and facilitated the transport of humanitarian assistance.[184] At the CCHA meeting on 16th October 2008, the UN Resident

[180] *Ibid.*
[181] *ibid.*
[182] CCHA minutes 08th September 2008
[183] PTFRDS: SLHE 2011
[184] *ibid*

and Humanitarian Coordinator (UN RC/HC) had thanked the Government and especially the GAs of Vavuniya, Mullaittivu and Kilinochchi for their assistance in sending the food convoys to the Wanni. He had further stated that the WFP convoy was not able to go sooner due to the change of the route. The Minutes of the meeting further discloses that a Government convoy had nevertheless been dispatched as food stocks in the Wanni were in need of replenishment.

4.152 It was also brought to the attention of the Commission that GAs of Kilinochchi and Mullaittivu had been directed by CGES to maintain a 3 month buffer stock of 750 – 1000 MTs of essential food in their respective districts for distribution amongst civilians. Material was also placed before the Commission stating that even after the end of the conflict stocks of rice had been found in warehouses in Mullaittivu.[185]

4.153 The material before the Commission discloses that when residents of Kilinochchi had been forced by the LTTE to move with the LTTE cadres towards Mullaittivu in January 2009, the buffer stocks that were available at Dharmapuram for the Kilinochchi district, had been transported to Mullaittivu and handed over to the GA of the Mullaittivu district.[186] A former Government Agent of Kilinochchi, who held this office during the final phase of the conflict, when making representations before the Commission stated that, the CGES had given instructions to maintain food stocks for three months and that buffer stocks were to be maintained at the Government warehouses in Puthukudiyiruppu. She went on to explain that when she had left Puthukudyiruppu on 22nd January 2009 a three month buffer stock[187] had been maintained with a view to meeting the needs of the people.

4.154 A Government Official[188] who was interviewed by the Commission stated that from October 2008 displaced persons started moving towards the PTK area. Together with some INGOs, the ICRC and the UNDP he had been involved in finding land and putting up sheds and huts for IDPs. He further stated that until the end of December 2008 food supplies sent by the Government and the WFP were adequate to meet the needs of the people. He stated that buffer stocks also had been available. From January 15th 2009, onwards the situation had become difficult. However, he had remained until the end of January 2009 and distributed food and clothes sent by the Indian Government. When questioned by the Commission regarding the records of buffer stocks maintained he

[185] *ibid*
[186] PTFRDS: SLHE 2011
[187] Mrs. Imelda Sukumar before the LLRC on 04th November 2011
[188] Representations made by a government official before the LLRC. Transcript No. LLRC/IS/20.08.11/01

stated that it was attended to by the Additional Government Agent Mullaittivu, who is currently in Switzerland.

4.155 At the CCHA meeting on 21st November 2008, the UN RC/ HC had presented the report on the UN assessment mission which had followed the Second WFP Convoy to the Wanni in October 2008. According to the Report tabled, based on the UN Missions interviews with IDPs and civilian officials, it had been revealed that 'the top need' from people had been food, shelter and water and sanitation facilities. 'People are largely dependent on food rations and regular food supplies are going on. The calorie requirement is largely met but the people are not receiving a balanced diet due to lack of purchasing power and increase of food prices in October".[189] At the meeting it had been noted that there was no food shortage in the Wanni.

4.156 The Commission was also apprised of the fact that the convoys of food and medical supplies had been sent into the uncleared areas in the Wanni, despite the heavy presence of the LTTE.[190]

4.157 A high ranking Defence Official[191] when making representations before the Commission stated that a decision was taken by the Government to suspend military operations at regular intervals, in order to provide safe passage for the convoys of food and medical supplies, risking LTTE attack. These convoys had in fact been attacked by the LTTE on many occasions. It was further stated that the Government was also aware that a substantial part of the items sent for civilian use were forcibly taken by the LTTE. According to this Official, this fact had also been known to the representatives of UN Agencies, the ICRC and Government officials who had been present in these areas. A Government Official who was serving in PTK during the conflict also stated that the LTTE did take some part of the food but they had had their own stocks as well.[192] A civilian who had been in the conflict areas until the final days of the conflict stated that the Government had made all efforts to provide food and sustenance and humanitarian relief to the civilians affected by the conflict until March 2009. He further elaborated that the LTTE had taken some scarce items such as potatoes and vegetables.[193]

4.158 Material placed before the Commission[194] shows that from 16th October 2008 the LTTE had attacked the convoys carrying essential food to Kilinochchi and Mullaittivu districts

[189] CCHA Meeting Minutes 21st November 2008
[190] Mr. Gotabhaya Rajapaksa before the LLRC on 17th August, 2010
[191] *ibid*
[192] Representations made by a Government official before the LLRC. Transcript No. LLRC/IS/20.08.11/01
[193] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/20.08.11/01
[194] CGES Response to the USSD Report. Annex 4.12

on several occasions. According to this information, LTTE had shelled the convoys as set out below:

Convoy 2 (16 Oct. 2008) - Shelling 1st day (before Puliyankulam)
Convoy 5 (10 Nov. 2008) - Shelling (Omanthai) while returning
Convoy 10 (08 Jan. 2009) - Shelling (Nedunkerny) while returning
Convoy 11 (16 Jan. 2009) - Shelling (Puthukudiyiruppu) [lasted for 7 days]

4.159 Material before the Commission also reveals that the LTTE shelling of convoys had intensified with the attack on 16th January 2009 lasting for several days, with Puthukudiyiruppu coming under heavy fire. This had made the transportation of food extremely difficult. Nevertheless food supplies to the Kilinochchi and Mullaittivu districts had continued by road until the end of January 2009.[195] According to the clarifications received from CGES, the Government of Sri Lanka had requested the ICRC to negotiate a safe passage for food transportation with the LTTE but apparently they had not been able to do so.[196]

4.160 The CCHA Meeting Minutes of 30th January 2009, disclose that another Joint UN Rapid Needs Identification Mission had visited the Wanni on 29th December 2008. The Assessment Team comprising WFP, UNICEF, UNOCHA, ICRC and Government Agent staff had assessed the situation in Tharmapuram and Puthukudiyiruppu. According to the Assessment Team there had been a need for supplementary food such as onions because not as many convoys as were required could go in due to the security situation.[197]

4.161 At the same meeting the UN RC/HC had stated that more convoys were needed with a longer time period allocated for movement of the convoys. He had applauded the good work done through the Government Agent structures in delivery of relief assistance to IDPs in such circumstances.[198]

[195] *Ibid.*
[196] *Ibid.*
[197] CCHA Minutes of 30th January 2009
[198] *Ibid.*

Government and WFP Food Delivered to Kilinochchi and Mullaittivu from October 2008 to January 2009[199]

	Food sent by Government (a) (in MTs)	WFP & GA convoys (in MTs) (b)
October 2008	4460	1850
November 2008	2208	1679
December 2008	2483	2278
January 2009	864	1782
Total	10,015	8370(c)

(a) Information provided by CGES[200]

(b) 11 convoys plus GA convoy on 28/1/2009[201]

(c) Includes 781 MTs which had been available in the Wanni and purchased by WFP

4.162 The Commission was also apprised that in addition to the food quantities delivered and the available buffer stocks, during this time there had still been food available in the Wanni as shown by the local purchases made by WFP[202] and displaced persons were often carrying food with them.[203]

The ground situation after January 2009

4.163 It was brought to the attention of the Commission that with the deterioration of the security situation in the Wanni due the LTTE attacking food convoys, the Government was forced to look for an alternate route to maintain supplies to the affected areas. Air lifting food supplies had not been possible due to LTTE ground fire, the only option had

[199] The UN Guidelines for calculating food rations for refugees agreed upon by WFP and UNHCR states 'when refugees are dependent on externally provided food, the total food available to them from all sources should provide an intake of no less than 1900 kilocalories of energy per person per day, of which at least 8% should be in the form of protein and ten percent in the form of fat. The calories of energy, however can be modified depending on the circumstances of the population. Source: http://www.unsystem.org/scn/archives/npp12/ch3.htmThis translates to approximately 0.5kgs of food per day per person or 15kgs of food per person per month. Accordingly every 100,000 persons would need 1500 MTs per month.

[200] Letter dated 6th April 2011 from CGES. Annex 4.12

[201] Annex 4.13 Letter dated 22 June 2011from WFP. [201] 'the WFP carried 11 such convoys from 3rd October 2008 to 16th January 2009, delivering 8,369 MTs of food to both districts (Mullaittivu and Killinochchi). Heavily mined roads and lack of sufficient security guarantees have prevented further WFP convoys leaving to Wanni. However on 29th January 2009, Sri Lanka Government had organized a convoy which included 13 trucks carrying 153 MTs of WFP food. The convoy safely reached Wanni town of PTK". (http://www.wfp.org/countries/Sri-Lanka/News?page=1 – 6 February 2009)

[202] WFP letter dated 22 June 2011. Annexe 4.13

[203] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/20.08.11/01

been to use sea transport from Trincomalee to Mullaivaikkal. However, the drawback had been the non availability of port facilities for unloading at Mullaivaikkal.[204]

4.164 The Commission was briefed that the private vessel owners had been reluctant to deploy their ships, due to the heavy security risks. Therefore, the Government had hired two tug boats from the Sri Lanka Ports Authority on 17th February 2009, and commenced sea operations. Later a passenger vessel "Green Ocean", which transported passengers from Trincomalee to Jaffna, had also been hired for transportation of goods to Mullaittivu. Subsequently other private vessels had also been used for transporting relief items to Mullaittivu.[205]

4.165 According to the material before the Commission, the goods carried to Puthumatthalan area of the Mullaittivu Sea, with ICRC protection, had to be unloaded mid sea into small fishing crafts and on many occasions changes had to be made in unloading points due to increased threats by the LTTE. The food and medical supplies delivered to the shore, had been taken over by the Additional Government Agent of the Mullaittivu district for distribution among civilians.[206] The material further discloses that at the point of delivery some of the food would be appropriated by the LTTE who were in control of the area. A Government official who was interviewed by the Commission stated that when the food was unloaded from the ships, a percentage of food went to the LTTE, and he further stated that from the Government Agent down to the lower officials, food was being given to the LTTE as the LTTE were using false ration cards and obtaining supplies.[207] The normal procedure had been for the distribution of the food supplies through the network of MPCSs. However, it was pointed out that since the Additional Government Agent and his staff had themselves been displaced with the general populace, the distribution of food supplies had been from impromptu venues and not from the actual locations of the MPCSs. The Commission was also briefed that whatever shortages that prevailed during this period, had been mainly due to the absence of unloading facilities, without a proper port and the associated security risks.[208] The CGES also briefed the Commission that with all these difficulties, the Government had not suspended supplies of food and medicine to the people. During this period the Ministry

[204] CGES Response on the USSD Report. Annex 4.12
[205] *Ibid*.
[206] I*bid*. PTFRDS:SLHE 2011
[207] Representations made by a government official before the LLRC. Transcript No. LLRC/IS/20.08.11/01
[208] CGES Response on the USSD Report. Annex 4.12.
PTFRDS:SLHE 2011, states (confirmed by WFP letter dated 22 June 2011 to LLRC) that Shipments carrying 1049 MTs of food were diverted to Jaffna due to inaccessibility to the Wanni in April 2009, the OCHA report of 14th May 2009 indicates that an ICRC ferry carrying 25MTs of food had been trying to offload food for 3 days and could not do so due to the security situation. Another cargo vessel Oriental Princess was waiting with 500 MTs to be delivered.

of Health and Nutrition, had initiated action to transport essential medicines through passenger vessels, operated by the Government, to bring back patients from Mullaittivu to Trincomalee with ICRC assistance.[209]

Food Delivered via Sea Route to Puthumatthalan, Mullaittivu from 17th February 2009 to May 2009

Food MTs	Food sent by Government (a) (MTs)	WFP (b)	Remarks
February2009	835	80	CGES also sent 1315 L. Vegetable Oil
March 2009	1650	1080	CGES also sent 24000 packets of milk powder, and 1232 bags of "thriposha"
April 2009	1190.50	1119	1049.37 MTs destined for Wanni was diverted to Jaffna due to inaccessibility to the Wanni
May 2009	615.00 (c)	50	

(a) Information provided by CGES - this includes WFP food items

(b) WFP letter dated 22 June 2011

(c) Includes 500 MTs of food items sent on "Oriental Princess"

4.166 The CGES also informed the Commission that in May 2009 the Government had dispatched another 500 MTs of food supplies by seas on the "Oriental Princess."

4.167 A copy of a Situation Report on the Mullaittivu district prepared on 28th February 2009 by the then Additional Government Agent Mullaittivu district was made available to the Commission at its request. The report identifies shortcomings in the supply of food and other humanitarian relief for the IDPs in the conflict zone in particular in the villages of Palayamaththalan, Puthumatthalan, Ampalavanpokkanai, Valayanmadam , Mullaivaikkal West and Mullaivaikkal East.

4.168 The UN Joint Humanitarian Updates during the months of March, April and May 2009[210] refer to scarcity of food, water, sanitation facilities and medicines. A UNHCR spokesman in a statement on 18th May 2009 had referred to the fact that around 265,000 people had fled the conflict zone in North Eastern Sri Lanka and had endured extreme conditions in the conflict zone.[211]

4.169 Amidst these reports, towards the latter stages of the conflict, the WFP website of 5th May 2009 carried the following comment by its, Deputy Country Director.

[209] CGES Response on the USSD Report. Annex 4.12

[210] http://www.humanitarianinfo.org/srilanka_hpsl/Files/Situation%20Reports/Joint%20Humanitarian%20Update/LKH0005_Sri%20Lanka%20Joint%20Humanitarian%20Update_28%20March%20-%2030%20April%202009.pdf;.

[211] Briefing Notes of 18 May 2009 of Ron Redmond, UNHCR spokesperson. Available at http://www.unhcr.org/4a1269406.html

"No let down in food distribution to NFZ, over 3000 MT delivered.

The World Food Programme (WFP) country officials yesterday (May 4), while refuting baseless assumptions of 'inadequate' food supplies to the civilian hostages in the 4.5 sq.km No Fire Zone repulsed fiction with fact confirming 'no let down in food distribution to hostages in the NFZ'. "Since February till end of April the WFP in collaboration with the Sri Lankan government has sent over 3000 MTs of food supplies". [212]

Supplies of Fuel

4.170 The Minutes of Meetings of the CCHA shows that fuel requirements had been regularly discussed due to the importance of fuel for a variety of humanitarian needs such as for water bowsers and running of mobile clinics, generators, ambulances and storage facilities. According to these Minutes decisions had been taken to increase fuel supplies in an expeditious manner where an urgent need had been evident.

Estimates of Displaced Persons

4.171 A Senior Government Official serving in the Wanni,[213] stated before the Commission that in January 2009 there were nearly 350,000 people from the districts of Kilinochchi, Mannar, Vavuniya and Mullaittivu when she had left PTK on the 22nd of January 2009.

4.172 Another Government Official who had been serving in the conflict areas stated that the Government Agent Vavuniya had requested them to conduct a survey of the number of people in the Mathalan, Ampalavanpokkanai, Mullaivaikkal area and this was done through the 250 Grama Sevaka divisions which were functioning at the time. The basis of the survey had been the ration cards which had been issued to the people who were regularly given food stamps. Based on this survey he stated that there were about 330,000 people.[214]

4.173 A civilian who was interviewed by the Commission stated that based on a numerical assessment which was done on records available, there were approximately 319,000 people in Puthumatthalan, Mullaivaikkal Area. In April 2009 when the Army had gained control of the area between Mathalan and Pokkanai about 150,000 people had moved to Government held areas.[215]

[212] Available at http://www.wfp.org/content/no-let-down-food-distribution-nfz-over-3000mt-delivered
[213] Mrs. Imelda Sukumar before the LLRC at Colombo on 4th November 2010
[214] Representations made by a Government official before the LLRC. Transcript No. LLRC/IS/20.08.11/01
[215] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/20.08.11/01

4.174 UN RC/ HC at a CCHA meeting on 30th March 2009 had estimated the number of civilians to be between 120,000 to 180,000.[216]John Holmes, UN Under Secretary General for Humanitarian Affairs and Emergency Relief Coordinator when briefing the UN Security Council on 26th March 2009 had stated that their most recent estimate had been that there were approximately 150,000 to 190,000 civilians in an area of around 14 square kilometers. In his briefing he referred to the fact that fighting was continuing and the LTTE was making every attempt to hold the civilian population as hostage. He went on to state that risks of malnutrition and disease were growing and while efforts were being made to deliver relief items, these efforts were constrained because the access was limited to the sea route. Hence the quantities of food and medical supplies were not adequate.[217]

Civilian Views

4.175 A civilian who had made representations before the Commission stated, while recounting his experience in the Puthumatthalan NFZ, (from February 2009 onwards) that the area had no facilities economically, so there had been no food production and they had virtually been thrown into starvation with no drinking water, no proper food and no clothing and they had gone through untold suffering. He went on to state that when the ships carrying food anchored, the Additional Government Agent had gone to take over the supplies. The LTTE had accompanied the Additional Government Agent to the landing point and once the Government official signed the documents, the goods were handed over to him. At this point the LTTE had taken over the supplies.[218] He added that it would then be in LTTE stocks and due to mishandling and without proper storage the food had got damaged and the people were given damaged items. Therefore, when the people had eaten this food which had been distributed to them, they had developed diarrhoea or dysentery. He further stated that he had been a witness to a particular family becoming casualties due to this type of action by the LTTE. He also added that the LTTE had forcibly appropriated medical equipment and medicines. As there had been no proper preservation, nor proper stocking, food and medical supplies had been damaged. He explained that, all in all, everything was in the control of the LTTE. Another civilian stated that the LTTE took the food from the ships and replaced it with their old stocks.[219] A civilian, who appeared before the Commission on being questioned, also stated that when food stuff was brought the LTTE

[216] CCHA Minutes of 30th January 2009
[217] Briefing 26th March 2009 on the humanitarian situation in Sri Lanka, John Holmes, Under Secretary-General for Humanitarian Affairs and Emergency Relief Co-ordinator – Available at www.youtube.com/watch?v=IIwPXciHU_w
[218] Representations made by a civilian before the LLRC at Kayts on 14 November, 2010. Transcript No. LLRC/FV/14.11.10 /01-
[219] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/20.08.11/01

appropriated it and it was not distributed to the people.[220] Yet another civilian who had been forced to go to Mullaivaikkal during the displacement, stated that there were a large number of people moving so there were shortages in respect of food and water and they had been very weak and feeble.[221]

4.176 A Government official stated that after January 2009, while there were food supplies by ship, these supplies were not adequate. Several other civilians when interviewed by the Commission stated that while people did not starve, the food that was available was not adequate. People had been experiencing short supplies of milk food. Private societies had been distributing porridge to civilians. From 9th May 2009 food had become very difficult; the Government had provided food which the civilians had to stand in a queue to collect, at the same time the LTTE was distributing porridge from a point in Mullaivaikkal. Prices of food had gone up to such an extent that it was not affordable. Rice was 2000/- per kg.[222] A coconut had sold at Rs 1500/-.[223]A civilian who was interviewed by the Commission stated that while some people were well off others were suffering without food.[224]

4.177 A priest who was interviewed by the Commission stated that due to the intensification of the conflict the food supply mechanism had broken down and after February 2009 the situation had worsened – people had not had enough food and had to share food among themselves. He further stated that even storage had become a problem as the stores had been damaged and the quantities sent had been inadequate.[225]

4.178 A detainee at the Omanthai Detention Centre who had crossed over to the Government held area on 16th May 2009 at Wattuwal when questioned about his experience, stated that they had faced difficulties in respect of food and a scarcity of water.[226] Another detainee who crossed over in May 2009 by crossing the Nanthi Kadal lagoon stated that his wife had been weak as they had had food problems during that time.[227] [228]The

[220] Representations made by a civilian before the LLRC. At Poonagary 19th September 2010 Transcript No LLRC/FV/19.09.10 /02

[221] Representations made by a civilian before the LLRC at Nedunkerny on 15th August 2010. Transcript No. LLRC/FV/15.08.10/01

[222] Representations made by a Government official and 4 civilians before the LLRC. Transcript No LLRC/IS/20.08.11/01 and LLRC IS/21.08.11/01

[223] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/20.08.11/01

[224] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/20.08.11/01

[225] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/21.08.11/01

[226] Representations made in camera. Transcript No. LLRC/CS/02.10.10/01

[227] Representations made in camera. Transcript No. LLRC/CS/02.10.10/01

[228] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/20.08.11/01. He stated that there was some food distribution even in the month of May 2009 and they used to boil some rice and dhal but around the 9th of May things had become very difficult.

Commission also heard representations from civilians that a few very old people would have died of starvation[229]

4.179 A Government Doctor who had served in the Wanni until the final days of the conflict during the course of his representations to the Commission stated that the hospital staff with a few medical people went to Puthumatthalan and Mullaivaikkal. He further elaborated:

> ' …thinking in retrospect I cannot help concluding that we all managed to survive under deplorable conditions, unfit even for animals, fear, suffering, loss of life or limbs and the surrounding areas littered with dead bodies and carcasses of dying animals was all that the poor people had to bear with. Many did not have access to a square meal a day and most importantly and pathetically water was a hard to get commodity for many. Absent were toilets and even the most conservative women folk had to go in the open…'[230]

4.180 Another Government doctor making representations before the Commission stated that during the displacement people in Mullaivaikkal, Valayanmadan and Puthumatthalan lived in a very congested area and faced difficulties. Water for both bathing and drinking had not been adequate.[231]

Medical Facilities and Medical Supplies during the final stages of the conflict

General

4.181 Senior officials of the Ministry of Health stated that health institutions including the District General hospitals of Kilinochchi and Mullaittivu, Base hospitals in Puthukudiyiruppu and Mallavi were all functioning prior to the displacement of the people in these areas. All these hospitals were supplied, maintained and their staff paid for by the Government throughout the conflict. [232]

4.182 The senior officials of the Ministry of Health explained to the Commission the disaster management strategy initiated by the Ministry of Disaster Management in 2004 in the wake of the tsunami catastrophe experienced by Sri Lanka. Therefore, according to these officials, the infrastructure and policies were already in place and provided the necessary framework to deal with emergency situations in an expeditious manner.[233]

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[229] Representations made by 2 civilians before the LLRC. Transcript No LLRC/IS/20.08.11/01. They stated that one or two old people would have died. One stated that t his mother had also died due to the lack of nutritional food.
[230] Dr T. Sathiamoorthy Before the LLRC at Colombo on 19th November, 2010
[231] Dr T. Vartharajah before the LLRC at Colombo on 30th November, 2010
[232] PTFRDS:SLHE 2011
[233] Meeting with Ministry of Health Officials 07th April 2011. Transcript No. LLRC/IS/07.04.11/01

Medical Supplies

4.183 Material was placed before the Commission which disclosed that as in the case of the other provinces in Sri Lanka, medical supplies were made available to the districts in the Northern Province by the Ministry of Health. Based on the annual estimates made by the Regional Director of Health Services (RDHS), medical supplies were dispatched quarterly. Additional supplies had also been sent from time to time on requests made by RDHSs. When road access for aid convoys into Wanni was no longer possible due to escalation of the conflict, medical supplies had been shipped along with other essential items. These included medicine, surgical items, equipment and other life saving supplies requested by the RDHSs. This had continued until 9th May 2009. Emergency health kits had also been dispatched via sea during this period.[234] The Commission also heard representations explaining the logistics involved, where the medical supplies had been sent from the Medical Supplies Division in Colombo. The containers had been sealed and sent by road to the Regional Medical Supplies Division at Trincomalee. At Trincomalee the supplies were shifted to ships and taken via sea route to Puthumatthalan in the conflict zone.[235]

4.184 A Government doctor who was serving in the makeshift hospitals in the Final No Fire Zones brought to the attention of the Commission that during the three month period from 10th February to 8th May 2009, they had received drugs (8) times through the ICRC ship.[236]

4.185 At the CCHA meeting on 30th March 2009, the RC/HC had reiterated that medical items, shelter materials and chlorine tablets were an urgent requirement.[237]

4.186 Doctors serving in the conflict areas during the last stages of the conflict shared their experiences with the Commission in terms of the availability of medical supplies. One doctor[238] stated that they had faced difficulties and obstacles during the period of displacement, particularly in respect of the hospitals as they had to change the structure of the hospitals and the medical equipment and they also had had difficulties with the cold rooms and the storage of some drugs which had to be protected in cold rooms. He also added that they had experienced a shortage of anaesthetics.

[234] PTFRDS: SLHE 2011
[235] Meeting with Ministry of Health Officials on 7th April 2011. Transcript No. LLRC/IS/07.04.11/01
[236] Dr T. Vartharajah before the LLRC at Colombo on 30 November, 2010.; Also see Annex 4.14 for medical supplies sent to the conflict areas as provided to the Commission by the Ministry of Health.
[237] CCHA Minutes
[238] Dr. V. Shanmugarajah before the LLRC at Colombo on 19th November, 2010

4.187 Another doctor,[239] referring to the time at Puthumathalan 'makeshift hospital', stated that he had kept the Ministry of Health informed about the shortages of medicines. Since the land route had been closed, the Ministry had tried to send the medicines through ships hired by the Government with the assistance of the ICRC. When they had received the medicines they had treated the patients as much as possible and at the same time they had evacuated the injured people to Trincomalee via the same ship.

4.188 A non medical hospital employee who had been serving at Mullaivaikkal West and East makeshift hospitals when interviewed by the Commission stated that medical stocks did arrive on the ships but they had not had enough 'treatment' for severe injuries caused by shelling.[240]

4.189 The Situation Report as at 28th February 2009 prepared by the then Additional Government Agent Mullaittivu refers to a report of the RDHS Mullaittivu in which certain shortages of medicines had been highlighted.

4.190 A Senior Military Official who made representations to the Commission, stated that at the last stages of the conflict the Government accepted anyone who was willing to provide medical assistance. The Indian medical team which came before the conflict was over had been stationed at Pulmoddai where the civilians were being evacuated by sea. Similarly, there had been volunteers from other medical organizations.[241]

Hospitals/'Makeshift Hospitals'

4.191 Representation were made by several doctors and hospital staff who had served in hospitals and makeshift facilities during the final phase of the conflict, as well as civilians and Government officials, regarding the conditions prevailing at the time.

4.192 A doctor who had served in the Wanni district from 2007 explained to the Commission the difficulties encountered in working in a 'hostile environment' where they had to satisfy two 'governments' the LTTE and the Government and at the same time provide the services to the people.[242]

4.193 The Commission was briefed that after January 2009, all the hospitals had been 'makeshift hospitals', temporarily arranged mostly in Government school buildings. Therefore there had been no proper infrastructure facilities, no beds, medicines had

[239] Dr T. Sathiamoorthy before the LLRC at Colombo on 19th November, 2010
[240] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/20.08.11/01
[241] Lt. General Jagath Jayasuriya before the LLRC at Colombo on 08th September, 2010
[242] Dr T. Vartharajah before the LLRC at Colombo on 30th November, 2010

been supplied by the Government through ICRC ships but no other materials such as IV stands were available and other items required to look after patients had been difficult to find.[243]

4.194 A nursing officer who was interviewed by the Commission stated that when the PTK hospital was moved to a 'makeshift hospital' at Puthumatthalan, patients had to be kept on the ground on tarpaulins and it was after 5 days that they had been able to get beds. He went on to state that there had been no anaesthetics and painkillers.[244] A Government Official who was interviewed by the Commission and who had suffered injuries during the last stages of the conflict stated that he had been transferred from PTK hospital to the 'makeshift hospital' at Puthumatthalan in early February 2009 and there had been no beds in the hospital and the patients had been on the ground.[245] A hospital employee who had been serving in the Puthumathalan hospital until the 15th of April 2009 stated that there was water service available in the hospital but there had been a shortage of space and beds, and patients were lying on the floor and on tarpaulins – but until the time she left the hospital it had not been damaged.[246]

4.195 Another doctor who was serving in the Wanni during the last phase of the conflict stated that during the latter part of the conflict although they had a shortage of doctors and other para medical staff, they had provided health services to the people with the available staff and had also engaged the services of volunteers.[247]

4.196 The Medical Superintendent at the Mullaittivu District General Hospital stated before the Commission that as the fighting intensified and it advanced closer to the hospital, they had been forced under the circumstances to move the hospital as some of the patients had also started to move from the hospital. He added that on 5th January 2009, the hospital had been moved to a 'makeshift hospital' in Vallipunam. A school in Vallipunam had been converted to a hospital.[248]

4.197 A doctor serving at the Vallipunam makeshift hospital stated before the Commission that when the Government forces had come close to Vallipunam area they had moved to Puthumathalan and then to Mullaivaikkal.[249]According to him, in February 2009, since the Kilinochchi Hospital had also been moved from PTK (Kilinochchi Hospital first moved

[243] Dr. S. Sivapalan before the LLRC at Colombo on 24th November, 2010
[244] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/01.07.11/01
[245]Representations made by a civilian before the LLRC. Transcript No LLRC/IS/01.07.11/01
[246] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/20.08.11/01
[247] Dr V. Shanmugarajah before the LLRC at Colombo on 19th November, 2010
[248] *ibid*
[249] Dr. S. Sivapalan before the LLRC at Colombo on 24th November, 2010

to PTK) to Puthumathalan, it had been decided to divide the hospital infrastructure into two places to serve the people better. So Puthumatthalan makeshift hospital had been run by the Kilinochchi Hospital Administration and the Mullaittivu Hospital administration had moved to Mullaivaiikkal.

4.198 The Commission was also briefed that as the conflict intensified and the people of Kilinochchi were displaced, the Kilinochchi Hospital[250] had been moved to Puthukudiyiruppu Hospital and arrangements were also made to provide services from temporary locations in Vallipunam and Suhandirapuram.[251] Then as the conflict had intensified in the Puthukuduirruppu area from 3rd February 2009, the provision of hospital services had been moved to Puthumathalan. It was also stated that there was no hospital at Puthumatthalan but a school with incomplete buildings had been taken over and converted to a makeshift hospital. In addition, OPD services had been provided at Pokkanai, Mullaittivu and Valayanmadam.[252]

4.199 A civilian who came before the Commission recounted the difficulties he had in admitting his injured daughter to the Puthumatthalan Hospital.

> 'In April 2009. My daughter was admitted to Puthumatthalan hospital. That hospital was under the control of the LTTE. In that hospital the ordinary injured people were not given preference but the LTTE supporters were given preference and were taken in the ships. Injured LTTE family members were given preference. I had to plead with the medical officer there, I had to raise both my hands, and I worshipped him, I pleaded with him to take my daughter in the ship. This is not what I alone encountered, all the other families also encountered the same problem.'[253]

4.200 During the course of their representations to the Commission some civilians also referred to the fact that they had received adequate medical attention at the Puthumatthalan Hospital.[254]

4.201 It was further explained to the Commission that when the Puthumathalan area came under Army control on 19th April 2009, medical facilities had thereafter been provided

[250] Killinochchi captured on 2nd January 2009
[251] Dr. T. Vartharajah before the LLRC at Colombo on 30th November, 2011
[252] Dr. T. Vartharajah before the LLRC at Colombo on 30th November, 2010.
[253] Representations made by a civilian before the LLRC at Poonagary on 19th September, 2010. Transcript No. LLRC/FV/19.09.10/01
[254] Representations of 2 persons made in camera. Transcript Nos. LLRC/CS/30.12.10/01, LLRC/CS/20.09.10/01

from the makeshift hospital at Mullaivaiikkal which had been established earlier.[255] This had been later shifted to Vellamullivaikkal.[256]

4.202 The CGES briefed the Commission that in March 2009, an emergency medical unit had also been set up at Pulmoddai by the Government of India, on the request of the Government, assisted by the Sri Lanka Navy, to treat patients coming from Mullaittivu. The Government of India had provided medical assistance with a medical team consisting of 01 Surgeon, 01 Anaesthetist, 02 Medical Officers, 01 Lab Technician, 06 Nurses and 04 Junior Nurses.[257]

4.203 Medicines like antibiotics, drugs for diarrhoea, x-ray plant, surgical equipment and one theatre field table had been provided at this field hospital.[258] According to a circular from the Ministry of Disaster Management and Human Rights, between the period 10th February 2009 to 9th May 2009, 5,490 patients and 8,326 bystanders had been evacuated from Puthumatthalan and Mullaivaikkal. [259]

Treatment of Sick and Injured and evacuation of patients

4.204 Material placed before the Commission disclosed that the joint UN Rapid Needs Identification Mission to the Wanni on 29th December 2008, had observed that while health services were fully functioning at the PTK hospital, the capacity of 200 had been exceeded to around 500 patients. With limited staff and the movements of IDPs, concerns had been expressed regarding sustainability of medical supplies. It had been noted that more evacuations by the ICRC were required and that medical supplies, especially for surgical needs were required.[260]

4.205 The Commission was briefed that the Ministry of Health had already provided the medicines for the year 2009 in 2008 and the doctors were able to preserve these drugs and medications used for children, and they were able to provide medical facilities particularly to children until April 2009. It was also stated that since the area from Mathalan to Mullaivaikkal was very congested, the doctors had provided treatment to whoever was injured and also transferred pregnant mothers, injured and elderly

[255] Dr. T. Vartharajah before the LLRC at Colombo on 30th November, 2010
[256] Dr. V. Shanmugarajah before the LLRC at Colombo on 19th November, 2010
[257] CGES Response to USSD Report. Annex 4.12.
[258] Letter No. PTF/NP/1/7 from CGES dated 06th April 2009 giving detailed account of the humanitarian relief provided by the government for the civilian population of Jaffna and Wanni Districts at Annex 4.12
[259] Ministry of Disaster Management and Human Rights – Humanitarian Situation Update Bulletin #1 of 15th May 2009 Available at http://reliefweb.int/sites/reliefweb.int/files/resources/426672648C688ED9852575CC005888B4-Full_Report.pdf
[260] CCHA meeting minutes 30th January 2009

persons with the support of the ICRC by ship and given priority to this category of persons.[261]

4.206 The Commission was also briefed that there had been no supervision of the evacuation. Permission had to be obtained from the LTTE to evacuate the injured. It was stated that one or two LTTE cadres would come to see the injured and only if the injuries had been very bad that they had given permission to evacuate. [262]

4.207 The wife of a senior LTTE cadre who came before the Commission stated that she had suffered shell injuries and had been brought to Mathalan and then taken by ICRC ship to Trincomalee on 2nd April 2009.[263]

4.208 Another civilian recounting the experience of his daughter who had been conscripted by the LTTE on 25th February 2009, stated that ten days after she had been conscripted she had suffered an injury and he had looked after her for over a month at the Mathalan Hospital.[264]

4.209 A doctor who was serving at Mullaivaikkal makeshift hospital, when questioned by the Commission as to whether he was satisfied that the Army had done everything to take the elders and the injured to hospital or whether he thought something more could have been done, he stated

> 'the Army along with the military doctors came to Mullaivaikkal, they came and attended to the injured and the elders. May be they did not get the full medical attention at the time but at least they were given the maximum treatment that could have been given under the circumstances.'[265]

4.210 According to the UN Joint Humanitarian Update Report No. # 6 covering the period 1-15 May 2009, RDHS Mullaittivu had reported that the Mullaivaikkal 'makeshift hospital' had received a large number of patients and that its temporary wards had all been occupied. It was reported that capacity constraints had prevented many of the injured from receiving any treatment for days. According to this update, Health Ministry personnel in the combat zone had reported that there were no antibiotics in the hospitals. RDHS had also reported that 50% of the health workers had not reported to work due to heavy

[261] Dr. V. Shanmugarajah before the LLRC at Colombo on 19th November, 2010
[262] Dr. T. Sathyamoorthy before the LLRC at Colombo on 19th November, 2010
[263] Representations made by a civilian before the LLRC at Sittankerny on 12th November 2010 Transcript No LLRC/FV/12.11.10/01
[264] Representations made by a civilian before the LLRC at Mullaittivu on 20th September 2010. Transcript No LLRC/FV/20.09.10/02
[265] Dr. V. Shanmugarajah before the LLRC at Colombo on 19th November, 2010

shelling and continued fighting in the combat zone. A limited quantity of essential drugs sufficient for one week had been transported by the ICRC ship to Mullaivaikkal but it had not however included antibiotics.

The LTTE impact on the provision of Medical Facilities

4.211 The Commission also heard representations that after January 2009, the majority of LTTE cadres were also treated at the State run medical facilities although they had had makeshift facilities everywhere during the final phase of the conflict.[266] The Commission was briefed that the LTTE had maintained a separate ward in the PTK hospital for their injured cadres.[267] Prior to that time they had maintained their own medical facilities.

4.212 One of the Government doctors who was serving in the 'makeshift hospitals' during the final stages of the conflict when questioned as to whether they were aware of the number of LTTE casualties and civilian casualties, stated that they could not differentiate between an LTTE cadre and a civilian and they had treated everyone alike.[268]

4.213 It was also stated that the LTTE did take some of the medicines that were brought for the hospitals. A former senior LTTE cadre making representations before the Commission elaborated on this aspect and stated that there were LTTE hospitals and makeshift hospitals run by the LTTE. The LTTE had run their hospitals in areas dominated by them. The Government doctors and the LTTE doctors treated both the civilians and the LTTE cadres. From 6th January 2009 he stated that all (including LTTE cadres) had been treated at the Government hospitals. According to him at this stage the LTTE hospitals had been closed down. Medical supplies, and medicines from the Government hospitals had been utilized for the treatment of LTTE cadres.[269] It was further stated that the doctors who served in the LTTE dominated areas were also members of the LTTE. They were paid by the Government but had worked for the LTTE.[270]

Conduct of the Sri Lankan Security Forces during the movement of civilians and combatants into cleared areas

4.214 Having discussed the above Core Principles of IHL in relation to the surrender of combatants and Treatment of Persons Hors de Combat, the Commission wishes to place

[266] Dr Sathiamoorthy refers to LTTE having small hospitals during the final phase. He stated that they had had medicines as well but many of them had come to the Government hospitals for treatment. Source: Meeting with Health Ministry Officials on 07th April 2011

[267] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/01.07.11/01

[268] Dr.V. Shanmugarajah before the LLRC at Colombo on 19th November, 2010

[269] See also Representations made by a civilian before the LLRC at Poonagary on 19th September, 2010 Transcript No. LLRC/FV/19.09.10/01

[270] Representations made by an ex-LTTE member before the LLRC. Transcript No. LLRC/IS/28.02.11/01

in context the practical issues arising from the internal armed conflict in Sri Lanka in particular during the period January to May 2009 and in the immediate aftermath of the end of the conflict.

4.215 Material was placed before the Commission by Senior Defence Officials[271] on the method in which the Security Forces facilitated the surrender of combatants.

4.216 According to this material, all frontline troops had been instructed to receive all surrendees unhurt and without any discrimination and to send them to the rear areas for military police to take charge of them. It was stated that troops had complied with these instructions and that female soldiers had been employed to help female IDPs and surrendees.

4.217 A Senior Field Commander[272] when making representations before the Commission stated that on the 17th and 18th May 2009 there were no NGOs around and whoever surrendered, surrendered to the Military. He further stated that no sooner a combatant surrendered, or was captured, he or she was sent as quickly as possible to the rear areas where competent people from other sections within the Army handled them. He added that as Field Commanders they never kept surrendees or captives in their areas for long periods of time.

4.218 It was stated that in the initial stages field headquarters in the frontline had maintained detailed registers[273] but in the final stages as there was a massive inflow of IDPs and surrendees from the NFZ into the Government held areas, and for security reasons, they were only received by the forward troops and were treated for medical needs, and given food and other immediate needs and without much delay were transported to Omanthai, where proper registration was done.

4.219 According to the material placed before the Commission by a Senior Military Official, during the last two weeks of the operations, people had moved into Government held areas from 3 directions 1) the Mullaittivu edge of the Third NFZ i.e. South of the Wattuwal causeway, 2) towards Puthukudiyiruppu and 3) towards Chalai North of the Third NFZ. During the last two days the influx had been from the Mullaittivu side. [274]

[271] Source Ministry of Defence
[272] Major General Shavendra Silva before the LLRC at Colombo on 18th November 2010
[273] According to the Army detailed registered were maintained at field headquarters in the frontline up to about 19th January 2009 – Source Ministry of Defense
[274] Source Ministry of Defense

4.220 Material placed before the Commission also revealed that at the initial receiving point, headcounts had been taken. Females and males had been separated and body checked. The Commission was briefed that the count taken had the following information: number of men/women/children and families[275]. These receiving points had been established by forward Divisions, Brigades and Units. Later, 56 Division had handled the registration point at Omanthai and carried out the registrations by day and night.[276]

Registration

4.221 It transpires from the material placed before the Commission[277] that due to the large inflow of civilians and surrendees, the number of registration desks had been increased at Omanthai. Head counts which had been taken at the initial receiving points (which had been at the rear of the areas where operations were continuing) had been counter checked at the Omanthai registration point. The following information had been lodged at the Omanthai registration point. Name, identity card number,(if available), address, family details, places resided during the recent past, district, Grama Niladari Division, age, sex, and marital status.[278] Details had been taken down by hand and then, on a daily basis transferred to computers maintained by the Army at Vavuniya. This information was then transmitted through Computer Discs to Army Headquarters in Colombo where a data base had been maintained.[279]

4.222 At Omanthai announcements had been made requesting those who were involved with the LTTE to declare themselves. IDPs had been sent to camps and surrendees had been sent to Detention Centres. Due to the very large numbers of civilians that had crossed over on 17th and 18th May 2009, everyone had been sent to IDP centres at Vavuniya and registration had been done at this point. It had taken about 2 days to dispatch all the people to Vavuniya and the journey had taken almost 12 hours.[280]

4.223 The fact that details had been taken at registration points was also stated by civilians and detainees.[281] [282] [283]

[275] Source Ministry of Defense
[276] Source Ministry of Defense
[277] Source Ministry of Defense
[278] Source Ministry of Defense
[279] Source Ministry of Defense
[280] Source Ministry of Defense
[281] Representations made in camera. A witness in the course of his representations to the Commission stated that he had come into the Government held area on 16th May 2009 from Wattuwal. He further stated that all the names of his family members had been registered at Omanthai and while they were sent to the welfare camp he was retained at Omanthai.
[282] A former senior LTTE cadre appearing before the Commission stated that when they crossed over to the Government held area at Puthumatthalan, the Security Forces had cleared the way of land mines. He further stated that all the people who

4.224 It was also stated by a senior Defence Official that photographs of all IDPs and surrendees had been taken and this was available in the data base.[284]

4.225 A senior Field Commander[285] explained the difficulties experienced due to the mingling of the LTTE with civilians. He emphasized the fact that one could not be complacent just because someone surrendered with his hands raised, because a 'terrorist is a terrorist' and they were not sure whether the combatant would actually surrender or would give the Security Forces a severe blow. He stated that even a suicide bomber could come just by raising hands as a surrendee. Therefore he said that the Security Forces stopped surrendering cadres at a distance and then the Security Forces would send their own people to search them and once this had been done the surrendee had been taken over and handed over to the authorities.

4.226 In connection with the suicide attacks by LTTE cadres, a Senior Field Commander[286] making representations before the Commission stated that when the Security Forces had captured Puthumatthalan[287] and the civilians were able to cross over to Government held areas, there had been three suicide attacks in the midst of the civilians in which several civilians had died. He further stated that during the last stages on the evening of 17th May 2009, in Vellamulllivaikkal and Karaiyamullivaikkal when the civilians were trying to take their vehicles towards Mullaittivu, the LTTE sent the last suicide vehicle packed with over a few hundred kilos of explosives into the Army line and it had exploded.

Concerns of Surrendees

4.227 The Commission on its visits to the detention centres heard from detainees that, due to the conditions not being conducive at the time of surrender, to obtain all the details of their involvement with the LTTE, they were languishing in detention/rehabilitation centres, even though at the time of surrender they had not been with the LTTE.

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crossed (and there had been thousands) were gathered in a place about 1km from Puthumatthalan and then civilians and LTTE cadre were separated – civilians went to welfare camps and the surrendees were taken to Vallipunam School. The government had provided transport by ways of trucks and buses to take the civilians to welfare camps and the surrendees to the school. When questioned by the Commission as to whether there were any ICRC officers present during the surrender he stated that there were none as the foreigners had left by then. When questioned further he said that even the local ICRC officers were not present. Only the Army had been present.

[283] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/21.08.10/01

[284] Source Ministry of Defence

[285] Major General Kamal Gunaratne before the LLRC at Colombo on 08th September 2010

[286] Major General Shavendra Silva before the LLRC at Colombo on 18th November 2010

[287] April 2009

4.228 The chief priest of a Hindu Temple who was a detainee at the Omanthai Detention Center stated that he had joined the LTTE movement in 1996, at the age of 18 years when he was in school, and had left the movement after a short while. He admitted that it had been a mistake. He had surrendered to the Army pursuant to an announcement that any person who had been with the LTTE movement even for a day should surrender. He further explained that the situation had not been conducive to making a detailed statement to the Army at the time of surrender regarding the extent of his involvement with the LTTE.[288]

4.229 Another detainee at Omanthai, stated before the Commission that, he had been forced to join the LTTE and had been with the political division for 10 months but had left in 1996 and had been punished by the LTTE for 19 months. He further stated that he had no connection with the LTTE for the past 15 years. He explained that he and his family had been rescued from a bunker by the Army in Puthumatthalan and had been taken by bus to Omanthai. An announcement made at Omanthai requested anyone who had been with the LTTE even for a day to register, and he had done so with his family. He had had no problems and had gone back to the camp. However on 2nd July 2009 two Army officers had come on a bike and asked him to come to the Kachcheri. They had said that, since it was 15 years since he had left the LTTE there was no problem and there would be a three day inquiry after which he could go back to the camp, however he had been there (in detention) for 435 days.[289]

4.230 The Commission heard several representations of a similar nature from the detainees at Omanthai.[290] [291] [292]

4.231 On being questioned on this matter by the Commission, a Senior Military Official[293] stated that it was a difficult task for one agency to interrogate and profile 10,000 ex

[288] Representations made in camera

[289] Representations made in camera

[290] Representations made in camera**: :** A detainee at Omanthai made representations before the Commission stating that he was not a member of the LTTE but a paid labourer and when he had been at the Ananda Coomaraswamy Camp there had been an announcement asking people who were or had any connections with the LTTE movement to register. So he had told them of his problems and had been asked to board a bus after being told that he would be given some vocational training. He alleged that he had been in detention for 1 year and 4 months despite not having any connection with the movement other than being employed as a labourer.

[291] Representations made in camera**. :** A detainee at Boossa, making representations before the Commission stated that he had been forcibly taken by the LTTE, as one member of each family had to join the LTTE. He had been with the LTTE for only 15 days digging bunkers. Then he had crossed over to the Government held area. He had initially been taken to the Ananda Coomaraswamy welfare camp and had first been told that he would not be taken[291] but after two months he had been arrested at the camp and had been in detention for 18 months.

[292] Representations made in camera: Another detainee at Boossa stated that after having being forcibly recruited by the LTTE he had been posted to the forward defense lines for 6 months and then he had run away. Having surrendered to the Army, he said he was in detention for 19 months.

LTTE cadres. Initially, once they had declared their involvement with the LTTE they had been profiled on the basis of over 10 years involvement/ 5-10 years involvement/ 1-5 years involvement / some months involvement and some days involvement. He further stated that there were instances where individuals may not admit truthfully the extent of their involvement – so finding out details had not been easy. He added that investigations were continuing and that it was on the basis of what had been revealed during the investigations that the Security Forces had been able to unearth equipment in the NFZs after the end of the operations. He explained that while some may not have spoken the truth one hundred percent, they had been profiled on the basis of their initial declarations and investigations were continuing. He further stated that over 1000 had been identified as strong LTTE cadres and legal action was to be taken but the others would be rehabilitated and reunited with their families. According to him "it is a gamble we have to take".

For further details on the Treatment of Detainees refer Chapter 5 – Human Rights.

Treatment of Civilians and Surrendees by the Security Forces

4.232 Representations were made before the Commission by civilians who had crossed over to Government held areas, as well as former combatants regarding how they had been treated by the Security Forces.[294]

4.233 Several detainees (former LTTE cadres) in the course of their representations stated that they had crossed over to Government held areas with civilians and as "civilians"[295]. They further stated that they had crossed in large numbers after the capture of Puthumatthalan on 21st April 2009, and from Wattuwal during the period 15th to 18th May 2009.

(i) A detainee stated that[296] after the Army had taken control of Mathalan, Pokkanai[297], 28 LTTE cadres also surrendered along with his family. When he had asked them why they were crossing over to Government held areas they had stated that if they continued to fight they would have died. According to him about 150,000 people had crossed at that time and the LTTE cadres had changed into civil clothes.

[293] Lt. General Jagath Jayasuriya before the LLRC at Colombo on 8th September 2010
[294] Refer also paragraphs 4.95 – 4.102.
[295] i.e. not in LTTE uniforms
[296] Representations made in camera.
[297] This was in the third week of April 2009

(ii) A detainee[298] stated that on 15th May 2009 he escaped amidst heavy shelling and surrendered at Wattuwal. He said that "thousands and thousands of people came to the safety area, even the LTTE cadres came and surrendered pursuant to radio news calling people to surrender". He stated that he and his entire family were brought to Omanthai and at Omanthai there had been another announcement that if any person had had any involvement even for a day with the LTTE he/she should surrender.

(iii) Some had been taken to Welfare Camps along with their families, having intimated their involvement with the LTTE to the Security Forces. Subsequently further announcements had been done at camps and upon surrender they had been taken away to detention centers.[299]

(iv) The Security Forces had assisted them when crossing over to Government held areas – they had also been given food and drink and medical attention wherever possible in the circumstances.[300]

4.234 A Senior Public Official[301] who had served in the affected areas until the latter stages of the conflict, when questioned by the Commission whether anyone had reported that persons trying to cross over from LTTE areas to Army held areas carrying white flags had been shot at by the Army she stated that such incidents had not taken place and even her driver had escaped with a white flag. She added that when the public were moving with a white flag nothing had happened and everyone had crossed over safely with the help of the Army and several persons including her clerk had confirmed this.

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[298] Representations made in camera.

[299] Representations made in camera. A witness stated that he had been taken to the welfare camp on 21st April 2009 and then he had been taken into custody on 2nd July 2009.
Representations made in camera. A witness stated that he surrendered on 21st April 2009 when the area he was in was surrounded by the Army (Puthumatthalan). They had all been taken to Omanthai where there had been an announcement saying that if anyone had been in the LTTE even for a day they should surrender. He had registered and then he had been taken to Ramanathan camp but on 1st June 2009 he had been taken into custody.
Representations made in camera. A representer stated that he had surrendered at Mathalan on 15th April 2009 alone. He had been at the Tharmakulam Rehabilitation Camp in Vavuniya for 1 year and 4 months and had been promised to be restored to normal life but had been sent thereafter to the TID and to Boossa Detention Camp.

[300] Representations made in camera. A witness stated "We swam through the Nanthi Kadal Lagoon on 14th May 2009. We came to Mullaittivu and from there we came to Vavuniya about 600 people. The water was deep there and people who could swim managed it but people who could not swim died there. My wife was very weak and we had food problems… we were rescued by the Army. They provided us with food etc and advised us to go to a place where it would be safe for us."
Representations made in camera, A witness stated**:** "I surrendered to the Army at Puthukudiyiruppu on 15th May 2009 and told them everything about me. The Army treated the injuries inflicted on my wife and children and gave us food and allowed us to stay the night and on 16th May morning they sent us to Omanthai."
Representations made by a civilian before the LLRC at Ariyalai on 11th October. 2010. Transcript No. LLRC/FV/11.10.10/01. A representer stated that she had delivered her second child at Wattuwal hospital and on 17th May she had been taken to Pulmoddai by the ICRC.

[301] Mrs. Imelda Sukumar before the LLRC at Colombo on 04th November 2010

4.235 The Commission also inquired from a Senior Military Official[302] regarding the purported allegations that persons who were surrendering were killed by the Security Forces. In response he stated:

> "…. I don't agree with that allegation … because I told you that we went into action on this humanitarian operation with a clear mind set and whoever surrendered was handed over to the authorities and nobody was assassinated as surrendees."

4.236 The Commission wishes to also refer to the incident narrated at paragraph 4.107 above concerning an alleged attack on a boat carrying civilians which was flying white flags.

4.237 A detainee at Omanthai stated that when he was crossing to the Government held area from Mullaivaikkal on 16th May 2009 there were people in front of him carrying white flags and there had been large numbers crossing. He also stated that the Army had assisted them and advised them of the route to use and asked them to carry a white flag.[303]

4.238 A civilian who had been working at the Puthumatthalan hospital and had crossed over to the Government held areas on 18th March stated that they had held a white flag and crossed over and that the Army had treated them well at the time.[304]

4.239 A Government official who had crossed over to the cleared areas on 20th April stated that they had raised their hands and slowly proceeded towards the Army and the Army had taken them.[305]

4.240 On being questioned by the Commission as to whether there were any INGOs or other independent organizations on the spot who would have witnessed the process of surrender a Senior Military Official[306] responded that there had not been any INGOs in the vicinity.

Representations to the Commission regarding alleged disappearance after surrender/arrest

4.241 The representations referred to above by the Defence Authorities, civilians and detainees must be viewed together with the following representations made by relatives of former LTTE cadres who allege that LTTE cadres who had been asked to surrender by the Security Forces and had done so, or who had been arrested by the Security Forces were now missing.

[302] Major General Kamal Gunaratne before the LLRC at Colombo on 08th September 2010
[303] Representations made in camera.
[304] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/21.08.11/01
[305] Representations made by a government official before the LLRC. Transcript No. LLRC/IS/20.08.11/01
[306] Major General Kamal Gunaratne before the LLRC at Colombo on 08th September. 2010

4.242 The wife of a former LTTE cadre who appeared before the Commission on the 9th of October 2010 at the Batticaloa District Secretariat stated that on 17th May 2009, at Wattuwal her husband who was a member of the LTTE had been taken by the Army together with 8 others. She further stated that her husband had been injured and he had been given medical treatment by the Army before being taken away. She went on to say that she had wanted to go with her husband but had been told to take her children and go to the welfare camp. When she had been in the camp persons who had introduced themselves as CID officers had come to the camp asking her to come with them to see her husband in hospital but she had been scared and had not gone. According to her they had then gone and never come back and she has not heard of her husband thereafter.[307]

4.243 The wife of another former LTTE cadre described a similar incident, to the Commission. She stated that her husband had been identified and arrested by the Army on 17th May 2009 at Wattuwal**.** When she had wanted to go along with her husband the Army had said that they were taking him for an inquiry and after the inquiry they would release him and had asked her to go to the welfare camp with her children. She said she has not had information so far about her husband.[308]

4.244 During its sittings at St Anthony's Church Kayts, the Commission heard representations from a spouse of a former LTTE cadre, who stated that she and her family had entered the Army held area at Wattuwal on 17th May 2009, and her husband had been taken in for questioning by the Army on 19th May 2009. According to her the Army had said that he would be released in 3 days but she still has no idea about his whereabouts.[309]

4.245 During its sittings at Kudathanai East, similar representations were made by the spouse of a former LTTE cadre. She stated that her husband who was a member of the LTTE was disabled. He was an amputee. She further stated that he had surrendered on 17th May 2009 at the Wattuwal checkpoint and the Security Forces had said they would investigate and release him but she had not had any contact with him since then.[310]

4.246 The wife of a former LTTE Political Wing member stated that her husband had surrendered on 18th May 2009 at Wattuwal along with others – she said there was a long queue may be thousands. She further stated that her child had been sick and she

[307] Representations made by a civilian before the LLRC at Batticaloa on 09th October 2010. Transcript No. LLRC/FV/09.10.10/01
[308] Representations made by a civilian before the LLRC at Batticaloa on 09th October 2010. Transcript No. LLRC/FV/09.10.10/01
[309] Representations made by a civilian before the LLRC at Kayts on 14th November 2010. Transcript No. LLRC/FV/14.11.10/01
[310] Representations made by a civilian before the LLRC at Kudathanai East on 13th November 2010.Transcript No. LLRC/FV/13.11.10/01

had explained this to the Army who had let her go and taken her husband in. She stated that the following former LTTE cadres also surrendered with her husband – Kutty, Elamparathy, Babu, Lawrence Thilakar and Yogi. Her husband had surrendered with father Francis Joseph. According to her, when she had tried to follow her husband, the Army officers had identified him and told her that she need not go with him. She said she had had no news of her husband.[311]

4.247 The wife of another former LTTE cadre[312] appearing before the Commission at the District Secretariat in Madhu stated that on 16th May 2009 she and her three children had come to Mullaittivu from Mullaivaikkal. Her husband had not accompanied them but had joined them on 17th May 2009. On 18th May 2009 in the morning he had surrendered to the Army at Mullaittivu together with some important LTTE cadres (Elamparthy , Kumaran, Ruben, Babu and Velavan). They had surrendered accompanied by Father Francis Joseph and had been taken away in a bus**.** She stated that she had not heard from him since then. The Commission made inquiries regarding Father Francis Joseph from Father Muralitharan the Parish Priest and Assistant Administrator of Madhu Church, and he stated that Father Francis Joseph had been a political teacher of the LTTE and people had told him that Father Francis Joseph had been in the conflict area until the end with the LTTE and was supposed to have surrendered and since then his whereabouts were unknown.

4.248 During its sittings in Ariyalai on 11th November 2010, the wife of a former LTTE member stated that they had come to Wattuwal on 17th May 2009 and her husband had surrendered to the Army on 18th May 2009**.** She said that the Army using loudspeakers called people to surrender indicating that all those who surrendered will be given common pardon. She further stated that the others who went with her husband in the bus were Puthuvai Rathinathurai – LTTE poet, Lawrence Thilakar, and Baby Subramaniam**.** She said that she has had no news of her husband.[313]

4.249 During its sittings in Kandawalai, the wife of an ex LTTE employee stated that on 17th May 2009 she and her husband had crossed over to the Army held area at Wattuwal and on 18th May 2009 in the morning there had been an announcement around 9.30 a.m. or 10 a.m. that anyone who was in the LTTE even for a day should surrender. She further stated that her husband was not a member of the LTTE but a paid employee who was in charge of taking photographs and operating videos for the LTTE. On that

[311] Representations made in camera
[312] Representations made by a civilian before the LLRC at Madhu on 08th January 2011. Transcript No. LLRC/FV/08.01.11/01
[313] Representations made by a civilian before the LLRC at Ariyalai on 11th November 2010. Transcript No. LLRC/FV/11.11.10/01

date a lot of people led by Father Joseph Francis had surrendered including Yogi and Rathinathurai**.** She said that she has had no news of her husband.[314]

4.250 During its sittings in Kandawalai a mother made representations before the Commission stating that Father Francis and Father Reginald had persuaded her son in law and his entire family to surrender on 18th May 2009 at Wattuwal. She stated that she had pleaded with Father Francis but he had insisted that the entire family should surrender even though only her son in law was a member of the LTTE. Her daughter had been 26 years old and her daughter's younger child had been born in 2006. She said that she has had no news of them after they were taken from Wattuwal to Mullaittivu in 16 buses.[315]

4.251 During its sittings in Ariyalai on 11th November 2010, another spouse of a former LTTE cultural wing member stated that she had handed over her husband to the Army on 18th May 2009**,** early in the morning with the assistance of Rev. Fr. Francis**.** She further stated that she had no news of her husband. [316]

4.252 During its sittings in Tellipalai on 12th November 2010, the Commission heard representations from a civilian who stated that her son in law had said that he, his wife and children had decided to surrender to the Army at Mullaivaikkal through a priest from Caritas**.** She said she had no news of the family.[317] The wife of a former LTTE cadre stated that her relatives had told her that her husband had surrendered to the Army on 17th May 2009 at Wattuwal with Father Joseph. She further stated that she had no news of him.[318]

4.253 During its sittings in Velanai on 14th November 2010, the wife of a former LTTE cadre stated that on 17th May 2009 she had come to the Wanni checkpoint**.** While they were sitting near the checkpoint the Army had come and dragged her husband away and she had followed him. She further stated that when she had followed him the Army had pushed her aside and put him in a bus. She added that she had no news of his whereabouts. She also stated that he was no longer a member of the LTTE at the time that he was taken away.[319]

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[314] Representations made by a civilian before the LLRC at Kandawalai on 19th September. 2010. Transcript No. LLRC/FV/19.09.10/01

[315] Representations made by a civilian before the LLRC at Kandawalai on 19th September. 2010. Transcript No. LLRC/FV/19.09.10/01.

[316] Representations made by a civilian before the LLRC at Ariyalai on 11th November 2010 – Transcript No. LLRC/FV/11.11.10/01

[317] Representations made by a civilian before the LLRC at Tellipalai on 12th November 2010. Transcript No. LLRC/FV/12.11.10/01

[318] Representations made by a civilian before the LLRC at Neervely on 11th November. 2010. Transcript No. LLRC/FV/11.11.10/02

[319] Representations made by a civilian before the LLRC at Velanai on 13th November. 2010. Transcript No. LLRC/FV/13.11.10/02

4.254 During its sittings in Jaffna the Commission heard representations from the wife of a former LTTE cadre. She stated that on 19th April 2009 her daughter had sustained injuries and she had accompanied her daughter on the ship – her husband and son had remained with relatives. She further stated that her relatives had said that her husband and son had crossed over to the Army held area through Rettiwaikkal on 17th May 2009 and surrendered but she had no news of them.[320] Another spouse of an LTTE cadre making representations before the Commission stated that her husband is supposed to have surrendered to the Army on 18th May 2009 at Mullaittivu and she had no news about him. She had been in hospital after the birth of her second child.[321]

4.255 During its sittings at Neervely RDS, the Commission heard representations from a spouse of another former LTTE cadre. She stated that on 17th May 2009 she, her husband and children had surrendered to the Army at Wattuwal. After being taken to the Welfare camp they had been brought to the Omanthai checkpoint for registration. She said at this point her husband had been taken away and she and the children had returned to the Welfare camp. She added that the Government people had been treating her well but she wanted to trace her husband.[322]

4.256 Another spouse of a former LTTE cadre who appeared before the Commission at the District Secretariat Batticaloa stated that on 17th May 2009 they had been stopped at the Omanthai checkpoint and told that anyone who was associated with the LTTE should come forward. She further stated that about 3,000 people had come with them from Puthukudiyiruppu and about 700 including her husband had surrendered to the Army. She and her children had been allowed to go. She stated that she has had no news about her husband's whereabouts.[323]

4.257 Two spouses of former LTTE cadres appearing before the Commission at the Divisional Secretariat Eravur Pattu, Chenkalady made representations regarding the fact that on 17th May 2009 at the Omanthai checkpoint, their husbands had surrendered pursuant to an announcement made by the Security Forces that anyone who had been associated with the LTTE even for one day should declare himself. The wives had been asked to go

[320] Representations made in camera.
[321] Representations made by a civilian before the LLRC at Ariyalai on 11th October 2010. Transcript No. LLRC/FV/11.10.10/01
[322] Representations made by a civilian before the LLRC at Neervely on 11th November 2010. Transcript No. LLRC/FV/11.11.10/02
[323] Representations made by a civilian before the LLRC at Oddamavaddy on 10th October, 2010. Transcript No LLRC/IS/10.10.10/01

to the welfare camps. They stated that they have had no news regarding the whereabouts of their respective spouses.[324]

4.258 During its sittings in the District Secretariat Madhu[325], the mother of a former LTTE cadre stated that her son had surrendered to the Army at the Madhu church in May 2009 and Father Desmond Kulas the Administrator of the Madhu church had witnessed the surrender. The Army had told her that her son was being taken for some investigations but she had not heard from him and he was not in any of the detention centres.

4.259 A former senior LTTE cadre, who surrendered after the capture of Puthumatthalan in April 2009, stated that none of the former LTTE cadres who crossed over to the Government held areas with him were missing. They had been middle level LTTE cadres and they had either been released or were in custody. He also stated that some of the high ranking LTTE members surrendered at the latter stages of the conflict in May 2009[326]

4.260 Please also see Annex 4.15 for a list of more persons stated to have surrendered to Army custody and alleged to be missing.

[324] Representations made by 2 civilians before the LLRC. At Chenkalady on 10th October 2010 Transcript No LLRC/IS/10.10.10/01 According to one of them another former LTTE cadre who had surrendered at the same time was in Boossa although she did not name him.

[325] Representations made by a civilian before the LLRC at Madhu on 08th January 2011 Transcript No LLRC/IS/08.01.11/01

[326] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/28.02.11/01

SECTION III

Evaluation of the Sri Lanka Experience in the context of allegations of violations of IHL

Introduction

4.261 It has been stated that a State that is engaged in an armed conflict must ensure that procedures and practices for identifying lawful targets are extremely robust. Advanced technologies help to make targeting even more precise. The principle of distinction and proportionality should not remain theoretical and should be implemented rigorously throughout the planning and execution of military operations in order to ensure that such operations are conducted in accordance with the applicable law.[327] These propositions applicable to both international and non international armed conflicts, give full meaning and content to the core principles of IHL.

Measures to safeguard civilians and avoid civilian casualties

4.262 In evaluating the Sri Lanka experience in the context of allegations of violations of IHL, the Commission is satisfied that the military strategy that was adopted to secure the LTTE held areas was one that was carefully conceived, in which the protection of the civilian population was given the highest priority. In reaching this conclusion the Commission has taken due account of all the material placed before it which had outlined in detail, *inter alia*, steps taken to identify precise targets, such as deployment of long range reconnaissance patrols, procedures followed in carrying out air strikes, utilization of UAVs etc. The Commission has also taken cognizance of the fact that substantial investment had been made by the Defence Establishment on sophisticated surveillance equipment. The Commission also notes in this regard that the movement of the Security Forces in conducting their operations was deliberately slow during the final stages of the conflict, thereby evidencing a carefully worked out strategy of avoiding civilian casualties or minimizing them.

4.263 These factors are consistent with the position that protection of civilian life was a key factor in the formulation of a policy for carrying out military operations. They militate against any proposition that deliberate targeting of civilians was part and parcel of a

[327] See for example response of Harold Koh Legal Advisor US State Department on questions raised regarding the lawfulness of the US operation against Al Qaeda and Osama bin Laden. Refer http://opiniojuris.org/2011/05/19/the-lawfulness-of-the-US-operation-against-osama-bin-laden

policy, although specific episodes which warrant further investigation are referred to above in Section II – *vide* paragraphs 4.106, 4.107, 4.109, 4.110, and 4.111.

4.264 To appreciate the challenge confronting the Security Forces, account must also be taken of the fact that military operations had to be conducted against an enemy who had no qualms in resorting to a combat strategy which paid little heed to the safety of the civilian population and in fact made the civilian population very much a part of such strategy.

4.265 The military policy referred to above, must be carefully examined in the context of the multiple challenges arising from the ground situation which existed during the final phase of the conflict, before reaching a definitive conclusion on whether in fact there had been any violations of IHL during this period.

No Fire Zones (NFZs)

4.266 Among the critical situations presented by the ground realties which demanded the particular attention of the Commission and a considered conclusion, was the civilian presence in the NFZs and the surrounding areas.

4.267 The Commission notes that no formal agreement had come into existence between the Government and the LTTE, regarding the promulgation of NFZs, which would normally be the case in establishing such zones and which would have prescribed mutual rights and obligations of the parties. However, the correspondence between the Commander of the Army and the Head of Delegation of the International Committee of the Red Cross (ICRC) made available to the Commission, has provided the Commission an insight into the circumstances under which such zones were set up. In a letter dated 19th January 2009 from the Army Commander to the Head of Delegation of the ICRC it is stated that, "with the intense fighting in the Wanni area, many civilians have moved from their original lands and have become displaced mainly in and around the outskirts of Visuamadu and Puthukudiyiruppu." The letter further observes that with the progress of the operations deeper into LTTE held territory, the presence of the IDPs and civilians should be taken into account to guarantee their safety and security, in order to avoid collateral damage. Accordingly, the letter suggests that considering the above and the safety and security of IDPs, a "NFZ/Safe Area" for IDPs/Civilians be demarcated in order to keep the IDPs/civilians away from the fighting and to reduce greatly the number of potential casualties. The letter also reflects the fact that the first NFZ had been well demarcated, and with much attention being paid to the requisite details.

4.268 However, the material also revealed the fact that the NFZ was located in fairly close proximity to the Army frontlines. The situation had become complicated by the fact that the LTTE had moved into the NFZ together with their heavy weapons and placed them amidst civilians. This had converted the NFZ into a virtual operational base from which the LTTE had directed fire against the Security Forces.

4.269 This appeared to have led to a situation where the Security Forces had been compelled to resort to return fire in response to LTTE attacks from within the NFZ, thereby exposing the civilian being held hostage by the LTTE in the NFZ to danger.

4.270 The fact that the LTTE had moved heavy artillery into the NFZs and had taken cover behind civilian lines and had used the NFZ to carry out attacks against the Security Forces is reflected in the representations by a civilian, e.g.;

> "in the NFZ, the LTTE comes and places their guns and when the LTTE comes and place their guns in the midst of the people and they start firing at the Army, then the firing is returned."[328]

4.271 It further transpired from these and other representations that the Army had never initiated attacks in the Safety Zones and return fire was in response to LTTE attacks.

4.272 It also became evident that the creation of the 'safe corridors' was to facilitate the safe movement of civilians out of the NFZs into Government held areas. The material further discloses that this in fact did happen until the LTTE resorted to the use of suicide cadres and prevented the IDPs/civilians from moving, with a view to using them as a human shield.

4.273 The material discloses the fact that, as the operations progressed, the LTTE had continued to prevent the civilians from moving into the Government held areas and had drawn them further into areas held by them. As a result of this, the Security Forces had been compelled to re-demarcate the boundaries of the NFZ and create a second and a third zone to match the evolving situation. This is evidenced by the correspondence between the Sri Lanka Army and the Head of Delegation of the ICRC on the demarcation of the No Fire Zones.[329] Thus in a letter dated 11th February 2009 from the Army to the Head of Delegation of the ICRC, it is stated, *inter alia*, "considering the intense fighting deeper into the LTTE held areas and safety and security of internally displaced persons (IDPs)/civilians during operations, it is suggested that previously defined "No Fire

[328] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/28.02.11/01
[329] See SLA letter dated 19 January, 2010 to ICRC attached as Annex 4.3. See footnote 47.

Zone/Safe Area" be modified to match with the present situation. This would not only keep the IDPs/civilians away from the fighting, it would also reduce greatly the number of potential civilian casualties." The above must also be viewed together with the action of the Security Forces to regularly air drop leaflets encouraging civilians to move to Government held areas and assuring them of their readiness to receive them. This manifests the continuing commitment of the Security Forces to take all feasible precautions to protect civilians as the conflict evolved.

4.274 The conclusions to be drawn from these representations is that the conduct of the LTTE, in gross violation of IHL obligations on the protection of civilians, radically transformed the very character of the NFZ and made it an integral part of the LTTE's combat operations to achieve their military objectives. The necessary inference is that this strategy was directed towards provoking the Army to return fire. Had the NFZs been established following the general practice in inter - state conflicts i.e. through a mutually negotiated agreement, the Government confronted with such a situation would have been entirely justified in terminating the agreement and ceasing the protection afforded to the NFZ, on the basis of a material breach of the agreement. These factors should not however detract from the fundamental humanitarian considerations that need to be taken into account, given the large concentration of civilians within the safety zones.

4.275 The forced movement of civilians generated by the LTTE, into a narrow strip of land bounded on two sides by water, presented its own dynamics and challenges in terms of terrain and geographical realities. This factor, taken together with the LTTE strategy of continuing to place mobile artillery amidst civilians, the aggressive conscription of civilians by the LTTE including young children from within the safety zones, the continued provision, largely through coercion, of a range of support services by civilians to the LTTE establishment and the LTTE cadres fighting in civilian clothing, combined to present a complex challenge in the full realization of the humanitarian objective which was the underlying basis for the creation of NFZs and the demarcating of the safe corridors for civilians to move into Government held areas. This unprecedented situation also brought to surface, the shortcomings of the existing IHL regime in its application to internal conflicts between States and non State armed groups, an aspect that is adverted to subsequently.

4.276 The material presented, discloses the fact that the objective behind the establishment of the NFZs, namely the protection of civilian life, was realized when a large number of civilians held as a 'human shield' by the LTTE came over to the Government areas using

the ‘safe corridors’ demarcated to facilitate the movement of civilians into Government held areas.

4.277 The sequence of events that followed after the creation of the First NFZ as described above, and the LTTE practice of shooting civilians who were trying to escape into Government held areas, and forcing them to move with the LTTE, and using suicide bombers to discourage civilians moving into safe areas, presents a more complex picture, which did not lend itself to well demarcated safe corridors, making the movement of civilians into Government held areas more difficult, thus exposing the civilians to danger, as the conflict intensified. Therefore the declaration of the Second and Third NFZs appear to have been forced by the prevailing circumstances which left no choice to the Security Forces. This was in contrast to the situation in the First No Fire Zone. Nevertheless despite these challenges the fact remains that civilians continued to move into Government held areas from various points in the Second and Third NFZs.

4.278 It would appear that given the conduct of the LTTE within the NFZs, particularly in the Puthumatthalan stretch going down to Mullaivaikkal, which had the effect of merging the NFZ into the theatre of military operations, the Field Commanders would have been confronted with a difficult choice, i.e., either returning fire and neutralizing the LTTE gun positions from which they were firing at the Security Forces or refraining from directing return fire towards such positions. The first course of action, no doubt places the civilians who would have expected conditions of safety in considerable jeopardy. At the same time, the return fire to neutralize the LTTE gun positions would have been necessary to preserve to the maximum extent possible the continued existence of the NFZ for the protection of the civilians.

4.279 The second course of action of refraining from returning fire would have defeated the very purpose of the entire objective of the operations, leaving the Security Forces no option but to virtually surrender. As already explained, much would depend on the precise circumstances prevailing at a given time and Field Commanders would be presented with difficult choices between protecting civilians and also protecting their own troops. In this regard it would also be pertinent to recall that several States have interpreted the term ‘military advantage’ in relation to the Principle of Proportionality in attack, as including the security of the attacking forces.[330]

[330] Customary International Humanitarian Law. Volume 1 Chapter 4 page 50 footnote 30

4.280 The Commission is constrained to observe that the above scenario presents a major dilemma to Field Commanders, who would be required to take quick decisions *in situ*, weighing contending considerations of ensuring the protection of civilians, while securing a military advantage. Such decisions would have to be based on their assessment of the information from all sources available to them at the relevant time. In such circumstances it is not easy to second guess with the benefit of hindsight, difficult decisions that are made in the heat and confusion of an armed conflict.

4.281 The Commission also notes in this regard a State's obligation to select an objective, the attack on which may be expected to cause the least danger to civilian lives, and to civilian objects, is not an absolute obligation as it only applies when a 'choice is possible'.[331]

4.282 On consideration of all facts and circumstances before it, the Commission concludes that the Security Forces had not deliberately targeted the civilians in the NFZs, although civilian casualties had in fact occurred in the course of crossfire. Further, the LTTE targeting and killing of civilians who attempted to flee the conflict into safe areas, the threat posed by land mines and resultant death and injuries to civilians, and the perils inherent in crossing the Nanthi Kadal Lagoon, had all collectively contributed to civilian casualties. It would also be reasonable to conclude that there appears to have been a *bona fide* expectation that an attack on LTTE gun positions would make a relevant and proportional contribution to the objective of the military attack involved.

4.283 Having reached the above conclusions, it is also incumbent on the Commission to consider the question, while there was no deliberate targeting of civilians by the Security Forces, whether the action of the Security Forces of returning fire into the NFZs was excessive in the context of the Principle of Proportionality. Given the complexity of the situation that presented itself as described above, the Commission after most careful consideration of all aspects, is of the view that the Security Forces were confronted with an unprecedented situation when no other choice was possible and all "feasible precautions" that were practicable in the circumstances had been taken.

4.284 In this context, the Commission wishes to recall the difficulties involved in the practical application of the Proportionality Principle referred to in Section I above, in determining

[331] Customary International Humanitarian Law Volume 1 Chapter 5 page 67 footnote 103 '……thus 'an attacker may comply with it if it is possible to do so, subject to mission accomplishment and allowable risk, or he may determine that it is impossible to do so'.

the excessiveness or otherwise of an attack in relation to incidental loss of civilian life, much being left to the judgment of Field Commanders in a given situation.[332]

4.285 It would also be pertinent in this context to recall that, in determining questions of State responsibility in respect of death, injury or property damage in the course of military operations, international tribunals referring to doctrinal authorities, have described as "next to impossible", the obtaining of a re-construction in front of a tribunal of all the conditions under which the "combat action" took place with an adequate reporting of all accompanying circumstances.[333]

Some Specific Instances of Death or Injury to Civilians

4.286 The Commission is faced with similar difficulties in attempting a re-construction of certain incidents involving the loss of civilian lives which have been brought to the attention of the Commission. While the Commission finds it difficult to determine the precise circumstances under which such incidents occurred (as described in Section II above, vide paragraphs 4.106, 4.107, 4.109, 4.110, and 4.111) the material nevertheless points towards possible implications of the Security Forces for the resulting death or injury to civilians, even though this may not have been with an intent to cause harm. In these circumstances the Commission stresses that there is a duty on the part of the State to ascertain more fully, the circumstances under which such incidents could have occurred, and if such investigations disclose wrongful conduct, to prosecute and punish the wrong doers. Consideration should also be given to providing appropriate redress to the next of kin of those killed and those injured as a humanitarian gesture that would help the victims to come to terms with personal tragedy, both in relation to the incidents referred to above and any other incidents which further investigations may reveal.

Hospitals /Makeshift Hospitals

4.287 Hospitals providing care for the wounded and the sick, both civilian and non combatants enjoy protection under IHL. The Commission received considerable material on instances of shells falling on hospitals as described in Section II above.

The overall picture that emerges from this material is as follows:

[332] IHL Principles Section I

[333] In the matter of arbitration between Asian Agricultural Products Ltd (AAPL) v. Republic of Sri Lanka, International Centre for the settlement of investment disputes (ICSID) case no. ARB/87/3 June 27th 1990.

(i) Intensive fighting was going on in close proximity to hospitals. The LTTE had gun positions/armouries in close proximity to hospitals, including within the one kilometer radius safe areas demarcated for certain hospitals. In one instance it was stated that the LTTE had mounted heavy artillery at the boundary of the hospital premises. In some other instances the LTTE had made use of hospital premises for parking their vehicles and even 'to lead operations against the Army'.[334]

(ii) These factors disclose a trend whereby the LTTE had merged protected premises to be an integral part of their combat strategy;

(iii) The Commission also notes that some medical facilities described as 'makeshift hospitals', although under the formal supervision of the Government Medical Superintendant, the LTTE had exerted, *de facto*, considerable control over them. This was evidenced also by the statement of one medical doctor who explained to the Commission the difficulties encountered in working in a 'hostile environment' where they had to satisfy two 'governments', the LTTE and the Government and at the same time provide services to the people.[335]

4.288 The Commission is satisfied, on a careful consideration of all the circumstances that shells had in fact fallen on hospitals causing damage and resulting in casualties. However, the material placed before the Commission points to a somewhat confused picture as to the precise nature of events, from the perspective of time, exact location and direction of fire.

4.289 There was a substantial volume of material relating to the damage caused to the Puthukudiyiruppu Hospital and this is a matter of particular concern to the Commission.

4.290 In this backdrop, the challenge faced by the Commission is the determination of responsibility for the acts in question, on the basis of concrete evidence.

4.291 It is well recognized that determining the precise source of shelling or direction of artillery fire is a complex task and much would depend primarily on the correct technical methodology, such as crater analysis being undertaken contemporaneously with an incident, supported by witness testimony on the direction of fire, having regard to his or her vantage point.

4.292 In making this determination, the difficulty faced by the Commission is twofold;

[334] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/10.03.11/01
[335] Dr T. Vartharajah before the LLRC at Colombo on 30th November. 2011

(i) It is evident to the Commission that no immediate investigation in the nature of a crater analysis had been undertaken, presumably given the intensity of the conflict, in the areas in question.

(ii) None of the persons making representations was able to state with certainty that they were in a position to definitely confirm that the shells which fell on the hospitals, originated exclusively from the side of the Sri Lanka Army or from the LTTE. Civilians who appeared before the Commission stated that there had been shelling from both sides. One civilian stated that 'when a shell lands, the general anticipation was that it was the Army – cannot state exactly'.[336] Another ex LTTE cadre in the course of his representations had stated that the Puthumathalan hospital was in fact accidentally shelled by the LTTE for which they had subsequently apologized.[337]

4.293 Thus the Commission's task of reaching a definite conclusion as to who was responsible for the shelling of hospitals and loss of lives / damage to property is made extremely difficult by the non – availability of primary evidence of a technical nature and also the fact that supportive civilian evidence is equivocal in nature and does not warrant a definitive conclusion that one party or the other was responsible for the shelling.

4.294 Although the Commission is not in a position to come to a definitive conclusion in determining responsibility that one party or the other was responsible for the shelling, nevertheless given the number of representations made by civilians that shells had in fact fallen on hospitals causing damage to the hospitals and in some instances loss or injury to civilian lives, consideration should be given to the expeditious grant of appropriate redress to those affected after due inquiry as a humanitarian gesture which would instill confidence in the reconciliation process.

Supply of humanitarian relief, including food and medicine to civilians in conflict areas

4.295 The Commission wishes to note the strong humanitarian tradition and welfare policies and practices in Sri Lanka in extending assistance to people in distress, whether during conflict or during natural disasters such as the tsunami. It would be pertinent to recall in this context that the UN Special Rapporteur Francis Deng had observed that "Sri Lanka presents the unusual situation of a Central Government providing relief to aid persons under the control of the main opposition group. In a world replete with examples of Governments and rebel groups using food as a weapon against civilian populations, the

[336] Representations made by a civilian before the LLRC. Transcript No LLRC/IS/01.07.11/01
[337] Representations made in camera

situation in Sri Lanka is one that deserves closer attention if not more publicity as an important precedent.''[338] Although the comment was made in 1991, the Commission observed that successive Governments have continued to follow this policy.

4.296 Representations made before the Commission, especially by ordinary people and civil society groups, have shown that this tradition and these practices have continued during several decades of the conflict and against overwhelming odds, during the terminal phase of the conflict. The Commission also wishes to note that there had been no major concerns expressed by the international community regarding the supply of humanitarian relief to affected persons whether due to the conflict or natural disasters until the final phase of the conflict.

4.297 As observed above in Section I, IHL requires that parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. In this context, the Commission notes the large scale effort over the years by the Government, civil society groups and other national and international agencies to provide essential food, medicine and other supplies to the conflict affected areas with the full knowledge that a certain portion of such supplies was being appropriated by the LTTE in areas where they were dominant.

4.298 The Commission also notes that the supply of food to the civilians held by the LTTE up to early 2009 was at reasonably adequate levels approximating by and large to the internationally accepted nutrition intake for refugees. This was possible through the food convoys sent by land up to January 2009. However, these adequacy levels appear to have declined during the months of February, March, April and the first half of May 2009 as the conflict intensified and the Government was compelled to resort to a sea supply route to provide essential supplies to a large number of people held by the LTTE in the narrow stretch of land in Puthumatthalan area across the Nanthi Kadal lagoon. It becomes evident to the Commission from the material before it that these supplies had been taken despite enormous logistical difficulties of sustaining a continuous flow of humanitarian supplies amidst an ongoing conflict.

4.299 It must be acknowledged that the maximum quantities of food supplies, that were possible under the prevailing circumstances had been delivered by the sea route to ameliorate the conditions confronting the affected civilians mainly due to the collective

[338] Report of the Representative of the Secretary General, Mr. Francis Deng submitted pursuant to the Commission on Human Rights Resolution 1993/95 at the 50th Session of the Commission on Human Rights relating to Internally Displaced Persons. Available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G94/103/57/IMG/G9410357.pdf?OpenElement

efforts of the Government, in particular the GAs and the Security Forces as well as international agencies such as the ICRC and WFP, and other volunteers who had provided selfless service on the spot in the final No Fire Zones.

4.300 Despite the unprecedented constraints imposed by the dynamics of the conflict and the deficiencies in the distribution system evident under those circumstances, the practices of the LTTE to appropriate food supplies that restricted a reasonable and equitable distribution of the limited supplies available, the Government, especially the CGES, the international agencies such as those referred to above and other volunteer organizations, provided praiseworthy services and assistance in ensuring the maximum possible supplies to those affected persons during the last several weeks of the conflict.

4.301 However, notwithstanding these efforts the fact remains that the civilians had been affected in terms of the adequacy of readily available food supplies to meet their nutritional needs particularly with the intensification of the conflict. The extreme conditions which appear to have prevailed after February 2009 are set out in detail in Section II above.

4.302 The Commission wishes to recall in the above context, the well recognized requirement that a State faced with difficulties of the type encountered by the Government in providing humanitarian supplies, should seek necessary international assistance to ensure uninterrupted supply of such assistance to affected civilians.[339]

4.303 Having examined the material before it, the Commission is of the view that the Government with the co-operation of the international community, in particular the agencies referred to above as well as civil society groups had, in a spirit of international co-operation and solidarity, taken all possible steps in getting food and medical supplies and other essential items across to the entrapped civilians despite enormous logistical difficulties of the operation.

4.304 The Commission also wishes to refer to the fact that it had before it material giving varying estimates of the number of civilians who were held hostage by the LTTE in the NFZs. Despite the Commission's best efforts to verify the estimates with documentary evidence from relevant civilian authorities, it has not been possible to secure any original documentation. However, the non availability of such documentation does not

[339] In this regard see the General Comment No. 29 of the Human Rights Committee in the context of the Right to food under the International Covenant on Economic, Social and Cultural Rights.
"State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.'

have a decisive bearing on the fact that what was practically feasible under the circumstances was undertaken. The strenuous efforts taken by the Government in co-ordination with international agencies such as the ICRC and WFP, as described above, does not warrant any possible inference that there was a deliberate intention to downplay the number of civilians in the NFZs for the purpose of starving the civilian population as a method of combat.

4.305 In dealing with the question of Humanitarian Supplies, it is necessary for the Commission to advert to the question of medical facilities and supply of medicines during the final stages of the conflict. The overall picture that emerges from the material before the Commission is that until January 2009, the necessary infrastructure to deal with emergency situations had existed with permanent hospital infrastructure in the Wanni by and large being used to cater to the evolving civilian needs. It also transpires that the Ministry of Health had provided the necessary medicines and other supplies required for hospitals.

4.306 However this position appears to have changed significantly as the conflict intensified, the primary factor being the close proximity of the hospitals to the theatre of conflict, which resulted in a need to 'shift' hospitals to makeshift facilities basically in school buildings which could not under the circumstances replicate fully functional hospitals with all attendant infrastructure facilities.

4.307 This situation was compounded by the fact that whatever supplies and facilities that were available had to be shared in the treatment of civilians as well as injured LTTE cadres. In fact there is material to show that even at the PTK hospital the LTTE had maintained a separate ward for its injured cadres. While recognizing that non combatants are entitled to medical treatment, it must be noted that this would have exacerbated the demand for medical supplies and facilities under difficult circumstances and to that extent, the availability of medical supplies and facilities for the treatment of civilians would have diminished.

4.308 The Commission acknowledges that under these trying conditions, civilian patients had undergone considerable hardship. In connection with the supply of medicines, the Commission also notes the references made regarding the inadequacy of medicines, referred to in Section II above.[340]

[340] See further paragraphs 4.186 – 4.189 above.

4.309 Notwithstanding all these, the fact remains that civilians had received medical attention to the extent practically possible amidst an on-going conflict and evacuation of patients had taken place with the assistance of the ICRC, despite the LTTE imposing restrictions on the movement of injured civilians. Medicines had also been supplied through the sea route even as late as May 2009.

4.310 The only possible conclusion that the Commission could arrive at on a consideration of all these factors is that by objective standards applicable under normal circumstances, there appears to have been a paucity of medicines and the medical facilities appear to have been inadequate. However this factor has to be placed in the context of the extraordinary conditions which prevailed amidst the intensity of the conflict and the proximity of the hospitals to the theatre of conflict.

4.311 The Commission also recognizes that given the inconclusive nature of the material before it, and taking into account the humanitarian considerations, the issue of medical supplies to civilians in the conflict areas during the final days of the conflict is a matter that requires further examination. Such an examination should take into consideration all relevant factors such as the number of civilians injured, the types of injuries, the number of LTTE cadres injured and treated, and the capacity to treat the injured in the makeshift hospitals, against which the actual supplies could be assessed.

Conclusions regarding the conduct of the Sri Lankan Security Forces during the movement of civilians and combatants into cleared areas

4.312 The requirements of IHL pertaining to the treatment of surrendees are set out in Section I above. These requirements would apply with equal force to civilians who moved into the safety of cleared areas from the conflict zone.

4.313 On an examination of the totality of the material presented, it appears to the Commission that until about January 2009, there had been a general adherence to required procedures for registration of surrendees and of civilians who crossed over to the safety of cleared areas. The material discloses that field headquarters in the frontlines maintained detailed registers.

4.314 However, the situation appears to have changed thereafter when there had been an influx of civilians coming over to the cleared areas. This situation had been compounded by the fact that LTTE cadres had also intermingled with civilians who came over. It had been complicated by several LTTE suicide attacks which had taken place in the midst of civilians who were crossing over to cleared areas. Therefore detailed registrations had

not been practically feasible and only headcounts had been taken – namely men, women, children and families after which they had been transported to Omanthai where detailed registrations had been done.

4.315 In the final few days in May 2009, with the huge influx, a situation had arisen where it had been virtually impossible to carry out registrations *in situ* at the point of cross over and civilians and combatants had been sent to IDP centres at Vavuniya. Announcements had been made at these Centres requesting any person who had even had one day's association with the LTTE to declare themselves. According to several detainees conditions had not been conducive to making a detailed statement at the time of surrender regarding the nature and extent of their involvement with the LTTE, whether they were conscripts or those who had joined voluntarily.

4.316 The Commission also received representations from both civilians and detainees concerning the treatment accorded by the Army when they crossed to the cleared areas. It was stated that those who waded across the Nanthi Kadal lagoon were rescued by the Army and provided with food and medical assistance where required. Others spoke of assistance rendered by the Army in helping civilians to avoid land mines as they crossed over to cleared areas. In the Commission's view this is exemplary conduct on the part of the Sri Lanka Army which is consistent with the requirements of IHL and a task undertaken under the constraints of a continuing conflict situation, even in some cases exposing themselves to physical danger as the LTTE had been firing at civilians who were crossing over to the cleared areas.

4.317 There were also representations made to the Commission by both civilians and detainees which point to the fact that wherever civilians and combatants had crossed raising a white flag when moving to cleared areas, the Army had facilitated their movement. However one instance of an alleged firing by the Navy at a boat carrying people trying to escape from the clutches of the LTTE while white flags were being raised by the people in the boat, was brought to the attention of the Commission. In this incident the Navy had apologized on the basis of a mistaken identity. The Commission's observations on this incident are set out in paragraph 4.286 above.

4.318 In the midst of these positive elements in the conduct of the Sri Lanka Army, there is a matter of grave concern to the Commission from the IHL and HR perspective. The Commission received a number of representations concerning alleged disappearances of LTTE cadres who had surrendered to or had been arrested by the Sri Lanka Army particularly in the final days. Family members of these cadres including some key

members of the LTTE stated (refer Section II paragraphs 4.242 to 4.258 and 4.260) that when they along with their husbands had reported at Army points, they had been told that their husbands were required for investigation and were being detained and the family members were asked to proceed to the IDP camps. In some other cases, the spouses had seen their husbands surrendering to the Sri Lanka Army. The Commission also heard instances of families surrendering to the Army. The consistent theme that emerges from these representations is that the last they had seen of their husbands was their surrendering to the custody of the Sri Lanka Army but had not heard or seen them since then.

4.319 The Commission must emphasize that in respect of these representations from a number of people who stated that they had directly witnessed certain persons surrendering to the custody of the Army, it is the clear duty of the State to cause necessary investigations into such specific allegations and where such investigations produce evidence of any unlawful act on the part of individual members of the Army, to prosecute and punish the wrongdoers. The Commission must also stress in this regard that if a case is established of a disappearance after surrender to official custody, this would constitute an offence entailing penal consequences. Thus the launching of a full investigation into these incidents and where necessary instituting prosecutions is an imperative also to clear the good name of the Army who have by and large conducted themselves in an exemplary manner in the surrender process and when civilians were crossing over to cleared areas, which conduct should not be tarnished by the actions of a few.

The Conduct of the LTTE

4.320 The grave violations of Human Rights by the LTTE have been dealt with in detail in the succeeding Chapter on Human Rights and in the accompanying Annexes.

4.321 The grave violations of core Principles of IHL by the LTTE are referred to above, particularly with regard to the NFZs as described in Section II. However by way of concluding observations, it is incumbent on the Commission to advert to the following:

The very fact of using civilians as human shields to advance their military strategy, together with;

- the practice of placing and using military equipment in civilian centres,
- the shooting at civilians trying to escape into safe areas,

- the conscription of young children to engage in combat even in the final stages of the conflict,
- the laying of landmines and Improvised Explosive Devices (IEDs) knowing that civilians would be exposed to danger even outside the conflict zone,
- the forcible use of civilians to provide support services to them to carry out their military objectives – thereby making the identification of civilians and combatants an almost impossible task particularly in the congested final NFZs, and
- the continued use of suicide attacks causing loss of innocent civilian lives,

underpins not only the blatant disregard of Principles of IHL by the LTTE, but also highlights the task that the Security Forces were faced with in securing a military advantage while combating an enemy which had no respect for civilian life.

In framing charges against LLTE cadres against whom investigations reveal prima facie material for prosecution, due account must be taken of the violation of core Human Rights and International Humanitarian Law Principles so that appropriate punishment, commensurate with the grave nature of such crimes could be meted out.

4.322 The section that follows deals comprehensively with the lacunae in the existing legal framework to deal with acts of Non State Armed Groups such as the LTTE and the imperative need to address this issue.

Concluding Observations on the IHL regime in its application to Internal Conflicts

4.323 In the light of what has been discussed above concerning the Sri Lanka experience, it would be pertinent for the Commission to make some concluding observations on the broader question of the application of IHL principles to internal conflicts involving non state armed groups.

4.324 The question of NFZs in the Sri Lanka experience brings to the forefront the complexities and challenges involved when applying IHL principles in internal conflict situations where non state armed groups act in blatant disregard of the Principle of IHL. The laws of armed conflict were conceived in the context of inter-state conflicts where clear battle lines were drawn, with armies facing each other on the battlefield and where, one's enemy was clearly distinguishable. The civilian remained distant from the battlefield. Traditional IHL principles and concepts such as the 'Safe Zone concept' were accordingly developed in a context where the boundaries of the theatre of conflict were well defined, and parties mutually agreed on well demarcated 'safety' or 'neutralized'

zones for the protection of civilians and which the States concerned respected in the conduct of hostilities.

4.325 In the recent and growing phenomenon of internal conflicts involving States and non state armed groups, the well demarcated traditional battle ground has receded to the background. In this scenario a serious dimension emerges, where the civilian and civilian installations including 'Safety Zones' merge into the theatre of conflict and are integrated into the overall combat strategy of the non state armed groups, including the use of civilians as human shields for the prevention of military advancement. In one of the cruelest ironies of present times, laws meant to protect the civilian are cynically manipulated by the non state armed groups for military advancement, to the ultimate detriment of the civilian.[341]

4.326 In this context, it is interesting to note from the legal literature, that during the Diplomatic Conference of 1977, which adopted Additional Protocols I and II to the Geneva Conventions, States, particularly those confronted with internal armed conflicts adopted a somewhat cautious approach towards Additional Protocol II applicable to internal armed conflicts resulting in an instrument minimalist in nature in contrast to Additional Protocol 1.[342] This position could be explained, both on the basis of the legal complexity involved in the application of some of these principles in an intra-state context, and more particularly, the political sensitivity of States, in the introduction into the domestic domain, of a body of Principles which had emerged and traditionally applied in the context of inter-state hostilities. Internal conflicts were generally treated as a matter pertaining essentially to domestic law enforcement, hence the reluctance to the formulation of an elaborate set of international legal principles relating to internal conflicts. However, contemporary developments, as demonstrated above, require a careful re-evaluation of these principles.

4.327 Given the rudimentary nature of the legal framework regulating internal conflicts involving non state armed groups, issues which constantly arise in such situations such as, the cynical disregard by the non state armed groups to the traditional protection afforded to the civilian – e.g. integration of 'Safety Zones' into combat strategy and the

[341] Underlining the complexities present in such situations the Legal Advisor to the US Department of State, referring to the Al Qaeda and the killing of Osama Bin Laden has stated that '….this is a conflict with an organized terrorist enemy that does not have conventional forces, but that plans and executes its attacks against us and our allies while hiding among civilian populations. That behavior simultaneously makes the application of international law more difficult and more critical for the protection of innocent civilians'. Refer http://opiniojuris.org/2011/05/19/the lawfulness of the US operation against Osama Bin Laden

[342] Additional Protocol 1 contains 80 Articles whereas Additional Protocol 11 a mere 15 Articles

use of civilians as human shields, leave grey areas in the existing legal framework applicable to internal conflicts involving states and non state armed groups. The resulting position is that the civilian is placed in jeopardy when the state is compelled to resort to counter measures to deal with the combat strategy of the non state armed groups, such as in situations which require neutralizing military positions established within civilian 'Safety Zones'.

4.328 The Commission also notes in this regard that the ICRC has recently taken the initiative of addressing these grey areas in the application of IHL principles to internal conflicts. The "Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law"[343] in addressing the issue of civilian participation in hostilities, recognizes that recent decades have seen a significant change from the traditional pattern where the civilians remained distant from the battlefield, and states:

> 'a continuous shift of the conduct of hostilities into civilian population centres has led to an increased intermingling of civilians with armed actors and has facilitated their involvement in activities more closely related to military operations…..all of these aspects of contemporary warfare have given rise to confusion and uncertainty as to the distinction between legitimate military targets and persons protected against direct attacks. These difficulties are aggravated where armed actors do not distinguish themselves from the civilian population, for e.g. during undercover military operations or when acting as farmers by day and fighters by night. As a result, civilians are more likely to fall victim to erroneous or arbitrary targeting, while armed forces – unable to properly identify their adversary – run an increased risk of being attacked by persons they cannot distinguish from the civilian population.'[344]

4.329

a) Common Article 3 to the 1949 Geneva Conventions, which is also recognized as customary IHL, serves as a 'minimum baseline' of applicable IHL rules concerning the protection of the civilian. IHL requires that civilians must be protected 'unless and for such time as they take a direct part in hostilities'. Direct participation in hostilities would make the civilian subject to the risk of attack, without enjoying the

[343] Nils Melzer, Legal Adviser, ICRC, ICRC publication May 2009. The introduction to the publication states "The purpose of the Interpretive Guidance is to provide recommendations concerning the interpretation of International Humanitarian Law (IHL) as far as it relates to the notion of direct participation in hostilities. Accordingly the 10 recommendations made by the Interpretive Guidance as well as the accompanying commentary, do not endeavour to change binding rules of customary or treaty IHL, but reflect the ICRC's institutional position as to how existing IHL should be interpreted, in the light of circumstances prevailing in contemporary armed conflicts."

[344] Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law – Nils Melzer ICRC 2009 pp.11-12

privileges afforded to combatants. It has been stated in this regard that, for the duration of their direct participation in hostilities, these actors may be directly attacked as if they were combatants.[345]

b) The lack of a definition of the term 'direct participation in hostilities' as well as the terms 'civilian' and 'civilian population' in the key IHL instruments pose a great dilemma to States caught up in an armed conflict with an enemy who has no qualms in using the civilian as part of its overall combat strategy. As the Sri Lanka experience has shown, armed groups do not as a matter of strategy distinguish themselves from civilians, conceal their identity amidst civilians, move their weapons to civilian centres and fight in civilian clothes. Further, the involvement of the civilian either voluntarily or under coercion in military operations of non state armed groups or in activities related to military operations, ranging from gathering intelligence, procuring weapons and logistical support as well as providing ancillary services such as food and shelter, adds to the complexity of the problem and pose difficult questions which are not susceptible to easy solutions within the existing framework of IHL.

4.330 In addressing the uncertainty surrounding the meaning and content of the term 'direct participation in hostilities' the Interpretive Guidance identifies the following three (3) key legal questions:

> Who is considered a civilian for the purposes of the principle of distinction;
> What conduct amounts to 'direct participation in hostilities'; and
> What modalities govern the loss of protection against direct attack, and states that:
> 'in non international armed conflicts organized armed groups constitute the armed forces of a non state party to the conflict and consist only of individuals whose continuous function it is to take a direct part in hostilities' ('continuous combat function')

4.331 Thereafter the Guide deals with the constitutive elements of 'Direct Participation in Hostilities' and sets out the following cumulative criteria:

> The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm); and,

[345] International Humanitarian Law Research Initiative – Program on Humanitarian Policy and Conflict Research, Harvard University (May 2008) page 3.

there must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation); and,

the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).[346]

4.332 While the stated objective of the ICRC Guide is to provide greater clarity to the grey areas which have arisen in the context of internal conflicts, the high threshold that has been set such as the notion of 'continuous combat function'; the 'threshold of harm'; 'direct causation' and 'belligerent nexus' described above, is likely to have the effect of excluding a range of activities where a 'civilian' is directly/indirectly involved in combat related operations although they may not be in 'continuous combat function' as stipulated by the Guide or meet the other threshold criteria set out above. In this sense, the complex situation that arose in the Sri Lanka context, where the non state armed group cynically manipulated the IHL concepts such as Safety Zones meant to protect the civilian, for military advantage, remains unaddressed.

4.333 An issue of critical importance that must be addressed in the context of conflicts between states and non state armed groups, is the question of declaring No Fire Zones/Safety Zones in situations where the State is compelled to declare such Zones unilaterally, when confronted with an intransigent armed group.

4.334 As the unprecedented Sri Lankan experience has demonstrated, where the non state armed group has no intention whatsoever of agreeing to a negotiated declaration of such zones providing for civilian protection and once unilaterally declared by the State, utilize them to advance its combat strategy and operations (for example, using civilians within the zone as human shields), the State and Field Commanders are faced with the dilemma of protecting civilians on the one hand and neutralizing the enemy fire power emanating from within the NFZ, on the other.

4.335 The Sri Lankan experience has in fact given rise to a debate as to whether, by unilateral declaration of a No Fire Zone, the Government unwittingly provided the LTTE an opportunity to consolidate itself amongst the civilian enclave for strategic purposes.

[346] Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law – Nils Melzer ICRC 2009

4.336 A host of such difficult issues arise, including the question of verification of actions of non state armed groups in relation to compliance with IHL requirements relating to the preservation of the sanctity of No Fire Zones. The development of appropriate standards and procedures to deal with such situations becomes an imperative need in addressing contemporary challenges to the existing IHL regime in internal conflict situations.

4.337

a) It is pertinent to note in this regard that Judge Richard Goldstone, who chaired the UN Fact Finding Mission on the Gaza conflict, has recently observed: 'ensuring that non state actors respect these (IHL) principles and are investigated when they fail to do is one of the most significant challenges facing the law of armed conflict. Only if all parties to armed conflicts are held to standards, will we be able to protect civilians who through no choice of their own are caught up in war.[347]

b) While these words echo the growing concern of the international community regarding the contemporary realities of internal conflicts involving non state armed groups, it is a matter of some doubt whether the law of armed conflict framed in the post war period to address the realities of the day, could effectively make an impact in addressing complexities which arise in present day internal conflicts, fought out amidst the civilian population and carried out by combatants who in every aspect, other than in their mind set, resemble the civilian.

4.338 The careful construction of a legal framework governing conflicts between States and non state armed groups as in the case of general principles of international law governing inter - state conflicts, taking into account all the complexities and challenges posed by internal conflicts as described above, could provide the answer in ensuring greater compliance with IHL principles by the non state armed groups. These complex issues of contemporary relevance to the application of IHL must engage the immediate attention of the international community of States and relevant international organizations such as the UN and the ICRC, so that appropriate legal instruments are put in place to fill the existing lacunae in IHL in its application to internal conflicts.

4.339 This is a clear lesson that could be learnt from the Sri Lanka conflict spanning 30 years causing the tragic loss of innocent human lives. Formulating an effective legal

[347] Richard Goldstone – *Reconsidering the Goldstone Report on Israel and war crimes* – 1st April 2011

framework drawing from these experiences is a clear obligation that the international community owes to all victims of conflict.

SECTION IV

Casualties

4.340 A key question that the Commission addressed in the light of the firsthand accounts placed before it and published reports, was the scale of civilian casualties, especially during the final phase of the conflict; January to May 2009. The Commission gave this matter the highest priority given the conflicting nature of statements made by various persons including media reports. The need to have an estimate of casualties was also crucial to the mandate of the Commission in addressing the question of possible violations of International Humanitarian Law and Human Rights Law during this period.

4.341 The Commission heard the presentations of senior officials of the Ministry of Health and medical officers who were on site, senior military and other officials of the Ministry of Defense, eye witnesses who were affected by the conflict, and other persons and entities who have presented material on this subject. The Commission made a particular effort to hear the eye witness accounts from civilians who had been in the IDP centres in Vavuniya, as well as from those described by the authorities as hard core LTTE cadres. The Commission heard the latter when it visited places of detention and rehabilitation in Vavuniya and the detention facility at Boossa. In addition, the Commission examined the video footage recorded by the UAVs of the Sri Lanka Air Force which reportedly covered, on a real time basis, the areas of military operations and civilian movements.

4.342 The Commission also noted that a number of organizations outside Sri Lanka provided 'rounded off' estimates of civilian deaths in reports said to be based on 'own sources'. These figures ranged from 40,000[348] to 'tens of thousands'[349]. The Commission invited some of these organizations[350] to make representations regarding these figures and related matters to facilitate its work but regrettably they have found reason not to do so.[351].

[348] "Amnesty International says 7,000 to 40,000 are estimated to have died in the final five months as the two sides exchanged artillery and other fire". http://hosted2.ap.org/APDEFAULT/54828a5e8d9d48b7ba8b94ba38a9ef22/Article_2011-03-05-Sri%20Lanka/id-8e2ca01f23ef445986a9ca7bd91eb5eb

[349] "War Crimes in Sri Lanka" International Crisis Group, Crisis Group Asia Report No.191, 17th May 2010, Pg 5

[350] Refer Annex 4.16. for letters inviting the International Crisis Group (ICG), Human Rights Watch(HRW), and Amnesty International (AI) to make representations before the Commission

[351] Refer Annex 4.17 for replies to the Commission by International Crisis Group, Human Rights Watch and Amnesty International and the response of the Commission

4.343 It was also noted that there were media dispatches e.g. from the London Times[352] and the Independent[353] reporting alleged civilian death tolls of 20,000 and 40,000, respectively. There was no specific time period provided for these figures. Other press reports quoted an 'internal document' alleged to have been leaked by the UN office in Sri Lanka[354], stating a figure of 2,683 civilian deaths for the period January to 7th March 2009, and another figure of 'nearly 7000 civilian deaths in the No Fire Zone up to the end of April' based on 'confidential UN documents.'[355] The UN reportedly stated that their figure was 'far too questionable for official publication.'[356]

4.344 The U.S. State Department[357] gave a figure of 6,710 deaths for the period Jan 20th to April 20th 2009, stating that the source did not differentiate between civilians and LTTE cadres. The UN Secretary General's Panel of Experts on Accountability in Sri Lanka estimated the figure to be both 40,000 and 'in tens of thousands' at different points in the report[358].

4.345 In response to press reports alleging 'tens of thousands' of civilians killed at that time, a Government official was quoted as saying the range for estimated casualties was 3,000 to 5,000.[359]

4.346 With a view to ascertaining the scale of the damage caused to civilian lives and property the Commission conducted interviews with civilian officials, including Chief Secretaries, District Secretaries and the Divisional Secretaries of the affected districts of Kilinochchi, Mullaittivu, Mannar as well as with the senior officials of the Ministry of Health.

4.347 The representations made by other civilian officials to the Commission indicate that they were not in a position, under the circumstances of conflict, to carry out any assessment of civilian casualties. Consequently, no estimated or verified figures of civilian casualties were available with them. The Ministry of Health was able to provide the Commission with documented data of casualties based on hospital admission

[352] The hidden massacre: Sri Lanka's final offensive against Tamil Tigers" By Catherine Philip in Colombo May 29th, 2009 in The Times.
[353] 'Up to 40,000 civilians 'died in Sri Lanka offensive', By Andrew Buncombe, Asia Correspondent, Friday, 12th February 2010 in The Independent, and UN Statement on Former Spokesman's Views, Office of the Resident/ Humanitarian Coordinator, Colombo Sri Lanka, 15th February 2010.
[354] 'In Sri Lanka, UN Knows of 2,683 Civilian Killings This Year, Leaked Documents Show' by Matthew Russell Lee of Inner City Press at the UN, 18th March 2009.
[355] The hidden massacre: Sri Lanka's final offensive against Tamil Tigers" By Catherine Philip in Colombo May 29th, 2009 in The Times.
[356] "INTERVIEW-World may never know Sri Lanka death toll – UN" By Louis Charbonneau, Friday May 29th, 2009 (Reuters)
[357] US State Department, Report to Congress on Incidents During the Recent Conflict in Sri Lanka 2009, pg 15.
[358] Paragraph 137 and 195 respectively, in Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31st March 2011
[359] "Sri Lanka says up to 5,000 civilians died in Tigers Battle", By Julian Borger in the Guardian, Thursday 4th June 2009

records. Data was presented in terms of registration at medical units and hospitals disaggregated by type of medical condition, gender and age. Records of deaths disaggregated by cause of death and maintained by the medical units of the Ministry of Health were made available to the Commission primarily by the Vavuniya Base Hospital JMO unit. 1,353 deaths have been recorded as occurring post admission at the Government hospitals in the Northern Province during the period January to June 2009 and a further 106 deaths of patients transferred to hospitals outside the conflict area[360]. The Medico-legal examination data of the Vavuniya Base Hospital has registered a total of 870 deaths during the same period. Of these 257 deaths have been registered as due to firearm and blast injuries[361]. However, as medical care did not differentiate between groups, records do not distinguish between civilians and LTTE cadres.

4.348 The MoD officials, who appeared before the Commission, stated that while data on military and estimated LTTE deaths were available, an estimate of civilian deaths was not available with them. They estimated LTTE deaths to be 22,247 for the period July 2006 to May 2009[362] while 4,264 have been confirmed by name for the period January 2009 to May 2009[363]. According to these submissions these LTTE cadres had perished either in combat or in suicide action. The security forces casualties were given as 5,556 killed, 28,414 injured and 169 missing in action for the period July 2006 to May 2009[364].

4.349 Military officials who appeared before the Commission emphasized that the whole strategy of the Security Forces was designed to avoid or minimize harm to civilians and civilian property. They contended that, this strategy was carefully conceived and executed as it would give confidence to the hundreds of thousands of people held hostage by the LTTE, to move out of that situation into the safety of the cleared areas, an element integral to both strategic and tactical objectives of the Government Operation. They also maintained that measures such as the two No Fire periods proclaimed by the Government (29th January to 1st February 2009 and 12th April to 14th April 2009), the declaration of the non use of heavy caliber guns, combat aircraft and aerial weapons from 27th April 2009[365], and the very initiative of declaring No Fire Zones or Safety Zones were manifestations of this policy. They further explained that the use of small groups of infantry and Special Forces was a strategy adopted throughout the military activities in the North to ensure precision where sensitive operations which

[360] Calculated from Ministry of Health Database provided to the Commission, June 2011
[361] Documents provided to the Commission by Ministry of Health, 7th April 2011. Transcript No. LLRC/IS/07.04.11/01
[362] Source : Ministry of Defence
[363] *Ibid*
[364] *Ibid*
[365] Government of Sri Lanka Press Release dated 27th April 2009

could endanger civilian lives were involved. They pointed out that these measures were implemented at considerable tactical and strategic cost to the military operation.[366]

4.350 According to the material placed before the Commission by civilians, the LTTE was violating the consecutive NFZs by amassing arms and ammunition and in particular placing heavy weapons amongst civilians in the NFZs. These weapons were used to fire at the Security Forces from behind civilian clusters in the No Fire Zones thus converting the NFZ into a virtual operational base for military engagement with the security forces[367]. Several representations were also made that the LTTE was holding thousands of civilians as a human shield both within and outside the NFZs[368].

4.351 Given the abuse of the sanctity of the NFZ by the LTTE, the absence of any agreed arrangement to ensure the LTTE compliance with the intended humanitarian objectives of the NFZs, and the fact that there was no verifiable way to ensure that the LTTE complied with the status of the Government's unilaterally declared NFZ arrangement, it would be reasonable to conclude that civilian casualties must have occurred when Security Forces returned fire at LTTE gun positions in the NFZ from which the LTTE was firing.

4.352 There was no material placed before the Commission suggesting any policy or incident of deliberately targeting civilian concentrations in the NFZs or elsewhere by the Security Forces, except for three incidents described by three persons: One alluded to by an LTTE inmate at the Boossa Camp[369] and two incidents of alleged Navy fire,[370] described by civilians who appeared before the Commission.

4.353 Submissions by civilians to the Commission described how the LTTE was firing at people who were trying to escape from the human shield situation and go across the front line and the bund into the areas controlled by the Security Forces[371]. There were many accounts of the LTTE firing at civilians in order to prevent them from escaping the

[366] Refer representations made by Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010; Lt. Gen. Jagath Jayasuriya, Maj. Gen. Kamal Gunaratne, Maj. Gen. Shavendra Siva and Air Marshal WDRMJ Goonetilleke on 08th September 2010. Representation by a disabled soldier at Ragama on 04th April 2011. Transcript No. LLRC/IS/04.04.11/01

[367] For extensive discussion see paragraphs 4.42 to 4.82

[368] Representations before the LLRC by civilians at Kandawalai on 19th September 2010. Transcript No. LLRC/FV/19.09.10/02;, at Poonagary on 19th September 2010. Transcript No. LLRC/FV/19.09.10/01; at Colombo on 10th March. 2011. Transcript No. LLRC/IS/10.03.11/01, video footage provided by Rupavahini Corporation.

[369] Representations made in camera

[370] Representations made by civilians at Kudathanai East on 13th November 2010. Transcript No. LLRC/FV/13.11.10/01 and at Mullaittivu on 20th September 2010. Transcript No. LLRC/FV/20.09.10/01.

[371] Representations made by civilians before the LLRC at Kandawalai on 19th September 2010. Transcript No. LLRC/FV/19.09.10/02, at Poonagary on 19th September 2010. Transcript No. LLRC/FV/19.09.2010/01, by Dr. S. Sivapalan at Colombo on 24th November 2010.

hostage situation created by the LTTE as part of its combat strategy.[372] This was also evident from the UAV footage seen by the Commission.

4.354 There was also material placed before the Commission that the LTTE had intensified forcible recruitment of individuals including under age children, for combat duty during their last stand.[373] The LTTE strategy of suicide attacks on civilian targets continued during the last phases of the conflict as well. On 9th February 2009, a female LTTE suicide attacker who had entered the IDP reception centre at Suhandirapuram in the Mullaitivu district posing as a civilian killed 8 and injured over 40 IDPs including children.

4.355 In the light of the above, the Commission sought to ascertain further information on the scale and the nature of the casualties through interviews (some in camera) with eye witnesses including those at the detention centres in Omanthai and Boossa.

4.356 A former LTTE cadre[374], who claimed he was tasked by the LTTE to remove dead bodies, stated that there were times he used to load 50 or more bodies into his truck. In response to questions by the Commission, he stated that the increase in collection of dead bodies happened during the month of May 2009. He indicated that from 1st January 2009 to 10th May 2009 (when he left the conflict zone) he had collected altogether about 1,000 dead bodies. It is not clear if he was referring to civilians only or LTTE bodies as well. A civilian who appeared before the Commission provided a figure of 200 to 350 casualties. He initially stated this was a daily count, subsequently revised his position stating the incidents occurred about twice or thrice a week when there was heavy fighting.[375] An 'Inquirer into sudden deaths' who had been in the Puthukudiyirrippu area from 09th January to 09th April when interviewed by the Commission stated 'in the Puthukudiyirrippu, Iranapali, Vallipunam and Thevipuram area I have conducted more than 3,000 inquests .' He went on to state that the deaths had been caused by shell injuries but could not conclusively identify whether the deceased were LTTE cadres or civilians.[376]

4.357 With regard to estimating civilian deaths, civilians and the Defense Ministry officials who appeared before the Commission submitted that towards the latter part of the

[372] Representations made in camera.
[373] Representations made by civilians at Neervely on 11th November 2010. Transcript No. LLRC/FV/11.11.10/02, at Sittankeny on 12th November 2010.Transcript No. LLRC/FV/12.11.02/01 and by a disabled soldier at Ragama on 4th April 2011. Transcript No. LLRC/04.04.11/01.
[374] Representations made in camera.
[375] Representations made by a civilian at Poonagary on 19th October 2010. Transcript No. LLRC/FV/19.10.10/01 and at Colombo on 10th March 2011. LLRC/FV/10.03.1011/01
[376] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/20.08.11/01

operations the LTTE adopted a strategy of mingling with the civilians and were often seen fighting in civilian clothes.[377] The MoD officials contended that it would be extremely difficult, if not impossible, to distinguish between LTTE and civilian casualties. A number of civilians and LTTE members who had witnessed the last few days of the conflict, who appeared before the Commission confirmed the LTTE cadres' practice of fighting in civilian clothes[378] and the LTTE's intensified forcible engagement of under age children and other civilians in combat during the final phase of the conflict. Both these points were confirmed in submissions by LTTE members[379]. Material placed before the Commission by the military also pointed out to the long standing practice of the LTTE accepting bodies in civilian clothes as its own cadre through the ICRC[380].

4.358 The Commission notes the following :

- The civilians who appeared before the Commission stated that there were many civilian deaths and injuries during the final phase of operations.
- To the question posed by the Commission as to the extent of civilian casualties, the answers were vague. People could not give numbers other than to say that there was heavy firing from both sides. Some of the civilians gave accounts of what they described as shells landing near them due to exchange of fire between the LTTE and the Army.
- The civilian, LTTE and MoD submissions indicate that the LTTE cadres intentionally located themselves among the civilians during the last months of the conflict, particularly within the NFZs and in close proximity to some hospitals. The LTTE cadres routinely wore civilian clothes during combat. This was evident when the bodies of top level members of the LTTE hierarchy were identified in civilian clothes.
- A Large number of civilians, of all ages and gender, were conscripted by the LTTE to engage in active combat or coerced to provide support services to the LTTE. This practice gained momentum as the conflict intensified.[381]

4.359 Accordingly, the Commission has the following observations to make.

[377] Representations made by a disabled soldier. Transcript No. LLRC/IS/04.04.11/01

[378] Majority of representations made in camera show that LTTE cadres mingled with civilians during combat as well as during the crossing towards the army lines.

[379] Representations made by a civilian before the LLRC. Transcript No. LLRC/IS/28.02.11/01. Representation made in camera. .

[380] Maj. Gen. Shavendra Silva before the LLRC at Colombo on 8th September 2010 gave the example of Charles Antony etc.

[381] Representations made before the LLRC by civilians at Vavuniya on 14th August 2010. Transcript No. LLRC/FV/14.08.10/01; at Nedunkerny on 15th August 2010. Transcript No. LLRC/FV/15.08.10/01; at Poonagary on 19th September 2010 Transcript No. LLRC/FV/19.09.10/02, and by a disabled soldier at Ragama on 04th April 2010. Transcript No.LLRC/IS/04.04.11/01. ;, "The Landscape of the LTTE's Last Redoubt, May 2009", Michael Roberts, 7th June, http://thuppahi.wordpress.com/2011/06/07/the-landscape-of-the-ltte%E2%80%99s-last-redoubt-may-2009/

i. Based on the firsthand accounts and other material placed before it by the affected civilians and detainees, it was clear to the Commission that despite the efforts by the Security Forces to avoid harm to people[382], there have been instances of exchanges of fire over the civilian areas including NFZs causing death and injury to civilians.[383]

ii. When the NFZs were declared, the LTTE deliberately clustered the civilian population into these zones and positioned their military hardware including long range weapons, among the civilians. There was material to indicate that they had in fact fired from among civilians[384]. It was also evident that the Security Forces had returned fire.

iii. Although the material before the Commission did not make it explicit whether the LTTE intended to draw fire from the Security Forces when they fired from the NFZ, and thereby cause civilian casualties in order to blame the Security Forces, nevertheless this is a reasonable inference that could be drawn. The Security Forces maintained that they had to return fire in order to neutralize those LTTE gun positions and preserve the status of the NFZs (since the sole objective of the NFZ was to create a safe area for protecting civilians) and not to provide 'military advantage' to the LTTE.

iv. The representations heard by the Commission, clearly showed the complexity and risks of unilaterally declaring an unverifiable NFZ in close proximity to the conflict area, however laudable the intention may have been from the perspective of protection of civilians. The Commission is of the view that this situation presents a dichotomy that needs further study and clarification from the stand point of humanitarian concern of protecting civilians on the one hand and the dilemma confronting Field Commanders as to how best to approach the situation before them in the context of an intra-state conflict, on the other. For further discussion on this aspect see paragraphs 4.333 to 4.336.

v. The Commission heard no representations from civilians or LTTE cadres that the Security Forces deliberately targeted civilians although most civilians referred to much death and injury caused as a result of 'shell fire' between the Army and the

[382] Representations made by 2 disabled soldiers before the LLRC at Ragama on 4th April 2011. Transcript No. LLRC/IS/04.04.11/01.

[383] Representations made before the LLRC by a civilian at Poonagary on 19th October 2010, Transcript No. LLRC/FV/19.10.10/02 and at Colombo on 10th March 2011, Transcript No. LLRC/IS/10.03.11/01. ; Mrs. Imelda Sukumar before the LLRC at Colombo on 04th November 2010; Dr S. Sivapalan at Colombo on 24th November. 2010; and representations made by 3 civilians at Kayts on 14th November 2010. Transcript No. LLRC/FV/14.11.10/01. See also Section II of this Chapter

[384] Representation made by a disabled soldier at Ragama on 4th April 2011, Transcript No. LLRC/FV/04.04.11/01.

LTTE. The Commission also heard representations detailing tragic accounts of death and injury caused due to cross fire and of humane endeavors of security personnel risking their lives to take care of the civilian victims of this brutal conflict.

vi. The Commission considered the following three instances referred to previously[385] with a view to ascertaining whether civilians had suffered harm by direct fire:

a. An incident in which an allegation was made that civilians were compelled by the Security Forces, to retrieve the dead body of a fallen army officer and in the process, a group of civilians suffered death and injury, due to being caught in the cross fire. However, the Commission was not able to verify and confirm this account given by a person who described himself as an 'intelligence officer of the LTTE'.

b. Two further incidents involved the Navy and both had occurred in the early hours of the morning, stated as around 2 a.m. and 3 a.m. It appeared to the Commission to be a case of mistaken identity by the Navy and not one of deliberate targeting. The fact that the affected persons themselves stated that the Navy had subsequently rescued them and provided medical care becomes particularly relevant in this regard.

vii. However, the civilians described many instances where the LTTE was deliberately firing at people held hostage by them when civilians attempted to flee into the 'Army controlled areas'. Accounts by LTTE members and civilians[386] and the UAV footage seen by the Commission confirm these instances of deliberate firing by the LTTE.

viii. The Commission noted that taking into account the large number of LTTE cadres involved in the conflict, as against the numbers that have surrendered and LTTE bodies identified by the military, a considerable number of LTTE cadre would have been among any estimate of casualty figures[387].

ix. The Commission recognizes the complex challenge faced by the Security Forces in neutralizing a suicide cult based terrorist group seeking security behind a human shield. It also appreciates that the priority, and indeed the natural instinct, of the

[385] See paragraph 4.352.
[386] Representations made in camera.
[387] As per MoD estimates LTTE cadre in the North was 21,500 and 4,264 bodies have been identified as LTTE, surrendered LTTE cadres 11,700.

Security Forces and other authorities was to 'save lives rather than count bodies.'[388] The Commission however notes with regret that there is no official record or a post conflict estimate of civilian casualties either by the civilian administrative authorities in the area or by the defense authorities. Whilst the Security Forces had their own casualty figures and an estimate of the LTTE casualties, the absence of authoritative civilian casualty records, with the exception of the limited data from the Ministry of Health, has led to widely varying figures of civilian casualty estimates by different entities, media organizations and authorities.

x. The Commission is also cognizant of the fact that the United Nations Humanitarian Agencies who had had *in situ* information about the casualty figures from January to April 2009 and thereafter 'secondary source' information from April to May, have indicated that whilst there must have been significant civilian casualties, it is not possible to establish a verified figure given the difficult circumstances of the situation, and the fact that UN representatives were not there on the ground during the final stages.[389]

xi. The fact that there was no proper verification process, either by the civilian administration or by the military has contributed to the unverified sweeping generalizations, of a highly speculative nature as regards casualty figures.

xii. It is the considered view of the Commission however, that eye witness accounts and other material available to it indicate that considerable civilian casualties had in fact occurred during the final phase of the conflict. This appears to be due to cross fire, the LTTE's targeted and deliberate firing at civilians, as well as due to the dynamics of the conflict situation, the perils of the geographical terrain, the LTTE using civilians as human shields and the LTTEs refusal to let the hostages get out of harm's way.

Recommendations

4.360 The Commission therefore recommends that action be taken to;

1) Investigate the specific instances referred to in observations at paragraphs 4.359, vi (a) and (b) above and any reported cases of deliberate attacks on civilians. If investigations disclose the

[388] Government Press Release dated 27th April 2009 "our security forces will confine their attempts to rescuing civilians who are held hostage and give foremost priority to saving civilians." There was substantial material placed before the Commission by IDPs, medical personnel as well as the military that the priority was given to saving lives and attending to injured rather than collecting data.

[389] Briefing to the Security Council on the humanitarian situation in Sri Lanka Statement by Mr. John Holmes, Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, 26th March 2009

commission of any offences, appropriate legal action should be taken to prosecute/punish the offenders.

2) Conduct a professionally designed household survey covering all affected families in all parts of the island to ascertain first-hand the scale and the circumstances of death and injury to civilians, as well as damage to property during the period of the conflict.

SECTION V

Channel 4 Video

4.361 In the context of dealing with humanitarian matters and IHL issues, the Commission took into account a range of audio visual material which it considered to be relevant. These included the video footage recorded by the UAV's of the Sri Lanka Air Force covering the last several weeks of the conflict, the TV footage recorded by embedded television journalists accompanying the Security Forces during that same period, and what has become known as the Channel 4 video aired by a British TV broadcaster containing scenes claimed to be from a conflict zone, images of alleged summary executions and alleged sexual violence.

4.362 The first two video footage were taken into account by the Commission in its consideration of IHL issues and humanitarian assistance to the conflict affected areas. The "Channel 4 Video" which has generated much discussion and controversy was also considered by the Commission.

4.363 Although no person appearing before the Commission referred to the Channel 4 Video or to the substance of allegations contained therein, the Commission nevertheless considered the material relevant to its Warrant, given the gruesome nature of the images and the fact that the video is claimed to contain scenes of alleged summary executions of persons in captivity and of potential sexual abuse during the last stages of the conflict.

4.364 Representatives of the Government have made public statements emphasizing that the video consists of 'fake images' or staged incidents or events electronically constructed through video data manipulation and tampering[390].

4.365 The Commission wrote to The Independent Television Network (ITN), United Kingdom requesting a copy of the original broadcast footage and whatever other information the Network can share with the Commission including the dates, location etc related to the alleged incidents. This request was made in order to facilitate the Commission's consideration of the matter in all its aspects. The Network did not send a copy of the original broadcast video but in its response states "the videos in question are on the

[390] Secretary, Ministry of Defence, 16th June 2011, and Minister of Mass Media & Communications, 29th July 2011

Channel 4 News Website and we consent for you to download that footage from the internet for the purposes of the Inquiry"[391]

4.366 In the absence of a copy of the broadcast footage, the video as available in the public internet domain was used for viewing and analysis by experts invited by the Commission[392]. The footage contains basically three segments aired by Channel 4 in installments at different locations, i.e. a segment containing images depicting alleged summary execution of persons in captivity; a video containing images of dead females allegedly the subject of possible sexual assaults as well; and thirdly, scenes purported to be from a conflict zone with images showing suffering civilians. The Commission's views on the protection issues and civilian hardships are contained in the Sections of the Report dealing with Humanitarian Law Issues, Casualties and Human Rights.

4.367 In its deliberations on the 'Channel 4 video', the Commission considered the following:

a. The video footage available on the Internet.

b. Various public statements made by Government spokesmen and expert views obtained and furnished by the Government contending that the footage has been tampered with and that the video is faked.

c. A video produced by the MoD of Sri Lanka titled 'Lies Agreed Upon', highlighting contradictions and internal inconsistencies in the Channel 4 video in both substantive as well as technical terms and implying also that the LTTE itself may have executed the Government Security Forces personnel it was holding prisoner.

d. Report by the UN Special Rapporteur Mr. Philip Alston[393] containing the views of technical experts enlisted by him and a second report by his successor, Special Rapporteur Mr. Christopher Heyns[394] giving further expert views on the matter. Both Rapporteurs contend that despite certain unexplained technical ambiguities including the contradictions brought up by the Government experts, the videos can be considered as authentic.

e. At the invitation of the Commission, an independent opinion was provided by Dr. Chathura de Silva, Director of the Centre for Instructional Technology and Senior

[391] Letter dated 21st February 2011 from the ITN.
[392] See paragraph 12.
[393] (http://www2.ohchr.org/english/issues/executions/docs/TechnicalNote.doc)
[394] (A/HRC/17/28-Add.1)

Lecturer, Department of Computer Science and Engineering, University of Moratuwa, Sri Lanka. His view is that segments (of the video) appear to have been recorded in a natural environment but that at least some events are staged ones and that there is much manipulation and tampering.

4.368 The Commission was cognizant of the fact that the video under reference has generated much controversy in Sri Lanka and abroad in terms of authenticity, motive and the gruesome nature of the alleged incidents, real or staged.

4.369 The Commission also took note of the fact that the Government and certain technical experts have taken the view that the video footage has extensive technical and forensic ambiguities suggesting that the alleged incidents and the video tape are fakes. Experts commissioned by the Special Rapporteurs however take the view that these ambiguities are not significant enough to invalidate their contention that the footage appears to be authentic and that technical parameters like 'file integrity must not be confused with authenticity'[395].

4.370 The Commission having gone through the available material and representations before it, including the independent view expressed by Dr. Chathura de Silva of the University of Moratuwa, found that there are strongly argued points supporting and opposing the integrity of the video and the authenticity of the 'events recorded'.

4.371 The Commission was therefore of the view that given the widely differing but strongly argued contentions on the subject, primarily based on highly technical aspects of the video and related forensic considerations, a further independent technical opinion should be obtained by the Commission in order to facilitate its consideration of this matter. This course of action was deemed necessary in view of the disturbing nature of the images, the serious potential implications they entail both in terms of IHL and the polarizing impact this whole question could have on the much desired reconciliation effort here in Sri Lanka.

4.372 Accordingly, the Commission took steps to obtain a further independent opinion from Professor E. A. Yfantis, Professor of Computer Science, of the University of Nevada, Las Vegas, USA, and Director of the ICIS[396] Laboratory. Professor Yfantis who is an expert in the field of digital image processing with vast experience in consulting for governmental and private sector organizations in the USA including NASA, in his report states that

[395] Page 15, Technical Note of experts of UN Special Rapporteur Mr. Philip Alston, (http://www2.ohchr.org/english/issues/executions/docs/TechnicalNote.doc)
[396] Image Processing Computer Graphics Intelligent Systems Laboratory

'based on mathematical analysis, blood in the 3GP videos is not real blood. It is not clear if the blood in the 3GP scenes is water with red dye or digitally constructed or edited video blood.' He further states that "…videographic and mathematical analysis of the two 3GP videos show that the videos either were edited, or staged, or both" and the report concludes that the "Careful analysis of the two 3GP videos which included both frame by frame visual inspection as well as the robust mathematical attributes of the video frames, has led us to the conclusion that this is a very deliberate and orchestrated video."[397] [398]

4.373 Dr. Chathura de Silva stated that "… video footages are not authentic in terms of integrity of the media files and the authenticity of their content. The events shown in these footages are staged, manipulated with special digital effects and finally trans-coded to a mobile format to depict as being recorded through a mobile phone"[399].

4.374 The Commission, having taken account of the above has the following observations/ recommendations to make:

a. The images contained in the footage are truly gruesome and shocking, irrespective of whether the incidents are 'real' or 'staged' ones.

b. While the Government emphatically stated that the video seeks to artificially construct the incidents, the technical experts commissioned by the UN Special Rapporteurs emphasise that the video provides prima facie material on possible summary executions and sexual assault involving people who appear to be in captivity. Both the Government as well as the Rapporteurs' experts, however point to several technical ambiguities in the video which remain un-clarified.

c. There are further technical issues and forensic questions brought out by independent experts, Dr. Chathura de Silva and Prof. E. A. Yfantis that cast significant doubts about the authenticity of the video, especially the probability of electronic tampering, and the artificial construction of the 'blood effect' in the video.

d. The non-availability of a copy of the broadcast footage has not helped in finding conclusive clarification of such technical ambiguities.

[397] Report of Prof. E. A. Yfantis, page 35 and page 104
[398] Full reports by Prof. E. A. Yfantis and Dr. Chathura de Silva are enclosed as Annexes 4.18 and 4.19.
[399] Dr. Chathura R. De Silva – Executive Summary

e. The Commission finds that there are troubling technical and forensic questions of a serious nature that cast significant doubts about the authenticity of this video and the credibility and reliability of its content. It is also observed that trauma evident on the bodies of victims does not appear to be consistent with the type of weapon used and the close range at which the firing is seen to have taken place. The Commission wishes also to note however that someone had recorded or otherwise produced these images and the video and made it available to the Broadcaster concerned. One expert enlisted by the Commission observes that "the segments of the footage appear to have been recorded in a natural environment"[400] and that some of the bodies of alleged victims show 'no artifacts of manipulation' either physically or by digital means[401].

f. The Commission regrets the fact that the Broadcaster did not respond positively to the request made by the Commission to provide more comprehensive information. Greater cooperation by the organization that provided to the television stations these video images and by the Producer/Broadcaster that aired this footage is essential to establish facts of this case.

4.375 Based on the available material and taking into account the above considerations, the Commission wishes to recommend that the Government initiate an independent investigation into this matter to establish the truth or otherwise of the allegations arising from the video footage.

4.376 The Commission considers this course of action as necessary and urgent for two reasons:

a. Firstly, if as claimed by the informants who supplied the images and by the experts enlisted by Messers Alston and Heyns, the footage reflects evidence of real incidents of summary execution of persons in captivity and of possible rape victims, it would be necessary to investigate and prosecute offenders as these are clearly illegal acts. It is also the obligation of the Government to clear the good name and protect the honour and professional reputation of soldiers who defended the territorial integrity of Sri Lanka and particularly the many thousands of soldiers who perished carrying out their combat duties cleanly and professionally against a widely condemned

[400] Dr. Chathura R. De Silva – Executive Summary - "There is no evidence to determine that the scene background depicted in the footage in general is computer generated or created in a studio environment. The segment of the footage appeared to be recorded in a natural environment"

[401] Dr. Chathura R. De Silva – Executive Summary - "Some of the bodies of alleged victims portrayed in the footage show no artifacts of manipulation either physically or through digital special effects. However fresh blood stains in the nearby ground showed evidences of using blood substitutes"

terrorist group who used most inhumane tactics in combat. Offences if any, of a few cannot be allowed to tarnish the honour of the many who upheld the finest traditions of service.

b. Secondly, if on the other hand the footage is artificially constructed or the incidents are staged as contended by several experts, the issue becomes even more serious and the need to establish facts of this case, equally compelling. The Commission shares some of the significant doubts expressed on the integrity of the video and feels strongly that if that were to be the case, whoever constructed the video and the organization that broadcast it should be held responsible for a serious instance of gross disinformation. Such conduct would constitute grave damage and injustice to the people of Sri Lanka and to those soldiers who fought professionally and sacrificed their lives in order to save other innocent lives from the LTTE stranglehold. Equally, it would also represent a body blow to the notion of the Freedom of Expression. From the perspective of its Warrant, the Commission is also concerned that such acts would seriously prejudice and place major obstacles in the way of the ongoing efforts, both national and international, to promote and consolidate a viable process of reconciliation, healing and reconstruction in Sri Lanka.

4.377 The Commission therefore recommends that the Government of Sri Lanka institute an independent investigation into this issue with a view to establishing the truth or otherwise of these allegations and take action in accordance with the laws of the land. Equally, the Commission feels that arrangements should be made to ensure and facilitate the confidentiality and protection of information and informants. The Commission strongly urges all those concerned, especially the organizations that provided the original images and the broadcasting organization, to extend fullest cooperation by providing the necessary information to facilitate this work.

Chapter 5 - Human Rights

Section	**Paragraph Numbers**
Introduction	**5.1 – 5.6**
Human Rights Issues arising from the conflict	**5.7 – 5.163**

Allegations concerning missing persons, disappearances and abductions
Treatment of detainees
Illegal armed groups
Conscription of children
Vulnerable Groups – women, children and the elderly
Disabled Persons
Internally Displaced Persons
Muslim community in the North and East
Freedom of expression and the right to information
Freedom of religion, association and movement
Follow up action on past Commissions of Inquiry

Chapter 5 - Human Rights

Introduction

5. 1 The Commission considered a number of key human rights issues arising out of the conflict. In its consideration of these issues, it took into account the principles of human rights law as contained in the core international human rights instruments and other international obligations that Sri Lanka has undertaken since independence, as well as relevant provisions of the Constitution and other laws. During the public sittings and its field visits to conflict affected areas, a large number of representations were made before the Commission alleging the violation of fundamental rights and freedoms of people affected by the conflict. These include abductions, enforced or involuntary disappearances, arbitrary detention, conscription of underage children, extrajudicial, summary or arbitrary executions, violation of the freedom of expression, movement, association, freedom of religion and the independence of the media etc. Representations were also made on issues pertaining to the rights of IDPs, and other vulnerable groups such as women, children and disabled. The Commission considers that its recommendations on these human rights issues are critically relevant to the process of reconciliation.

5. 2 Being a party to the following seven core international human rights instruments, Sri Lanka has given effect to the obligations under these Conventions through legislative measures, including the Constitution as well as executive and administrative measures:

a. International Convention on the Elimination of All Forms of Racial Discrimination
b. International Covenant on Civil and Political Rights
c. International Covenant on Economic, Social and Cultural Rights
d. Convention on the Elimination of All Forms of Discrimination against Women
e. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
f. Convention on the Rights of the Child
g. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

5. 3 Sri Lanka therefore has constitutional and international obligations for the effective national implementation of these core conventions both during times of peace and war, and in the latter situation, together with applicable International Humanitarian Law. The protection of human rights of civilians in situations of armed conflict has gained increasing recognition in recent times (See Chapter 4 on Humanitarian Law Issues).

5. 4 Hundreds of persons who appeared before the Commission clearly articulated the critical importance of re-dedicating ourselves to the task of promoting and protecting human rights as a catalyst for bringing about reconciliation, lasting peace and security. The Commission also got the clear impression that the current period, which is the immediate aftermath of a traumatic conflict, is an opportune and a decisive moment for this task. The Commission also notes that the concept of human rights is not an ideal that is alien to the socio-cultural ethos of Sri Lanka, or one that belonged to a particular part of the world, Western or other, but one deeply embedded in the core values and ethics espoused by Buddhism and other religions practiced in Sri Lanka. As the Sri Lankan Constitution devotes an entire chapter to the promotion and protection of human rights, the representers pointed out that it is vital for the State, civil society and the citizenry to do all they can to ensure the effective compliance with and the strict observance of human rights as an integral part of the reconciliation effort under way, aimed at preserving Sri Lanka as a multi – ethnic nation at peace with itself. In this context, particular emphasis was placed on the State's responsibility towards the effective enjoyment of human rights by all communities in order that the post-conflict rebuilding process leads to a nation unified in hearts and minds, and in equity and justice.

5. 5 The Commission fully endorses these sentiments articulated before it and urges State institutions, civil society and citizenry of the country to exert all possible efforts towards this end. The Commission's observations and recommendations are derived from these broad objectives.

5. 6 There is an urgent need to assist the victims and their families to overcome the trauma they suffered due to the conflict, and to bring the perpetrators of any human rights violations to justice. There is also the essential need to ensure that lessons from these past incidents be learnt in a manner that they will never be repeated again. The Commission considers that a strong foundation should be built upon to further promote and protect basic human rights and fundamental freedoms as a key component of the reconciliation process, which will enhance the confidence of all people living in the country that they could live in dignity and be treated equally before the law. The Commission considers that its observations and recommendations, which appear below, will serve that purpose.

Human rights issues arising from the conflict

5. 7 A large number of people who made representations before the Commission, especially during its field visits to the conflict affected areas, provided disturbing accounts of the loss of their family members, including women, children and elderly, during the conflict. Most of these victims were ordinary citizens who lived in conflict areas under tremendous hardships.

5. 8 Further representations were also made on behalf of thousands of innocent civilians who lived outside the conflict affected areas and who fell victim to indiscriminate bomb attacks and other violent killings carried out by the LTTE over three decades. A detailed account of the atrocities committed by the LTTE is annexed[1].

5. 9 The Commission heard representations concerning allegations pertaining to a range of human rights violations, including extrajudicial killings, abductions, arbitrary arrests and detentions, and disappearances committed by the LTTE, and allegations concerning human rights violations by Security Forces. There are also IDPs and other vulnerable groups, such as women and children, who have suffered human rights violations due to the conflict.

5. 10 The Commission also heard representations by the Ministry of Defence on the emphasis placed on familiarizing the military - Army, Navy and Air Force - on the human rights obligations of the military forces during armed conflict. A programme in 2003 for this purpose was started with the assistance of the Red Cross and the ICRC.[2]

5. 11 On the overall human rights situation, which has arisen consequent to the conflict, the Commission heard representations from several persons[3] that there has been an overall erosion of values consequent to the conflict, and human rights has become a casualty. The view was also expressed that the respect for fundamental rights was a major feature ingrained in the religious and cultural ethos of Sri Lanka. Therefore there was a need for these rights to be respected and observed in times of peace.

[1] See Annex 3.1

[2] Mr. Gotabaya Rajapaksa, before the LLRC at Colombo on 17th August 2010. See also the details on human rights education programmes for the Security Forces in Chapter 4.

[3] Rt. Revd. Dr. Kingsley Swamipillai, before the LLRC at Colombo on 3rd November 2010; Mr. B H P S Abeywickrema, before the LLRC at Colombo on 5th October 2010; Mr. Mahen Dayananda of the Friday Forum, before the LLRC at Colombo on 1st October 2010; Mr. Gomin Dayasiri, before the LLRC at Colombo on 28th October 2010; Dr. Kumar Rupasinghe, before the LLRC at Colombo on 20th October 2010

Allegations concerning missing persons, disappearances and abductions

5. 12 During the public sittings and its field visits to conflict affected areas, the Commission was alarmed by a large number of representations made alleging the violations of fundamental rights and freedoms of people affected by the conflict. The Commission also heard a substantial number of allegations of abductions and disappearances by the LTTE[4]. A large number of representations were made with regard to those whose whereabouts are unknown, sometimes for years, as a result of abductions, unlawful arrests, arbitrary detention, and involuntary disappearances.

5. 13 Many persons who made representations impressed upon the Commission that definitive action against alleged cases of disappearances as well as preventive measures would have a significant impact on the reconciliation process. Repeated reminders were also made during the course of representations on the fundamental need to ensure that lessons from past experiences be learnt so as to prevent any recurrence.

Alleged disappearances and abductions

5. 14 During the Commission's visit to Ampara[5], a representation was made on behalf of a number of missing persons from the Monaragala district. In this regard, reference was also made to the reluctance of people to come forward and make complaints about these incidents due to fear.

5. 15 According to the representations made before the Commission during its sittings in the Batticaloa district[6], there were at least 12 cases of alleged abductions by the Security Forces or the Police. The whereabouts of the alleged victims are unknown. The Commission also noted that some of these incidents are related to the arrest of LTTE suspects by the Security Forces, and they are believed to be under detention. According to the representations made in this district, at least 4 more cases of abductions by unknown persons were also reported. An organization called the Batticaloa Peace Committee also made a representation[7] on behalf of "many thousands" of disappeared persons. According to the representation, the victims were innocent civilians going about their daily lives. It was claimed that despite many complaints, the whereabouts of these disappeared persons are still unknown. A question was raised as to what the

[4] Transcripts Nos LLRC/FV/14.08.10/01, LLRC/FV/18.09.10/01, LLRC/FV/20.09.10/02

[5] Representations made by a member of the clergy before the LLRC at Ampara on 25th March 2011 – Transcript No. LLRC/FV/25-03-11/01

[6] See representations made in Batticaloa on 9th October 2010. Transcript No. LLRC/FV/09.10.10/01

[7] Representations made by a representer of the Batticaloa Peace Committee, before the LLRC at Batticaloa on 9th October 2010 - Transcript No. LLRC/FV/09-10-10/01

Government intended to do with regard to the cases reported in the previous Commissions of investigation as it impacts on the reconciliation process.

5. 16 Representations were made during the Commission's sittings in the Jaffna district[8] on behalf of at least 9 persons who have allegedly been abducted by unknown parties at various times of the conflict, and their whereabouts are unknown. The number of missing persons reported was around 12. In the same district, when making a representation before the Commission, an individual stated :

> "Another issue we are facing is a large number of persons missing and there is no information available on their whereabouts. Parents, wives, and relatives of these people live in anxiety and worry. Please help to resolve this human suffering."[9]

5. 17 Representations were made during the Commissions' visit to the Jaffna district with regard to two cases of abduction[10] in which the family members of the victims alleged that a person who presented himself by the name of "Major Seelan" engaged in an act of extortion, offering them to get the victims released from the 51 Division where he claimed that the victims were being detained. They also gave a detailed description of the ransom demanded and handed over to "Major Seelan". They said that an officer from the 51 Division has informed them that there was no such person by the name of "Major Seelan" in that Division. Pursuant to this representation and on the initiative of the Chairman of the Commission, the Deputy Inspector-General of that area conducted an investigation and subsequently reported that an accomplice of "Major Seelan" has been taken into custody.

5. 18 A person who made representations before the Commission at Jaffna made the following remarks[11]:

> "Disappearance is far worse than death, because when a person dies, when I know that, so and so is dead, the story ends and somehow or other we close the chapter. But when a person has disappeared, it is an eternal suffering."

5. 19 A person who made a representation on the alleged disappearances in Kilinochchi[12] stated:

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[8] See representations made in Jaffna District, including Ariyalai (11th November 2010), Neervely (11th November 2010), Gurunagar (12th November 2010), Sittankerny (12th November 2010), Jaffna (12th November 2010), Telippalai (12th November 2010), Chavakachcheri (13th November 2010), Velanai (13th November 2010), Kayts (14th November 2010). Transcript Nos. LLRC/FV/11.11.10-01/02, LLRC/FV/12.11.10-01/02/03, LLRC/FV/13.11.10-01/02, LLRC/FV/14.11.10/01

[9] Prof. Balasundaram Pillai, before the LLRC at Jaffna on 12th November 2010. Transcript No. LLRC/Fv/12.11.10/02

[10] Representations made by 2 civilians before the LLRC at Telippalai on 12th November – Transcript No. LLRC/FV/12-11-10/01

[11] Mr. A Santhiapillai, before the LLRC at Jaffna on 12th November 2010

"Most of us have come here with the same problem – either it is a disappearance of a person or a missing person or someone who is in detention now. Land problem is not very serious. That is not the main problem we are facing. Difference being the person representing the problem being a mother, wife, father etc."

5. 20 On the same issue, another person made the following remarks[13]:

"In this area, boys and girls are still missing. They have not died. There is no document to say that they have died and we are still thinking that they are still alive. But we don't know where they are. Someone says that they may be living in some camps, and some say they are with the Government. Is it true but we don't know. Every day we read in the papers that there is an unknown camp near the Batticaloa side and our people are being kept there. You ask independently these people as to how many children they have lost and they are without any information – even little information. They are expecting that their sons and daughters will come back. Every day they are waiting for them. Please help them. Ask them independently who are missing. With permission they can go and see these people who are being kept at these camps. This is our grievance. We are also Sri Lankans. We are still being neglected…"

5. 21 During the Commission's visit to Mannar, a member of the clergy making a representation[14] submitted a list of 100 persons reported to have disappeared and observed that the actual numbers could be much more. During the same visit in Madhu, a person who was speaking on behalf of families of missing persons[15] requested to make appropriate arrangements to let the people know whether their loved ones were alive or dead as they were still searching for them. He mentioned the incidents where telephone calls were received from unknown persons claiming that they could help find the missing persons if payments are made. He stated that,

"Even during the Mass when we pray for the dead, they have doubts whether they are dead or alive. Therefore, our urgent appeal to you is to help our people by finding the whereabouts of those who are still missing and to inform whether they are still alive or dead."

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[12] Representations made by a civilian before the LLRC at Kilinochchi on 18th September 2010 – Transcript No. LLRC/FV/18-09-10/01

[13] Representations made by a civilian before the LLRC at Kilinochchi on 18th September 2010 – Transcript No. LLRC/FV/18-09-10/01

[14] Representations made by a member of the clergy before the LLRC at Mannar on 8th January 2011 – Transcript No. LLRC/FV/08-01-11/01

[15] Representations made by a member of the clergy before the LLRC at Madhu on 9th January 2011 - Transcript No. LLRC/FV/09-01-11/01

5. 22 During the Commission's visit to Madhu[16], representations were made on behalf of 13 missing persons.

5. 23 A person made representations on behalf of a 'society of parents for kidnapped or disappeared persons in Trincomalee'[17] with 74 members whose loved ones are still missing. He stated that,

> "Even if they have done any offence, allow us to go and meet them and to speak to them. We have full confidence and trust in the Commission. We have come here now, as we have nowhere to go. Whatever happened to us we are not frightened because we have lost everything. Before this Commission, we can ask for some relief."

5. 24 During the Commission's visit to Muttur[18], representations were made on behalf of at least 17 people who are reportedly missing due to abductions and arrests made by unknown parties, the Security Forces or Police. Their whereabouts are unknown. Similarly, during its visit to Vavuniya, including Chuttikulam, Menik Farm, and Nedunkerny[19], representations were made on behalf of at least 7 people who are missing due to abductions and arrests allegedly made by unknown parties, the security forces, or the police.

LTTE abductions

5. 25 According to the representations made a substantial number of cases of abductions involving the LTTE were reported during the Commission's visits to Batticaloa[20], Jaffna[21], and Muttur[22] .

People who have voluntarily surrendered

5. 26 During the Commission's sittings in conflict affected areas, a number of representations were made concerning people who have voluntarily surrendered to the Security Forces during the final stage of the conflict in response to the Government's public appeal for such surrender[23]. Many stated that their efforts to trace these people at various places

[16] See representations made by a civilian before the LLRC at Madhu on 9th January 2011 - Transcript No. LLRC/FV/09-01-11/01
[17] Representations made by a civilian before the LLRC at Trincomalee on 13th December 2010 - Transcript No. LLRC/FV/03-12-10/01
[18] See representations made in Muttur on 4th December 2010 - Transcript No. LLRC/FV/04-12-10/01
[19] See representations made in Vavuniya on 14th August 2010 - Transcript No. LLRC/FV/14-08-10/01
[20] See representations made in Batticaloa on 9th October 2010 – Transcript No. LLRC/FV/09-10-10/01
[21] See representations made in the Jaffna District on 11th – 14th November 2010. Transcript Nos. LLRC/FV/11.11.10-01/02, LLRC/FV/12.11.10-01/02/03, LLRC/FV/13.11.10-01/02, LLRC/FV/14.11.10-01/02
[22] See representations made in Muttur on 4th December 2010 - Transcript No. LLRC/FV/04-12-10/01
[23] For example, see representations made in camera at Boossa on 30th December 2010 - Transcript No. LLRC/CS/30-12-10/01

of detention proved unsuccessful. (For details see paragraphs 4.242 to 4.260 in Humanitarian Law Issues - Chapter 4).

Alleged "White van" abductions

5. 27 With regard to the allegations concerning so-called "white van abductions", during the Commission's visits in the Jaffna district[24], 6 such allegations of "white van" abductions were reported. Representations were made during the Commission's visit to Batticaloa[25] with regard to several cases of abductions involving the use of so-called "white vans". During its visit to the Madhu area[26], the Commission was informed that two persons have been abducted in "white vans". In Muttur[27], there were representations on behalf of at least 3 persons who had been abducted involving "white vans" (See paragraphs 5.66 to 5.78 on Illegal Armed Groups for further details).

Clergy

5. 28 A number of representations[28] were made with regard to clergy in all religious faiths who have allegedly been killed or found missing during the conflict, including the cold-blooded murder of Buddhist monks at Arantalawa and Anuradhapura carried out by the LTTE.

5. 29 The Commission having listened to hundreds of persons during its field visits to conflict affected areas as well as in Colombo, giving disturbing accounts of the family members whose whereabouts remain unknown, felt that the most cogent summary description of this concern was articulated by the organization "Mothers and Friends of Missing Persons in Batticaloa"[29] which outlined in detail the extent and the depth of suffering of the family members due to such disappearances of their loved ones. They requested the establishment of a mechanism exclusively devoted to addressing the issue of involuntary disappearances. In that regard, a representative of the organization stated :

> "I think this is probably in our lifetime the best Commission that we have ever seen who has really come to districts, interacted with the people … so we know that something is really, really happening … what we request you is to recommend to the President to appoint a

[24] See representations made in the Jaffna District on 11th – 14th November 2010. Transcript Nos. LLRC/FV/11.11.10-01/02, LLRC/FV/12.11.10-01/02/03, LLRC/FV/13.11.10-01/02, LLRC/FV/14.11.10-01/02

[25] See representations made in Batticaloa on 9th October 2010 – Transcript No. LLRC/FV/09-10-10/01

[26] See representations made in Madhu on 9th January 2011 - Transcript No. LLRC/FV/09-01-11/01

[27] See representations made in Muttur on 4th December 2010 - Transcript No. LLRC/FV/04-12-10/01

[28] See representations made by His Eminence Cardinal Malcolm Ranjith before the LLRC at Colombo on 03rd November, 2010; Mr. Austin Fernando before the LLRC at Colombo on 18th August 2010; Mr. D. Ahangamaarachchi before the LLRC at Colombo 03rd January 2011; Mr. Tassie Seneviratne before the LLRC at Colombo on 24th January 2010.

[29] Spokeswoman for the Group of Mothers and Friends before the LLRC at Colombo on 20th January 2011

Special Commission to get into the disappearances more deeply because each story needs a lot of time. You just can't get those facts within five minutes. You need very deeper attentive listening, so that is the process. This Special Commission should listen deeply to each story, verify facts through a process of inquiry and investigation, establish responsibility, verify the truth, analyze the root causes, and share the lessons learned to make necessary changes in the legal system."

5. 30 A number of parents who appeared before the Commission stated that their children were fighting cadres of the LTTE and other illegal armed groups, and the whereabouts of them are not known. These parents requested the Commission's assistance to find them.

5. 31 Among the many disturbing allegations concerning missing persons submitted to the Commission by the general public, especially during its visits to conflict-affected areas, the case of Mr. Razik Pattani in Puttlam[30] is referred to here on account of the Commission's own disappointing experience concerning that case. It highlights the deplorable absence of conclusive law enforcement action, despite the Commission itself bringing this case to the attention of the concerned authorities of the area. Mr. Razik's body was reportedly discovered while the Commission was writing its report. Timely action could probably have saved this life.

5. 32 Mr. Razik who had been an official of an NGO providing assistance to the IDPs in Puttalam was abducted allegedly due to the fact that he had questioned the manner in which some of the expenditures have been incurred by the NGO as well as the purchase of some properties under the names of some of its directors. When inquires were made from the relevant Deputy Inspector-General of Police in the area as to why there was a delay in arresting the alleged abductor following a court order, he has reportedly said that the police was not aware of the suspect's whereabouts and if the people know where he was, let the police know so that they could arrest him. It was alleged in this regard that the suspect evaded arrest due to his "political connections". If this is established, it must be mentioned that such an attitude would completely erode the public confidence, in particular in the Police, and make the maintenance of law and order much more difficult. The Commission is equally concerned that undue political interference has also contributed to the lapses on the part of the Police.

5. 33 There were strong concerns among members of public who made representations that criminal investigations, law enforcement, and the police administration have been

[30] Representations made by a civilian before the LLRC at Puttalam on 7th January 2011 - LLRC/FV/07-01-11/01

adversely affected due to political interference resulting in an erosion of confidence in the criminal justice system.

Note: Please see Annex-5.1 containing the Tables 1-8 for a statistical analysis of the representations made before the Commission in writing with regard to alleged cases of missing persons, which do not necessarily include the information provided by individuals and organizations by way of oral representations made before the Commission, which are reproduced in the relevant transcripts. In certain cases, representations included more than one case.

Observations/Recommendations

5. 34 During the public sittings and its field visits, including to the conflict affected areas, the Commission was alarmed by a large number of representations made alleging abductions, enforced or involuntary disappearances, and arbitrary detention. In many instances, it was revealed that formal complaints have been made to police stations, the Human Rights Commission of Sri Lanka and the ICRC. In some cases, submissions had also been made to the previous Commissions of investigation. Yet, the next of kin continue to complain that the whereabouts of many of those missing persons are still unknown. The Government therefore is duty bound to direct the law enforcement authorities to take immediate steps to ensure that these allegations are properly investigated into and perpetrators brought to justice.

5. 35 The Commission emphasizes that it is the responsibility of the State to ensure the security and safety of any person who is taken into custody by governmental authorities through surrender or an arrest.

5. 36 A comprehensive approach to address the issue of missing persons should be found as a matter of urgency as it would otherwise present a serious obstacle to any inclusive and long term process of reconciliation. It is noted that given the past incidents of disappearances from different parts of the country and investigative efforts thereon, the past Commissions have recommended, *inter alia*, a special mechanism to address this issue and deter future occurrences[31]. These recommendations warrant immediate implementation, as these will help address this serious issue, which has arisen in the human rights context and left unimplemented by successive Governments. Continued failure to give effect to such critical recommendations of past commissions gives rise to

[31] Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island), Volume-1, March 2001 (Sessional Paper No 1-2001)

understandable criticism and skepticism[32] regarding Government appointed Commissions from which the LLRC has not been spared.

5. 37 The Commission also emphasizes that the relatives of missing persons shall have the right to know the whereabouts of their loved ones. They also have the right to know the truth about what happened to such persons, and to bring the matter to closure. Reconciliation is a process. Closure is the first difficult emotive step in that long and complex journey irrespective of whether they are victims of conflict or victims of LTTE terrorism. This will also enable them to seek appropriate legal remedies including compensation.

5. 38 All efforts should be made by the law enforcement authorities, in cooperation with relevant agencies, especially the ICRC, to trace the whereabouts of the missing persons and ensure reunification with their families. The families should be kept informed of the progress being made in that regard.

5. 39 The issuance of death certificates and monetary recompense where necessary should be addressed as a matter of priority, taking into account applicable international standards. In this regard, the Commission notes the recent amendment to the Registration of Deaths Act[33], which provides for the next of kin to apply for a Certificate of Death in respect for a person who is reported missing and not been heard of for a period exceeding one year by those who would naturally have heard of him/her, and his/her disappearance is attributable to any terrorist or subversive activity or civil commotion which has taken place in Sri Lanka. All measures necessary for the effective implementation of this law must be taken at the administrative level within a published timeframe. In particular, adequate publicity should be given to the relevant provisions of this Act through the media, Grama Niladharis etc., especially in the conflict affected areas, in order to facilitate access to the procedures and remedies provided under this Act.

5. 40 The Commission heard a number of allegations concerning persons taken into custody without any official record. The Commission therefore recommends that applicable legal provisions should be adhered to by the law enforcement authorities when taking persons into their custody, such as issuing of a formal receipt regarding the arrest and providing details of the place of detention. Such persons should be detained only at

[32] For example, see the report published by the Law and Society Trust titled "A Legacy to Remember: Sri Lanka's Commissions of Inquiry"
[33] Registration of Deaths (Temporary Provisions) Act No 19 of 2010

formal places of detention declared under the law. Adequate publicity should be given to such authorized places of detention, with access to next of kin.

5. 41 In keeping with the obligations Sri Lanka has undertaken in applicable international human rights instruments, and in accordance with the requirements of its national laws, the following measures should be taken:

a. An arrested person should be promptly produced before a Magistrate to be dealt with in accordance with the law.
b. Any change of the place of detention should be promptly notified to the family of the arrested person[34] and the Human Rights Commission of Sri Lanka.
c. Magistrates should visit the places of detention every month.
d. Release from detention should be done through courts.

5. 42 The failure or refusal by the police to record an arrest, detention and transfer or to record complaints of abductions and failure to investigate the same would constitute a criminal offence and steps should be taken to prosecute such wrongdoers.

5. 43 The Commission also heard allegations that a number of persons have been taken into custody and detained under the Emergency Regulations although the facts of some cases do not disclose any offence related to public security. In this regard, the Commission takes note of the Government's decision to lift the Emergency Regulations as a significant and a positive step towards reconciliation and restoration of normalcy. Many representations made before the Commission gave a clear impression that with the ending of the LTTE terrorism, the people's preference was that the governance be carried out under the normal laws of the land that will uphold the supremacy of the Rule of Law. The Commission also expresses the hope that the civilian life will receive the fullest benefit of the lifting of the Emergency Regulations and that any further regulations would not impair the full enjoyment of such benefits.

5. 44 The Commission has observed instances of persons being detained in custody for a long period of time under the Prevention of Terrorism Act (PTA). In this regard, the Commission recommends that an Independent Advisory Committee be appointed to monitor and examine detention and arrest of persons taken into custody under any regulations made under the Public Security Ordinance or the PTA.

[34] Also see the Interim Recommendations of the LLRC at Annex 1.5.

5. 45 The families need to be assisted to deal with the trauma of not knowing the whereabouts of their family members, in some cases for years. They could also be assisted financially in situations where the missing persons had been the breadwinners. Legal aid should also be provided as and when necessary.

5. 46 In order to address this issue comprehensively and to eliminate this phenomenon in the future as well as to fill an existing lacuna, the Commission strongly recommends that domestic legislation be framed to specifically criminalize enforced or involuntary disappearances.

5. 47 There is also a fundamental need to ensure that lessons from these past incidents be learnt in a manner that they will never be repeated again. In this regard, the Commission also stresses the need for comprehensive, island wide human rights education programmes targeting the school children, youth, members of the Security Forces, and the Police.

5. 48 Given the complexity and magnitude of the problem and considering the number of persons alleged to have disappeared, and the time consuming nature of the investigations involved, the Commission recommends that a Special Commissioner of Investigation be appointed to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings as appropriate. The Office of the Commissioner should be provided with experienced investigators to collect and process information necessary for investigations and prosecutions. This mechanism should also devise a centralized system of data collection at the national level, integrating all information with regard to missing persons currently being maintained by different agencies.

Treatment of detainees

5. 49 According to the Commissioner General of Rehabilitation[35], the Commission understands that there were 11,954 former LTTE combatants undergoing rehabilitation after they surrendered or who were otherwise taken into custody. It has also been informed that as of 26th September 2011, a total number of 8,240 of those former combatants have already been rehabilitated and left the rehabilitation centers. There are 2,727 former combatants still undergoing rehabilitation and are expected to be released in the future on the completion of the programme.

[35] Report received from the Commissioner General for Rehabilitation dated 27th September 2011

5. 50 The Commission visited several rehabilitation centers and was impressed by the professional and caring manner in which the programmes are being conducted. The goodwill and confidence generated and the vocational capacity building resulting from these programmes will certainly contribute towards reconciliation.

5. 51 The Commission also visited a number of places of detention and had discussions with inmates as well as relevant officials. Among the representations made by the detainees at the Boossa Detention Center where hardcore LTTE suspects have been detained, were those narrated by several young inmates of the circumstances under which they were forcibly conscripted by the LTTE, their attempts to escape from the LTTE's clutches and how they were re-recruited. They have spent long periods in detention without charges being preferred and consequently their educational prospects have been severely affected. This matter has already been dealt with under the Interim Recommendations of the Commission where it recommended that a special mechanism be created to examine such cases on a case by case basis and recommend a course of action in regard to disposal of each case, as appropriate.

5. 52 One detainee[36] stated that he did not join the movement with a "clear mind" at the age of 15 and escaped after five months of training. He was subsequently arrested by the LTTE and sent to the Forward Defence Lines in the Wanni and Mannar. He had sustained injury due to an attack in Mannar, and as a result, was subsequently able to leave the movement and surrendered to the Security Forces during the final stage of the conflict. He expressed his desire to enhance his skills in handicraft and be released at an early stage.

5. 53 Another detainee[37] stated that he was forcibly recruited by the LTTE at the age of 17 and was given training in throwing hand grenades. When he escaped, the LTTE arrested and assaulted him. When he escaped for the second time, the LTTE arrested him again and sent him to the FDL where he sustained injury. After 6 days in hospital, the LTTE had put him in jail from where he escaped, and subsequently surrendered to the Security Forces during the final stages of the conflict.

5. 54 Yet another detainee[38] stated that he was forcibly recruited by the LTTE while he was studying for his A/L examination and given training on handling a AK 47, and sent to the

[36] An ex-LTTE combatant making representations in camera at Boossa on 30th December 2010 - Transcript No. LLRC/CS/30-12-10/01
[37] *Ibid*
[38] *Ibid*

FDL. He escaped the movement and was subsequently arrested by the LTTE and jailed, and sent to the frontline. He later surrendered to the Security Forces.

5. 55 During the Commission's field visits in the conflict affected areas, it was noted that most of the representations on the issue of detainees focused on:

a. The whereabouts of the detainees, especially those who have surrendered voluntarily:

According to the representations made before the Commission during its visits in the Batticaloa district[39], there had been at least 5 cases of alleged arrests by the armed forces/police and in most of these cases the whereabouts of the detainees are unknown. In this regard, it was claimed that there were 4 cases of arrests (LTTE suspects) by the armed forces at the Omanthai checkpoint during the final days of the conflict. Some of those who made representations expressed the desire to know the detention centre in which these detainees have been placed.

b. The difficulty of getting definitive information for the family members with regard to the place of detention of the detainees, especially when they have to travel very far:

During the Commission's visit to the Jaffna district[40], a woman making representations stated that her husband and son were believed to be at the Boossa Detention Centre, and having visited the center all the way from Jaffna, she was not allowed to see them and was told outside the camp that both her son's and the husband's names were in the list of detainees. Her 21 year old daughter is still to be traced since 11th April 2009.

During the Commission's visit to Kandawalai[41], a representation was made by a woman who informed the difficulties she faced in meeting her husband (LTTE suspect) at the Boossa Detention Centre. She also stated the following:

> "My husband is at the Boossa camp and when we go there we are given only 15 minutes time to talk to him through a small net**…**He was with the LTTE at the start but for the last 10 years he did not have any connection with the LTTE….With great difficulty we go from here

[39] See representations made in the Batticaloa District on 9th – 11th October 2010. Transcript No. LLRC/FV/09.10.10/01, LLRC/FV/10.10.10/01, LLRC/FV/10.10.10/01

[40] Representations made by a civilian before the LLRC at Sittankerny on 12th November 2010 – Transcript No. LLRC/FV/12-11-10/04

[41] Representations made by a civilian before the LLRC at Kandawalai on 19th September 2010 - Transcript No. LLRC/FV/19-09-10/01

all the way to Boossa and we are not allowed to talk to them or see them properly so I want some relief from the Commission. When we carry any food parcels we are not allowed to hand them over and if we try to give some money we are asked as to how we get our income and from what source etc. He was at the mental health hospital at Vavuniya."

Similar problems were expressed to the Commission on its visits to Mullaittivu, Kuchchaveli, and Madhu.

c. Particular needs of the young detainees to complete their formal education**.**

A young female inmate at Boossa Detention Center[42] making a representation stated that she was forcibly conscripted by the LTTE and missed the opportunity to sit for the GCE A/L examination. She had subsequently escaped the LTTE and surrendered to the Security Forces. She stated that she has been in detention over 18 months and requested for her release, as she did not join the LTTE voluntarily, and did so only to save her life and family.

Another inmate[43] stated that he was forcibly conscripted by the LTTE while studying for the GCE A/L examination and was sent to a computer center run by the LTTE who forcibly took his identity card so that he could not return home. During the final stage of the conflict he surrendered to the Security Forces. As he was forcibly conscripted, he missed the opportunity to sit for the GCE A/L examination but with the help of the center he said that he managed to sit for the GCE O/L English language paper, and expressed his desire to be released early so that he could continue his education and lead a normal life.

d. The breadwinners who are in detention:

Some detainees were referred to by the next of kin as their breadwinners and it was stated that the release of the breadwinner would help begin the restoration of normalcy in their lives. This would also help them to move their families into independent sustenance within a short period without entirely depending upon the Government and other external sources.

e. The need to expedite the investigations and legal processes as some of the detainees have been detained for a long period of time without a formal charge:

[42] An ex-LTTE combatant making representations in camera at Boossa on 30th December 2010 - Transcript No. LLRC/CS/30-12-10/01
[43] *Ibid*

In this regard, a lawyer from Anuradhapura[44] who made representations before the Commission stated that on a visit to Anuradhapura prison, 65 inmates were interviewed and they had been taken into custody on several occasions during the period 2006 - 2009. However, most of them have not been served with indictments so far. During the Commissions' visit to the Jaffna district[45], an individual who made a representation stated that early action should be taken to release the detainees if no evidence is found against them or they should be brought before the Courts early.

Similar sentiments were expressed during a series of representations made before the Commission. A retired senior Government official[46] who was functioning as the Chairman of the Prisons Visitors' Board spoke of what he called **"**very, very sad situation, particularly bad and dangerous situation." He stated:

> "We have in our prisons over 2,000 young Tamil men. There are 500 here in the Remand Prisons at Welikada. Then we have 700 in the TID (Terrorism Investigation Division), and another 600, or little more, at Boossa. Some of them in the Remand Prisons have been taken on suspicion. Just picked up and taken…They are produced before Magistrates, and then the Police say 'we have not finished the inquiry' and they are locked up again."

5. 56 During the Commission's visit to Mannar[47], a religious leader speaking on behalf of the detainees made the following remarks:

> "Almost all Tamils who have been detained were on suspicion of having links to the LTTE and no charges have been brought for one year. Some others have been charged but their trials are going on for years. Some of those who are detained in Omanthai under the Terrorist Investigation Department have been denied access to lawyers, ICRC and National Human Rights Commission and the right to participate in religious services. The relatives face a lot of problems visiting them and are often compelled to talk to them in an inhuman manner through a mesh, 10 at a time in a small congested room. There is no centralized list of detainees in each detention center that relatives could refer to. It is very important also to identify and pay attention to vulnerable groups with special needs such as those with small children and physically disabled."

Note**:** Please see Annex-5.2 containing the Tables 9-17 for a statistical analysis of the representations made before the Commission in writing with regard to cases of detention, which do not necessarily

[44] Mr. Karunaratne Herath before the LLRC at Colombo on 15th February 2011
[45] Prof. Balasundaram Pillai, before the LLRC at Jaffna on 12th November 2010
[46] Mr. K Godage, before the LLRC at Colombo on 15th September 2010
[47] Representations made by a member of the clergy before the LLRC at Mannar on 8th January 2011 – Transcript No. LLRC/FV/08-01-11/01

include the information provided by individuals and organizations by way of oral representations made before the Commission, which are reproduced in the relevant transcripts. In certain cases, representations included more than one case.

Observations/Recommendations

5. 57 The next of kin of the detainees have the fundamental right to know the whereabouts of their family members who are in detention. Therefore there is a need for a centralized comprehensive database containing a list of detainees, which should be made available to the next of kin with names, place of detention as well as record of transfers so that families have access to such information.

5. 58 The Commission wishes to urge that the Government direct the relevant authorities to ensure the full implementation of all Interim Recommendations[48] pertaining to detainees.

5. 59 The next of kin have the right of access to detainees. Therefore, any practices that violate this principle should be removed. The Commission has observed that some next of kin are only provided information verbally. Moreover, having travelled very far, some family members have not been allowed to see the detainees in person. The Commission recommends that the relevant authorities in cooperation with the ICRC and voluntary organizations enhance current facilities for the transportation of the next of kin to visit their family members at the places of detention.

5. 60 The Commission visited several places of detention, especially the high security facilities at Omanthai and Boossa. It notes that the Omanthai center has since been closed. The Commission notes with appreciation the caring attitude of the authorities towards the inmates at these centers and the fact that the ICRC has access to these places of detention, including for private meetings with detainees. The Commission welcomes this policy of cooperation with the ICRC and strongly recommends that the Government expands this policy of cooperation and constructive engagement with the ICRC and other similar humanitarian organizations to ensure the welfare of the detainees.

5. 61 All places of detention should be those, which are formally designated as authorized places of detention and no person should be detained in any place other than such authorized places of detention. Strict legal provisions should be followed by the law enforcement authorities in taking persons into custody, such as issuing of a formal receipt of arrest and providing details of the place of detention.

[48] Interim Recommendation 1 (a): A special mechanism be created to examine such cases on a case by case basis and recommend a course of action in regard to disposal of each case, as appropriate. Further, to support this process the establishment of a focal point in the Attorney-General's Department is also recommended.

5. 62 The Commission recommends that special attention be given to young detainees, in particular those whose education has been disrupted due to conscription by the LTTE and who expect to complete their formal education. Priority should be given to investigation and the speedy disposal of their cases. In this regard, the Commission notes with appreciation that the rehabilitation programme has enabled many detainees to sit for the national examinations.

5. 63 A proper screening process should be in place to identify special cases such as those with young children, physically disabled and those who are recovering from injury, and medical interventions. They must be provided special assistance that they may require. There may also be cases where some inmates require counseling due to long periods of detention and lack of access to relatives.

5. 64 The Commission notes with appreciation the action taken by the Government to process the cases relating to a significant number of detainees based on the Interim Recommendations of the Commission. However, the Commission expresses concern over some detainees who have been incarcerated over a long period of time without charges being preferred. The Commission stresses again that conclusive action should be taken to dispose of these cases by bringing charges or releasing them where there is no evidence of any criminal offence having being committed.

5. 65 With regard to those who have been rehabilitated, the Government must implement programmes to ensure that they are integrated into the mainstream of civilian life. For this purpose, the Commission is of the view that the Government should actively encourage a greater role for the civil society organizations that could provide both financial and human resources towards that end.

Illegal armed groups

5. 66 Activities of illegal armed groups, especially during the period under review are of serious concern to the Commission. According to a number of representations made before the Commission during its field visits to conflict affected areas, it appeared that the dominating presence and activities of such groups have created fear among the general public, contributing to an environment of impunity. Some of their illegal activities have affected the basic rights of people such as the right to life as there have been a number of alleged incidents of abduction, wrongful confinement and extortion by these groups. The whereabouts of most abductees are still unknown while some others have since been found dead. These acts, if proven to be true, constitute a violation of basic freedoms and fundamental rights of people.

5. 67 During its sittings in the Provinces, the Commission heard a range of representations concerning activities of illegal armed groups.

5. 68 In Ampara[49], a widowed mother made a representation with regard to her son who had allegedly been abducted by the so-called "Karuna Group" in the Ampara district. After more than two years, the whereabouts of this person is still not known. In this case, there has also been a police investigation. It was further alleged that the missing person has been handed over to the Army by the "Karuna Group".

5. 69 During the Ampara sittings, four mothers[50] made representations concerning the alleged abduction of their sons by the "Karuna Group". The whereabouts of these persons are still unknown. During the same visit, 3 other women[51] made representations that the "Karuna Group" had allegedly abducted their husbands. The whereabouts of these people are still unknown.

5. 70 During the Commission's visit to the Batticaloa District, there were at least 8 cases of alleged abductions of persons[52], mainly by the so-called "Karuna Group". The whereabouts of these persons are still unknown. In one such case[53], a son alleged that his father was abducted and killed by the "Karuna Group" and raised the issue of obtaining a death certificate. Some of these cases are also related to the so called "white van" abductions. In the Batticaloa district alone, according to the representations made, there were 7 cases involving so called "white vans"[54].

5. 71 According to a further representation made in the Batticaloa district[55], a person alleged that her son-in-law was shot dead by the "Karuna Group" and the TMVP took away her daughter whose whereabouts are still unknown. It was mentioned that the abducted daughter had 3 children.

5. 72 During the Commission's sittings in the Jaffna district, a complaint was made by a mother[56] alleging that her son was abducted in May 2007 involving a "white van" with

[49] Representations made by a civilian before the LLRC at Ampara on 25th March 2011 – Transcript No. LLRC/FV/25-03-11/01
[50] See representations made in Ampara district on 25th March 2011 – Transcript No. LLRC/FV/25-03-11/01
[51] *Ibid*
[52] See representations made in Batticaloa district on 09th – 11th October 2010
[53] Representations made by a civilian before the LLRC at Chenkalady on 10th October 2010 – Transcript No. LLRC/FV/10-10-10/01
[54] See representations made in Batticaloa district on 09th – 11th October 2010. Transcript Nos. LLRC/FV/09.10.10/01, LLRC/FV/10.10.10/01, LLRC/FV/11.10.10/01.
[55] Representations made by a civilian before the LLRC at Chenkalady on 10th October 2010 – Transcript No. LLRC/FV/10-10-10/01
[56] Representations made by a civilian before the LLRC at Sittankerny on 12th November 2010 - Transcript No. LLRC/FV/12-11-10/04

two EPDP cadres following them on a motorbike. The woman also claimed to possess the number of the van and when she visited the EPDP office several times they have repeatedly requested her "to be patient". In another case reported to the Commission in Jaffna[57], a woman claimed that her husband and his two brothers were abducted by the "EPDP and Army men in civilian clothes". Their whereabouts are still unknown.

5. 73 The continuing concerns of the general public regarding the activities of the illegal armed groups, even in the post-conflict phase, were explicitly expressed by a civilian who made a representation during the Commission's sitting in Vavuniya[58]. He stated that,

> "In Vavuniya lot of extortion games are taking place. Other than the LTTE there are many other armed groups, influential armed groups in Vavuniya. People feel that these armed groups are mainly responsible for these kidnappings and extortions… "

5. 74 The Commission strongly feels that such grievances must be effectively addressed to create an appropriate environment for the reconciliation process.

5. 75 The Commission sought clarifications from the TMVP and EPDP political leadership regarding specific allegations that were attributed to their respective groups.[59] Whilst acknowledging that there are illegal activities attributed to their parties, their contention was that their names are being used by unknown parties. In this regard, it is appropriate to mention that the leader of the EPDP made the observation that the ruthless internecine warfare encouraged by the LTTE necessitated certain Tamil groups to carry weapons and that although the LTTE engineered conflict is over, some residual activity could remain for some time. He stated that "after heavy rains, some wetness remains"[60].

5. 76 The Commission is constrained to observe the attitude manifested by the leadership of the TMVP and EPDP in their explanations provide little or no consolation to the aggrieved parties, and tends to militate against any meaningful reconciliation process.

Observations/Recommendations

5. 77 The Commission is of the view that proper investigations should be conducted in respect of the allegations against the illegal armed groups with a view to ascertain the truth and

[57] Representations made by a civilian before the LLRC at Velanai on 14th November 2010 - Transcript No. LLRC/FV/14-11-10/02
[58] Representations made in Camera
[59] Hon. Douglas Devananda, before the LLRC at Colombo on 3rd September 2010; Hon. V Muralitharan before the LLRC at Colombo on 13th December 2010
[60] Hon. Douglas Devananda, before the LLRC at Colombo on 3rd September 2010

the institution of criminal proceedings against offenders in cases where sufficient evidence can be found.

5. 78 Action should also be taken to disarm and put an end to illegal activities of these groups, as it would otherwise present a serious obstacle to the ongoing process of reconciliation. In this regard, the Commission strongly reiterates its Interim Recommendation seeking to disarm all illegal armed groups. While the Commission notes that some action has been taken in this regard, it regrets that no conclusive action has been taken. It is essential that conclusive action should be taken to address this issue as part of a time bound and verifiable process. The Commission is of the view that had timely action been taken with regard to the Commission's Interim Recommendations, serious incidents such as the recent attack on the Editor of the Uthayan Newspaper may have been averted.

Conscription of Children

5. 79 During its field visits to the conflict affected areas, a number of representations were made with regard to child conscription and, according to the parents, the whereabouts of many of these children are still unknown. Conscription of children was one of the worst forms of crimes committed by the LTTE during the time of the conflict.

5. 80 A church leader[61] in his submission to the Commission explained as to how, due to LTTE threats, he was unable to continue with a project, which he began with foreign aid in order to improve the education and health standards of more than 1,000 Tamil children. Consequent to the discontinuing of his project, he had observed that some of those children were forcibly recruited by the LTTE.

5. 81 The Commission heard a number of detainees who explained in detail the circumstances under which the LTTE forcibly recruited them to the movement when they were below the age of 18 years. One inmate who joined the movement stated that he was "nurtured and grew in the movement"[62]. When they were conscripted, some had been preparing for the GCE examinations while others had already gained university admission.

[61] Representations made by a member of the clergy before the LLRC at Ampara on 25th March 2011 – Transcript No. LLRC/FV/25-03-11/01.

[62] An ex-LTTE combatant making representations in camera at Boossa on 30th December 2010 - Transcript No. LLRC/CS/30-12-10/01

5. 82 During the Commission's visit to Kilinochchi[63], a mother informed that all her 3 children were abducted and conscripted by the LTTE at the ages of 13, 15 and 17. The child who was conscripted at the age of 13 had died. The other two children are now under detention and she made a request for their early release.

5. 83 In Muttur[64], a woman made representations stating that her brother was forcibly conscripted by the LTTE when he was a schoolboy. He then escaped and surrendered to the army during the final stage of the conflict. She made a request that her brother be released from detention, as he needed to sit for his GCE O/L examination this year.

5. 84 A representation made before the Commission by a member of the clergy[65] from Mankulam revealed that a large number of children were forcibly conscripted by the LTTE during the final stage of the conflict. According to this representation, by April 2009, as the conflict intensified, approximately a large number of civilians, including those LTTE fighters who escaped, workers from the NGO Caritas, and some doctors had taken shelter in the compound which belonged to the St. Mary's Church at Valayanmadam. On 23rd March 2009, a large number of LTTE cadres had surrounded this Church and walked into its compound with their weapons despite objections raised by the clergy. Subsequently, it was alleged that nearly 575-580 children, between 15 to 18 years – were forcibly taken by the LTTE from this Church compound and sent to Mullaiwaikkal. It was also revealed that some of these children had left the LTTE and taken refuge in the Church and many of them had resisted the LTTE cadres by attempting to fight with them with chairs, tables etc. During the incident, the LTTE had shot the parents who resisted the attempt of the LTTE to take their children. As a result, it was alleged that one person was killed while several others were injured. The member of the clergy who described this incident was of the view that these children would have been given 1-2 days of training and sent to the frontline. This incident was also described by another member of the clergy who had been at the St. Mary's Church on that day. He made representations to the Commission in Jaffna[66].

5. 85 Many such accounts of forcible recruitment were heard during the Commission's visits to Jaffna, Kilinochchi, Puttalam and Muttur.

[63] Representations made by a civilian before the LLRC at Kilinochchi on 18th September 2010 – Transcript No. LLRC/FV/18-09-10/01
[64] Representations made by a civilian before the LLRC at Muttur on 4th December 2010 – Transcript No. LLRC/FV/04-12-10/01
[65] Representations made by a member of the clergy at Colombo on 19th October, 2011-Transcript No. LLRC/IS/19.10.11/01
[66] Statement made by a member of the clergy at Jaffna on 18 October, 2011. Transcript No. LLRC/IS/18.10.11/01

5. 86 A former UNICEF official and a child rights activist[67] told the Commission that it was legally and morally unacceptable that the CFA did not contain any provision at all to put an end to the abhorrent practice of child recruitment by the LTTE.

5. 87 The report submitted by Sri Lanka under the Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict[68] has referred to the phenomenon of child conscription as follows:

> "Since the signing of the CFA, as of 31 March 2008, UNICEF has recorded in its database 6,259 cases of child recruitment by the LTTE. Out of this total, 3,784 were boys, 2,475 girls, and 2,047 were regarded as released children. There were 1,429 children recruited under 18 but who had reached 18 years as of March 2008. Those under 18 years were 168.
>
> UNICEF has also recorded underage recruits by the Karuna faction, which is a breakaway group of the LTTE in the East. The total known to UNICEF is 463. Outstanding cases under 18 years are 131 with 66 recruited under 18 years but are now above that age.
>
> The LTTE has been identified as a party that recruit and use children in situations of armed conflict in the report to the Secretary-General on children and armed conflict and in further reports in 2006 (S/2006/1006) and in 2007 (S/2007/758). In 2007, the "Karuna faction" of the LTTE was also included as a party responsible for child recruitment.
>
> The UNSG in a report issued in 2005 highlighted LTTE's continued use and recruitment of children following the signing of the CFA in 2002. This reached a peak in 2004 when there were over 1,000 cases of recruitment and re-recruitment reported by parents to UNICEF. Increasing number of girls was a new feature. Most of the recruitment occurred in the Eastern Province.
>
> The UN Secretary General's report of 2006 states that the LTTE continued the recruitment and the re-recruitment of children who had previously run away. The report indicated that as of end 2006, out of a total of 5,794 cases, 1,598 remained with the LTTE. The report also indicated an overlap of 37 per cent between children recorded by UNICEF and children who were released, ran away or returned home. This suggests that the UNICEF figures reported approximately one third of the total cases of recruitment. Higher levels of recruitment were reported from Kilinochchi (which is an "uncleared" area where the LTTE dominates) with more girls being recruited from Mullaittivu.

[67] Dr. Hiranthi Wijemanna before the LLRC at Colombo on 12th August 2010

[68] The report submitted by Sri Lanka under the Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict (CRC/C/OPAC/LKA/1), UN Committee on the Rights of the Child, 15 February 2010, p. 5-6

A disturbing feature reported was the release of children through the so-called 'North-East Secretariat on Human Rights' and to an 'Educational Skills Development Centre', both of which are run by the LTTE. Children were placed in this facility without parental consent. No independent verification was possible. As a perpetrator, the LTTE's control of the centre is highly questionable. During this period, the LTTE had conducted systematic programmes on civil defence training. UNICEF reported that children were also involved in such programmes and much of them were conducted during school hours, while school principals and teachers were helpless."

5. 88 The Commission heard representations during its field visits that the LTTE intensified child conscription during the last phase of the conflict to replenish its cadres.

5. 89 The Commission also heard representations made by the Commissioner General for Rehabilitation, the National Child Protection Authority as well as the Ministry of Women's Affairs and Child Development.

5. 90 There were also concerns about the recruitment of underage children in the East by groups other than the LTTE. In this context, the Commission wishes to note the Tripartite Action Plan between the TMVP, Commissioner General of Rehabilitation, and the UNICEF signed in December 2008 to "ensure that the practice of child recruitment by the TMVP is stopped and that all children recruited or used by the armed group are released and provided with reintegration assistance."[69] As stated in this Action Plan, by the end of December 2008, UNICEF had received reports of 545 children recruited by the TMVP of which 133 remained with that party, including 62 who were still under 18[70]. In 2007, the UN Secretary-General's Report on Children in Armed Conflict also included "the Karuna faction" as a party responsible for child recruitment. The Commission therefore hopes that the full implementation of this Action Plan will result in the complete elimination of the abhorrent practice of child recruitment by armed groups and the victims be rehabilitated and reintegrated with their families and communities. The conscription of children is also a violation of the penal laws of Sri Lanka. The Commission also notes the Government of Sri Lanka's ongoing cooperation with the UNICEF and the Security Council Working Group on this issue in compliance with the Security Council resolution 1612 (2005) and other relevant resolutions.

5. 91 The Commission commends the establishment of the Family Tracing and Reunification (FTR) Unit by the Vavuniya Government Agent and the Probation and Child Care Commissioner (Northern Province) for unaccompanied and separated children. This was

[69] Action Plan between the TMVP, Commissioner-General of Rehabilitation, and the UNICEF signed on 1 December 2008
[70] *Ibid*

done with UNICEF support, in December 2009, following a number of tracing requests received from the public. The UNICEF has reported that most of the complaints regarding missing children were lodged by parents who accused the LTTE of conscripting them[71]. According to the Vavuniya Government Agent, the FTR has received 2,564 tracing applications up to 30th June, 2011, and of them 676 related to missing children[72]. The Commission hopes that the FTR's work will result in tracing all missing children due to the conflict and their reintegration with their families and communities in the near future.

5. 92 Speaking of the rehabilitation programme of the Government a senior official of the Ministry of Justice[73] explained that its rehabilitation program has been divided into the following four categories:

a. To provide children with psychosocial rehabilitation.
b. To look at their problems in a spiritual angle, and to expose them to their respective religious backgrounds.
c. To undertake a socio-reintegration rehabilitation process through which they could reunite with their families over a period of time.
d. To provide vocational rehabilitation for children who were deprived of having a preliminary education.

5. 93 It was also revealed that 127 children, upon reaching the age of maturity and having obtained vocational training, have found employment in other countries.

Observations/Recommendations

5. 94 The rehabilitation of the ex - child combatants should be the utmost priority of the Government in the immediate post-conflict phase. The Commission was pleased to note the rehabilitation programme of the Government, which has resulted in the rehabilitation, and reintegration of hundreds of former child combatants, and in particular the approach of the community based correctional programme of the Commissioner General of Childcare and Probation. The Commission recommends that the same community based approach be adopted for the rehabilitation of the former child combatants in cooperation with NGOs and civil society organizations.

[71] Government Agent, Vavuniya as quoted by The Island newspaper, "Vavuniya GA blasts BBC for twisting war-related news", 1 September, 2011.
[72] *Ibid*
[73] Mr. Suhada Gamlath , Secretary to the Ministry of Justice, before the LLRC at Colombo on 13th December 2010

5. 95 In the process of rehabilitation, the Commission calls on the relevant rehabilitation authorities to ensure that the children be allowed to live with their families no sooner they complete the rehabilitation programme, and help them earn a living and to assist them to continue their formal or informal studies. In this regard, the Commission stresses the importance of children staying with parents and/or extended family members within their own communities, which is an integral part of cultural traditions that need to be respected. This would also help their long term reintegration with their own families and communities.

5. 96 In instances where there is *prima facie* evidence of conscription of children as combatants, any such alleged cases should be investigated and offenders must be brought to justice. In this regard, the complaints of alleged recruitment of children by illegal armed groups/groups affiliated with the LTTE or any political party should be investigated with a view to prosecuting the offenders to ensure that the practice would not occur in the future. The Commission calls for the full implementation of the Action Plan between the TMVP, Commissioner General of Rehabilitation, and the UNICEF with immediate effect so that the practice of child recruitment by the TMVP ceases, children recruited are released and reintegrated with their families and communities after rehabilitation.

5. 97 The Commission urges the relevant authorities in consultation with the private sector to provide increased employment opportunities in the former conflict affected areas. Some element of flexibility should be given in respect of child combatants who have missed school. Further, these former child combatants should be encouraged and facilitated to complete their formal education requirements while engaging in gainful employment.

5. 98 The Government should also explore the possibility of securing assistance from relevant UN agencies, ICRC, INGOs, NGOs and civil society organizations who have knowledge and experience in dealing with children exposed to armed conflict, especially the UNICEF. In this context, the Commission notes as a positive step the establishment of the Family Tracing and Reunification (FTR) Unit with UNICEF assistance, and the progress it has achieved in matching data on children. The Government should actively encourage and support this initiative and all agencies, especially the security agencies should cooperate in this process so that matching could lead to actual reunification of the children with their families. The Government must also consider establishing a national, Government led, multidisciplinary task force to develop and implement a comprehensive child-tracing programme.

5. 99 Priority should be given to examining on a case-by-case basis, the cases relating to young LTTE suspects with a view to either instituting legal action without delay or rehabilitating and/or releasing them.

Vulnerable Groups

5. 100 The conflict has given rise to many problems concerning vulnerable groups such as women, children, IDPs and disabled. The Commission heard several accounts of these groups who have suffered considerably. The meeting of basic needs of these groups should be a matter of priority for the Government in the current post conflict environment, while durable solutions should be found in the medium and long term, without which a sustainable and all inclusive reconciliation process cannot be achieved.

5. 101 The challenges faced by these vulnerable groups and solutions thereto are crosscutting in nature. The services of international organizations and civil society groups who have developed considerable expertise in handling these issues should also be explored. Most importantly, the community level associations and support groups helping the communities through their families and villages could play a significant role in this regard. Through such associations, single mothers, those recently resettled, and those who are disabled could make collective efforts to address the issues they face and bring them to the attention of local governmental institutions, political leadership and other support structures, including civil society organizations. Such community level support groups could also address emotional and spiritual needs of people who have been subjected to trauma due to difficult conditions and personal tragedies under which they have lived through the conflict.

Women, children and the elderly

5. 102 During the Commission's field visits, it became evident that women, children and elderly are the segments that have taken the brunt of the conflict, seriously disrupting their lives. Many women have either lost their husbands or their whereabouts are unknown. Despite such trauma and hardship, they continue to support their families with young children and aging parents. In these efforts, women need to feel that they live in a secure environment and their human dignity is safeguarded and protected.

5. 103 According to the Ministry of Child Development and Women's Affairs[74], the female headed households in the North and East are estimated to be 59,501, with 42,565 of them living in the Eastern Province and 16,936 in the Northern Province. There should

[74] Report dated 21 September 2011 received from the Ministry of Child Development and Women's Affairs

also be a substantial number of female headed households outside the North and East. According to the Ministry, the data collection process is ongoing. Furthermore, according to a study conducted by the CARE in 2008, there were about 2,939 widows in the Batticaloa district[75]. The Commission heard many representations with emphasis placed on the need to support female headed households to drive the reconciliation process forward. In that process, there is also a need to let these women know that the Government, civil society and the citizenry as a whole are fully behind them in supporting them.

5. 104 The Commission heard several accounts of women specific post conflict issues. They are best summed up in the following points made before the Commission by the Batticaloa Disaster Management Women's Movement[76]. The following is a summary of the points made before the Commission:

a. The increase in the number of widows and problems faced by women headed households are major post conflict challenges in the district.

b. The special needs of these widows who are the poorest of the poor must be taken into account as a matter of priority.

c. These women should be looked at not only as recipients of aid but also as participants in the development and reconciliation process.

d. Land rights of women and their right for a secure livelihood is also an important aspect. During the conflict, especially in 2006 and 2007, due to restrictions on the freedom of movement, livelihood activities of many women in the district were severely affected. During this time, there was a situation of starvation as well. Local business and livelihood activities had also been affected as a result of people from outside engaging in such activities in the district.

e. There are delays in providing livelihood assistance programmes.

f. So far, women who were subjected to various forms of violence arising from the conflict have not received any justice. Women feel unsafe in the presence of the armed forces, and in most of the resettled areas such presence is not very reassuring to women. Many women were killed even after the conflict came to an end. The Batticaloa Disaster Management Women's Movement has observed these cases for 5 months from November 2009 to March 2010. Although exact reasons for such

[75] Representations made by a member of the Batticaloa Disaster Management Women's Movement at Batticaloa on 9th October 2010 – Transcript No. LLRC/FV/09-10-10/01

[76] *Ibid*

"mysterious murders" were not known, "the pathetic situation" is that the accused in such cases have been released on bail.

g. The illegal armed groups have been responsible for many human rights violations affecting women. These include arbitrary arrests, abductions, disappearances and forced conscription. These violations should not only be published but justice should also be done.

h. Post-conflict development and reconciliation efforts and their implementation must take into account the gender balance and rights of women as well as relevant provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the UN Security Council resolution 1325 on women peace and security.

5. 105 During the Commission's visits to conflict-affected areas, the following comments were made:

> In Kilinochchi[77]: "There are many widows in this area. Some of them have lost their children as well. This is the centre where much fighting took place. Young boys, girls and the husbands and able men have died. The rest are poor widows and elderly. They have no assistance. They have no jobs. No income. Can you help them earn a small income? You have to create some industries. There is nothing that the Government has created as an industry in this area. In some areas the Government has created industries such as garment industries but in this Pachchillaipallai area there is nothing."

In Jaffna: A member of a Women's society[78] making a representation stated:

> "the war has resulted in the production of over 40,000 widows in our area. So the basic economical structures have to be provided to them and self employment facilities also have to be provided."

In Mannar: A member of the clergy making a representation [79]

> "As a priest moving with the people I notice that we have nearly 81 widows in our district. Either they have lost their husbands or their husbands are in the detention camps. These women headed families face many difficulties, as the Tamil society is a very traditional society. When a man goes in to help a widow's family undue suspicion could arise and social and moral issues could also come up. They do not have anybody to help."

[77] Representations made by a civilian before the LLRC at Kilinochchi on 18th September 2010 – Transcript No. LLRC/FV/18-09-10/01
[78] Representations made by a civilian before the LLRC at Jaffna on 12th November 2010 – Transcript No. LLRC/FV/12-11-10/02
[79] Representations made by a member of the clergy at Mannar on 9th January 2011 – Transcript No. LLRC/FV/08-01-11/01

5. 106 The Commission wishes to specifically highlight an observation made by a large number of individuals who stated that all that a family wishes is to have confirmation whether their loved ones are either alive or deceased so that they can perform their cultural and religious rites accordingly and get on with their lives. The Commission sympathizes with those observations and recognizes that there is a need to bring about a sense of closure, which would be an important contributory factor for any meaningful process of healing and reconciliation.

5. 107 A religious leader in Mannar[80] made the following observations highlighting the plight of the widows:

> "Speaking of the widows most of them are educated, having passed the GCE O/L with a number of credits, but were unfortunately deprived of pursuing further studies due to the war. Some of them speak both Sinhala and Tamil and that is not a very common occurrence.
>
> A major problem they encountered was economic survival. The employment they engaged in was always temporary with minimum wages. The work available to them hardly ever matched their skills and was often menial types of work. They were never made permanent in their employment, and were therefore deprived of employee benefits. On quitting these temporary sources of income, they were often left empty handed carrying with them the same feeling of financial insecurity that has been the lot of nearly all war widows.
>
> They continue to remain emotionally battered, shedding tears whenever they narrate their real life stories. Despite being emotionally shaken and sometimes disoriented, they put up a brave front. They have hardly had a forum to pour out their feelings of loss, social rejection and humiliation. They need to be recognized as a group that needs very special attention. There have been no organized counseling sessions to help them come to terms with their sense of loss, mourn their dead or disappeared, and help them pick up the broken pieces of their shattered lives. Sadly, the Ceasefire Agreement failed to cover such areas.
>
> Being widows, they carry a social stigma. They cannot remarry since social custom does not favor remarriage. Their lives are often lonely and insecure, and they are treated as a symbol of bad omen in their own social circles. They are undoubtedly among the most vulnerable categories of our society and often suspected of being associated with the LTTE.
>
> One of the most delicate and difficult mental agonies they encounter is explaining to their own children (especially the male children) the tragedy that has befallen their husbands. Children, as they grow in age, need a father figure in a family, a role that can never be replaced by a widowed mother. No attempts have been made to heal these mental and

[80] Rev Fr. Oswald B Firth before the LLRC at Colombo on 20th January 2011

emotional wounds, remnants of which widows carry with them even to this day. In certain instances they have been issued with certificates by state institutions confirming the death or disappearance of their husbands. But such documents do not reveal the real story or the circumstances that accompany the death and disappearance of their loved ones, nor of the pathetic tragedy that has struck their families. These death certificates, whenever they were issued, entitled the widow to a one-off state grant of anything between Rs.6,000 and Rs.50,000 to help the widow to pay up her loans, rebuild her home, launch some small income generating activity and pay for the education of her children. But considering the loss incurred, these sums of money cannot be stretched very far. Their agonizing stories remain either buried in the sands of history or blown away with the winds of time. In fact, these stories can be a source of lessons learnt for all future generations. These women have categorically stated that they absolutely abhor all forms of violence and war, since they have been among its most affected victims. They freely give testimony to their suffering so that society may learn never again to engage in war to resolve people's problems, because violence leaves in its trail untold and unseen damage to the lives of the innocent who have often no voice. These women hold neither hatred nor rancor in their hearts despite the immense suffering they have experienced.

However, as a matter of justice, their plight needs to be recognized by the State and due compensation granted. What they cry for is not sympathy, but justice. Irrespective of their race and religion they have a message to humanity that the wounds of war are deep and cannot easily be healed for they linger on in their minds and the minds of their children for generations to come. The destructive consequences of war far outweigh the reasons for which they were waged."

5. 108 A representation made before the Commission[81] claimed that violence against women and structural discrimination have increased in former conflict areas due to the lack of participation of women. It was stated that discriminatory policies and practices, heavy military presence, lack of authority to control their environment, limited access to basic needs combined with weak institutional protection mechanisms and breakdown of traditional support networks, norms and prejudices against women in the society and attitudes and behavior of power players have lead to a culture of violence and impunity. As such, it was claimed that such a situation exposes women to various forms of sexual and gender based violence that compromise their dignity, security, well being and rights, and any effort to find durable solutions must take these issues into account.

[81] Ms. Vishaka Dharmadasa before the LLRC at Colombo on 7th October 2010

5. 109 The Commission notes with satisfaction the programmes undertaken by several institutions, the private sector and civil society organizations, in collaboration with the Government to meet the needs of these vulnerable groups.

5. 110 Details obtained from the District Secretariats of Vavuniya, Mullaittivu, Mannar, and Kilinochchi on children's home and orphanages in those districts are at Annex 5.1

Observations/Recommendations:

Women

5. 111 Having listened to many women headed households and organizations who represented them, and given the fact that there is a large number of such women (over 59,000 - according to the Government sources) in the country in the aftermath of the conflict, the Commission recognizes the welfare of these women and the women headed households as a major post conflict challenge that needs to be addressed as a matter of priority by the Government and all other stakeholders, in a collective effort towards reconciliation.

5. 112 Many women have either lost their husbands or do not know their whereabouts. In some cases, their husbands have been kept in detention camps for long and unspecified periods. Despite such trauma, women are expected to support their families. Many such families have young children and aging parents. In view of the above, immediate needs of women, especially widows who most often have become heads of their households must be met. These immediate needs include economic assistance by way of providing them with means of livelihood and other income generating means so that they could reduce the immense economic hardships and poverty under which they and their families are living at present.

5. 113 The Commission is of the view that this enormous challenge can be met and durable solutions found only by a coordinated inter agency effort, dealing with many crosscutting issues and needs. Accordingly, an Inter Agency Task Force mandated to addressing in a comprehensive manner, the needs of women, children, elderly and other vulnerable groups such as disabled affected by conflict, and providing necessary relief, must be established without delay.

5. 114 The Government should make greater and sustained efforts to enlist and engage the services of relevant international organizations and civil society groups who have expertise and resources in these areas to assist in this task. Most importantly, the community level associations and support groups who help the communities through

supporting the families and villages can play a significant role in this regard. Through such associations, single mothers, those recently resettled, and those who are disabled could make collective efforts to address the issues they confront and bring them to the attention of local governmental institutions, political leadership and other support structures such as NGOs and civil society organizations. Such community level support groups can also address emotional and spiritual needs of people who have been under trauma due to difficult conditions and personal tragedies under which they have lived through the conflict. The Commission strongly recommends that the Government should encourage and facilitate such cooperation.

5. 115 There are many women who, due to the protracted conflict and the fact that men in the family have gone missing, have not been able to continue with their formal education. The Commission recommends that in a post conflict environment, opportunities and options should be provided to such women to continue with their formal education or pursue other forms of informal education and/or vocational training that may facilitate in finding employment and/or engaging in other livelihood activities.

5. 116 Women also need to feel that they live in a secure environment and their basic human dignity is safeguarded and protected. The Commission is of the view that the Government has a responsibility to create such a conducive environment in all areas of the country, especially the conflict affected areas as an essential prerequisite for the reconciliation process.

5. 117 The issues pertaining to missing persons, abductions, arbitrary detentions, long and indefinite detentions, and disappearances have a direct bearing on women as the victims are most often their husbands, sons, fathers and brothers etc. who play a vital role in a traditional household as breadwinners as well as providers of security. As such, these issues need to be addressed as a matter of priority recognizing that these women have a right to know the whereabouts of their loved ones, have the right to the truth and legal remedies as equal citizens of the country. These are prerequisites for any successful, durable and all inclusive reconciliation process (Please also refer to the mechanism recommended under paragraph 5.48.)

Children

5. 118 The Commission strongly recommends that support for children, especially in their education, should remain a key priority. Providing schools, teachers, school supplies, financial and other forms of support such as scholarships should be considered in this regard. The provision of better educational and health facilities, and the continued

support, financial and material, for children's homes and orphanages are also vital in this endeavor.

5. 119 The Commission notes that there are children who suffer from trauma and other psychological disorders as they have been exposed to violent conflict and the loss of their loved ones - sometimes their own father, mother etc. This could severely hamper their growth and education. The Commission strongly recommends that the Government should identify such children who need special attention as a matter of priority through the formal education system as well as other community, civil society groups who work in such areas. Special attention and care should be provided to these children, including professional counseling where necessary. The identification of children who live in women headed households can be one way of addressing this problem.

5. 120 The Commission strongly encourages the Government, local authorities and other stakeholders, including community and civil society organizations to pay special attention to create child friendly environments in the areas affected by the conflict, including easy access to schools, better healthcare facilities, recreation facilities such as play grounds, and children's parks.

Elderly

5. 121 The Commission recognizes that elderly in the conflict affected areas have suffered immensely, and sometimes left to provide for their extended families for many years throughout the conflict as their children and grandchildren have become direct victims of the conflict. Physical difficulties, psychological trauma and economic hardships that this segment of the society has undergone needs more recognition. Therefore, the Commission strongly recommends that:

a. Programmes aimed at improving the conditions of families who have been affected by the conflict must include provisions to reduce the burden on elderly in maintaining and taking care of their extended families.
b. The Government and other stakeholders pay attention to the special needs of the elderly due to disability and other long-neglected health issues, including conflict-related trauma.

5. 122 The Commission is of the view that the facilitation of easy and unhindered access to spiritual and cultural activities will help the elderly deal with trauma. In that regard, the Commission encourages the community and civil society organizations, especially those

with expertise and resources, to play a key role in assisting the elderly. The Commission calls on the local religious bodies and the places of worship and the clergy also to play an active role in this regard. The Government should facilitate such efforts.

Disabled persons

5. 123 Due to direct impact on the lives of people exposed to the conflict, it is to be expected that a large number of disabled persons may be living under difficult circumstances in the conflict affected areas. Their economic, social, cultural and spiritual needs require special and urgent attention of the authorities. During the Commission's visit to Kilinochchi[82] a representation was made on behalf of many disabled people in that area. A request was made to the Commission to make arrangements to provide some assistance, as "they cannot come to this meeting because they cannot even walk." It was also stated that NGOs were not allowed to operate in that area and as a result no assistance could be obtained from such sources. The person who made the representation was of the view that Seva Lanka and other local NGOs could play a role but "they don't come to this area – only up to Vavuniya."

Observations/Recommendations

5. 124 The Commission recognizes that there is an urgent need to support the disabled people in conflict affected areas who in many cases had been breadwinners for their families. Assistance should be obtained from international organizations and civil society organizations that have experience and expertise in assisting people with disabilities. The Government must also, as a matter of priority, address the economic needs of the families with disabled members as in many instances, disability has a serious economic impact on the survival of the family. The social, cultural and spiritual needs of the disabled also require special and urgent attention of the authorities.

5. 125 The authorities should encourage people with disabilities to organize themselves as community groups that will help facilitate mutual support and obtain necessary assistance for them through international organizations and civil society groups who have expertise and resources in this area.

5. 126 The Commission recommends that necessary national legislation be put in place to realize the rights of persons with disabilities in line with the UN Convention on Rights of Persons with Disabilities. Such action would have a positive impact, including obtaining

[82] Representations made by a civilian before the LLRC at Kilinochchi on 18th September 2010 – Transcript No. LLRC/FV/18-09-10/01

international assistance, on matters affecting a large number of disabled persons, especially in the conflict affected areas.

Internally Displaced Persons

5. 127 The Commission received a number of representations on the issues pertaining to IDPs. At the time of writing the report, the Commission was pleased to note that most of the IDPs who were displaced during the final stages of the conflict have been resettled[83]. However, it is still necessary to pay attention to the continuing needs of people who have been resettled and are in the process of making efforts to rebuild their lives.

5. 128 During the Commission's visit to Jaffna[84], the following representation outlined some of the IDP problems:

> "IDPs are unable to enjoy the full range of the rights they are entitled to and the right to equality and freedom of movement to re-settle in their own places of origin. This is something very difficult. For the last 20 years they have been moving, and I am one of the victims. From 1992 onwards I have been moving from one place to the other - from Valikamam West, Valikamam North, Valikamam South, Jaffna, Nallur and now I am in Kopay. I gave my address as Nallur, but they were good enough to invite me, but now I am at Kopay Division, because the rent here is so high. I have to pay Rs.3,000/-, but now they want Rs.5,000/- and an advance of Rs. 300,000. Who is to pay for all these? But only thing Government says no funds. All the earnings are dumped into your house. If that house is demolished, where are we? That is the real situation."

5. 129 During the Commission's sittings in Kilinochchi[85], the following observations were made with regard to the poor state under which the resettled IDPs were living:

> "Very recently they have resettled the people but even if you go to the jungle area or the village area there are no houses. Still they are living in makeshift huts and tarpaulin houses. Is it possible to live like this? But they are told after the resettlement that they have been given everything – even houses, roads and everything but we receive only dry rations and nothing more than that. We are requesting that this assistance must be expedited. They need to be given before the rainy season as they still live in makeshift huts made by them not by the Government, which has given only tarpaulin and some wood. This is not enough. There are many young boys and girls in this area and they have only one school here, and

[83] According to the Situation Report dated 20th September 2011 of the Ministry of Resettlement, 7,440 persons belonging to 2,268 families were still living in welfare camps as of 12th September 2011. According to the same source, the total number of persons who came over to government-controlled areas from October 2008 was 285,972.
[84] Mr. S Paramananthan before the LLRC at Jaffna on 12th November 2010 – Transcript No. LLRC/FV/12-11-10/02
[85] Representations made by a civilian before the LLRC at Kilinochchi on 18th September 2010 – Transcript No. LLRC/FV/18-09-10/01

that is a Maha Vidyalam; but if you go and visit there is no suitable building for it. Teachers and the principal are putting up a building by themselves, not by the Government. Government MPs come and have a look and say they will do it but nothing has been done yet. People are living under trees and under makeshift houses. If you go and see, it's a very pathetic situation."

Observations/Recommendations

5. 130 The process of returning the IDPs who were displaced during the final stage of the conflict has been largely completed, for which the Government and all stakeholders should be commended. However, attention should be paid to the continuing needs of the re-settled people.

5. 131 Assistance should be provided for returnees to repair or build permanent houses as many people still live in makeshift structures. In this regard, self-help and mutual assistance programmes such as "Shramadana" must be encouraged. Adequate provisions should be made to provide infrastructure needs such as roads, schools and hospitals in the areas where people have been resettled. The Commission notes with satisfaction the ongoing programmes and urges the authorities to continue to attach priority to this area in cooperation with other stakeholders, including the NGOs and the donor community. The Commission is of the view that assistance and cooperation of voluntary groups such as the civil society should also be encouraged particularly in the field of housing.

5. 132 There is a need to grant the legal ownership of land to those who have been resettled (also refer to Chapter 6 – Land Issues: Return and Resettlement).

5. 133 The civil society should be encouraged to engage in community development at the grass roots level to help communities who are making a collective effort to reconstruct and rebuild their lives.

5. 134 There is a need to respect a person's freedom of movement to re-settle in their places of origin, in accordance with internationally accepted principles governing voluntary return. In this regard, the Government must be clear in its policy with regard to the areas that are available for people to re-settle and more awareness should be created among people about such policies and the options available to them. Such clear cut and well thought out policy on options available for people to re-settle would help address some of the misunderstandings and misgivings related to the resettlement programme. (also refer to Chapter 6 – Land Issues: Return and Resettlement).

5. 135 Needs of people including the security needs should be approached in such a manner that it does not lead to an environment of fear, apprehension or mistrust. It is only in such an environment of security and confidence that the benefits of resettlement could be harnessed towards a genuine process of reconciliation.

5. 136 Displaced persons living in India who wish to return to Sri Lanka and resettle on their own volition should be facilitated and encouraged by the Government. In this regard, essential facilities will have to be made available if they are to return to Sri Lanka. The Commission notes that the flow of returnees from India has continued at the time of writing this report. It is also important to ensure that there is no room for a feeling of discrimination in facilities available to the returnees from India and to the local IDPs returning to their lands. It is also recommended that a formal bilateral consultation process, take place between Sri Lanka and India to enable the displaced persons to take considered decisions with regard to their return to Sri Lanka.

Muslim Community in North and East

5. 137 The issue of Muslim IDPs who were displaced from five districts (Jaffna, Mannar, Kilinochchi, Mullaitivu and Vavuniya) due to LTTE threats as far back as October 1990 remains one of the key post conflict challenges, which also has a significant impact on the process of reconciliation. A large number of representations were made before the Commission on the plight of these IDPs who have been living under dire conditions for more than two decades. According to representations made especially during the Commission's visit to Puttalam, almost the entire Muslim Community of Sri Lanka's Northern Province numbering approximately 75,000 persons were expelled by the LTTE in a systematic and organized manner during a two week period in October 1990.[86] Northern Muslims were 5% of the population of the Province and hailed from the five districts of Jaffna, Mannar, Kilinochchi, Mullaittivu and Vavuniya. A 2006 UNHCR survey estimated that there were 63,145 individuals living in 141 separate settlements in Puttalam district alone. There are many more outside of the Puttalam district. (Also refer to Chapter 6 – Land Issues: Return and Resettlement, for details on progress made in resettlement of these IDPs).

5. 138 The representations made covered a host of issues affecting both the IDPs and the host communities such as property issues, relief assistance, administrative issues, issues pertaining to education and health, employment, foreign aid, political participation and support for the communities, language issues, environmental issues, cultural issues and

[86] Dr. Mrs. F. Haniffa before the LLRC at Colombo on 4th November 2010.

cultural differences between the IDPs and the host communities. Proposals were also made to appoint a high powered Commission to address the issues and to resettle the IDPs.

5. 139 In view of the above, the Commission is of the view that durable solutions should be found to address this long-standing IDP issue concerning the Muslims evicted from the North, which contains the seeds of disharmony and dissension if it remains unaddressed.

5. 140 According to representations made, some of the issues faced by the Muslim IDPs and the host communities are as follows[87]:

a. The Muslim community of the Northern Province who were Tamil speakers had to integrate into an area where the language of administration was Sinhala

b. Over 50,000 persons moved to a District, which was poor and under-resourced.

c. They had to remain there for over 20 years with minimal State support, mostly in the form of dry rations for the poorest segments.

d. They have been unable to integrate into the host community, as they would have lost their right to the dry rations if they had done so.

e. As they maintained registration as residents in the North, they were unable to access State services in the Puttalam District and were also unable to apply for vacancies in Government Departments coming under the purview of the Provincial Administration of the North Central Province.

f. Although there were no violent incidents the tensions were high between the Northern Muslims and the host community.

g. The host community was unhappy to share resources for such an extended period of time.

h. The Northern Muslims worked for lesser wages as they had access to dry rations, causing tension among the labour force.

i. More recently with more Northern Muslim students encroaching on the University Entrance Quota allocated to the Puttalam District tensions have arisen among the student fraternity.

[87] *ibid*

5. 141 With regard to the post conflict possibilities of resettling of the Muslim IDPs in their original places of habitat in the Northern Province, a representative of the Muslim Community appearing before the Commission stated: "Given that the LTTE is no longer a factor, there is a real possibility of return for Northern Muslims without the threat of a repeated expulsion. The possibility of resuming farming and fishing and moving out of a life of poverty in Puttalam and elsewhere seems an actual possibility for many. Many are hoping for assistance to resettle and start livelihood activities and to rebuild Muslim communities in the North."[88]

5. 142 Although an organized scheme of return is yet to be completed for the Muslim IDPs by the Government, some of the IDPs have started returning to their lands voluntarily. In doing so they are faced with many hurdles such as clearing of jungles, lack of infrastructure, schools, housing, land issues (also see Chapter 6 – Land Issues: Return and Resettlement).

5. 143 On the other hand, there are many Northern Muslims who do not want to or anticipate returning to their homes and lands due to various reasons[89]:

a. Persons who were not well to do in the North, but are doing better in Puttal.
b. Persons who have married into the host community and have livelihood activities in Puttalam.
c. Persons who were displaced to Colombo or neighboring areas who have access to jobs and other livelihood activities.
d. Women who have been abandoned by their husbands and are managing to raise their families in Puttalam and other areas of the country.
e. Women who have land in the North but are unable to start from the beginning, as they do not have the wherewithal to clear land, build houses and seek employment, whilst caring for the family.

5. 144 It was submitted to the Commission that there is a view that the Muslims who were expelled from the Northern Province in October 1990 by the LTTE, are not being categorized as IDPs as the authorities seem to consider only the displaced from the Wanni as IDPs. Even though the authorities have claimed that 90% of the IDPs have

[88] *ibid*
[89] *ibid*

been resettled since the conclusion of the armed conflict, this does not include the Muslim Community of the Northern Province[90].

5. 145 It was stated that the treatment given to the Muslim Community of the Northern Province has led them to believe that they are at the bottom of the list of priorities of the Government, INGOs & NGOs and the donor Community, and it was the host Muslim Community in Puttalam that had to be depended on for emergency assistance in their hour of need[91].

5. 146 The Commission was told that the expulsion remains inadequately integrated into the history of the Sri Lankan conflict, and Northern Muslims feel that the State has not adequately acknowledged the Northern Muslims' experience of ethnic cleansing at the hands of the LTTE. A Citizen's Commission has been established to investigate the history of the expulsion, the displacement experience of 20 years and the current experiences of return[92].

5. 147 It was further submitted that the Northern Muslims have long wanted the Government to establish a Presidential Commission of Inquiry into the expulsion. In order to return to their homes and lands and some form of normalcy, the Muslim Community of the Northern Province seeks assistance from the Government and other parties[93].

5. 148 It was also stated that sufficient attention had not been given to the dire situation of the Muslims from Jaffna who have had to live in camps in Puttalam for a long period of time. It was pointed out that the issue is only brought to light during election campaigns. Concerns were also raised as to whether persons who have been living in such conditions for extended periods of time, on State support, would be willing to give up such support to return to their original homes or villages[94].

Observations/recommendations

5. 149 Durable solutions should be found to address the plight of the Muslim Community as one of the long standing IDP issues arising out of the protracted conflict in Sri Lanka. This could be achieved through the creation of a uniform State policy aimed at resettlement of these IDPs and/or integrating them into the host community. This policy needs to be communicated to the IDPs so that they could take considered decisions with regard to

[90] *Ibid*
[91] *Ibid*
[92] Dr. Mrs. F. Haniffa before the LLRC at Colombo on 4th November 2010
[93] *Ibid*
[94] Mr. Manik de Silva before the LLRC at Colombo on 13th September 2010

the resettlement options available to them either in their original places of habitat or in the host communities.

5. 150 Such State policy should also include an assistance package including financial assistance and other material support such as support for housing construction.

5. 151 A special committee should be appointed to examine durable solutions and to formulate a comprehensive State policy on the issue, after having extensive consultations with the IDPs and the host communities.

Freedom of expression and the right to information

5. 152 During the Commission's visit to Jaffna, Mr. Gnanasundaram Kuganaadan, Chief Editor of the Uthayan newspaper, made the following observations in his representation[95]:

> "We have been sharing the difficulties along with the people amidst a lot of threats and killing and also still running this newspaper for the last 25 years. Three of our Journalists were killed. The paper is still continuing amidst many difficulties such as threats, killings etc."

5. 153 Making a representation before the Commission, a senior journalist stated that[96] the press should be encouraged to visit the conflict affected areas. He further observed that various roadblocks should be removed and just as much as somebody can go and report the Kandy Perahera, the media should be permitted to go and visit the IDP camps, go to Jaffna, write about the ground conditions in Jaffna etc. With regard to the prior approval of the Defence Ministry, he observed that since such things happen in a bureaucracy, the person who grants the permission may not be as concerned about it as the person who is seeking it so that there can be lapses.

5. 154 The Commission also heard many representations stressing the need for having more robust legislation and more proactive executive action to ensure and promote the freedom of information. This was summed up appropriately by Justice C G Weeramantry[97] who stated before the Commission that:

> "It will suffice to note here that there have been several attempts at introducing freedom of information legislation, but that none of these have succeeded thus far. It is distressing to note that right to information legislation has been adopted in India, Pakistan, Bangladesh,

[95] Representations made by a senior journalist before the LLRC at Jaffna on 12th November 2010 – Transcript No. LLRC/FV/12-11-10/02
[96] Mr. Manik de Silva before the LLRC at Colombo on 13th September 2010
[97] Justice C G Weeramantry before the LLRC at Colombo on 29th September 2010

Nepal and the Maldives. When all these countries have such legislation it is a major deficiency that Sri Lanka, where the building of trust and confidence is so essential, has not yet reached this stage. There was a time when we were ahead of all these countries in our adherence to the rule of law and we can regain that position again. But we cannot afford to lag behind them all in what is increasingly considered to be a fundamental democratic right."

5. 155 The Commission was deeply disturbed by persistent reports concerning attacks and obstacles placed on journalists and media institutions including news websites and killing of journalists and the fact that these incidents remain to be conclusively investigated and perpetrators brought to justice. The Commission was also alarmed by the deplorable attack on the Editor of the Uthayan newspaper in Jaffna, which occurred while the Commission's sittings were still in progress. The Commission condemns this attack. Such actions clearly place great obstacles in the way of any reconciliation efforts. Any failure to investigate and prosecute offenders would undermine the process of reconciliation and the Rule of Law.

Observations/Recommendations

5. 156 Freedom of expression and right to information, which are universally regarded as basic human rights play a pivotal role in any reconciliation process. It is therefore essential that media freedom be enhanced in keeping with democratic principles and relevant fundamental rights obligations, since any restrictions placed on media freedom would only contribute to an environment of distrust and fear within and among ethnic groups. This would only prevent a constructive exchange of information and opinion placing severe constraints on the ongoing reconciliation process. The Commission strongly recommends that:

a. All steps should be taken to prevent harassment and attacks on media personnel and institutions.

b. Action must be taken to impose deterrent punishment on such offences, and also priority should be given to the investigation, prosecution and disposal of such cases to build up public confidence in the criminal justice system.

c. Past incidents of such illegal action should be properly investigated. The Commission observes with concern that a number of journalists and media institutions have been attacked in the recent past. Such offences erode the public confidence in the system of justice. Therefore, the Commission recommends that steps should be taken to

expeditiously conclude investigations so that offenders are brought to book without delay.

d. The Government should ensure the freedom of movement of media personnel in the North and East, as it would help in the exchange of information contributing to the process of reconciliation.

e. Legislation be enacted to ensure the right to information.

Freedom of religion, association and movement

5. 157 During the Commission's visit to Mannar, a member of the clergy[98] brought to the Commission's notice that the military had cancelled religious services to remember persons killed or missing and even some of the priests have been threatened and intimidated for their attempts to commemorate those killed in the conflict. He observed that while celebrations of victory have been held under the Government patronage, no efforts have been made by the Government to express solidarity with the families of those killed, missing and injured in the conflict. It was further stated that attempts to protest peacefully about land occupation and lack of basic facilities have also met with threats and intimidation. It was pointed out that restrictions on travel still remain and even some overseas visitors were prevented from visiting people in Manthai West division recently. He further added that such restrictions make the Tamil people in these areas feel that they are living under military rule and cannot enjoy the rights and liberties that people in other parts of the country enjoy. Restrictive measures on peaceful and humanitarian activities also create further tensions and distance between the Government and Tamil people, and should be avoided in order to move towards reconciliation. It was also stated that travel restrictions on those who are interested in helping resettled people deny such people opportunities to get further assistance.

5. 158 The attention of the Commission was also drawn to the fact that the security authorities had disrupted a civil society event of an academic nature in Jaffna organized by the Noolaham Foundation on 29th May 2011[99] in Jaffna.

Observations/Recommendations

5. 159 Any credible and sustainable process of reconciliation requires the creation of an environment, which respects, promotes and protects people's right to freely engage in observing their religion, and other freedoms such as freedom of association and

[98] Representations made by a member of the clergy at Mannar on 9th January 2011 – Transcript No. LLRC/FV/08-01-11/01
[99] Press Release issued by the Noolaham Foundation, Nallur, Jaffna, on 29th May 2011

movement. This is particularly important in the case of people living in conflict affected areas as these freedoms enhance their confidence and trust in the ongoing reconciliation process as a genuine and inclusive process. Therefore, the Government must ensure that such rights are not arbitrarily restricted or violated by any State institution, especially by the Security Forces and the Police. The Commission strongly feels that such agencies must work as agents of change in assisting people to fully harness and enjoy these rights ensuring a sustainable process of reconciliation. The Commission emphasizes the need to bring to a closure the sense of uncertainty among victims by facilitating their attendance at religious ceremonies, without placing any hindrance to such activities.

5. 160 The Government should take immediate steps to remove any remaining restrictions on visiting places of worship with the only exception being made in respect of the restrictions necessitated by mine clearance activities. This should also include access to places of religious worship within the HSZs. Assistance of the Police could be provided where security arrangements are required.

5. 161 People, community leaders and religious leaders should be free to organize peaceful events and meetings without restrictions.

5. 162 Visitors from overseas should be allowed to visit their friends and relatives in recently resettled areas without any undue restrictions.

Follow up action on the Reports of Past Commissions of Inquiry

Observations and Recommendations

5. 163 The Commission strongly recommends the implementation of the recommendations of the Report of the Presidential Commission of Inquiry Appointed to Investigate and Inquire into Alleged Serious Violations of Human Rights Arising Since August 2005, particularly those relating to further investigation and prosecution of offenders involved in the incidents of the death of 5 students in Trincomalee in January 2006 and 17 aid workers of the ACF in August 2006. Such action would send a strong signal in ensuring respect for the Rule of Law, which in turn tends to contribute to the healing process.

Chapter 6 – Land Issues: Return and Resettlement

Section	Paragraph Numbers
Introduction	**6.1 – 6.2**
The Situation of people who lost land due to the conflict	**6.3 – 6.27**
The background	
Tamil families compelled to leave homes to escape fighting between LTTE and Security Forces	
Tamil families coerced to serve as human shields and forced labour	
Tamil families coerced to leave Jaffna to Wanni	
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Conclusions
Recommendations

Chapter 6 – Land Issues: Return and Resettlement

Introduction

6.1 In a small country such as Sri Lanka with a high population density, landlessness is a critical issue. Historically, several initiatives had been taken by the British Colonial Government such as the appropriation of large tracts of native lands for commercial plantations, and subsequently the distribution of State lands for irrigated agriculture to landless peasants.[1] Successive post-independent Sri Lankan Governments too followed the latter approach, distributing State lands to alleviate poverty among the landless peasants. Alleviating landlessness has led to vexed political debate, and has unfortunately influenced the course of the ethnic conflict.

6.2 Displacement of persons as well as loss of land and homes were major conflict related outcomes, and affected all communities throughout the period. In the last phase, particularly in the Wanni, an estimated 284,000 persons were displaced. Problems concerning land were a key issue that was brought to the Commission's attention by a large number of persons of all communities who appeared before it; particularly during the Commission's visit to the affected areas in the North and East. The Commission believes that measures and policies ensuring legitimate land rights, especially among the returning IDPs, would contribute significantly to restoring normalcy and promoting reconciliation.

The Situation of People Who Lost Land Due to Conflict

The Background

6.3 The separatist terrorist campaign launched by the LTTE in the last three decades, and the response measures taken by the Security Forces to protect the country, resulted in many family displacements and loss of land. The earliest large scale displacement and appropriation of land occurred among Sinhalese living in Jaffna and the Northern Province in the early to middle 1980s. The latest displacement and loss of land occurred among Tamils living in the Wanni during the final phase of the conflict.

[1] Introduction of the 1840 Crown Lands Encroachment Ordinance to expropriate lands of natives to establish commercial plantations, under British companies with emigrant labour; and subsequently under the 1935 State Lands Development Ordinance, alienation of State lands to the landless peasants.

6.4 The United Nations System in Colombo described all those people displaced in and after April 2008 in the Wanni[2] as 'new IDPs'. The Government of Sri Lanka accepted this categorization. Persons displaced before April 2008 were hence termed 'old IDPs', and included within this category are people from all ethnic groups.

6.5 Although for ease of analysis and planning of interventions, IDPs are divided into two distinct groups, in reality, there are overlaps, within some groups. Accordingly, persons included within the categories referred to in paragraphs 6.8, 6.9 and 6.10 below respectively are, technically 'old IDPs' as they first experienced displacement long before April 2008; however, they also fall into the 'new IDP' group as a significant proportion of them suffered their last displacement in or after April 2008. Thus all the persons described in paragraphs 6.6 and 6.7 are considered to belong to the category of 'new IDPs'. The persons described in paragraph 6.8, 6.9, and 6.10 comprise both new and old IDPs, with the majority presumably belonging to the old IDP category. All the persons described in paragraphs 6.11 to 6.27 distinctly belong to the category of old IDPs**.** The United Nations System provides a few specific items[3] of assistance exclusively to the 'new IDPs'.

Tamil families compelled to leave homes to escape fighting between LTTE and Security Forces

6.6 The fighting that ensued between the LTTE and Security Forces during the last phase of the conflict was a key cause of displacement of people from their homes and land in the Wanni, and to some extent in Jaffna. The people in the Wanni who were displaced suffered deeply; their lands abandoned; houses destroyed; children's education disrupted; family health affected; income sources curtailed, with some of them psychologically scarred; and physically disabled.

6.7 The LTTE prevented these people from escaping into areas devoid of battle or into Government areas from where they could have been evacuated. As the battle lines moved, the displaced civilians moved too, not away from battle as they would normally and instinctively have done, but into areas hugging battle lines as dictated to by the LTTE.

[2] Coincides with the beginning of the Humanitarian Operation in the North and includes all persons displaced in the Wanni and Jaffna in and after April 2008

[3] For example, the cash grant of Rs.25,000 (paid in installments, the first of which is paid at physical occupation of land is given only to 'new IDPs")

Tamil families coerced to serve as human shields and forced labour

6.8 It is widely known that the LTTE forced some groups of people to accompany them into battle to be used as human shields. These Tamil civilians were also used as forced labour. Named "donation" of labour, the Tamil civilians were coerced to provide 'x' days of labour for a stipulated, time period for building the LTTE's military defenses. Numerous references have been made regarding the use of civilians as human shields and forced labour by the LTTE, in the media and the web newspapers. International agencies have also referred to this phenomenon in some of their Reports. The labour was hazardous and debilitating to a people who also had to move from place to place according to the vagaries of military confrontations.

Tamil families coerced to leave Jaffna to Wanni

6.9 After Jaffna was cleared of LTTE in 1995, the LTTE was compelled to withdraw into the jungles of the Wanni. As the LTTE needed human capital for use in various military and civilian activities, a large proportion of families were forced to evacuate Jaffna along with the LTTE. A substantial proportion of residents of Jaffna also left to avoid the advancing Security Forces. A number of individuals who came before the Commission said that private lands and State lands in Kilinochchi were distributed by the LTTE among cadres and their families and sympathizers after evicting owners or original settlers from private or State land respectively. A Tamil woman living in Kandawalai, Kilinochchi since 1976 complained that she was forcibly evicted by the LTTE in 2004 and her land distributed among LTTE supporters. In 1995, according to her submission, those who came to Kilinochchi from Jaffna were also given State lands by the LTTE.

6.10 Most of these civilians from Jaffna led a difficult life in the Wanni. Very little assistance was granted by the LTTE to people relocated from Jaffna, except for granting of permission to either settle in land vacated by Muslims and some Tamils, or to encroach on State land. Within a period of about six months of the exodus, about one half of the Tamil people who moved to the jungles of the Wanni returned to Jaffna, even though Security Forces were in control of Jaffna. For the rest of the civilians from Jaffna who were either forced by the LTTE, or opted to stay back in the Wanni, life was difficult.[4]

[4] "As far as can be ascertained LTTE does not provide relief for large displaced population under its control. No assistance was given by them to those who fled Jaffna during the exodus in 1995. To this date many remain virtual prisoners in the Wanni as the LTTE imposes stringent restrictions on the movement of civilians in areas under its control. Compulsory training, forced recruitment into its ranks…… continues to be reported" quoted in - Profile of Internal Displacement; Sri Lanka. Compilation of the Information available in Global IDP Data Base of the Norway Refugee Council as of 16th September 2003

Tamil and Muslim families who lost land due to HSZs

6.11 The establishment of High Security Zones (HSZs) by the Security Forces resulted in displacement and loss of land. The largest land areas under HSZs were in the Northern and Eastern Provinces. In a minority of cases forest areas abutting settlements in threatened villages, although not declared HSZs, were restricted areas to civilians. One such restricted area is in Weli Oya. Due to the restrictions, some settler families were not given the full quota of land they were entitled to in the 1980s.

6.12 The largest number of people who were displaced due to the establishment of HSZs are Tamil people. It is estimated that about 41 sq km of land in Jaffna came under the HSZs, at the height of the conflict.[5] Some have had to forego their ancestral land - a traumatic experience.

6.13 The Commission was informed that people in the Jaffna area who were displaced due to HSZs are living in adjacent village camps, with relatives and friends, or at the Ramavil welfare camp. The Security Forces, additionally, occupied some private houses as well as commercial establishments in Jaffna, for some of which rents have been paid. In the Mannar district's Mullikulam village, (Musali DS Area) 150 families have been displaced due to a newly created Navy installation. The Bishop of Mannar informed the Commission that occupation of land by the military should be an act of last resort, and in each such case of land loss, alternative lands should be given in consultation with the affected families. With the establishment of peace, most people yearn to return to their land. In the East, the Trincomalee-Sampoor HSZ established in May 2007, displaced about 10,000 people.

Families affected by land expropriation in Eastern province

Muslims in Eastern Province without agricultural land due to expropriation

6.14 The Federation of Mosques and Muslim Institutions of Kattankudy explained that landlessness among Muslims living in areas such as Kattankudy in the Batticaloa district, is a significant problem. The LTTE compounded the problem by forcibly taking over State lands traditionally cultivated by Muslims (on permits) most of which are located in Tamil majority DS Divisions, in the Batticaloa district. The LTTE redistributed these lands, as rewards, to their cadres and sympathizers. The Commission was informed that 58,486

[5] Sri Lanka Army Report to LLRC titled 'Details on HSZs'

acres of agricultural land belonging to about 15,000 families were thus expropriated[6] by the LTTE. A number of witnesses informed the Commission that some Muslims were also persuaded to sell lands for absurdly low prices to LTTE nominees under threat of violence.

6.15 The Muslim representatives informed the Commission that in 1990, the LTTE had burnt most of the land records of Muslims held in the Land Registry section in the Valachchenai Divisional Secretariat Office. They also informed that even after the dawn of peace, the majority of 'permit' lands cultivated by them, prior to the conflict, have not been restored, allegedly, due to the ethnic bias of some officers of the Divisional Secretariat Offices. It is alleged that some officers who had close links with the LTTE in its heyday, still continue to discriminate against Muslims. According to representations made to the Commission, most Tamil secondary occupiers of the LTTE - rewarded land are now in possession of forged user rights documents (permits). A Muslim representer said that until these lands are returned to Muslims, ethnic reconciliation would be a distant dream in the East.

Sinhalese in Eastern Province without agricultural land due to expropriation and eviction

6.16 The material before the Commission indicates that in the Trincomalee district, 4,058 Sinhalese families comprising 16,137 persons including a large number of families resident in the Kuchchaveli DS Division lost both residential and agricultural land, due to LTTE violence and resultant eviction.[7] The Convener of the Sinhala Buddhist organization of displaced persons in Batticaloa in a written submission to the Commission conveyed that a substantial number of Sinhala families from among the approximately 150,000 people who were resident in the coastal belt from Ottamvady to Panama were displaced in the late 1980s. All of the Sinhalese families in Madurankulam and Wellawadi in the Batticaloa district had also lost agricultural land. The Convener further noted that as a vast majority of the displaced persons were given shelter by their kith and kin in the South in the eighties, the Sinhalese displaced, unlike other displaced who were in IDP

[6] M.I.M Mohideen, Executive Director, All- Ceylon Muslim Documentation Centre at a public sitting on 03rd September 2010. In the document titled "The Road Map to Resolve Muslims Grievances in Sri Lanka" submitted to the Commission by Mohideen. A breakdown of Muslim lands forcibly taken over by LTTE by districts is given as follows; Ampara 14,271 acres; Batticaloa 27,219 acres; Trincomalee 16,996 acres. Another Muslim representative addressing the Commission indicated that 45,577 acres belongings to 18,000 Muslim families were forcibly taken over by LTTE.

[7] Memo by Director, Planning, Kachcheri, Trincomalee, Ref. No. MED/DRRS/04/01/01(3) dated 26th September, 2011.

camps had been largely ignored by successive Governments as they did not possess lobbying power.[8]

6.17 It was also disclosed that during the ceasefire of 1994-5, some of the displaced Sinhalese in villages such as Irakkandy and Valauttu in the Kuchchaveli DS Division in Trincomalee had made use of the 'peace - interlude' to lease out their 'permit 'land to Muslim and Tamil neighbours due to economic necessity. After the conflict, however, the neighbours declined to hand back the land on the pretext that land was sold to them, and not given on lease, as claimed.[9]

Muslim families forcibly evicted from Jaffna and the Northern Province

6.18 The Muslim Community formed about 5 per cent of the population in the Northern Province. In October 1990, the LTTE evicted about 75,000[10] Muslim people in the Northern Province. According to the evidence of the former Deputy Mayor of Jaffna, the Muslim Community were brought to the Jinnah Stadium and threatened with death, if they did not leave the Province. All movable properties were forcibly taken and their properties expropriated.[11]

6.19 Representations made on behalf of Muslims evicted from the Northern Province[12] included data from a 2006 UNHCR survey. The survey indicated that 63,145 individuals expelled from the Northern Province were living in the Puttalam district in 145 IDP settlements. Some others were living in Colombo and other parts of the country. The representative of the Northern Province Muslims informed the Commission that as the conflict is now over, many of the Muslim IDPs living in Puttalam wished to return to the North. However, some groups who are doing well in Puttalam, informed the Commission that they did not wish to physically move to the North, and some wished to reserve the right to claim user rights to their previous land in the North.

[8] Written submission of Mr. A Ranjith Abhaya, Convener, Organization of the Sinhala Displaced Persons in Batticaloa, dated 13th January, 2011 Ref. PCO/LLAR/05/2010/244

[9] Maria Fernando, a Sinhalese woman from Madurankulam, Batticaloa, whose family had been in several IDP camps for 7 years, informed the Commission at the District Secretariat, Oddamavaddy on 10th October 2010, that she was chased away by the secondary occupier (who was busy cultivating her land) when she returned to claim her land recently. Her family has had cultivation rights (a permit) for the land since 1962 .The secondary occupier, a Tamil, told her "Sinhalese people don't own land in this village". As the Police station refused to entertain her complaint, she went to a lower level government functionary, who was himself cultivating another's land illegally. He, not wishing to intervene, had asked her to seek help from the Army camp. The Army personnel, in turn, requested her to make a complaint at the Police station.

[10] Dr. Mrs. F. Haniffa before the LLRC at Colombo on 04th November 2010.

[11] Representations made by a civilian before the LLRC at Puttalam on 7 January 2011. Transcript No. LLRC/FV/07.01.11/01

[12] Representations made before the LLRC by a representative of Citizens Committee on Expulsion of Muslims, at Batticaloa on 04th November, 2010. Transcript No. LLRC/FV/04.11.10/01

6.20 Material before the Commission indicated that the problems relating to land and property of the expelled Muslims are very complex. The people expelled from the Jaffna city were involved in trade and business. The businesses were run in rented premises. The Muslims who wish to return find it difficult to persuade the landlords to rent the premises to them again. The Muslim residents in semi - urban and rural areas were mainly involved in agriculture and fisheries. Most of the State land that was obtained on permits by Muslims and farmed for decades by them had been occupied illegally by LTTE activists and sympathizers.[13]

6.21 According to representations made to the Commission there is a perception among Muslims in the Northern Province that people and Government officers in the North do not welcome the return of Muslims. ''After all, the North has been a mono-ethnic place for twenty years and integration may take longer than many Muslims anticipated. Some speak of how when they return (to Jaffna), some Tamil neighbours ask them, why did you come?'' According to Muslims in the Northern Province, the State must assist, and facilitate Muslims to return ''in order to ensure that the ethnic cleansing that occurred in 1990 is over turned.''[14]

Sinhalese families forcibly evicted from Jaffna and the Northern Province

6.22 According to representations made to the Commission, Sinhalese families who were living in Jaffna were forced to leave in 1977 and evicted by the LTTE again in the mid – 1980s. By 1987 there were no Sinhalese residents left in Jaffna. The LTTE had begun its programme of ethnic cleansing.

6.23 The Consortium of Humanitarian Agencies, established to support the peace initiatives consequent to the signing of the 2002 CFA, reported in a Paper dated 12th December, 2003,[15] that "no information was available about the Sinhalese who were displaced from Jaffna at the onset of the war". According to information provided by the Government Agent, Jaffna, only 24 Sinhalese families [16] had been evicted from the Jaffna district from 1980 up to May 2009. However, according to the census data, the

[13] Representations made by before the LLRC by Mr. M.I.M Mohideen at Colombo on 3rd September 2010. Jaffna 348 acres; Kilinochchi 525 acres; Mannar 23,233 acres; Mullaitivu 1148 acres; Vavuniya 5122 acres.

[14] Representations made before the LLRC by a representative of the Citizens' Committee on Expulsion of Muslims from the Northern Province, at Batticaloa, on 4 November 2010. Transcript No. LLRC/FV/04.11.10/01

[15] Quoted at page 39 in *Profile of Internal Displacement: Sri Lanka*. Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council (as of 7th March, 2005). Available at http://www.unhcr.org/refworld/pdfid/407e6e9c2.pdf.

[16] comprising 09 families evicted from Jaffna city and 15 families evicted from Tellippallai DS Area as per Memo by G.A. Jaffna to LLRC Ref. No.J/DRRS/IDPs/S/M/ 2011, dated 20th September ,2011, and attachment titled 'Information Request on Displaced Families and Land'

Sinhalese population in the Jaffna district in 1981 was 5,648.[17] There appears to be a discrepancy with regard to the data on Sinhalese persons evicted from the Jaffna district. A representative of the Displaced Sinhalese Persons from the Northern Province, now living in Anuradhapura, in a written submission made to the Commission, indicated that a considerable proportion of the displaced families request that they be resettled in the North, as the vast majority of the displaced were born and bred in Jaffna and the North.[18]

6.24 A number of Sinhalese persons who had lived in Jaffna informed the Commission that they had lived in amity with Tamil families.[19] This observation was also affirmed by the Representative of the Displaced Sinhalese Persons from the Northern Province.

Families in (Former) Threatened Villages

6.25 About 210[20] Sinhala villages located on or near the boundaries of the Eastern, Northern, North Central and Uva provinces were subjected to regular attacks by the LTTE. Most families in these "threatened villages" suffered "night-displacement", (compelled to spend nights in near-by jungles for safety) due to fear of recurrent LTTE attacks. Families living in a few threatened villages in the Trincomalee district such as in Gomarankadawala and Morawewa were totally displaced. A small number of villages, in the Vavuniya and Mullaittivu districts, lying close to the boundaries of the Anuradhapura district were also permanently evacuated. Displaced persons from Weli Oya,[21] informed the Commission that 6 villages out of the 16 villages were permanently evacuated and people placed in IDP camps in Padavi-Siripura. They are still in camps. They, too, wish to be returned to their lands.

6.26 The Commission was also informed that some of the settlers were not given the allotted quota of land (3 ½ acres) as the adjacent forest area had to be kept under Security Forces control for purposes of security. Weli Oya residents request that (i) all villages in

[17] Number and percentage of population by ethnicity, 1981 and 2007 (Jaffna District) Department of Census and Statistics

[18] Written Submission of Mr. A.M. Chandrasiri, Representative of the Sinhalese Displaced in the North dated 28th January 2011, Ref.PCO/LLAR/05/2010/248)

[19] Representations made before the LLRC by a civilian at Galle on 19th February 2011.Transcript No. LLRC/FV/19.02.11/01 Her family had fled Jaffna, and is now living in Galle. She informed that they had two shops in Grand Bazaar and a piece of land in Colombathurai and lived happily with Tamil people –" we were very friendly with Tamil people; we used to exchange cooked food with each other; Tamil people are also a group of people like us… they too must be treated in a just manner…" She wished to return to Jaffna to her land, and live amicably with Tamil people.

[20] Information about Housing Needs in Threatened Villages - Ministry of Resettlement, 2011. Perhaps this survey is still incomplete as Weli-Oya, whose residents made representations before the Commission, is not included in the this List

[21] Various administrative officers had taken figures and facts about people who were displaced .... nothing has come out of it by way of relief"- Representations made by a civilian before the LLRC at Weli Oya on 29th January 2011. Transcript No. LLRC/FV/29.01.11/01

Weli Oya be brought under the Anuradhapura District[22], and within one DS area only, for administrative affairs related to different facets of routine life) (ii) all IDPs be returned or resettled (iii) farmers who were not given the normal allotment of agricultural land (due to security reasons) be allotted the normal quota and (iv) the jungle road providing access to close by Tamil villages and to Nedunkerny town be opened in order to re-establish past cordial relations they enjoyed with the Tamil people in the adjoining villages.[23]

6.27 A substantial proportion of families in threatened villages who suffered night – displacement, as well as the death of bread winners in LTTE attacks continue to be in dire straits. Some are female, child or grandparent headed households,[24] economically destitute and psychologically affected. The Commission was informed by many residents in the threatened village of Kotiyagala in the Siyambalanduwa DS Division and the threatened villages of Niyadella and Nelliyadda in the Buttala DS Division, respectively, in the Moneragala district that, although compensation for deaths (of family members through LTTE attacks) has been paid, no significant action has been taken to provide income generation or livelihood support for the majority of disadvantaged families. Some complained that they have not been enrolled in the Samurdhi (low-income support) programme or the poor relief programme. The inability of the successor heads of households to complete Government documentation as well as the physical remoteness and the distance of villages from the Divisional Secretary's office may have been a factor in their not being able to access poor relief.

Return and Resettlement

Land Restitution: Policy, Methodology and Assistance

6.28 Sri Lanka had no officially declared policy on return and resettlement of displaced persons and restitution of their land, as the country did not suffer large scale displacement till the LTTE began its separatist terrorist campaign[25]. The Commission

[22] Weli Oya was brought under the Anuradhapura district temporarily during the conflict as Mullaitivu District could not effectively administer Weli Oya due to the ongoing conflict

[23] Weli Oya is located at the meeting place of boundaries of Anuradhapura, Vavuniya, Trincomalee and Mullaitivu districts. Villages of Weli Oya are administratively truncated; a part belonging to the Vavuniya district, and the other part coming under the Mullaitivu district. This unique situation is a social advantage for Weli Oya residents but an administrative nightmare. Socially and economically there were many exchanges between Tamil villages in the Mullaitivu and the people of Weli Oya. They bought their supplies in Nedunkerny which was closer than Padaviya. They traded and maintained cordial relations with people in surrounding Tamil villages as much as possible through periods of lull in fighting. Even though peace has been restored, the jungle road through Weli Oya to Mullaitivu remains closed due to mines and security concerns.

[24] See transcripts of public sessions in Weli Oya; Siyambalanduwa and Buttala DS Divisions in Moneragala district at www.llrc.lk.

[25] Before the LTTE caused illegal displacement, vast scale land appropriation occurred mainly under British colonial government, when they expropriated large tracts of land belonging to Kandyan Sinhalese through statutory action. Overnight hundreds of

observed that the Government followed three main principles in settling displaced people (i) safety (ii) voluntary return to own land (iii) if practically not possible to be returned to own land, resettlement in alternate land in the same area. This approach was in consonance with Article 13(2) of the 1948 Universal Declaration of Human Rights enshrining right of return of displaced persons and other UN Guidelines on land restitution and settlement of displaced persons.

6.29 The Commission notes that in May 2009, a Presidential Task Force for Resettlement, Development and Security in the Northern Province (PTF) was established to formulate strategy, generate resources and political will for the return and resettlement of IDPs, and development of the North.[26] The PTF provided leadership to the national task of returning and resettling new IDPs in the Wanni and Jaffna in liaison with other national and international stakeholders. This virtually embraced the estimated 284,000 odd persons who streamed out of the general area of Nanthi Kadal in April and May 2009.

6.30 The methodology for return and resettlement has been formulated to facilitate a safe, fair and predictable approach to settling the displaced in the Wanni and Jaffna from the Manik Farm complex in Vavuniya and Ramavil camp in Jaffna, and two very small camps in Mannar and Pulmoddai. In carrying out this task, the assistance of the UN system was obtained. The main elements of the methodology as explained in the document prepared by the Government[27] are:

1. Ascertain places of origin of displaced families
2. Re-confirm information with the Divisional Secretary's office in the relevant area
3. Demine approach roads, and required land for building or renovating infrastructure for key essential services
4. Demine residential land
5. Rehabilitate basic infrastructure

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thousands of Kandyan Sinhalese were made landless. Messrs. Mahinda Katugaha, Harindranath Dunuwille, and Samantha Ratwatte in a presentation made to the Commission at public sittings in Kandy on 20th March, 2011, titled 'Memorandum on behalf of the Up-country Peasantry' stated 'At a time when the Nation is searching to ascertain the causes of disharmony in the country, we consider it our duty to highlight the factor of poverty ,deprivation and neglect of the Kandyan peasantry..... in the hope that due regard(be paid) to a marginalized section of our population ...(to) rectify the historical wrong perpetuated on a gentle...people"

[26] The main objectives of the Northern development programme are:
i) Rapid resettlement of displaced persons securely and safely in places of origin
ii) Provision of better basic infrastructure and services than enjoyed before
iii) provision of livelihood facilities
Joint Plan for Assistance (JPA) for Northern Province, 2011, (Annex 0-3) included in "Sri Lanka Humanitarian Effort"
Presidential Task Force for Resettlement, Development and Security in Northern Province 2011

[27] Presidential Task Force for Resettlement Development and security in the Northern Province (PTF) Annex P1,and P2, titled Procedure adopted for resettling IDPs by GOSL

6. Obtain 'demining certificate' from the UNDP
7. Arrange 'go and see' visits (for the displaced persons) to relevant Grama Niladhari[28] Areas
8. Obtain consent of displaced persons to return or resettle
9. Arrange transport for displaced persons to travel to relevant DS Division in groups[29]
10. Reception ceremony for displaced persons by Government Agent or Divisional Secretary, the Government officials and Security Forces officers.
11. Transport displaced persons to Transitional Shelters[30] such as new camps and existing schools.
12. Provide mine safety education[31]
13. Visit to land to begin temporary shelter construction
14. Provision of Settlement Assistance Package inclusive of tools, amenities and cash grant, and the first installment of 6 months dry rations. (See Annex 6.1).

6.31 The return and resettlement programme had been coordinated by the Ministry of Resettlement, and implemented under the administrative guidance of the respective Government Agents, with the support of local Government bodies, Divisional Secretary Officers, Grama Niladharis, officers of selected Line Ministries, the Sri Lanka Army, the UN agencies, selected INGOs and NGOs. The Government had provided the major funding, for return and resettlement supported by the UN, the Government of India, and other bi-lateral donors. The Commission also notes that the Government accomplished the complicated task of physical return and resettlement of the vast majority of 'new IDPs' amidst many difficulties. These constraints and difficulties will be discussed in the section titled Constraints and Challenges.

6.32 The Commission is of the view that the mere physical return and resettlement of the displaced persons in the Wanni would not resolve the totality of the problems faced by the displaced. A daunting, and more complex and time – consuming task, which at times could even ignite controversy, still lay ahead. That is the checking, confirming and re-issuing of official documents guaranteeing user right of each family, or head of household to their particular allotment of land. The transformations that occurred in physical occupation and use of land due to the ongoing conflict as well as the LTTE's manipulation of land settlement, administration and record keeping systems through intimidation and violence, necessitated the launching of a corrective and legitimizing

[28] The Grass-root level government functionary reporting to the Divisional Secretary
[29] Services provided by International Office of Migration (IOM)
[30] Construction assistance by UNHCR
[31] UNICEF, Sarvodaya, Sri Lanka Army

mechanism. In short, displaced persons were returned to their own land or resettled; but they also require legally accepted documents confirming user right/ownership to their land, as well as solutions to any disputes of user rights and ownership due to secondary occupation, and forged documentation etc.

6.33 Consequently, the Commission notes that based on an analysis of constraints in return and resettlement experiences and lessons learned, the Government had proposed a policy framework for restitution of their land through a Cabinet Paper adopted on 13th May 2011. The proposed solutions formulated on the basis of the Cabinet Paper to manage the land restitution process of the displaced in the North and East will be discussed in the section titled 'Proposed Solutions'.

Current Progress in Return and Resettlement

Tamil Families compelled /coerced to leave homes in Wanni and Jaffna - Current progress in return and resettlement

6.34 As per information made available to the Commission, the vast majority of families displaced from the Wanni and Jaffna (members of categories described in paragraphs 6.6. and 6.7; and some members of categories described in paragraphs 6.8, 6.9, and 6.10, (i.e. the 'new IDPs') have been returned to their own lands or resettled in areas close to places of original residence. According to information provided to the Commission by the Ministry of Resettlement, 7,440 persons belonging to 2,268 families, were still living in welfare camps, as of 12th September 2011.[32] They are in the Kadirgamar and Anandakumaraswamy relief villages in Manik Farm, Vavuniya. It is envisaged that these families would be resettled in Mullaittivu when demining is completed.[33]

6.35 According to the PTF,[34] the return of displaced persons from the Wanni was begun with the initiative called the "pre-settlement host family stays" arranged in consultation with the UN, within a month of the end of conflict, in June 2009. Under this scheme IDPs

[32] As per Ministry of Resettlement's Situation Report (as at 20-9-2011), the total number of persons that came over to Government areas and were accommodated in welfare villages in Manik farm complex and welfare centres in Jaffna, Mannar, Pulmoddai from October 2008 were 285,972 persons. This figure includes the natural increase that occurred, after coming into residence in the welfare centres.

[33] At the time of writing this Report, resettlement authorities were continuing negotiations with these families, to initially resettle them in alternate land in the same DS Division of Maritime Pattu in Mullaitivu, till the land they were occupying prior to the conflict are totally cleared of mines and UXOs.

[34] Sri Lanka's Humanitarian Effort, Presidential Task Force for Resettlement, Development and Security in the Northern Province, 2011.

(from Manik Farm, Vavuniya) with special needs[35] were facilitated to stay with host families, (mostly relatives) based on an undertaking given by the host family that the IDPs would be well looked after.

6.36 As per the PTF report, the second phase was the '180 day crash programme' for return and resettlement of IDPs. This was planned by the Government in consultation with the UN, and began in July 2009. The physical return and resettlement of IDPs under this initiative, commenced in September 2009. Sometime after the conclusion of this phase, i.e. by May 2010,[36] according to the PTF, approximately 110,000 families (350,000 persons) had been returned or resettled in the Wanni and Jaffna.

Tamil and Muslim Families compelled to leave homes due to HSZs - Current progress in Return and Resettlement

6.37 According to official sources,[37] the Trincomalee – Sampoor HSZ /SEZ, the biggest of the HSZs, was reduced from 110 sq. km. to 38 sq. km. by Gazette Extraordinary on 30th October, 2008. According to the Director, Planning, of the Trincomalee District, 2,717 families comprising 9,526 persons have been returned to their own land, after the reduction of the HSZ. However 4,100 persons belonging to 1,272 families from within the DS Division of Muttur, Trincomalee district are still displaced, and are either living with friends and relatives or are housed in transit camps in Kiliveddy, Padiththidal, and Manalchenai. Some of them expressed reservations about the suitability of lands identified by the District authorities for their future residence.

6.38 Although still not gazetted, the Sri Lanka Army informed the Commission that the Palaly HSZ was reduced by 12 sq. km. to 39 Sq.km. in October, 2011[38]. This action has freed up land belonging to 11,965 family members and 2,392 houses. The Sri Lanka Army also informed the Commission that, the reduced currently operative Palaly HSZ would continue to include 4,531 houses and displace about 22,655 persons in the Jaffna district.

6.39 According to the Government Agent, Mannar, in the Musali Divisional Secretary area in Mannar district, 1,320 persons belonging to 307 families,[39] including 166 families from Mullikulam village have been displaced due to the establishment of a naval installation.

[35] Elders over 59 years of age; disabled persons; persons with chronic debilitating illness; university students; and priests. Included in this first batch were about 4000 elders, 2000 pregnant mothers, and 450 priests (clergy).
[36] Sri Lanka's Humanitarian Effort, Presidential Task Force for Resettlement, Development and Security in the Northern Province 2011.
[37] Sri Lanka Army Report to LLRC titled 'Details of the HSZs'.
[38] Sri Lanka Army Report to LLRC titled 'Details of the HSZs'.
[39] Memo by the Government Agent, Mannar, to the Commission Ref.No.MN/DRRS/k/Rs/102 dated 26 September,2011

On a request made by the Bishop of Mannar, new land has been identified in Kayakuli village in the same Division for resettlement of displaced families in Mullikulam. The Conservator of Forests and the Government Agent Mannar are coordinating administrative action for formal release of land identified for this purpose. In the Musali DS area, the remaining 141 displaced families have yet to be allocated land.

Families affected by land expropriation in the Eastern Province

Muslims in Eastern Province Evicted from Agricultural Land - Current Progress in Return and Resettlement

6.40 Very little progress has been made in the restitution of agricultural land of Muslim families expropriated by the LTTE in the East. For example, according to the Government Agent Batticaloa,[40] agricultural land belonging to only about 568 Muslim families have been restored in the Batticaloa district up to the end of August 2011. This is negligible compared to the number of families affected and the extent of agricultural land lost to Muslim families. For example, according to the All Ceylon Muslim Documentation Centre, in the Batticaloa district alone, the LTTE had expropriated about 27,219 acres of agricultural land that were cultivated by Muslims primarily on permits.[41]

6.41 A Representative of the All Ceylon Muslim Documentation Centre confirmed that despite appeals to successive administrations the problem has remained largely unresolved. The representative further observed that the local political structures and the civil administration in the Batticaloa district, lacked the will to resolve this problem due to bias and lack of interest. The practical difficulty of relocating secondary occupants, some of whom had already developed their lands for over a decade, was also seen as a possible dilemma.

Sinhalese families in Eastern Province Evicted from Resident and Agricultural Land - Current progress in return and resettlement

6.42 The Commission notes that the data presented by the District Administrations on Sinhalese families evicted by the LTTE being returned to their own land or resettled in the Eastern Province shows two contrasting trends. In the Trincomalee district there appears to be satisfactory progress with 13,351 persons belonging to 3,650 families being returned to their own land or being resettled up to 30th June 2011.[42] On the

[40] Memo by Government Agent Batticaloa to LLRC Ref. No. BD/DPS/LLARC/2011 dated 28 September, 2011.
[41] Please see footnote No. 6.
[42] Memo by Director of Planning, Trincomalee District, Ref. No.MED/DRRS/04/01/01(3) dated 26 September, 2011

contrary, the Commission notes that the progress in return / resettlement of evicted Sinhalese families in the Batticaloa district has been very poor. According to the District Administration in Batticaloa only 85 Sinhalese families have been returned to their own land or resettled by July 2011; 13 Sinhalese families were in temporary camps by July 2011.[43] According to the Convener of the Organization of Sinhalese Displaced Persons in Batticaloa a substantial number of Sinhalese families from among the approximately 150,000 people who were resident in the coastal belt from Ottamvady to Panama were displaced in the late 1980s from the Batticaloa district. [44]

Sinhalese Families Evicted from Jaffna and the Northern Province - Current progress in Return and Resettlement

6.43 In a written submission made to the Commission, a Representative of the Internally Displaced Sinhalese Persons in the Northern Province[45] (from Jaffna, Point Pedro, Kankesanthurai, Chunnakkam, Elephant Pass, Paranthan, Kilinochchi and Mullaittivu and now living in Asokapura, Kannattiya, Senapura, in the Anuradhapura district and in Galle, Matara, Kondeniya and Tissamaharama, in the Southern Province) conveyed to the Commission, that 'it is a tragedy that the displaced Sinhalese persons have been ignored in the IDP resettlement process'.

6.44 According to information provided by the Government Agent, Jaffna, only 24 Sinhalese families[46] had been evicted from Jaffna up to May 2009, and no Sinhalese families have been returned to their own land or resettled in the Jaffna district up to 20th September 2011. As of 30th September, 2011, 145 Sinhalese families comprising 512 persons have been resettled in the Chavakachcheri DS Division in Jaffna.

6.45 The information provided by the Jaffna District Secretariat on the number of Sinhalese families evicted from the Jaffna district seems to be very low.[47] The information provided to the Commission by the Government Agent, Jaffna regarding the status of land records in the Jaffna district indicated that land records in the Jaffna district were comprehensively preserved, except for some land records prior to 1996 that were observed to be missing or destroyed. The low figure of Sinhalese persons evicted from

[43] Memo by Government Agent, Batticaloa to LLRc Ref. No. BT/DRRS/LLARC/2011 Dated 28 September, 2011 and attachment titled 'Information Required by LLRC'.
[44] Please see paragraph 6.16 and 6.17
[45] Written Submission of Mr. A.M. Chandrasiri, Representative of the Sinhalese Displaced Persons in the Northern Province, dated 28 January 2011, Ref.PCO/LLAR/05/2010/248.
[46] comprising 09 families evicted from Jaffna city and 15 families evicted from Tellippallai DS Area as per Memo by G.A. Jaffna to the Commission Ref. No.J/DRRS/IDPs/S/M/ 2011 and attachment titled 'Information Request on Displaced Families and Land'
[47] Please see paragraph 6.23.

the Jaffna district as cited in the official records of the Jaffna District Secretariat may need to be reviewed in a dispassionate and low key but methodical manner, without arousing any communal passion or tensions.

6.46 When the Commission visited Jaffna to hold public sittings in the district, the Commission was informed of the occupation of the old Jaffna Railway Station by about 100 or so Sinhala families said to be some of the families evicted from the Jaffna district. In a discussion the Commission had with the Government Agent, Jaffna, the Commission was informed that appropriateness and eligibility of these families to be returned to or resettled in the Jaffna district would be assessed, and suitable action taken to resettle them if eligible.[48] As progress is slow, it may be prudent to review the process of resettlement of evicted Sinhala families in the Jaffna district.

6.47 According to the District Administration[49] of the Mullaittivu district, 165 Sinhalese persons belonging to 36 families have been evicted up to the year 1983. The comparatively low figure of evictions recorded[50] may be due to the fact that land records in all Divisional Secretariat offices in the Mullaittivu district have been reported to be destroyed. (Please see Table 1). According to the Mullaittivu District Secretariat, by 03rd October, 2011, only 199 Sinhalese persons belonging to 88 families have been resettled in the Mullaittivu district.

6.48 The District Administration of Mannar[51] informed the Commission that 224 Sinhalese families comprising 845 persons had been evicted from the Mannar district in the 1980s. According to the same source, as of 31st August, 2011, only 697 persons of 205 Sinhalese families had been returned to their own land or resettled in the Mannar district. The officially recorded data on evicted Sinhalese families (845 persons) seems to be substantially low when compared to the population statistics in the Mannar district.[52] Any data extracted from land records would have been inaccurate as according to the District Administration of Mannar the land records in two of the five DS Divisions have been completely destroyed. (please see Table 1)

[48] See GA's remarks during representations made by a civilian before the LLRC at Sittankerny on 12th November, 2010. Transcript No. LLRC/FV/12.11.10/01 R. C. Thamodarajah

[49] Memo by Project Director, DRRS, District Secretariat, Mullaitivu to LLRC Ref. No…MU/DRRS/Reset/Pop/2011 Dated 03rd October, 2011.

[50] The Sinhalese population in Mullaitivu district in 1981 was 3992. Source - 1981 population Census, Department of Census and Statistics

[51] Memo by Government Agent, Mannar to LLRC Ref. No. MN/DRRS/K/RS/102 Dated 26th September, 2011.

[52] The Sinhalese population in Mannar district in 1981 was 8683. Source- 1981 Population Census, Department of Census and Statistics

6.49 The data presented above indicate that the progress of resettlement of displaced Sinhalese families in all of the districts in the Northern Province is slow. It may be prudent to review the process of resettlement of evicted Sinhala families in the Northern Province including the Jaffna district, with a view to understanding the barriers in order to improve the situation.

Muslim families evicted from the Northern Province - Current progress in return and resettlement

6.50 The Government Agent Jaffna informed the Commission that according to existing records, of the 2,783 Muslim families evicted from the Jaffna district during the conflict, 2,083 families have come back to Jaffna and been given land for return or resettlement; 33 families are still in temporary camps in Kopay and Velanai.[53]

6.51 In the Mannar district, according to records available to the Government Agent, 20,878 persons of 6,202 Muslim families had been evicted in 1990, due to the conflict. However, during the time period between the conclusion of the conflict and 31st August, 2011, 14,739 Muslim families comprising 61,050 persons have been returned to their own land or resettled.[54] The nearly threefold increase in the returned / resettled Muslim persons compared to the evicted Muslim persons as depicted in the Government Agent's Memo need to be noted. The possible reason may be the natural increase within the evicted Muslim population.[55]

6.52 In the Mullaittivu district, according to the District Administration records[56] 3,651 Muslim persons belonging to 521 families had been evicted. However, up to 03rd October, 2011, 7,627 Muslim persons belonging to 2,045 families have been returned to their own land or resettled. The doubling of the number of Muslim persons returned to their own land or resettled in the Mullaittivu district need to be noted, and again the possible reason for this increase may be the natural increase in the evicted Muslim population.

[53] Memo by Government Agent, Jaffna to LLRC Ref. No. J/DRRS/IDPs/S/M/2011 And Attachment Titled 'Information Request on Displaced Families and land' dated 20th September 2011

[54] Memo by Government Agent, Mannar, to the Commission Ref.No.MN/DRRS/k/Rs/102 dated 26th September,2011

[55] It is also evident from limited data available, that a considerable number of Muslim families who were originally evicted from the Mannar district, and who were housed in IDP camps in Puttalam, and a few other towns, have once again returned to their places of secondary residence after having claimed their land in Mannar. For example according to data available at the PTF, in the DS Division of Mannar Town, of the 8,845 families who were returned to their own land or resettled, only about 4,373 families are permanently resident in the Mannar Town DS Division, as of the date of writing this Report

[56] Memo by Project Director, DRRS, District Secretariat, Mullaitivu to LLRC Ref. No.MU/DRRS/Reset/Pop/2011 Dated 03rd October, 2011.)

Families in the former Threatened Villages – the Current Progress

6.53 Based on the representations made by the residents of the former 'threatened villages' (Please see paragraphs 6.25 to 6.27). The Commission became aware of the special nature of their difficulties and displacement. However, up to the time of writing this Report the Commission has not received any information on basic data about the residents in the 'former threatened villages' and their current situation. The Commission notes with concern the lack of information regarding their present situation and the magnitude of their problem. The Commission is of view that a special programme of assistance should be launched to meet the special needs of a segment of the population who have borne the brunt of difficulties during the entire period of the conflict.

Constraints and Challenges

Land Mines

6.54 Land mine contamination was a key impediment in moving the displaced back to the Wanni. "Ten districts located in the North and East of Sri Lanka were contaminated with landmines and unexploded ordnance (UXO): Ampara, Anuradhapura, Batticaloa, Jaffna, Kilinochchi, Mannar, Mullaittivu, Polonnaruwa, Trincomalee, and Vavuniya."[57]

6.55 As the Government's decision was to expedite safe resettlement of the displaced persons, the Sri Lanka Army (SLA) was requested to establish a Humanitarian Demining Unit (HDU). Additionally a Sri Lanka Mine Action programme was established, and UNDP, UNICEF, and a number of international and national mine clearing organizations[58] partnered the Government in mine clearing. Mine education for the returnees was conducted by UNICEF, Sarvodaya, and SLA. The UNDP issued 'demining certificates' for areas successfully demined.

6.56 According to information made available to the Commission, the SLA demined about 75 percent of the total demined area in the Northern Province. By May 2011, all demining partners acting together had cleared 3,942 sq. k.ms. of land, removing 354,237 mines in the process.[59] The Commission recognizes this achievement by the SLA in collaboration

[57] http://www.undp.lk/What_We_Do/Pages/Mine_Action.aspx

[58] Mine/UXO removal operations are conducted by the Sri Lanka Army – Humanitarian Demining Unit, a Sri Lankan NGO – the Milinda Moragoda Institute for People's Empowerment; and six INGO demining organizations: The Danish Demining Group (DDG), The HALO Trust, HORIZON, Mines Advisory Group (MAG), Sarvatra, and the Swiss Foundation for Demining (FSD).

[59] Presidential Task Force on Resettlement, Development and Security in the Northern Province : Sri Lanka Humanitarian Effort 2011.

with the UN and other Mine Action partners in overcoming a key obstacle for return and resettlement of IDPs.

6.57 With the demining of residential land completed, the demining partners had begun to shift focus to agricultural land. The Commission is aware that there is a fledgling debate among development planners and researchers, on the wisdom of settling people before consolidating activities for uptake of large scale agricultural (livelihood) activities. i.e. without simultaneously releasing residential and agricultural land. This is a decision that the Government has had to take. The selection of the other option of simultaneous release of residential and agricultural land, would have resulted in a majority of the displaced being subjected to longer stays in the welfare centres. Though not ideal, the current implementation approach, on balance, seems to be appropriate.

High Security Zones (HSZ)

6.58 There are 6 gazetted HSZs in the country, two in the Northern Province; one in the Eastern Province; and one each in Western, Southern and Sabaragamuwa Provinces respectively.[60] There were representations made to the Commission to the effect that more land from the existing HSZs should be released.

6.59 The Commission is pleased to note that the High Security Zone (HSZ) in Sampoor in the Muttur Divisional Secretary Area in Trincomalee District has been reduced from 110 sq km to 38 sq km by Gazette Extraordinary No 1573/19 of 30th October 2008, thus releasing approximately 72 sq km for resettlement purposes[61]. Land for establishing a coal power plant with the assistance of the Government of India, as well as land for setting up of a Special Economic Zone (SEZ) for industries, is also included in this reduced amalgamated HSZ-SEZ area. According to the Government Agent, Trincomalee, 1,272 families comprising about 4,100 persons would continue to be displaced even after the reduction of the HSZ-SEZ. The District Administration has offered alternate lands to these families. Some of the displaced families have concerns about the suitability of the new lands allocated to them. The matter is still under negotiation.

6.60 The Commission has been informed[62] that an administrative decision has been taken by the Ministry of Defence in October 2010, to reduce the Palaly HSZ, from 41 Sq.km. to 29

[60] HSZs in Palaly and Kankesanthurai in the North; HSZ in Sampoor and Trincomalee (contiguous area) in the East; Western Naval HSZ Area, Colombo, in the West: HSZ in Galle Harbor Area, in the South; and Gonagala Mountain Restricted Area in the Sabaragamuwa Provinces respectively.

[61] The 1110 sq km approx HSZ established by Gazette Extraordinary No 1499/25 of May 2007 has been reduced as per Gazette Extraordinary No 1573/19th October 2008

[62] Source: Sri Lanka Army

Sq. km. Although this decision has not been gazetted yet, the Sri Lanka Army has taken physical action to release this area, by moving the boundaries of the HSZ back, thus facilitating return and resettlement of civilians. According to the SLA estimates, about 11,960 persons have been able to return to their land due to the downsizing of the HSZ; about 2,393 housing units have been released. However, 4,531 housing units would continue to be included within the HSZ in Palaly, even after reduction of the HSZs.[63]

6.61 According to the SLA, in addition to the reduction of HSZs, two private hotels and some houses occupied by the SLA to house Divisional HQs etc through payment of a monthly rent have been handed back to the owners,[64] in March 2011.

6.62 It has been brought to the attention of the Commission, that in the Mannar district, the unofficial HSZs that continued to be in force even after the conclusion of the conflict have now been withdrawn. According to the Government Agent Mannar, all families whose lands were within the unofficial security zones, i.e. 389 families in the Mannar DS division, and 1,430 families in the Madhu DS division have been returned to their own lands.[65]

6.63 The Commission has also been informed that in Mannar, the Sri Lanka Navy is occupying some land area in the Musali Divisional Secretary Area for the purpose of establishing a navy installation.[66] The GA, Mannar, informed the Commission that 307 families including 166 in the Mullikulam village in the Musali DS division have lost land due to the establishment of the military (naval) establishment. Families in Mullikulam have agreed to accept alternate land in Kayakuli village in the same DS Division. The Government Agent, Mannar, is coordinating with the Conservator of Forests to release this land for resettlement. However, no arrangements have still been made to allocate land to the balance 141 families in the Musali Division.

6.64 The Commission also heard representations[67] to the effect that further action should be taken to release more private land, including places of religious worship which are still located within the HSZs.

[63] Sri Lanka Army Report to LLRC titled 'Details of HSZs'.
[64] Sri Lanka Army Report to LLRC titled 'Details of HSZs'. .
[65] Memo by Government Agent, Mannar to LLRC Ref. No. MN/DRRS/K/RS/102 dated 26th September, 2011.
[66] GA/District Secretary, Mannar referred to this situation at the LLRC - District Secretary Meeting on 22nd July 2011. The Bishop of Mannar too informed about this in his evidence at Mannar on 8th January 2011
[67] Reprsentations made by civilians before the LLRC at Ariyalai, Tellipalai, Gurnugar and Nelliaddy – Transcript Nos. LLRC/FV/11.11.10/01 at Ariyalai (1 M. Vamadevan); LLRC/FV/12.11.10/01 at Tellipala (2) M. Vinayagamoorthy, R. S. Ranganathani; LLRC/FV/12.11.10/03 at Gurunagar (2) Pastor Raja, Sharmilla Hanifa ; LLRC/FV/13/11.10/01 at Nelliaddy (1) S. Pasupathy .

6.65 It is imperative that all families who have lost land and or houses placed within officially declared HSZs, or even within small plots of land locally identified and used for security purposes be found alternate lands as a matter of utmost urgency and that any compensation due to them is also paid promptly. Timely action in this regard will have a salutary impact on the reconciliation process.

Loss of Documents

6.66 Loss of title or user right documents is a key problem faced by returned and resettled displaced persons. It is evident that some Tamil families in the Wanni could not retrieve documents in the rush to leave homes ahead of fighting; some who had time to retrieve them could not protect them, later, as the LTTE directed them to move constantly within the conflict area itself. The Muslims in the Northern Province were forbidden to take documents along with them.

6.67 The potential for distrust and conflict among communities increases when the real owners/users with lost documents are confronted by secondary occupiers who challenge their ownership or user rights. Many Muslims in the Northern and Eastern Provinces respectively[68] as well as some Sinhala in the East had faced this situation. Please see paragraphs 6.15 to 6.17.

Forged Land Documents

6.68 Persons making representations before the Commission[69] reported of forgeries made on land documents by individuals, as well as alteration of official land records at District/ Divisional Secretariats by officials in the North and East. The magnitude of the problem is not known. According to these persons, these were resorted to, because of LTTE intimidation and/or ethnic bias of some officers.

Loss or Destruction of Land Records in Government Land Registry offices

6.69 It has been reported that some office buildings that housed official land records were destroyed due to fighting; some land records were deliberately destroyed by the LTTE. The following land registry/record offices have been damaged or destroyed.

6.70 The destruction of official land records has dealt a double blow to those who (i) lost land as well as documents, (ii) are confronted with secondary occupiers holding forged

[68] Representations made before the LLRC at Oddamavaddy on 10th October 2010. Transcript No. LLRC/FV/10.10.10/01 that unless Muslim lands expropriated by LTTE are handed back there could be no reconciliation between Tamils and Muslims.
[69] Representatives of Muslims in the Northern and Eastern Provinces and evicted Sinhalese in the Eastern province

documents (iii) have physical possession, but with no documents to establish ownership or user –right.

Table 1 - Status of Preservation of District Land Records

District	Status
Mullaittivu	Land Records in all five DS Divisions completely destroyed
Kilinochchi	Land Records in 03 DS Divisions completely destroyed Land Record in the 4th DS Division - About 70% destroyed
Mannar	Land records in 02 DS Divisions 90% destroyed. Land Records in other 03 DS Divisions mainly preserved
Vavuniya	Land Records in all DS Division Preserved. However some land records have gone missing
Jaffna	Land Records in all DS Division Preserved. However some records prior to 1996 have been destroyed

Source: Government Agents in the respective Districts.

Secondary Occupation

6.71 The secondary occupation of land is a key constraint for the displaced genuine owner/user as well as the land settlement officials. It becomes clear from the representations made before the Commission that most secondary occupation in Jaffna and the Wanni occurred due to ethnic cleansing of Muslims and Sinhalese and the settlement of LTTE activists in those lands. In the Wanni, some of the original Tamil residents were also forced out of their lands by the LTTE, to settle families of their choice.[70] In the East, it occurred mainly due to the eviction of Muslims from their agricultural land. (Please see paragraphs 6.14, 6.18 and 6.22.)

6.72 Secondary occupation had also occurred due to encroachment encouraged by, political influence, bureaucratic support, and police inaction. Another reason for continuation of secondary occupation, and non-release of land to original owners is an increasing ethnic consciousness rooted on the perception that land in a particular location should belong only to a particular ethnic group.[71] [72] The use of small extents of land in various districts for security purposes[73] and the occupation of some of the former LTTE military camp

[70] A Tamil female from Kandawalai, Kilinochchi informed the Commission that she was evicted from her land to settle LTTE supporters.

[71] Representations made by civilians before the LLRC at Puttalam on 07.01.2011 (W1, W15, W 20) and at Oddamavaddy on 10.10.2010.(Y.L.Mansour IMT Sahid, VL Mansour,ABM Mustafa, M. Fernando, KL Jainudeen,) Transcript No. LLRC/FV/07.01.11/01 at Puttalam.

[72] Please see paragraphs 6.15, 6.21 and footnote No. 10.

[73] This is generally common in all provinces in the country

land by the Security Forces also constitute secondary occupation in cases where the lands in question had been previously owned by private individuals.

6.73 It also becomes evident that some unscrupulous persons have used secondary occupation as a ruse to acquire more State land.

6.74 Despite the fact that almost all of the new IDPs have been returned to or resettled in the Wanni and Jaffna, many do not possess legally acceptable documents to prove ownership or user right as the case may be to the particular land they physically occupy due to some of the reasons discussed above. This shortcoming impedes access to many services including credit facilities. The transfer of the ownership or rights to others and next of kin would also be impeded.

Encroachments on Reservations

6.75 Reservation of land set aside to protect water sources of irrigation reservoirs as well as reservoir bunds; of public roads and railways as well as land under forest have been encroached on a large scale in the Northern Province. Although some encroachments have been resorted to by private individuals or small groups for personal gain, often times with political patronage, the large scale encroachments on reservations occurred due to LTTE backing and intimidatory tactics applied on the civilian administration who tried to prevent such encroachment. Some political interference too, had stalled administrative action. For example in Vavuniya, persons displaced due to the conflict in 1995 had encroached into large areas of rail road reservations; attempts to remove them had failed.[74] It appears that recourse to law for removing encroachers is also beset with difficulties due to shortage of State Counsel dealing in civil law in the Districts, and delays associated with Court rulings.

Land Alienation by Unauthorized Groups

6.76 Since the latter part of the 1980s, the LTTE usurped the authority of the State to alienate land in the Northern and Eastern Provinces. The LTTE settled people of their choice not only on State land, but on some private lands too. The lands gained through ethnic cleansing were settled with LTTE nominees and "Mahavir" families. It becomes apparent that the LTTE used selective land alienation practices as a deliberate ploy to stamp their authority on the land distribution mechanism, gain control over Tamil families by using land as a punishment and reward system, and alternately disrupt and delegitimize the

[74] Copy of Minutes of the Meeting on Land Issues in Vavuniya District held in the Vavuniya Kachcheri on 17th June 2011 submitted to the Commission

civil administration. As occasion permitted some other armed groups too had attempted to distribute land, with comparatively low success.

6.77 Some civil administration officers in the East,[75] are allegedly supporting the land claims of families settled by the LTTE as against the claims of original permit holders.[76]

Transfer of land through Spurious Deeds

6.78 From the material before the Commission it transpired that State land in Vavuniya,[77] Mannar, Mullaittivu and Kilinochchi have been and currently are being transferred through fraudulent deeds. This is done in two ways. State lands for which permits have been issued (normally for 2 ½ acres of land) for a limited period of time are being transferred as private land guaranteeing perpetual ownership. Large parcels of State lands encroached upon by individuals, usually with political backing are also transferred as private land and accorded perpetual ownership for the encroacher. Both categories of State land are being transferred through spurious deeds locally known as Japan Deeds[78].

6.79 Some spurious deeds go back to 1956, 1961, 1965 and 1970 etc. A spurious deed purporting to transfer ownership of a State land in the guise of a private land in 1983 to a particular individual has been bought by the same individual in 2009 after a series of 'insider transfers' that helped to launder the title as a clear title.[79]

6.80 These illegal transfers of 'ownership' of alienated State land by or to other persons who are not eligible for State land is a clear impediment for regularizing Land Development

[75] Representations made by a civilian at Oddamavaddy on 10.10.2010. Transcript No. LLRC/FV/10.10.2010/01

[76] Please see paragraph 6.15.

[77] Copy of Minutes of the Meeting on Land Issues in Vavuniya District held in the Vavuniya Kachcheri on 17th June 2011 submitted to the LLRC

[78] Source- Minutes of the Meeting on Land Issues in Vavuniya District dated 17.06.2011, submitted to the LLRC. Reference the information contained in the Minutes, the Commission sought more detailed information on the preparation of 'spurious deeds' at a meeting held between the Government Agents and the Commission on 22nd July 2011. The following is a brief description of how spurious deeds are prepared:-.
The first of the deeds describing either the encroached state land or the alienated blocks of state land issued under permits (but made out as private lands) are written in the supposed to be owners name, usually without prior registration numbers, and registered in the District Land Registry, through a variety of ruses ----- (although state lands cannot be registered through deeds). After a lapse of time, patiently spent, another Deed is written transferring ownership to another person usually a known insider. This process of 'insider transfers' is continued overtime to a number of persons, acquiring on the way a series of prior registration numbers, as well as a 'pseudo-clean title' through a number of 'laundering transfers'. The final transfer is made out to the initial transferor, thus completing the cycle of transfers with the initially-mentioned 'owner' acquiring ownership again.

[79] Copies of spurious deeds shown to the Commission

Ordinance permits of displaced persons during the planned land restitution exercise in the North and East, which would be prejudicial to the reconciliation process.[80]

Shortage of competent and experienced staff for Land Management

6.81 Assessments done at the District[81] level and corroborated by the Line department[82] at the Centre indicate that there is a dearth of experienced and skilled staff needed to handle the complex land issues that surface at the Divisional Secretary Area level in the North and East, as well as in the Department of Land Commissioner General. The workload would certainly increase both at the Divisional, District, and Central level due to the proposed new land restitution programme. Therefore unless accelerated action is taken to reinforce skilled and experienced staff at all levels, through temporary secondment, contracting of qualified and skilled retired staff, and assignment of additional administrative service staff to the Land Commissioner General's Department through new recruitment and / or secondment for a stipulated period of time,[83] the current shortage of staff would adversely affect the implementation of the proposed new programme.

6.82 It also appears that there is also a shortage of State Counsel dealing in civil law at the District level. This hampers legal advice being sought by the District and Divisional Secretaries on land problems, and delays legal procedures being taken against violators of land laws and large scale encroachers of State land.

The Dilemmas and Challenges faced in return and resettlement

6.83 The United Nations Principles on Housing Property Restitution, the UN Guiding Principles on Internal Displacement, and other human rights instruments places a normative responsibility on States to return or resettle displaced persons at the earliest opportunity. In countries subjected to long violent conflicts, building infrastructure and services takes time. In this regard, timing of relocation to match 'provision of adequate

[80] Please see paragraphs 6.88 to 6.90

[81] "The District Secretary brought to the notice of the Land Ministry officials about the acute shortage of staff for land works..... She requested that additional land officers and Legal officers be appointed by Land Ministry and if it is not possible immediately;" staff in other districts may be transferred to attend the heavy volume of works" - in Minutes of the Meeting on Land Issues in Vavuniya District, 17.06.2011.

[82] The Land Commissioner General informed that there is a shortage of experienced and competent staff to handle land matters, including the implementation of the planned special programme to facilitate restitution of Land for displaced persons in the North and East, especially at the Divisional Secretary Area level. The Commissioner - General also focused on of strengthening policy-guidance, technical assistance, and monitoring functions of the Land Commissioner General Department, to support the implementation of the special land restitution project in the North and East. Recruitment of Tamil speaking officers and a Tamil translator, even on a temporary basis would be useful in this regard.

[83] According to administrative regulations, each and every final land entitlement/ registration certificate has to be checked and signed by an executive level officer of the Land Commissioner General's Department

services and infrastructure' is a real dilemma for resource limited developing countries. What criteria does the Government of a developing country adopt to make a judgment regarding timing of return and resettlement? It is clear that the Government had worked on the basis that - achieving of physical safety and provision of rudimentary basic services and infrastructure - as the threshold criteria[84] for initiating relocation of IDPs into places of origin. The Commission appreciates that the overriding concern of the Government was the safety of new IDPs in relocation; (until homestead land, access-roads, and land for primary infrastructure were demined the IDPs were not moved into relocation areas). This objective appears to have been achieved.

6.84 The material before the Commission demonstrates that along with the physical return and resettlement of new IDPs a series of actions and support measures had been taken to facilitate the return and resettlement as well as strengthen the capacity of the now settled displaced persons to grapple with the practical necessities and problems of starting a new life. A pre-planned package of assistance was provided to the new IDPs on physical occupation of homestead land. (Please see Annex 6.1)

6.85 There are and obviously would continue to be deficiencies in distribution of assistance, and support to settled families, due to some inefficiencies in the civilian administration; inadequate financial, human, and logistical resources; lack of optimum coordination among different arms of the central and provincial administrations, as well as within the different arms of the provincial administrations; and prejudices within some parts of the Divisional Secretary administrations. However, notwithstanding these weaknesses, commendable progress has been made in return, resettlement and support to settled families despite the enormity of the exercise and low – resource framework within which Sri Lanka was obliged to handle return and resettlement of displaced persons, after a debilitating conflict.

6.86 There were also some charges of mismanagement preferred mainly due to a misunderstanding as to who were eligible to receive specific items of assistance in the package (as some of the assistance was limited to the new IDPs). For example the cash grant was provided by the United Nations only to the 'new IDPs'. The 'old IDPs' were not eligible for this cash grant. There were allegations regarding this due to a misunderstanding of the criteria to receive the cash grant. According to Government Agents' returns the vast majority of 'new IDPS' have received the stipulated assistance package. In fact some districts have already extended the provision of dry rations for a

[84] With the second phase objective being to improve basic infrastructure and services to a level higher than was available before the conflict. Please see Foot Note No.26

further three month period, thus covering a total period of nine months, although the original plan was to distribute dry rations for only six months. This indicates that the Government has adopted a flexible approach to respond to the needs of the 'new IDPs'

6.87 Despite the many complexities, within two years of the conclusion of the conflict the vast majority of the 'new IDPs' have been returned to their own land or were resettled on land close to areas of former residence, and is a good achievement by any standard.[85] The Government of Sri Lanka[86] who provided the leadership, the United Nations, the donor Governments that directly assisted in return and resettlement, as well as NGOs and INGOs who were partners in this venture should be satisfied with the general progress achieved. [87]

[85]The dilemmas faced in practical decision making regarding relocation of displaced persons by conflict weakened, low-resourced, developing countries and the judgments delivered on the efficacy of such processes by, theory-driven, high-resourced, west-centric organizations with little or no implementing and or grass-root experience, would be a useful area of research. Ms. Sarah Pantuliano of Overseas Development Institute has attempted to analyze the empirical experiences in relocation and land restitution processes of displaced and refugee persons in a number of countries in relation to implementation of set norms and principles contained in Covenants and International Instruments on displaced persons. The initial results reveal that there is a mis-match between the pure normative application (of provisions in international rights instruments dealing with internal displacement and restitution of land and property) as advocated by rights organizations and the real on ground implementation in countries where social, political, economic and administrative structures have been exposed to destabilization and transformative processes due to prolonged conflict. Please refer "Unchartered Territory: Land Conflict and Humanitarian Action, ODI Nov 2009.

[86] The PTF provided policy guidance and the Ministry of Rehabilitation coordinated the initiative. *The* programmes were implemented by the Government Agents of Jaffna, Mannar, Kilinochchi, Mullaitivu and Vavuniya, through the respective Divisional Secretariat offices. The security forces in the area assisted as necessary in close coordination with the Government Agents and Divisional Secretaries. The United Nations assisted in planning, as well as in funding. The Government of India was a key donor. A number of bi-lateral donors including Japan, selected INGOS, and NGOs also supported the initiative.

[87] For the experiences of a high-resourced initiative on return and resettlement of displaced persons refer the Katrina experience in USA. Chris Kromm and Sue Sturgis, Hurricane Katrina and Guiding Principles on Internal Displacement, Institute Southern Studies 2008 - provides insights into some of the difficulties faced in resettling displaced persons, and are presented in direct quotes as follows :-

"When hurricane Katrina crashed into the US Gulf Coast August 2005.... over a million people were immediately forced from their homes and communities; today (the Paper was published in January 2008) tens of thousands of people from the Gulf Coast remain displaced across the nation"

"One year after Katrina, two thirds of those displaced from New Orleans (one of the worst affected areas) in Louisiana State were still living out of state or outside the 18 parish area....." " ..... As of June 2007, the population of Orleans parish Louisiana was two thirds of its pre-Katrina levels"

" ..... As a survey (in August 2007) of Louisiana's displaced found that half want to return to either New Orleans or to Louisiana..."

"..... displaced persons seeking to return say there are several barriers preventing them from coming back. Finding money to pay for a move and concerns over finding housing were cited as prime obstacles among those displaced from Louisiana; other concerns such as crime, schools, levees and government leadership were cited as important although less significant barriers to coming home"

The Paper also highlighted the lack of data by federal agencies. "One barrier to accurately assessing the scope and needs of internally displaced persons in the wake of Hurricane displaced Katrina is the lack of monitoring and data by federal agencies. No federal agency is responsible for collecting solid information about the number and location of internally displaced persons, and state-level (equivalent to our provincial level) data varies widely in scope and quality.

Proposed Solutions

6.88 Although the vast majority of the 'new IDPs' have been returned to their own land or resettled in alternate land, the complicated task of providing legal documents of ownership/user-right to the lands occupied by them, still remains to be done, as the majority of IDPs who physically settled on their lands have lost their documents due to the conflict. The resolution of land disputes due to secondary occupation, forged documentation etc is also a problem faced by the displaced. The Government, based on settlement experiences and identified constraints, has sought to provide practical, less bureaucratic, and flexible solutions to solve difficulties of displaced persons on land restitution. As stated earlier, the Cabinet Paper No. 13/ 2011 adopted in May 2011 while establishing policy directives for the return and resettlement of displaced persons, has approved the establishment of a programme to regularize State land management in the North and East. (Please see Annex 6.2 - Circular No: 2011/04 dated 22nd July 2011 on 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' issued by the Commissioner General of Lands which gives operational effect to the new programme proposed under the Cabinet Paper No.13/2011 of May 2011).

6.89 The new programme, coincidentally, is designed to deal with a number of land related issues brought before the Commission by the displaced persons.[88] The programme is a novel experience for Sri Lanka in that, it advocates the use of semi-formal and flexible methods to resolve land problems including the use of community leaders to monitor the transparency of the implementation process. When examining the circular that lays down the operational procedures for the new programme, it appears to the Commission that the programme is founded on the concept that semi-formal mechanisms (for clarification of land disputes, regularization of user rights documentation, and land restitution), would clearly benefit the displaced families rather than the formal court system which is already over-burdened, complicated, time consuming and expensive for litigants.

6.90 The Commission believes that this is a unique and ground breaking development in land administration in Sri Lanka.[89] The Commission also wishes to offer comments and

[88] Please see paragraphs 6.66 to 6.77

[89] The broad purpose of the two year Programme named 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' is to :-

give priority to persons who had been displaced due to the conflict or had been expelled by terrorist organization to return to their own land or to be resettled in alternate land in the same area, re-issue legal documents certifying user-rights to their land so that they can continue to live and cultivate the land they have returned to or settled on, peacefully, and with the assurance that their right- to- use and/or ownership to land has been legally established.

suggestions to further enhance the effectiveness and the outcome of the new programme. These are presented in the Recommendations Section.

Conclusions and Recommendations

Conclusions

6.91 From the material available to the Commission, it would appear that a substantial proportion of the displaced persons from the Wanni, identified as 'new IDPS' have been returned to their own land or resettled in alternate land close to areas of former residence by the Government with the support of national and international partners, within a period of two years of the conclusion of the conflict.[90] The Government policy approach as regards the 'new IDPs' has been generally consistent with the UN Guiding Principles on Internal Displacement and other Guidelines relating to rights of IDPs.[91]

6.92 During the initial stages of displacement, it appears that both the Government and the 'new IDPs' faced many constraints on decisions and plans regarding return and resettlement. Some families, especially the female headed families, had been content to continue to stay in the welfare villages as they were apprehensive of having to cope with the difficult conditions once they returned to their places of origin; while some others with children had been concerned about the prevailing health and schooling facilities in settlement areas. For the Government, a major concern was stated to be the safety of displaced persons returning to their areas of origin, as some of the land in settlement areas were heavily mined; Demining units of the SLA had led the rapid demining initiative with the UN, and international and national demining partners, thus removing a key obstacle to quick return and resettlement of displaced persons. (Please see paragraphs 6.54 to 6.57).

6.93 Although the vast majority of new IDPs have been returned or resettled, it had not been possible to restore all of their land at once due to the phased release of agricultural land. Considering that vast areas of the land in the Wanni were mined, the delays that

[90] On the basis of figures provided to the Commission by the Ministry of Rehabilitation, it is estimated that over 90 per cent of the 'new IDPs' have been returned or resettled

[91] Guiding Principles on Internal Displacement, principle 6 provide that "displacement shall last no longer than required by the circumstances" The Universal Declaration on Human Rights recognizes that " everybody has the right ..... to return to his country." The Fourth Geneva Convention, Article 49 affirms the importance of transferring people back as soon hostilities have ceased.

were experienced are understandable. Moreover, the area under agricultural land was substantially larger than homestead land.[92]

6.94 The Commission notes that despite the initial lag, by the end of 2010 large areas of agricultural land were being released in the Wanni. Data received from the Government Agents of Mannar, Vavuniya and Mullaittivu districts indicate that 68 per cent of paddy land had been brought under paddy cultivation in the Maha (cultivation) season of 2010-2011. This was made possible through accelerated demining, rehabilitation of irrigation tanks, free distribution of basic agricultural implements, supply of seed paddy, and other inputs and fertilizer at a concessionary price.[93] The Commission notes that according to information made available by the respective Government Agents in the above mentioned three districts, 49 major and medium irrigation tanks and 640 small irrigation tanks out of a total of 938 are in operation.

6.95 Despite an improvement in livelihood activities, especially agricultural activities, in the 2010-11 Maha season, the Commission notes that it is imperative to continue with the special assistance measures and packages that have been provided to date, even into the future to ensure food security and family sustenance of the resettled new IDPs. In this regard, there is a distinct need for livelihood assistance initiatives to be continued into the future (duration of periods of extension to be decided based on rapid community assessments on Divisional Secretary Area basis) by the Government with the assistance of the United Nations, bi-lateral donors, NGOs and INGOs specialized in such undertakings.

6.96 The Commission is pleased to note that the Sri Lankan Security Forces, especially the Army, contributed to return and resettlement of 'new IDPs' in the Wanni.[94] (Please see paragraphs 6.54 to 6.57) The '180 day crash settlement programme' was completed successfully. The SLA and the United Nations also carried out a mine education programme and the army helped to identify demined land. The Commission, nevertheless, notes that while some persons praised the SLA for assistance[95] in resettlement, some have underscored the importance of reducing the military presence[96] in resettled areas, after completion of their responsibilities such as in

[92] As per GOSL policies with regard to State land distribution, the average ratio of homestead land to agricultural land distributed by GOSL to peasant farmers was approximately 1:4)

[93] Mullaitivu: Total paddy lands 41340Ac./ Cultivated paddy lands in Maha 2010/2011- 24016 Ac; Mannar: 57000 Ac./ 47 000 Ac; Vavuniya: 52,540 Ac./43,811 Ac. Source Government Agents

[94] Please see paragraphs 6.54 to 6.57.

[95] Representations made by a member of the clergy at Madhu on 09 January 2011. Transcript No. LLRC/FV/09.01.11/01

[96] Representations made by a civilian at Vavuniya on 14th August, 2010. Transcript No. LLRC/FV/14.08.10/01; at Mullaittivu on 20th September 2010.. Transcript No. LLRC/FV/20.09.10/01.; at Batticaloa on 09th October 2010. Transcript No.

demining, so that the civil administration could progressively assume responsibility for local level administration. These sentiments have also been echoed in the East. The Commission wishes to underline the importance of the rapid restoration of the civil administration in order to bring back normalcy, create confidence and promote reconciliation

6.97 The Commission is pleased to note that HSZs in both Trincomalee-Sampoor in the Eastern Province and Palaly in the Northern Province have been reduced and land released to original owners and permit holders as applicable. The 'unofficial HSZs' in Mannar too has been withdrawn.[97] However, an estimated 26,755 persons still continue to be displaced due to the Trincomalee - Sampoor and Palaly HSZs, while a proposed naval establishment has displaced an estimated 1,320 persons in the Mannar district.

6.98 In this regard the Commission notes that it is desirable to formalize all HSZs according to existing legal provisions so that maximum benefits and compensation could be paid to affected persons promptly. It is also desirable to continue to review the HSZs with a view to reducing the areas of the HSZs further, while being alert to national security needs. The necessity to use small plots of private land for security purposes (e.g. for as cantonment areas, etc) in the districts should also be assessed jointly with the respective Government Agents and lands that are not vitally important for security purposes released to owners as urgently as possible. Land that is identified to be vitally required for security purposes based on this joint assessment should be either taken on lease at market rates if the owner so wishes, or legally acquired so that the owners can claim alternate land and or compensation as per legal provisions, within a specified reasonable time-frame.

6.99 The Commission further notes that the civil administration has been subjected to some criticism by persons who came before the Commission, especially with regard to the management and alienation of State land and restitution of land to displaced persons especially, to the 'old IDPs'.[98] There were some complaints about the partiality of the civilian administration and political interference in the East as well as in the North regarding the restitution of' land belonging to the 'old IDPs'. Some persons who came

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LLRC/FV/09.10.10/01; at Mannar by Rt. Revd. Dr. Rayappu Joseph and a civilian. Transcript No. LLRC/FV/08.01.11/01 and by a civilian at Kalmunai on 27th March 2011. Transcript No. LLRC/FV/27.03.11/01.

[97] In Trinco-Sampoor HSZ- lands of 9,526 persons released; in Palali HSZ- lands of 11,965 persons released. Source- SLA Report to LLRC titled 'Details of HSZs'; In Mannar lands of 1,819 families (6,736 persons) located in 'unofficial HSZs' released. Source- Memo by Government Agent, Mannar to LLRC Ref. No. MN/DRRS/K/RS/102 dated 26 September, 2011.

[98] Dr. Mrs. F. Haniffa before the LLRC at Colombo on 04 November 2011. Mr. M. I. Mohideen before the LLRC at Colombo on 03 September 2010. Representations made by a civilian at Batticaloa on 09th October 2010. Transcript No. LLRC/FV/09.10.10/01

before the Commission have referred to instances of some civil administrative officers who have continued to be partial to LTTE sympathizers in the past in land matters, continuing in the same vein even after the conclusion of the conflict. The Commission recognizes that the fact that the civil administration performed a difficult task during the conflict. However, in the present post conflict period, the civil administration will be responsible in managing land restitution, recovery and livelihood support in the settled areas. Any partiality displayed in the implementation of the new programme, even by a small number of members of the Divisional civil administrations in the Northern and the Eastern Provinces would result in the programme, and the civil administration, being subjected to community censure. Such an outcome would also impact adversely on promoting national reconciliation and community harmony.[99]

6.100 The Commission appreciates the measures taken by the Government through Cabinet Paper No 13/2011 and the Circular No 2011/04 dated 22nd July 2011 to implement an innovative programme titled 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' to resolve land documentation, ownership and user right issues of the displaced persons. The Paragraphs 6.88, 6.89, and 6.90 of the 'Proposed Solutions' section provide a summary and the Commission's basic observations on the new programme. The Commission wishes to offer suggestions to further enhance implementation effectiveness and the outcome of the proposed programme. These will be discussed in the 'Recommendations' section.

6.101 The Commission recognizes the fact that although it is not an easy task to restore the pre-conflict status quo in a country immediately after a prolonged conflict, it is important to ensure that illegal land transfers and alienation triggered by violence, intimidation and ethnic cleansing are not allowed to be perpetuated or institutionalized. This is critical for nurturing ethnic harmony and national reconciliation, for if left unsolved this would transform into trigger points for future conflict. Now that the vast majority of all 'new IDPs' have been returned to their own land or resettled, it is prudent to expedite the return and resettlement of old IDPs, who belong to all communities, including a substantial proportion of Muslim families who lost agricultural land in the Eastern Province, and Sinhalese families who were driven out of Jaffna.

6.102 To those reviewing the Government's return and resettlement programme, the research done by Sarah Pantuliano on return and resettlement of IDPs in varying socio-political-cultural contexts may be enlightening……" Land issues often come to the fore in the

[99] Please see paragraphs 6.15, 6.16, 6.21 and 6.40.

post-conflict periods as populations seek to claim and reclaim land …… Even in supposedly "post conflict" environment, it is not a simple process for refugees to return home……. This is a complex issue and every situation is different, conflict is a highly transformative process and pre-war status quo can never be established completely, even if that were desirable" – Sarah Pantuliano, Unchartered Territory, Land Conflict and Humanitarian Action Overseas Development Institute, November 2009.

6.103 The above reasoning applies with equal force to the post conflict situation in Sri Lanka and the Commission's recommendations take into account this reality.

Recommendations

6.104 (1) Any citizen of Sri Lanka has the inalienable right to acquire land in any part of the country, in accordance with its laws and regulations, and reside in any area of his/her choice without any restrictions or limitations imposed in any manner whatsoever. The land policy of the Government should not be an instrument to effect unnatural changes in the demographic pattern of a given Province. In the case of inter provincial irrigation or land settlement schemes, distribution of State land should continue to be as provided for in the Constitution of Sri Lanka.

(2) The Commission appreciates the Government's land policy concerning return and resettlement of displaced persons and the associated programme proposed in July 2011, titled 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' designed to resolve problems relating to land documentation and disputes in ownership and user-rights of the displaced persons. The Commission notes that the programme is innovative, and seeks to utilize where appropriate, mechanisms that are less bureaucratic mainly informal and designed to release the vast majority of the displaced persons from having to use the formal court system which would be complex, time-consuming and expensive for litigants.[100]

The Commission would however like to strongly recommend to the authorities concerned to make it quite clear and assure the people, through an appropriate publicity effort, that this programme and associated mechanisms are not a substitute for recourse to the Courts of Law where people are in possession of valid legal proof of their claim to the land/s in question and that it seeks to make available land to all returning IDPs as expeditiously as possible, especially to those who do not have documentary proof due to conflict related reasons. This is necessary to allay the

[100] Please see paragraphs 6.88, 6.89, 6.90, 6.100 and Annex 6.2).

understandable concerns of the people about the paucity of information on the objectives of this programme.

The Commission offers the following recommendations to ensure implementation effectiveness and outcomes.

(2.1) The Commission recommends that an apolitical approach be adopted in the implementation of the programme, combined with a strong political will to ensure that it is completed as planned and any problems and constraints that arise are resolved effectively and promptly. The Commission recommends that the Government provides the needed human and financial resources for the successful implementation of the programme.

(2.2) A strong administrative will on the part of the civil administration beginning at the highest levels of officialdom to ensure impartiality and justice in implementation will also be critical.[101] The Commission recommends effective supervision of civil administration officers tasked with the implementation of the programme, by the respective Government Agents, and the monitoring of implementation quality by the Land Commissioner General at the national level to ensure impartiality and transparency.

(2.3) The Commission believes that the success of the programme would substantially depend on a clear and unambiguous understanding of the principles, the purpose, the objectives, and the methodology of the programme by political leaders, the implementers, in this case the public officers and community leaders who would be the members of the various implementing Committees, and the beneficiaries, i.e. the heads of the households of the returned/resettled displaced persons.

In this regard the Commission wishes to make the following observations and recommendations:

Although in the main done with good intentions, the public information so far disseminated on the proposed new programme has resulted in insufficient clarity regarding the purpose and the methodology of the proposed programme.

[101] Please see paragraphs 6.15,6.17,6.21,6.41,6.68, and 6.99

The following factors may have contributed to this state of affairs:

a. Un-researched or inadequately researched information on the new programme disseminated by the media as well as various political personalities; and,
b. Inadvertent mix up of the content and the methods of the proposed new programme with some other land titling and user right consolidation programmes currently under implementation by the Ministry of Lands. Although the recent advertisement on the proposed new programme inserted by the Land Commissioner General in all three languages in the print media, provided some coherence, it may not be adequate to remove mixed messages and sometimes confusing information coming through the media, the web pages, and political pronouncements.

(2.3.1) The Commission recommends that a well planned media seminar on the proposed new programme could be organized by the Land Commissioner General's Department to enable the media to project an accurate and clear view of the new programme, devoid of political posturing.

(2.3.2) The Commission recommends that the Land Commissioner Generals Department and the respective Governments Agents conduct well designed training programmes for all officers and community leaders selected for various committees. The training should be based on a short and simple but written training manual in order to ensure that all training is identical and similar messages are delivered through the training activities in all Divisions and Districts. Short case studies of various possible scenarios on problems that are anticipated in the field can be developed with role plays or similar training methods used to simulate problem solving. This would enhance the skills and self confidence of the officers and community leaders in coming to terms with real problems in the field. A specialized training Institute such as the Sri Lanka Institute of Development Administration could be commissioned to partner the Land Commissioner General and the Government Agents in organizing the training, as they have expertise and experience in training public officers in a variety of disciplines. These would incur additional expenditure as well as time, but would definitely improve the effectiveness and the outcome of the programme.

(2.3.3) The Commission also recommends the launching of a well-designed, settler-centered communication campaign primarily in simple Tamil language, as well as in Sinhala language, incorporating information on what specific action the displaced persons should take with regard to different services provided by the programme. The communication campaign design should take into consideration clients' knowledge and understanding levels, as well as their existing communication networks; and should include 'how to do' and 'what to do' information in clear and simple language. This would help displaced persons to come forward to benefit from the programme with confidence.

(2.4) The programme envisages the nomination of the area civil coordination officer, who is a Security Forces officer, into the two committees proposed to be established to review land documentation and user right issues. The Commission notes that the two committees will be chaired by senior civil administration officers, and that the majority of the members are drawn from the civil administration. The Commission, as a policy, strongly advocates and recommends to the Government that the Security Forces should disengage itself from all civil administration related activities as rapidly as possible. With regard to the participation of Security Forces officers in the proposed land restitution process, the Commission being cognizant of the fact that that some lands are currently being utilized for security purposes[102] recommends that such participation be confined to and used optimally to expedite releasing maximum extents of such land, while taking account of security considerations, but according primacy to the policy objective of allowing people to settle in areas convenient to them.

(2.5) The Commission notes that the new programme has introduced a measure of community consultation through the Observation Committees linked to the First (Investigation) Committee and the Second (Investigation) Committee. The Observation Committees constituting community members are expected to monitor the investigation decision process and provide locality specific information to the two committees as necessary. While appreciating the opportunity provided for some measure of community consultations, the Commission recommends that the First Committees in each of the District

[102] Please see paragraphs 6.58 to 6.65.

Secretariat areas organize and hold a well publicized 'Community Consultation Meeting' prior to the launch of the First Committee investigation process. This would provide an opportunity for the returned /resettled communities in the respective areas to air their problems and constraints, as well as make useful and constructive suggestions to improve the investigation process. The First Committee could also use this forum to explain to the community how the investigations regarding land problems would be conducted, and what specific action and procedures each category of prospective applicants should adopt to facilitate reasonably quick resolution of their problems. This will give a sense of confidence to the people that they were also listened to. The First Committee will also get a preview of what type of problems to expect in their respective areas. The Commission recommends that the planning and conduct of such Community Consultation Meetings be based on the experiences of the traditional Land Kachcheri system.

2.5.1. The Commission also recommends that the Land Commissioner General establishes a mechanism to rapidly consider the constructive suggestions made through the 'Community Consultation Meetings', and to consider using these suggestions as appropriate to further improve the field level methodology of the programme.

(2.6) The Commission recommends that arrangements be made to strengthen the human resource teams at all levels of implementation, through temporary secondment, and / or contracting qualified and skilled retired staff, and assignment of additional administrative service staff to the Land Commissioner General's Department through new recruitment and / or secondment for a stipulated period of time to support effective and efficient implementation of the programme.[103]

(2.7) The Commission realizes that implementation of some of the aforementioned recommendations would require additional financial allocations and lead-time. The Commission is of view that the proposed additional activities would, nevertheless, strengthen programme implementation, and increase the benefits to the community.

(2.8) The Commission notes that the new programme also envisages the granting of land to genuine landless families in the North and the East. The Commission

[103] Please see paragraph 6.81.

recommends that all families who have been secondary occupants, whether at the behest of LTTE or not, be given land, if the lands they are currently in occupation are awarded to the genuine original permit holders on the results of the Investigating Committee decisions. However, the Investigating Committees should clarify, without any doubt, whether the secondary occupiers are genuinely landless**,** as some unscrupulous persons would use secondary occupation to gain more land in times of transition.

(2.9) The Commission also recommends that strict controls be applied to prevent any alienation of State land other than for IDPs, except where State land is required for other approved purposes, until the proposed programme is implemented. As there is information regarding alienation of State land through spurious deeds, legal provision should be made to enable relevant authorities to investigate and institute legal action in appropriate cases against any public officer, Attorney-at –Law, or Notary Public who commits such illegal acts or any other person aiding and abetting such acts.[104]

(2.10) The Commission believes that international financial assistance geared to supplement national counterpart funding through multilateral or bilateral development partners could help in the implementation of the programme. Such an arrangement could prevent any possible slowing down of programme implementation, as competing demands for the development of the Northern and Eastern Provinces could negatively affect financial disbursements to the land sector. The Commission recommends that the Government actively seeks the cooperation of a development partner to support the programme, based on the understanding that the Government will be responsible for programme policy, decision making, and implementation.

(3) The Commission appreciates the fact that the two HSZs in Palaly and Trincomalee-Sampoor respectively have been reduced and that an estimated 21,491 persons have been returned to their own land. However, in the two reduced HSZ areas an estimated 26,755 persons are still displaced. The Commission recommends that the two existing HSZs in Palaly and Trincomalee-Sampoor, as well as small extents of private land currently utilized for security purposes in the districts be subject to review with a view to releasing more land while keeping national security needs in perspective. The Commission also recommends that all families who have lost lands and or houses due to

[104] Please see paragraphs 6.78 to 6.80.

formal HSZs or to other informal or *ad hoc* security related needs be given alternate lands and or compensation be paid according to applicable laws. The Commission further recommends that provision of alternate lands and or payment of compensation be completed within a specific time frame.[105]

(4) The Commission, recommends that the Government with the assistance of the development partners extend livelihood assistance to 'new IDP' families as needed, on an area by area basis for a longer period of time than planned, to ensure family sustenance. The Commission is pleased to note that in some areas of the Northern Province, the livelihood support initiative has been extended from the original period of 6 months to 9 months. The Commission recommends further extension of livelihood assistance including schemes for providing micro-credit for peasant farmer groups, tractors for farmer cooperatives, as well as extension advise and other support such as for introducing possible pilot projects on application of dry-farming methods for cultivation of upland crops in un-irrigated areas in the North.[106] [107] The Commission notes (according to data submitted by the Government Agents in the Northern districts) that a substantial proportion of irrigation tanks in the Northern Province are now in operation. The Commission recommends that the current momentum of renovating irrigation tanks in the Province be continued till all the remaining small irrigation tanks are brought back into operation, possibly with UN System assistance.

(6) The Commission recommends that the land issues of Muslim families who were forcibly ejected by the LTTE from their agricultural land in the Eastern Province, and whose living conditions have drastically deteriorated as a result, be effectively and expeditiously resolved, as very little progress has been made in the East, especially in the Batticaloa district,[108] even though about 04 years have elapsed since the end of the conflict in the East.

(7) The Commission notes that the available official data with regard to the eviction of Sinhalese families from the Jaffna district appears to be inaccurate and recommends that this aspect be reviewed in a dispassionate and low key but methodical manner without arousing any communal passion or tensions, in order to arrive at more precise

[105] Please see paragraphs 6.58 to 6.65.

[106] The Maha Iluppallama Agricultural Research Institute near Anuradhapura has accumulated research experience and appropriate upland crop varieties developed for cultivation under dry-farming methods using low level rains in the Yala cultivation season. If found appropriate to Kilinochchi, Mannar, Mullaitivu, this could be an area of cooperation between the Northern Province and the Northern Central Province.

[107] Please see paragraphs 6.93 to 6.95

[108] Please see paragraphs 6.40 and 6.41.

data. The Commission also recommends that the Sinhalese families who were evicted from Jaffna and the rest of the Northern Province, and who volunteer to go back, be returned to own land or resettled in alternate land as expeditiously as possible, as the progress in this regard has been unsatisfactory**.**[109]

(8) The Commission notes that with respect to Muslim families evicted from Jaffna and the Northern Province, good progress has been made in return and resettlement as per information provided by the Government Agents of Jaffna, Mannar, and Mullaittivu.[110] The Commission recommends that the return and resettlement of the remaining Muslim families who volunteer to return to Jaffna and the Northern Province be expedited.

(9) The Commission notes with regret that the land issues and livelihood issues of some families living in the former Threatened Villages, especially families whose breadwinners were killed in LTTE attacks or were forced to be 'night-displaced'[111] for family security, remains largely forgotten and unaddressed. Up to the time of compiling the Report, the Commission did not receive adequate information on the current situation of these families, a considerable proportion of who are presumed to be headed by females, grandparents, older siblings, and single fathers. The Commission recommends that a focal agency be designated to study the special nature of problems and displacement of families in former Threatened Villages, with a view to designing a special mechanism to resolve their current problems expeditiously, as they lack the political patronage or power to influence the existing governmental administrative machinery as well as the evolving national post-conflict development agenda.

(10) The Commission is of view that in order to prevent legitimizing of forced eviction and secondary occupation of private lands in the North and the East, the law pertaining to prescription should be amended in its application to land transfers/occupation effected during the period of conflict.

(11) The Commission is concerned with the situation faced by so called **'**old IDPs' - persons displaced prior to April 2008, with a considerable proportion of them being displaced since 1980s. The old IDPs[112] feel that they have suffered discrimination by non-action or slow-action of the State and other stakeholders. This recommendation is linked to recommendations 3, 6, 7, 8, and 9, being the umbrella recommendation that advocates

[109] Please see paragraphs 6.43 to 6.49.
[110] Please see paragraphs 6.50 to 6.52.
[111] Please see paragraphs 6.25 to 6.28
[112] Please see paragraphs 6.11 to 6.27.

for the return and resettlement of 'old IDPs'. The Commission is of view that the Government should ascertain the magnitude of the problems of the 'old IDPs' and with the assistance of the United Nations, begin a programme to return or resettle these displaced persons who wish to return voluntarily. The proposed project described in 2 above could also be utilized to assist the voluntary return or resettlement of old IDPs and restoration of their homestead and agricultural lands. Any sense of injustice and discrimination welling up in their hearts and mind would adversely affect the nurturing of ethnic harmony and national reconciliation. It is also pertinent to note that the United Nations Guiding Principles on Displacement as well as the United Nations Guiding Principles on Restitution of Land of Displaced do not qualify displaced persons by period of displacement or reasons of displacement. All displaced persons enjoy equal rights, notwithstanding convenient administrative definitions coined to restrict benefits due to financial limitations, political concerns or international pressure.

(12) The Commission is of view that the Government should expedite action on the establishment of a National Land Commission (NLC) in order to propose appropriate future national land policy guidelines. In formulating land policy the proposed NLC should include Guidelines for the equitable distribution of State land. The Commission regrets to note that although this is a requirement under the 13th Amendment, and a draft Bill has been framed, successive Governments have failed to get it passed through the Parliament.

(13) The Commission is of view that a land use plan for each district in the North and East should be developed with the participation of district and national experts drawn from various relevant disciplines to guide the district administration in land conservation and alienation in order to ensure protection of environment and bio-diversity; sustainable economic development; leisure and recreational standards; religious, cultural, and archeological sites with a view to improving the quality of life of the present and future generations.

(14) The Commission appeals and recommends to all political parties to arrive at a bi-partisan understanding that 'restitution of land to displaced persons in the Wanni and Jaffna and persons who lost agricultural land in the Northern Province, and in the Eastern Province and homes in the Threatened Villages', (i.e. to both the' new' and 'old) is recognized as a national issue and would not be used as a tool by political parties in the Government and the Opposition to gain narrow political advantage. The Commission is strongly of the view that such a bi-partisan approach is an imperative in promoting national reconciliation.

Chapter 7 - Restitution / Compensatory Relief

Section	Paragraph Numbers
Introduction	7.1 – 7.7
Current status of applications and payments	7.8 – 7.14
Recommendations	7.15

Chapter 7 - Restitution / Compensatory Relief

Introduction

7.1 The Commission has been mandated by the warrant to recommend the methodology whereby the restitution to any person affected by the events occurring during the period covered by the warrant or their dependents or their heirs can be effected.' It is well recognized that while restitution enjoys primacy as a legal principle other forms of relief such as compensation and monetary relief is commonly sought. The Commission has considered, in particular, the role of compensatory relief in facilitating resettlement and reconciliation, the structures in place and the current status of payment. The Commission's recommendations seek to ensure that those who are eligible for payments have access to it within a reasonable timeframe.

7.2 The Commission has gathered information from the mandated State institutions, State officers responsible at different levels of the process and persons who are entitled to, or have received compensatory relief from the Government. Recommendations concerning similar issues in previous Commissions such as the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in Certain Provinces[1], 2001, provided useful background material to the Commission's consideration of the matter.

7.3 In the context of internationally accepted norms and standards the Commission took into account the relevant instruments and other documents developed within international organizations such as the United Nations and related agencies[2]. Although some of these norms and standards have been developed in the context of responsibility of States for internationally wrongful acts suffered by foreign nationals, they nevertheless serve as broad guidelines on the question of providing restitution to one's own nationals.

7.4 REPPIA (Rehabilitation of Persons, Properties and Industries Authority)[3] is the specialized institution responsible for implementing the Government's policy on compensatory relief for the person/s who suffered loss/damage due to terrorist violence and operations of the Government Security Forces. Chairman REPPIA

[1] For full report see Government of Sri Lanka Sessional Paper No. 1 - 2001

[2] United Nations Guiding Principles on Internal Displacement*,* September 2005*;* Responsibility of States for Internationally Wrongful Acts, Chapter II: Reparation for injury, 2005, United Nations; Handbook for Repatriation and Reintegration Activities, UNHCR, 2004; Principles on Housing and Property Restitution for Refugees and Displaced Persons, by the UN Sub-Commission on Protection of Human Rights 2005, Geneva; Customary International Humanitarian Law. Vol 1, ICRC, 2009

[3] Set up under *Rehabilitation of Persons, Properties And Industries Authority Act (No. 29 of 1987*)

conceptualized compensatory relief provided by REPPIA as 'consolation and relief.'[4] Its purpose is to complement the variety of relief and reconstruction programmes in operation.

7.5 REPPIA recognises death, injury, destruction and damage to housing (places of worship is considered as a special category) eligible for compensatory relief[5]. REPPIA's statutory function clearly establishes that assistance/relief is to be provided in financial terms. The eligibility requirements and quantum of payments is set by the Government circulars[6].

7.6 Compensatory payments have to be seen within the context of the extensive State welfare services, largely provided free of charge (such as education, health, infrastructure, and livelihood development), which operated despite the difficult conditions even in areas held by the LTTE[7]. Since the end of the conflict, normalized provision of welfare services to the conflict affected population has become a primary focus of Government administration.

7.7 REPPIA has been the only State institution responsible for compensatory relief for all districts in the country, except for a limited period (1997- 2007) when a second institution, the Northern Province Re-settlement and Rehabilitation Authority, was set up and all REPPIA functions relating to the Northern Province was shifted to the new agency[8].

Current status of applications and payments

7.8 The most critical aspect of payments is the extreme lack of funds available to REPPIA[9]. As at May 2011, Rs. 2.3 billon (34,111 cases) is needed to make payments to the

[4] Meeting with Chairman, REPPIA, 9th June 2011, Colombo

[5] Members of the Government of Sri Lanka Security Forces are not eligible to apply. Ministry of Defense is responsible for relief payments relating to the Security Forces.

[6] A uniform payment Rs. 100,000 for death, injury payment based on the impact on earning capacity within a maximum of Rs.50,000. If disability is over 70% full compensation is paid and pro rata below that. Damage to property pro rata subject to a maximum of Rs. 100,000. Related Government of Sri Lanka Circulars: PA 21/88, PA 59/89,MRR/Com/Gen/8 3-95/01

[7] See 'Countries in Conflict and Aid Strategies: The Case of Sri Lanka' by Arve Ofstad, 2002, World Development, Vol. 30, No. 2 pp 165-180

[8] Set up under *Emergency (Northern Province Re-Settlement and Rehabilitation Authority) Regulations, No. 1 of 1996. "*Section 14: REPPIA not to function in Northern Province" states, "For so long as these regulations are in force, REPPIA established by the Rehabilitation of Persons, Properties and Industries Act, No. 29 of 1987 shall not exercise or discharge, in respect of the Northern Province, any power or function conferred on, or assigned to REPPIA by that Act."

[9] Based on the data sheets provided to the Commission by REPPIA, representations by senior REPPIA officials, 26 Jan and 9 June 2011,Colombo, and representations by public administration officers at the local level (divisional and GN), 1 July 2011, Colombo. According to data provided by REPPIA, total actual payments have amounted to Rs. 220.8 mn (2007), Rs. 213.6mn (2008), Rs.189.1mn (2009), Rs.187.7mn (2010), Rs. 90.7 (up to July 2011).

backlog of approved cases[10]. Despite the expectation of an inflow of new applications, REPPIA's own draft budget estimates for 2012 are significantly lower than estimated costs of payments[11]. Recommended budgetary ceilings have been cited by REPPIA as the reason for the low National Budget request[12].

7.9 Pending payments include 2,059 cases of general public deaths, 1,283 cases of general public injuries, and 5,716 cases of general public property losses. In addition, 112 cases of Government servant deaths, 81 cases of Government servant injuries and 8,099 cases of Government servant property loss are outstanding. Payments for 574 cases of damage of property to places of worship are also pending[13].

7.10 As per the REPPIA mandate, its assistance schemes are equally available for all districts. Currently, however, REPPIA prioritises applications from the Northern and Eastern Provinces for payments. Data provided to the Commission, show a rapid increase in payments and a greater proportion of payments going to these two Provinces (see Table 1 in Annex 8.1).

7.11 However, despite payments in 2009 and 2010 being almost exclusively for residents of the Northern and Eastern Provinces (see Table 1 in appendix), the coverage of actual payments to entitled persons in these Provinces remains extremely low[14].

7.12 In 2010 REPPIA carried out mobile services in a number of locations within the Northern Province, to facilitate the compensatory relief payment process. Following this, REPPIA distributed 15,000[15] application forms for death and injury and 6,000 forms for house and property to the District Secretaries of the Northern Province. However, the number of applications received so far has been significantly lower than estimated by REPPIA.

7.13 Based on representations made to the Commission, the following factors were identified as contributing to the low level of applications by eligible persons:

[10] Data tables provided on 26th January and 9th June 2011, meetings with REPPIA officials.
[11] As per data provided by REPPIA, September 2011: REPPIA budget estimate for 2011 was 425% higher than the estimate for 2010. The estimate amounted to Rs. 1.8bn of which REPPIA received 6.3%. Budget estimate for 2012 is a 30% increase on the 2011 estimate.
[12] Document provided by REPPIA, September 2011
[13] Data tables provided on 26th January and 9th June 2011, meetings with REPPIA officials
[14] For the period 2009 to June 2011, 1,719 payments for 'General Public deaths and injuries', and 865 payments for 'General Public damage of property' had been completed by REPPIA. Source: Data provided by REPPIA on 12.07.2011
[15] Kilinochchi and Mullaittivu 5,000 each, Jaffna and Mannar 2,000 each, Vavuniya 1,000

- Previous experience of applications not resulting in payments is a de-motivating factor[16]. Outstanding payment trends confirm that this position is justified.

- Lack of necessary documents, particularly certification,[17] is a critical problem in completing applications. The acknowledgement of this difficulty by the State can be seen in existing concessions such as acceptance of an affidavit where no functioning Police station exists, or existed at the time of loss. The provisions of the recently adopted *Registration of Deaths (Temporary Provisions) Act, No. 19 of 2010* provides for expeditious issue of death certificates. This should facilitate the application process.

- In the case of death and injury, the inability to certify non-involvement with the LTTE prevents Grama Niladaris (GNs) from processing the applications. While this position is in line with Government regulations, submissions by REPPIA clarified that in practice this is no longer considered a compulsory certification[18]. Despite this relaxation by REPPIA, it would appear that some GNs continue to regard themselves to be bound by this requirement[19].

- Applications are not made to REPPIA for compensatory relief for loss of property to avoid disqualification from receiving benefits from non-state housing projects[20]. A related problem submitted was, properties that are damaged for a second time are not eligible for compensatory relief if previous payments have been made. Given the extent of the housing requirements, such issues pose a severe constraint to progress in providing shelter needed for resettlement.

- Entitlement to compensatory relief arises only if damage/loss is due to terrorism or operations by the Government Security Forces. Separating the cause of loss may pose challenges. For example, data provided by the Mannar District Secretary showed only 17% of widows in the district are war widows, only 21% of disabilities have been caused by the conflict[21]. However, according to submissions by REPPIA,

[16] Representations made before the LLRC by Grama Niladaris of Mullaitivu at Colombo on 1st July 2011 and written representations to LLRC from districts of Ampara, Batticaloa, Jaffna, Mannar, Monaragala, Trincomalee.

[17] Documents needed to establish death or injury as well as cause: police entry, medical report if disabled, affidavit from the Justice of Peace. Documents needed to establish next of kin; marriage certificate, birth certificates of the children. Documents needed for payments to be made: number of the bank account as all payments are made by cheque.

[18] Meeting with Chairman REPPIA at Colombo on 9th June 2011

[19] Representations made before the LLRC by Grama Niladhari Kalappadu South, Grama Niladari Pudukudiyirippu East, at Colombo on 1st July 2010. Transcript No. LLRC/IS/01.07.11/02

[20] Representations made before the LLRC by Grama Niladharis from Mullaitivu, at Colombo on 1st July, 2010. Transcript No. LLRC/IS/01.07.11/01

[21] District Secretary data collection by LLRC, as at June 2011.

'cause of loss' is not considered in detail. If cause can be established as due to violence it is accepted. Further, when loss is due to multiple causes, the primary cause is accepted.

- The Commission is of the view that concerned State officers are well aware of the regulations in implementing the REPPIA functions and concludes that this is not a critical bottleneck. However, REPPIA documents indicate that cadre vacancies could be a constraint to timely processing of applications.

7.14 In addition to REPPIA's primary function of compensatory relief in the case of death, injury and damage/loss to property due to conflict, REPPIA has a range of other supplementary relief schemes in operation; for example, loan schemes and grants are provided for housing and enterprises, livelihood grants for IDP marriages. In the post conflict period, REPPIA has moved towards facilitating livelihood and education assistance as well. REPPIA justified this move in terms of needs observed during mobile service programmes held in the Northern Province.

Recommendations

7.15

1. Based on representations made before the Commission and in the light of the Commission's consideration of relevant norms and standards of compensatory relief, the Commission recommends that the State should review the role and capacity of REPPIA with a view to streamlining and augmenting its role and resources in undertaking post conflict requirements.

2. The severe lack of funds to meet eligible payments is the single most critical issue in providing relief to effected persons. Providing an urgent solution to this problem is essential for any progress to be made. Other administrative constraints appear to be at a manageable level.

3. The Government needs to take responsibility for prioritising payments in full, and in time. Funding has to be procured to clear the backlog of cases as well as to prevent lack of funds being the reason for delays and non-payment in the future[22].

[22] 15,000 application forms have been distributed to the Northern Province district officers. Given the impact of the conflict in these districts a high rate of entitlements can be expected. Very few of these applications have come in. The funds needed will increase dramatically should applications be successful.

4. The responsibility of ensuring payments needs to be taken on by REPPIA. It should not be the responsibility of the individual to obtain their entitlements. REPPIA needs to set itself a target time frame to ensure that all entitlements are met.

5. A time limit should be set for completion of payments for losses suffered up to the end of the conflict. This needs to be done for two reasons: 1) for those who are entitled to payments to obtain it while the financial need is most acute. 2) for REPPIA to bring its responsibilities towards those affected by the conflict to a close.

6. In setting a time limit for payments to be completed, the following need to be considered: 1) Reasonable time needed for those making applications. The particular circumstances of IDPs and those who had been living in areas dominated by the LTTE should be taken into account when deciding on a time limit. 2) A reasonable minimum and maximum time taken for processing applications and payments given REPPIA's capacity and other relevant factors. Extensive publicity needs to be given to ensure all entitled persons to apply.

7. While the Commission acknowledges that the education and livelihood projects are critical to the needs of people of affected areas, the primary focus of REPPIA should be in providing compensatory relief for persons affected by the conflict. As such, the supplementary projects should be taken over by other relevant state authorities.

8. REPPIA should urgently prioritise the 'General Public' and 'Public Servant' payment of death, injury and housing entitlements. The problem of public servants being disqualified from NGO assistance programmes, particularly housing assistance, needs to be revisited[23].

9. Requests to increase the compensation amount have been made to REPPIA. However, given the financial commitment needed to clear the backlog of cases and pending applications, the Commission does not consider an increase in amount as a viable step. Further, given the principles of reparation the more reasonable strategy would be for the Government to provide for complementary schemes to ensure rebuilding and resettlement.

[23] Special submissions were made by the GNs of Mullaitivu district at Colombo on 1st July 2011 on behalf of other government officers and pensioners regarding the disqualification of government officers from housing projects. This was presented as a severe problem faced by them.

10. A decision has to be taken on compensatory relief for death and injury for those involved with the LTTE. From the broad reconciliatory perspective, the Commission takes the view that in principle, ex-combatants and next of kin should also be considered eligible for compensatory relief. However, the priority of REPPIA should be with the affected civilians who are most in need.

11. Housing needs have to be addressed urgently[24]. Housing is a fundamental issue for returning IDPs that needs special assistance, beyond the scope of compensatory relief and the mandate of REPPIA. Given the number of houses required and the extensive costs, the Government should access all possible sources of assistance from institutions and individuals both national and international.

12. In conclusion, the Commission observes that providing compensatory relief cannot be considered in isolation. The specific role of compensatory relief has to be seen against the overall resettlement and development strategy that is being operationalised in the areas that had been the centre of conflict. These include the operation of the basic national welfare services such as health, education, food, water and agriculture, infrastructure, as well as the complementary State programmes such as livelihood development and village development programmes.

[24] According to data collected from District Secretary's offices in the Northern Province LLRC (June 2011) : despite the large number of state and non-state intuitions involved, the progress of permanent new housing is far from satisfactory. Close to 50% of the requirement of permanent housing in Kilinochchi is yet to be met. In Mannar only 7% (1,679/23,438) of the housing assistance applications are currently being constructed. Mannar District Secretary has listed 11 international NGOs providing housing assistance. In Vavuniya 90% of the housing requirement (11,607 homes) has been committed by funders (Sri Lankan and international) but only 10% has commenced building. In Mullaitivu district only 26% of the requirement for new permanent housing by resettlement families is currently being met.

Chapter 8 – Reconciliation

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Chapter 8 – Reconciliation

SECTION 1

Issues impacting on Post Conflict Reconciliation

Introduction

8.1 Representations were made before the Commission, during its sittings in Colombo and particularly during its field visits, regarding issues that were of concern to persons who have been either directly or indirectly affected due to the conflict.

8.2 The areas of concern that emerged from these representations included the following:

- resettlement and livelihood issues;
- the difficulties experienced by the public due to the long period of displacement during the conflict;
- shelter, education, problems of children without formal education in the North and East, particularly in the rural areas;
- numerous land Issues arising due to the protracted conflict;
- medical facilities and transportation related issues, in rural areas;
- the law and order situation in the North and East and the continued existence of illegal armed groups;
- compensation;
- alleged disappearances and abductions, robberies and extortion;
- alleged disappearance of family members during surrender;
- the conduct of the LTTE during the conflict;
- incidents which had taken place during the conduct of the Security Forces operations which had allegedly resulted in death or injury to civilians and damage to property;
- concerns of vulnerable persons such as widows, disabled persons, children and elderly persons;
- the status of development in the Northern and Eastern Province;
- the need for People's participation in Governance;
- the re-establishment of civilian administration in the Northern and Eastern Provinces,
- the role of Provincial Authorities;

- the intrusiveness of the presence of the Security Forces in the North and East, including the engagement of Security Forces in civil administration matters, business activities and their use of State buildings and private properties;
- apprehensions regarding changes to the demographic composition of the North and East;
- concerns of persons in Sinhalese villages adjacent to the former conflict affected areas;
- concerns of the displaced Muslim population;
- the existence of High Security Zones and their impact on re-settlement;
- mine clearance and related issues; and
- Post conflict diaspora issues.

8.3 The Commission deemed it necessary to consider these issues in the context of reconciliation and building amity and national harmony. With regard to several of the issues highlighted which are directly relevant to day-to-day living, the Commission sought updates from civilian administrators (Government Agents)[1] and the Security Forces, and the Commission also took cognizance of the Report of the Presidential Task Force for Resettlement, Development and Security in the Northern Province issued in the year 2011[2], the Reports of the Central Bank and the Ministry of Economic Development[3] as well as the Joint Humanitarian and Early Recovery Update Reports prepared by OCHA,[4] all of which indicate that by and large significant progress has been made and is continuing to be made on the issues raised.[5]

8.4 In terms of its mandate the Commission has also made detailed observations and recommendations on the concerns expressed by persons during the course of their representations, as highlighted above in separate Chapters on Humanitarian Law Issues, Human Rights, Land Issues: Return and Resettlement, Restitution/Compensatory Relief and in Section II of this Chapter. Chapter 9 contains a summary of the Principal Observations and Recommendations.

[1] This was done through a detailed questionnaire sent by the Commission to the Government Agents – copy of Questionnaire is at Annex 8.1. The information was requested as at 1st June 2011.
[2] Sri Lanka's Humanitarian Effort, 2011.
[3] http://med.gov.lk/english/?page_id=1479
[4] Available at http://www.humanitarianinfo.org/srilanka_hpsl/Catalogues.aspx?catID=74, United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA).
[5] The Commission has not independently verified the material provided by the Civilian Administrators. However, considering the importance of the material and its currency, the Commission has tabulated the data (Annex 8.2).

8.5 The Commission notes from the material examined by it, including the responses of the GAs,

- that concerted efforts are being made in all affected districts to address re-settlement, livelihood, education, medical, transportation and permanent shelter needs of the people and much progress has been made (including through the grant of financial and other assistance packages). Agriculture which is the mainstay of most of the affected districts has seen increased production and fisheries production has also shown improvement. Infrastructure development is well underway. However, there continues to be needs which are still unmet in these areas. Certain fishing grounds are still inaccessible and in some districts permits are required from the Navy for fishing. While a significant number of irrigation tanks have been rehabilitated and are being used, an accelerated program with regard to the rehabilitation of the remaining tanks would further assist the agricultural production. Resettlement assistance is still pending in some cases and there appear to be difficulties in providing the requisite documentation for eligibility. Teacher accommodation appears to be a common problem across districts.

- Land related issues continue to be a challenge.

- Permanent shelter requirements as against actual commitments and delivery is a matter of serious concern.

- The needs of certain vulnerable groups of persons require a more focused approach.

- The re-establishment of civilian administration is still lagging in certain districts. Many vacancies exist in Grama Niladari (GN) positions – the Commission is of the view that filling these vacancies should be a priority given the fact that the GN is the focal point of civilian administration at the grass roots level.

8.6 The Commission however recognizes the fact that considering the protracted nature of the conflict spanning a period of thirty years, resolving all such issues would naturally take time and require significant resources and financing. The Commission also notes that the Government has in fact committed considerable funding and resources to the North and East and Sri Lanka's development partners are contributing to these efforts and working in cooperation with the Government agencies. These actions of the Government demonstrate an acknowledgement and commitment on its part to ensure that citizens throughout the country are assisted with their basic needs and can share equally in economic dividends. At the same time the Commission takes the view that the

Government must adopt a more engaged and constructive policy towards its development partners at home and abroad in order to realize the full potential of the latter towards mobilizing the resources, know-how and experience. Such a policy will stand in good stead in meeting the remaining challenges of reconstruction, development and reconciliation.

8.7 The Commission further notes from the responses received from the civilian administrators and others that, while the Security Forces have worked and are continuing to contribute to reconstruction and development, there were concerns that they also continue to be engaged in small businesses and farming on private lands[6] in some districts. Moreover it appears that the permission of the Security Forces is required in some districts for various activities, including in some instances, for selecting beneficiaries for housing assistance. The responses also indicate that certain State buildings and private land/buildings in the North and East continue to be used by the Security Forces. The Commission recommends the phasing out of the involvement of the Security Forces in civilian activities and use of private lands by the Security Forces with reasonable time lines being given.

8.8 When analyzing the data, particularly those provided by the civilian administrators, there is a need for a uniform and transparent approach for reporting progress/issues by each district, together with a gap analysis of needs as against progress achieved, through a standard reporting mechanism. Considering the multidisciplinary nature of the issues involved this may be a difficult task but it would go a long way in enabling a broader understanding of the key issues, at a macro as well as micro level, which still need to be addressed.

General Comments

8.9 The view was expressed that the North and East and the adjacent areas needed to be looked at as a whole, as areas that have suffered greatly – both in terms of destruction caused by violence, and also due to lack of development, which had resulted in a regression of the economy and infrastructure. It was noted that what was paramount was the need for sensitivity, recognizing that the areas had suffered, not to plan macroeconomic projects and have business plans as if they were normal areas. There was a need to recognize the suffering, and problems caused by the conflict, give them a hearing and acknowledge their grievances.[7]

[6] Representations made by a member of the clergy at Colombo on 19th October 2011. Transcript No. LLRC/IS/19.10.10/01
[7] Mrs. Ferial Ashroff , before the LLRC at Colombo on 24th September 2010

8.10 During its sittings in Jaffna, a leading academic stated that after years of chaos and threat to life in the North and East, for the first time since the early 1970s the people in Jaffna feel free, but only somewhat so. He further stated that while the Tamil insurgency is crushed, the Tamil pride is wounded. At the same time he acknowledged that no one is asking them for inordinate contributions, and no one is carrying away their children to serve as cannon fodder on the battlefront. He also acknowledged that they could go to the South without passes, and children had access to jobs in the South, and people are no longer huddled behind closed doors fearful of unknown persons carrying their children away in white vans. At the same time he posed the question whether the peace that has been achieved could be leveraged towards national reconciliation and forging a united nation, and stated that he saw several "attitude" problems which could prevent it. He stated "Despite the new opportunities, there is a severe resentment among the Tamil people. Sinhalese visitors to Jaffna speak to us in Sinhala as if we are obliged to know Sinhala. Soldiers summon us from afar with a wag of a finger …… we feel we are being treated like a conquered people although we ourselves suffered under the LTTE. Every day the Government delays a solution, the people wonder more if the LTTE was right after all. The opportunity to rebuild a nation must not be frittered away as seems to be happening"[8]

Resettlement – General

8.11 Several representations were made pointing to the fact that people must be resettled in their original places at the earliest; they must have decent shelter and a reasonable source of income for their survival. The view was also expressed that once they are properly resettled, the people would be able to rebuild their lives through their own hard work, and become self-reliant without depending on hand outs. It was also stated that the relief and rehabilitation stage must be phased out, and one must move on to a reconstruction and real development that benefits the people. [9]

8.12 The following view was also expressed with regard to re-settlement

[8] Representations made by Professor Ratnajeevan Hoole, before the LLRC at Jaffna on 12th November, 2010. See also representations made by Mr. Harim Peiris before the LLRC at Colombo on 7th October 2010 'we may have united the nation geographically, but remain polarized, ethno socially. In response to a simplistic and blanket denial of the alienation of the Tamil people from the Sri Lankan State, the response should be look at public security assessment and measures. …it is not possible to simultaneously argue the need to maintain Emergency Law, war time levels of defence expenditure, deployment at war time levels and a network of security installations in the North not found anywhere else in the country and still maintain that the Tamil people are not alienated from the Sri Lankan state. If one needs to maintain security that is more in keeping with having to hold a population by force, then one concedes the fact that the people are alienated. If one says they are not alienated, then it is not possible to justify maintenance of security at those levels. While a military campaign has successfully united a divided land what is now required is a hearts and minds campaign, which we will not achieve militarily, but a reconciliation process that seeks to unite a divided people.'

[9] Revd. Fr. G. Sigamoney before the LLRC at Colombo on 03rd November, 2010.

'As far as displaced persons are concerned, the Government Agents and other officers have done things to the best of their ability. The first problem is the people who have lived there, when they go back to their houses, they find that they are depleted and they do not have the financial resources to rebuild or construct houses. My personal view is that the Government is more concerned …. on massive projects like electrification or major development activities, whereas the basic amenities for the people, the basic infrastructure for the people in the areas are not being attended to and individual needs of the people are not being attended to…….'[10]

8.13 A Senior Public Official appearing before the Commission stated that in the Kilinochchi district 115,000 people had been resettled and there were 52 more families that had to be resettled who were still in Welfare Camps. It was stated that the people in the camps had not been resettled as demining was still continuing. She also stated that it was with the support of the Government that they had been able to resettle such a large number in the Kilinochchi district.[11] She also stated that significant development had taken place in the Kilinochchi district. At the time that she had gone there, there had been no shops to buy any readymade food, there was only the Multi Purpose Co-operative Society. She commented that she had to send for bread to Vavuniya, but all that had changed and she was of the view that the people were hardworking, and if the necessary support was given the district would prosper.[12]

8.14 The Commission also heard representations regarding the difficult conditions in the welfare centres in Vavuniya, the lack of financial support and the inadequacy of what was being provided.[13]

8.15 During its sittings in Madhu representations were made stating that there was an anomaly in terms of how re-settlement benefits were being disbursed. It was stated that the LTTE had attacked the village in 1985 and they had been displaced – the majority of the villagers were traders. They had gone to refugee camps and subsequently they had returned and resettled in the original land. However the families in the particular village

[10] Representations made by a civilian, at Vavuniya on 14th August 2010. Transcript No. LLRC/FV/14.08.10/01
[11] Mrs. R. Ketheeswaran before the LLRC at Colombo on 25th November 2010
[12] *Ibid.*
[13] Representations made in camera – widow with two children, who lost her husband during the conflict at Mullaivaikkal stated that she had no money, even milk food could not be provided due to lack of money, in the early stages flour had been provided but had been subsequently withdrawn – she did not have even some money to buy her children an ice cream when the ice cream seller came to the camp; another civilian at Manik Farm stated that he had been living in the Manik Farm since the 20th of May 2009 and have been given only rice, coconut oil, and dhal for survival, he had no money as they had lost all their belongings during the conflict and have had to sell their jewellery in order to get some money – he wanted to be resettled as soon as possible. Transcript No. LLRC/FV/14.08.11/03. Yet another civilian before the LLRC at Manik Farm IDP Centre. Transcript No. LLRC/CS/14.08.11/03 – stated that her husband was in detention, therefore she had no means of an income and it was expensive to go and see her husband – it cost Rs. 5,000/- per trip.

had not been given the facilities that were being given to surrounding villages particularly the financial assistance of Rs. 35,000 for resettlement. The Government Agent explained that the policy of the Ministry of Resettlement was that only people who were returning from Welfare Centres were eligible to receive assistance.[14] During the period of displacement they had received alternate property in the jungle in Mihintale and that land was still available to them but they wanted to settle back in their own village.[15]

8.16 A Senior Public Official stated that in the Killinochchi district after resettlement of IDPs they had been able to provide assistance to the people in the form of livelihood support and even housing support through the Government and the many agencies supporting the Government's initiatives.[16]

8.17 During the Commission's sittings in Pachchilapallai, the view was expressed that the Government was developing the urban areas in Jaffna, Kilinochchi and Vavuniya but Pachchilapallai being a very rural place was being neglected.[17]

8.18 From a Government perspective it was stated by Hon. V. Muralitharan that it had allocated a lot of money for development of the affected areas and some people did not understand the real situation. He stated that more than 75% of the money was being spent in the North and the East and large projects were going on.[18]

Resettlement – Livelihood and Shelter

8.19 Representations were heard by the Commission both during its sittings in Colombo and in the Provinces, regarding livelihood issues and housing.

8.20 The need to prioritize facilitating means of employment was identified. It was stated that contractors from the South were employed for road construction. It was further stated that there was a need to generate employment wherever possible and have the people of the area doing their own projects rather than having people from overseas or other areas engaged in such employment.[19]

[14] Representations made by a civilian before the LLRC at Madhu on 09th January 2011. Transcript No. LLRC/FV/09.01.11/01.
[15] *Ibid.*
[16] Mrs. R. Ketheeswaran before the LLRC at Colombo on 25th November 2010
[17] Representations made by a civilian before the LLRC at Pachchilapallai on 18th September 2010. Transcript No. LLRC/FV/18.09.10/02
[18] Hon. V. Muralitharan before the LLRC at Colombo on 13th December, 2010.
[19] Mr. Gomin Dayasiri before the LLRC at Colombo on 28th October 2010

8.21 In the representations made before the Commission by the Batticaloa Disaster Management Women's Movement reference was made to people from Sinhala areas bringing their goods to the coastal areas of Batticaloa and engaging in business, which according to them affected the local people. It was also stated that workmen such as masons and carpenters are brought at lower rates from outside, and this also affects the local workmen.[20]

8.22 With regard to the Mannar district it was pointed out that resettled people lacked assistance to restart their livelihood, fishing, farming, shops etc. It was further stated that the number of shops run by the military and businesses started by people from other parts of the country were negatively affecting the ability of the local people to earn a living through small shops and restaurants. Furthermore it was mentioned that NGOs who were ready to provide assistance were being restricted by Government bodies such as the Presidential Task Force and the Ministry of Defence.[21]

8.23 The Commission heard representations on behalf of the public in the village of Pachchilapallai. It was stated that while the people had been resettled there was very little assistance and development. People were living in cadjan huts and tarpaulin dwellings, and with the onset of the rainy season it would not be possible to live in them. It was further stated that while some people were receiving assistance it should be expedited. A request was also made for dry rations.[22]

8.24 Representations were also heard from the Grama Niladari of the Kumalamunai Centre. He stated that in Kumalamunai there was an irrigation scheme consisting of 4 GN divisions, and 115 families of one GN division had been settled but not the people of the remaining GN Divisions. He went on to say that people from 13 villages had their paddy lands (5,000 acres) under this scheme and 10,000 heads of cattle. The people who had not been settled were living in welfare camps and with relatives and were having difficulties and he requested that these people be settled before the cultivation season begins.[23]

8.25 During its sittings in Vavuniya a member of the public, who was born in Mullaittivu but was residing at the time in Vavuniya, stated that while resettlement was in progress in

[20] Representations made by an organization before the LLRC at Batticaloa on 09th October, 2010. Transcript No. LLRC/FV/09.10.10/01
[21] Rt. Revd. Dr. Rayappu Joseph at Mannar on 8th January, 2011.
[22] Representations made by a civilian before the LLRC at Pachchiilapallai on 18th September 2010. Transcript No. LLRC/FV/18.09.10/02
[23] Representations made by a civilian before the LLRC at Mullaittivu on 20th September 2010. Transcript No. LLRC/FV/20.09.11/02

the Mullaittivu district the basic facilities had not yet been provided, particularly in transport, health and education, and that no assistance had been provided for their daily existence. He added that using Government assistance, in the form of mainly tin - roofing and wood, they had set up temporary sheds. According to him, people in his district were used to living a fairly decent life with good houses, and he wanted to impress upon the Government that whatever activities were being undertaken by the Government should be expedited in order for people to get back to their normal lives. [24]

8.26 Another member of the public who appeared before the Commission during its visit to Vavuniya stated that it had been 4 months since resettlement and so far they had been given only 8 bags of cement and 12 tin sheets to re-build houses that had been completely destroyed. [25]

8.27 With regard to the Mannar district it was stated that 20 months after the end of the conflict the displaced persons still have no housing and live under tarpaulin sheets, and others live in makeshift houses, mainly made of cadjan and tin sheets. A concern was also expressed that a limit of Rs. 325,000 had been placed as the amount that would be spent for a permanent house being built under the North East Construction Program.[26]

8.28 Representations were made on behalf of the people of Madhu as one of the worst affected, as the operations had commenced from this area and people had been displaced several times. It was stated that out of 17 AGA divisions people of 13 were displaced. It was stated that Madhu had over 2,000 families consisting of 9,747 members and the facilities and assistance provided for re-settlement was inadequate. Out of the 13 divisions that were displaced only 4 villages were given temporary shelters and it was stated that the Army gave them a very big helping hand. An appeal was made for some temporary or permanent shelters as all the houses had been destroyed.[27]

Education Needs in the North and East

8.29 During the course of its sittings both in Colombo and in the Provinces, the Commission heard representations regarding the inadequacy of schooling facilities and teachers in the affected areas.

[24] Representations made by a civilian before the LLRC at Vavuniya on 14th August, 2010. Transcript No. LLRC/FV/14.08.10/01
[25] Representations made by a civilian before the LLRC at Nedunkerny on 15th August, 2010. Transcript No LLRC/FV/15.08.10/01
[26] Rt. Revd. Dr. Rayappu Joseph at Mannar on 8th January, 2011 – Also expressed concern that NGOs who may be able to help have been restricted from doing so,
[27] Revd. Fr Muralitharan at Madhu on 09th January 2011

8.30 In respect of the Kilinochchi district, a Senior Public Official stated that apart from infrastructure, there was a dearth of Mathematics and English teachers.

8.31 During its sittings in Pachchillaipallai it was brought to the attention of the Commission that there was only one school in the area which was a dark room, and there was no school building and the teachers and principal were trying to put up a building themselves. It was also pointed out that the school served about 1,000 children.[28]

8.32 The Grama Niladari Kumalamunai Centre stated that Kumalamunai Maha Vidyalayam which had 600 students now had only 150 as children had not yet returned from the Welfare Centres. He also commented that the education of children in the welfare centres was adversely affected as there were no proper arrangements for their education. He also pointed out that since there were no residential facilities in the school for teachers they would come from Jaffna, but they had found it difficult to do so.[29]

8.33 With regard to the problem of children who have not had a formal education, a leading child expert who appeared before the Commission stated that once a child had missed schooling it was very difficult to put them back into the regular system. She stated:

> "say a 14 year old does not want to be in class with an 18 year old. So once they have missed regular schooling you have to look at non-formal schooling, and basically you have to look at two skills, literacy and numeracy. It is not so much content and doing 'O' levels and 'A' levels….".

8.34 She also pointed out the need for more vocational training to provide skills to obtain a job that would provide them an income. In this context she stated that job opportunities need to be created for people who do not necessarily have 'O' Levels and 'A' levels.[30]

8.35 Representations were also made that there were children in the North and East who had not attended school during the conflict. It would, therefore, be unfair to expect them to compete on an equal footing with students in other areas, when sitting for national exams. It was stated that 'what we should see here is not whether they are Tamils, Sinhalese or Muslims but as people living in the North and East'. He added that there are still schools in the North and East where there are about two or three teachers

[28] Representations made by a civilian before the LLRC at Pachchillaipallai on 18th September 2010. Transcript No. LLRC/FV/18.09.10/02.

[29] Representations made by a civilian before the LLRC at Mullaittivu on 20th September, 2010. Transcript No. LLRC/FV/20.09.10/02

[30] Dr. Hiranthi Wijemanne before the LLRC at Colombo on 12th August 2010

and four or five children, and sometimes they hold the classes under trees; and the children are very depressed at this state of affairs. He also pointed out that when these children grow up they could be led astray and hence it was important to address the development of schools in these areas.[31]

8.36 The Commission also heard representations that there is an urgent need to address the needs of pre-school children, particularly in the rural areas in the North and East, and also to address the emotional needs of such children as they had been through the worst of the conflict during their formative years. He added that there was another category, i.e. the young people whose education had been disrupted for various reasons including displacement, and these young people had lived through two kinds of fears, the fear of military offensives, bombardment, aerial shelling and constantly the fear of being conscripted in the militant movement; and they had lost opportunities of formal education. It was further stated that sufficient attention must be paid to improvement of agriculture and dairy farming, particularly in the rural areas, so that these young people can have a livelihood to live in dignity and honour.[32]

8.37 It was also brought to the attention of the Commission that parents and children had both expressed the view that it was difficult to take any action about the betterment of their education, as they had other priorities in terms of seeing parents and siblings in detention camps; and some were selling relief items that they were getting, to use the money to look for missing children in other welfare camps. It was therefore emphasized that the problem of broken families needed to be addressed as a priority.[33]

8.38 The Commission heard representations from a teacher working in the Zone 1 Welfare Camp, who was also a displaced person. She stated that there were about 11,000 students in the Welfare Camp, but most of them had left as resettlement had taken place. She stated that there were more than 4,000 students remaining, and the school which has been established in the camp lacked basic facilities. Moreover she stated that children don't have the frame of mind to receive education as the trauma of the conflict had affected the mental condition of the children and parents. Most of the students, she said, are irregular in their attendance and achievement levels had gone down.[34]

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[31] Most Ven. Maduluwawe Sobitha Nayaka Thero before the LLRC at Colombo on 24th September, 2010.
[32] Revd. Fr. Ebenezer Joseph before the LLRC at Colombo on 24th September, 2010
[33] Representations made by a civilian before the LLRC at Vavuniya on 14th August 2010. Transcript No. LLRC/FV/14.08.10/01
[34] *Ibid.*

Fisheries

8.39 The difficulties faced by persons engaged in fishing was highlighted during the Commission's field visits.

8.40 A fisherman representing the fishing village of Wellawadi in Kalkudah[35] stated that they had been evacuated by ship in 1990 due to the conflict and had gone to settle in Maggona, Beruwela and Tangalle. As the situation was returning to normal, about 15 - 20 families had returned about 8 months ago[36]. He stated that the village comprised of about 150 families but the people who had returned had not been provided with any facilities or fishing equipment. The families, he said, had been provided a mamoty, a small pot, a razor and a piece of soap by the DS. No dry rations had been received, their houses were destroyed, there were no schools for the children and no electricity.[37]

8.41 On behalf of the people of Vadamarachchi East it was contended that 85% of the people were fishermen, and due to the conflict and tsunami they had lost almost all of their belongings, and in order to uplift their livelihood fishing equipment should be provided to them. It was further stated that the re-settled persons were being permitted to do fishing only on a limited scale and that too after obtaining a pass.[38]

8.42 A lawyer speaking before the Commission[39] stated that there is a Fisheries Co-operative Society functioning in Mullaittivu which is a registered society under the Provincial Commissioner of Co-operatives. However, the military has formed a fisheries society of their own which functions separately. This causes problems for the original society as the military is distributing boats and engines only to the people who belong to the society formed by the military.

8.43 An Army officer[40]explained to the Commission that the Army had initiated the setting up of 12 fishing Societies. All members of these societies are registered and all details are documented to ensure that only fishermen affiliated to the societies are allowed to fish in the area. He said that the Army was protecting the local fishermen of the Societies in order to prevent fish mudalalis from encroaching, thereby depriving the fishermen of their livelihood.

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[35] Village belongs to Koralapattu Valachchenai DS

[36] i.e. February 2010

[37] Representations made by a civilian before the LLRC at Oddamavaddy on 10th October, 2010. Transcript No. LLRC/FV/10.10.10/01

[38] Representations made by a civilian before the LLRC at Kudathanai East on 13th November, 2010. Transcript No. LLRC/FV/13.11.10/01

[39] Representations made by a civilian before the LLRC at Vavuniya on 14th August, 2010. Transcript No. LLRC/FV/14.08.10/01

[40] Representations made by a SLA officer at Mullaittivu on 20th September, 2010. Transcript No. LLRC/FV/20.09.10/01

8.44 He also said that the military is providing assistance to the fishermen engaged in maritime fishing. He said that in association with Ceynor they are taking steps to repair boats. So far 82 fibre glass boats and 103 outboard motors are under repair. 62 fishermen have been selected for distribution of boats, and it is expected that the distribution of these boats and other fishing gear would be distributed amongst the fishermen in a month's time. He also said that the fishing societies were formed as a part of the re-settlement process.

8.45 16 Witnesses from Puttalam explained to the Commission the problems they faced. They said that there are 12 islands in the Kalpitiya area. They had started giving them out on lease to the Tourist Department. Thus the fishermen in this area have a fear that they would not be able to fish in these places once the tourist industry starts projects. Furthermore, certain fishing areas in Kalpitiya have been taken over for security reasons. They are seeking relief regarding this matter. They complained that when they go to one Ministry they say it is not their responsibility. So they say they are at a loss as to whom they should approach about seeking relief for their problems.[41]

8.46 The chairman of an Aquatic Fishing Society,[42] appeared before the Commission. He said that before 1983 the fishermen were living with all facilities. Later because of the conflict they lost their livelihood and also their residences and now they were living without knowing how to manage their day-to-day lives.

8.47 He said that they are permitted to go fishing, but not in all the places. Their members are from the Northern area, but none of the fishing fronts in the North have been opened to them. Their traditional fishing grounds at Kusumanthurai is close to Madagal. It comes under the security zone. Through a pass system they have released a very small area of the former fishing grounds, for fishing within a specified time period. None of the fishing harbours in the Northern areas allow fishing. It is the Fisheries Department that takes decisions with regard to fishing rights. However, now in the Northern areas it is being decided by the military. In the map of Sri Lanka the areas with the highest concentration of fish is the KKS area which is known as Kandamadu, but the Army is not allowing local fishermen into these seas for reasons of security.

8.48 Apart from these problems, he said that even in the areas where they are allowed to fish, they have to compete with Indian fishermen. He alleged that the Government did

[41] Representations made by civilians before the LLRC at Puttalam on 07th January, 2011. Transcript No. LLRC/FV/07.01.2011/01

[42] Representations made by a civilian before the LLRC at Tellipalai on 12th November, 2010. Transcript No. LLRC/FV/12.11.10/01

not allow the local fishermen to fish in these water, but they allowed the Indian fishermen to fish without hindrance.

8.49 In a broader political context, the question of fishing in territorial waters was highlighted during the course of representations made. It was stated that one area where dialogue was urgently needed related to fishing in the Northern seas off Sri Lanka. It was pointed out that the plight of fishermen from Sri Lanka and Tamil Nadu is a constant irritant, the cause being the straying of fishermen from each country into the other's territorial waters, and the related actions taken by the respective Navies. It was indicated that the absence of an identifiable Maritime Boundary and reliance on individual GPS capabilities of fishermen was the stated reason for straying. The view was expressed that unless the issue was amicably resolved, relations between the two countries could be affected to the extent that the future of Kachchativu could be jeopardized, as evidenced by the occasional remarks made by Tamil Nadu politicians, and this could result in a revision of the Maritime Boundary with a corresponding loss of Sri Lanka's territorial waters.[43]

Agriculture

8.50 The Government Agent Killinochchi appearing before the Commission stated that Killinochchi was an agricultural district and they were engaging in providing agricultural inputs to the families. She stated that more than 60,000 acres were available for paddy cultivation but had been abandoned; but now 54,000 acres had been cultivated. The Government was providing tractors and other farm machinery and paddy seed as well as subsidized fertilizer.

8.51 On being questioned by the Commission whether the farmers were getting a fair price for their produce, she stated that it depended on the storage facilities and they were in the process of rebuilding these facilities.

8.52 The Director of the Multi Purpose Co-operative Society in Chettikulam[44] appearing before the Commission during its sittings in Vavuniya brought to the attention of the Commission the need to uplift agriculture production in the Vavuniya district, which was the main source of income for the people in the district. He observed that he did not know whether the Government was giving enough priority to this sector as the harvest was not paying any dividends to the people and was causing them further losses. He also referred to the Pavamkulam area which he said was the largest tank area. He stated that it is an area where all three communities were living, and he was of the view that if

[43] Mr. Neville Laduwahetty before the LLRC at Colombo on 28th October 2010

[44] Representations made by a civilian before the LLRC at Vavuniya on 14th August 2010. Transcript No. LLRC/FV/14.08.10/04

the tanks were re-constructed and rehabilitated in this area it would make a big change to the communities living there.

8.53 With regard to the Madhu area where the main occupation of the villagers was agriculture, it was stated that there were nearly 135 minor tanks and only 4 had been repaired and still mine clearance was also going on, as a result of which out of 5,000 acres only 1,000 had been cultivated. While requesting that the rehabilitation work should be expedited with the help of NGOs as well, it was acknowledged that it was a difficult situation to address all the problems at once.[45]

Land Issues

8.54 Several issues with regard to land surfaced during the course of the Commission's hearings both in Colombo and in the Provinces. The Commission heard representations from members of the public regarding, *inter alia*, the inability to prove land ownership due to loss of documentary evidence, the issues relating to land given to civilians by the LTTE and lands on which forcible encroachment had taken place, as well as issues with regard to lands not restored to owners where the lands were being put to other uses. For a detailed analysis of these issues please refer Chapter 6 on Land Issues: Return and Resettlement.

Medical Facilities

8.55 In making representations on behalf of the people of Vadamarachchi East, it was stated that the Madurankerni Hospital which was a base hospital had been destroyed. It was contended that this hospital served over 6,000 people and did not have a resident medical officer and para-medical staff. Only a limited service was being provided during the day, and if there were patients who needed to get medical treatment in the night they would have to be taken by private vehicle to Point Pedro Hospital. It was requested that the hospital be reconstructed with residential facilities to serve the people.[46]

8.56 During its sittings in Pachchillaipallai representations were made on behalf of the public that there was no proper hospital, only a damaged one which functioned only twice a week.[47]

[45] Revd. Fr Muralitharan at Madhu on 9th January, 2011.
[46] Representations made by a civilian before the LLRC at Kudathanai East on 13th November 2010. Transcript No. LLRC/FV/13.11.10/01
[47] Representations made by a civilian before the LLRC at Pachchilapallai on 18th September 2010. Transcript No. LLRC/FV/18.09.11/02

8.57 A resident of Mullaittivu who was temporarily residing in Vavuniya stated before the Commission that there were many hospitals in the Mullaittivu district which were not functioning, and they lacked basic facilities. He named Thunukkai and Pandiankulam hospital, and also stated that the hospitals in Mulliyawalai and Mallavi, while they were functioning they lacked basic facilities.[48]

8.58 During its sittings in Madhu it was brought to the attention of the Commission that the Madhu area consisting of 17 AGA divisions did not have a base hospital.[49]

Transport and Roads

8.59 The Commission also heard representations regarding transport problems encountered by the public in certain areas and the conditions of the roads.[50]

Vulnerable Groups

8.60 The Commission heard several representations regarding the need to give special consideration to widows, disabled persons, elderly persons and orphans. For a detailed analysis of these issues please refer Chapter 5, Human Rights.

Issuance of Death Certificates

8.61 Representations were made before the Commission that the families of many who perished during the conflict had not received death certificates, especially in respect of those missing. It was stated that this was an impediment for them to move on with their lives. It was further stated that the document to show that their loved ones have been lost needed to be obtained since the compensation and other rehabilitation facilities that they were entitled to could not be obtained without this documentation.[51] Please also refer Chapter 5, Human Rights.

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[48] Representations made by a civilian before the LLRC at Vavuniya on 14th August 2010. Transcript No. LLRC/FV/14.08.10/01

[49] Revd. Fr. Muralitharan at Madhu on 9th January, 2011.

[50] Representations were made before the Commission on behalf of the people of Vadamarachchi East regarding the importance of opening the Madurankerni- Parathathurai Road – which it was said connects Vadamarachchi East, Point Pedro and the suburban areas. It was further stated that the people of Vadamarachchi East travelled along this road to obtain medicines, do their shopping, banking and obtain other essential services. It was contended that due to this road being closed a journey that took one hour usually was taking three and a half hours – Representations made by a civilian before the LLRC at Kudathanai East on 13th November 2010.Transcript No. LLRC/FV/13.11.10/01

It was also brought to the attention of the Commission that the Madurankerni Bridge (also called the Thaliyadi bridge) was damaged as a result of which people who had been resettled in the Madurankerni area were finding it difficult to have easy access to transport their construction equipment and daily needs - *ibid.*

During the Commission's sittings in Vavuniya it was stated that roads in the District had not been properly re-constructed. Representations made by a civilian before the LLRC at Nedunkerny on 15th August 2010. Transcript No. LLRC/FV/15.08.10/01.

[51] Rt. Revd. Dr. Kingsley Swamipillai before the LLRC at Colombo on 03rd November 2010

8.62 A Senior Public Official who made representations before the Commission also stated that there were delays in receiving compensation due to lack of death certificates and that people had difficulties obtaining these.[52]

Compensation

8.63 The issue of compensation for lost properties, both movable and immovable, and lost lives, disappearances and injury to persons and property was repeatedly brought up by affected persons during the course of the Commission's sittings in the Provinces.

8.64 A senior public official during the course of her representations highlighted the need to expedite, at least, the compensation that had been approved by the Government.[53]

8.65 Representations were also made before the Commission with regard to payment of compensation for loss of life, limb and properties. It was stated that during the conflict period there had been many bomb blasts and attacks in the North and South which had killed and maimed hundreds of civilians, and compensation should be paid to them as soon as possible.[54]

Please also refer Chapter 7 on Restitution / Compensatory Relief.

Law and Order – Continued Presence of Illegal Armed Groups

8.66 The Commission heard representations from several persons regarding the law and order situation in the North and East after the conflict.

8.67 During its field visits the Commission heard representations made by individuals, as well as groups, regarding family members who were abducted by unknown persons, or allegedly arrested by the Security Forces or the LTTE or other political parties. Their whereabouts were not known to date despite complaints (some incidents dating back to the 1980s as well) having being made at Police Stations, Human Rights Organisations both local and international. Representations were also made regarding extortion of monies by individuals from family members on the promise of returning loved ones to their respective families. [55]

8.68 It was stated that armed groups comprising TELO, PLOTE, EPDP, EPRLF, ENDLF, TMVP who were primarily trained in South India gave indescribable suffering to the Tamil

[52] Mrs. R. Ketheeswaran before the LLRC at Colombo on 25th November 2010
[53] Mrs. R. Ketheeswaran before the LLRC at Colombo on 25th November 2010
[54] Rt. Revd. Dr. Kingsley Swamilpillai at Colombo on 03rd November 2010
[55] See representations made before the LLRC in Jaffna; Batticaloa, Killinochchi, Mullaittivu, Mannar Trincomalee etc.

people, and still continue their underground activities of kidnapping, ransom, murder, and robbery unabatedly, and cause fear and anxiety to the Tamil people. It was further stated that they were conniving with the Government in order to continue the emergency regulations which suited their underground activities.[56]

8.69 A religious leader making representations before the Commission stated that there were still questions about the presence of armed groups who carry weapons in the Wanni and on the peninsula and also there were still questions about the rule of law. He stated that he had been informed that abductions continue to take place in the Wanni and there is an element of sexual harassment as well. A speedy process of rehabilitation and reconstruction in a climate of trust and dignity was essential for these areas, he said.[57]

For a detailed analysis of these issues please refer Chapter 5, Human Rights; and Section II of this Chapter 7.

Destroyed Religious Sites/ Attacks on Religious Places

8.70 Representations were made before the Commission that Buddhist shrines, Christian churches, Hindu kovils, Muslim mosques that were destroyed during the 30 year conflict should be renovated and reconstructed.[58]

8.71 The Commission also heard representations that several Buddhist religious places both in the Wanni and the Eastern Province had been destroyed and that kovils and crosses (Christian) were being erected in these places.[59]

8.72 Representations were also made before the Commission that the Government should order a full scale probe into the Arantalawa massacre of 33 Buddhist monks, most of whom were Samaneras, on 2nd June 1987 and the Kattankudy Mosque massacres of 147 Muslim men and boys at prayers on 3rd August 1990.[60]

Interruption of Hindu Religious Rituals and Vandalism

8.73 A leading Hindu priest from the North appearing before the Commission expressed concern that some important temples such as the Kandasamy Temple at Mawattapuram

[56] Dr A Mahadeva before the LLRC at Colombo on 14th January 2011.
[57] Rt. Revd. Dr. Duleep De Chickera before the LLRC at Colombo on 29th October 2010
[58] Most Ven. Dr. Walpola Piyananda Thero before the LLRC at Colombo on 22nd November 2010
[59] Most Ven Ellawala Medhananda Nayaka Thero before the LLRC at Colombo on 16th December 2010; Ven Medagama Dhammananda Thero before the LLRC at Colombo on 27th December 2010; Mr. S. Dharmasiri – before the LLRC at Colombo on 16th December 2010 referred to evidence given before the Sansoni Commission.
[60] Mr. Tassie Seneviratne before the LLRC at Colombo on 24th January 2010 – A letter was handed over to the Commission from a representer who had considerable knowledge in respect of the submissions made.

and Naguleshwaram were being closed without regular poojas. The Hindus had lived around these temples but had been displaced, and since then the temples were just worshipping centers without people. He stated that the Mannar Tirukeswaram Temple was also experiencing the same problem since 1990. He went on to provide the Commission with a list of temples where the religious rituals had been interrupted.[61]

8.74 It was further stated that since the people could not go to these temples during the time of the conflict, artifacts such as chariots, statues, bells and other things had been removed and were being sold in antique shops in Colombo. Reference was made to a shop on Pamankade Road, at Kirulapona and to Sanath Antiques in Madampe. Concern was expressed that these artifacts belonged to the people of the country and should not be vandalized and sold.[62]

Families of Soldiers

8.75 Representations were also made regarding the need not to forget the soldiers and their families. While it was stated that the State was doing whatever possible, it was also stated that the public of the country should be blamed for having forgotten them. He added that the families of soldiers were undergoing the same hardships as displaced people.[63]

8.76 Another member of the public making representations before the Commission stated that;

> '….we owe a duty to the families of the soldiers who sacrificed their lives to save our country. We should think first about them; how do we look after them; how do we settle them and their families and those injured soldiers from all the armed forces…'[64]

Development Issues and People's Participation in Governance

8.77 The Commission also heard representations that when analyzing economic data, in particular the contribution of the provinces from 1999 to 2008, the Western Province was contributing almost 50%, and, in contrast, the Northern and Eastern Provinces combined contributed less than 9% to the GNP. Central Bank statistics indicate that in 2003 and 2004, the Eastern Province had the lowest literacy rate in the country.

[61] Mr. Pathmanathan Sharma before the LLRC at Colombo on 24th November 2010 – Oddusudan Thandon Eeswaran Temple in Mullaittivu District from 2007; Mawattapuram since 1990 because it is in the HSZ – people can go there in the morning and return in the evening but it was not possible to conduct the daily poojas 6 times as was the ritual. The same was true of the Keerimalai Naguleswaran Aalayam.
[62] Mr. Pathmanathan Sharma before the LLRC at Colombo on 24th November 2010
[63] Mr. Gomin Dayasiri before the LLRC at Colombo on 28th October 2010
[64] Mr. Douglas Wickramaratne before the LLRC at Colombo on 01st December 2010

Therefore it was stated that it was time to take urgent and substantial steps to enhance the livelihoods of the people in these provinces and the Government's initiatives in attending to the infrastructure needs should be welcomed.[65]

8.78 A leading academic, during the Commission's sittings in Jaffna, while acknowledging the fact that the Northern Province was economically backward, stated that development activities should be carried out in consultation with the local people. As an example he stated that the Northern Rehabilitation body consisted of 19 people and there wasn't a single Tamil or a local person. He concluded that with the participation of the local people, within a short period they could rectify the regional imbalance and bring the Northern Province on par with the other parts of the country.[66]

8.79 Both in Colombo and during its extensive field visits in the North and East, the Commission heard several representations where it was stated that people wanted to be free, to have their land and homes back, and their livelihood issues resolved. Infrastructure was not a pressing issue, the view was also expressed that left to cultivate their own lands, the people would get back on their feet.[67]

8.80 The Bishop of Mannar appearing before the Commission during its sittings in Mannar stated that immediate needs of the people need to be addressed in order to move forward on the path of reconciliation. He said "without addressing these needs people affected by the war would not be able to move forward towards reconciliation, and neither would they have confidence or hope of any reconciliation process initiated at a macro level."[68]

8.81 A member of the public who came before the Commission during its sittings in Vavuniya commented on the fact that she sees lorries with big posters of "Uthuru Wasanthaya" – prosperity to the North - going up North; but it meant little to her as her son, she alleged, had been shot by the Army in August 2006, and she was living with a disabled husband and daughter in a backward village. She had no money to educate her daughter for further studies. She further added that Vavuniya was not war torn but people were living in abject poverty with no employment.[69]

[65] Mr. Susantha Ratnayake before the LLRC at Colombo on 06th September, 2010
[66] Prof. Balasundaram Pillai before the LLRC on 12th November 2010
[67] Mr. V. Anandasagaree before the LLRC at Colombo, on 13th August 2010
[68] Rt. Revd. Dr. Rayappu Joseph before the LLRC at Mannar on 08th January 2011.
[69] Representations made by a civilian before the LLRC at Cheddikulam, on 14th August 2010. Transcript No. LLRC/FV/14.08.10/04

8.82 With regard to the Eastern Province, further representations were made that Karuna and Pillayan's group were joining and carrying on development, but the Muslim people were not given a right to participate in the Government's development programme.[70]

8.83 The Commission also heard representations to the effect that most of the development in the North and East was governed exclusively by the Presidential Task force. While it was acknowledged that the Task Force comprised of an eminent group of very capable people, it was a centralized top down approach. It was further stated that when one speaks to middle level Government officials in the North, they would say 'we are not aware', 'we have not been informed from the top'. With regard to issues that arise, when one asks the public 'Don't you ask your immediate local officials?' the answer that the public is given most often is that they have not really received instructions.[71]

8.84 A leading lawyer who made representations to the Commission stated, 'There is development, but development alone is not sufficient. I think there are other aspects like education, health, shelter, occupation which also must be given consideration.'[72] At the same time, he acknowledged, that due to the development work, there was more money with the people than during the conflict period, and that tanks are becoming more functional for fishing, and larger areas are under cultivation.[73]

Civilian Administration in the North and East

8.85 Several representations were made before the Commission identifying the need to re-establish civilian administration and reduce the Security Forces, profile in the North.[74]

8.86 During its field visit to Kilinochchi the Commission heard representations from the Chief Trustee of the Battapalai Kannahi Amman Temple, to the effect that the civilian administration was not fully operational in the area in which he lived (Battapalai). He stated that his temple was one of the most popular among the Hindu community in Sri Lanka and the people who came from outside (i.e. not the local people) were being asked to obtain a permit to visit the temple.

8.87 A lawyer residing in Vavuniya appearing before the Commission, stated that although resettlement was taking place, the resettlement programmes were not brought under the purview of the civilian officers. He said that it was still under the control of the

[70] Mr. M.I.M. Mohideen before the LLRC at , Colombo on 03rd September 2010
[71] Mr. Mahen Dayananda, before the LLRC at Colombo, on 01st October 2010
[72] Mr. Gomin Dayasiri before the LLRC at Colombo on 28th October 2010
[73] *Ibid*.
[74] Mr. V. Anandasagaree before the LLRC at Colombo on , 13th August 2010

military authorities – the Army. In response to a question posed by the Commission he stated that for the transportation of goods to the cleared area - one had to get permission from the GA as well as the Army. It was further stated that while there was a Fisheries Co-operative Society functioning in Mullaittivu which was a registered society, the Army had also formed some societies on their own which were functioning separately, and there was no equality in the allocation of resources between the people of the different societies.[75]

8.88 Another member of the public making representations before the Commission stated that a proper systematic civil administration had not been established in their[76] area. If timber was needed for a house one would have to get a permit from the Forest Department and there was no Forest Department in the area.[77]

8.89 A senior public official when questioned by the Commission with regard to this aspect stated that while some media and politicians say that there is no civilian administration she was, in fact, carrying out all the civilian activities as the head of the district, without any problems. She went on to state that one could not say that the military and security is not necessary. On further questioning as to whether a person who required a permit for a certain activity had to go to the Kachcheri first and then go to the military for further clearance, she stated that whatever the permit that was required the people would have to approach the civilian administration, however if there was a security related issue it would be referred to the military.[78]

8.90 The Batticaloa Disaster Management Women's movement making representations before the Commission stated that in the Korale Pattu South DS Division permission had to be obtained from the Army before providing humanitarian assistance to the people.[79]

8.91 The representations heard in the Mannar district claimed that many activities and decisions that should be attended to by the civil authorities are still being handled by the military. It was also stated that they had seen an alarming level of interference in the civil administration of Mannar district by politicians of the ruling party.

[75] Representations made by a civilian before the LLRC at, Vavuniya on, 14th August 2010. Transcript No. LLRC/FV/14.08.10/01
[76] Batapalai in Mullaittivu
[77] Representations made by a civilian before the LLRC at Mullaittivu on, 20th September 2010. Transcript No. LLRC/FV/20.09.10/02 See also representations made by a civilian before the LLRC Cheddikulam on, 14th August 2010. Transcript No. LLRC/FV/14.08.10/04 – when questioned by the Commission regarding what he meant by saying that public officials should have the complete freedom to the serve the people he responded that when he asks the public officer for a service they respond by saying that they have to write to higher authorities and they are awaiting a response from the higher authorities and they (the public) don't know from which high officials they are expecting the responses.
[78] Mrs. R. Ketheeswaran, before the LLRC at Colombo on 25th November 2010
[79] August 2010

Appointments and transfers to important positions in the civil administration including crucial areas such as health care and education are controlled and monopolized by politicians completely bypassing official procedures. [80] [81] It was also stated that church organizations and NGOs have been instructed in writing and verbally by the Government Agent and by the Army in Mannar that no events should be organized without inviting the military.[82]

8.92 During the Commission's hearings in Pachchilapallai, commenting on another aspect of civilian administration, it was stated that the Police officers were unable to speak Tamil and were, therefore, unable to communicate with the people to resolve their problems. This problem was highlighted to the Commission in several other areas which the Commission visited.[83]

8.93 Representations were also made on behalf of the people of Vadamarachchi East regarding the shortage of Grama Niladaris (GNs) in the area. According to the representations made there were 18 GS divisions which come under the AGA division and the area is 53 sq kms with a population of 22,250 but only 9 Grama Niladaris were functioning of the 18. It was pointed out that Grama Niladaris needed to be appointed to the remaining Divisions in order to cater to the needs of the people affected by the conflict.[84]

8.94 A member of the public from the Madhu AGA Division stated that after 2007, people were gradually resettling in the Madhu area, but were struggling because of their economic and livelihood problems. He highlighted that many posts had not been filled by the Government in Health, Transport and Agriculture, as a result of which resettlement programmes could not be expedited. He particularly referred to Public Health Inspectors (PHIs), Land Officers.[85]

Provincial Authorities

8.95 Commenting on the role of Provincial authorities in general, it was stated before the Commission that the rationale for establishment of Provincial Councils was to devolve greater power to the Provinces. It was contended that while the rationale for

[80] Rt. Revd. Dr. Rayappu Joseph before the LLRC at Mannar on 08th January 2011. See also representations made by Revd. Fr. David Alexander Silva at Mannar on 8th January, 2011.
[81] *Ibid.*
[82] *Ibid.*
[83] *Ibid.* – 'Although Tamil is the language of the majority Sinhalese is continued to be used by government officials.'
[84] Representations made by a civilian before the LLRC at Kudathanai East on 13th November 2010. Transcript No. LLRC/FV/13.11.10/01
[85] Representations made by a civilian before the LLRC at, Madhu on 9th January 2011. Transcript No. LLRC/FV/09.01.11/01

devolution, in general had been political all over the world, in the final analysis it is the effective management of development that must justify the decision to devolve. It was further stated that the decision to devolve is invariably based on the demand for a better voice for regional and local people in decision making regarding matters that are of concern to the realization of their aspirations and needs. Representations were made that the end of the conflict had allowed people in the Eastern Province to return to their homes, cultivate their lands and move about. Despite these positives a study carried out in the East had also found that the Province remained 'fundamentally a case of arrested potential'. It had concluded that while the Government machinery was yet to get moving, and become supportive of a return to livelihoods, the citizens remained constrained by ethnic prejudice, physical insecurity, official indifference and above all rampant corruption. The view was expressed that the problems were rooted in the institutional weakness at the provincial and local levels. The transition from conflict to post conflict, from military to civilian, had created a governance vacuum in the East, where political power brokers decided on what gets done or not done. The Provincial Councils and local councils had little influence in governance. In relation to the East, the view expressed was that until these issues were addressed, the Eastern Province would impose serious constraints to reconciliation. It was further stated that Local authorities should be made an integral part of the system of representative Government. [86]

> "We find today that local authorities have been left stranded in a scheme of devolution where they must relate to the province on matters of administration and the centre in respect of matters of national policy. The dividing line between policy and administration is therefore to be sorted out between the centre and the Province, with little if no involvement of local authorities. So we have a system of local Government that has got marginalized in the course of devolution."[87]

8.96 It was also pointed out that now what was significant was that the Government had adopted a national policy on local Government. It was gazetted – in the gazette of 18th December 2009 – to strengthen and broaden the democratic structure of Government and the democratic rights of the people by decentralizing the administration, and by affording all possible opportunities to the people to participate at every level in the national life and in Government. The objective of the policy has been stated as being to make local authorities an integral part of the system of representative Government with highest permissible level of democratic decentralization and autonomy.

[86] Mr. Asoka Gunawardana before the LLRC at Colombo on 25th August 2010
[87] *ibid*

8.97 Another point of view was expressed before the Commission on the functioning of Provincial Councils:

> 'It has not worked. In fact, today everybody says that the Provincial Councils are a white elephant, because naturally the legislators would not permit authority to go out of their hands. Therefore witnessing this and knowing this we continue with this system at great expenditure. Therefore one of the things that we have actually suggested is that the Government must devolve executive functions of the Government. Once you decide on a project may be in Jaffna, Matara or Batticaloa or whatever place, it must be devolved to the people of that area, and they must execute this, and when they execute it the entire Government service, officials and everybody is there to look after it. Therefore devolution is necessary. At the moment there is no devolution whatsoever because it is actually the centre that controls even the remote areas. It must be devolved in our view to the districts not to Provinces, because provincial devolution has already created a problem of ethnic segregation.'[88]

8.98 Practical problems which had arisen from the devolution of power were explained by a retired surveyor. He stated that previously, surveyor labourers were recruited at local level, but last year (2009) and the previous year even for a Surveyor labourer post (now they were called Surveyor Assistants) the candidate had to take a flight to Colombo to face an interview, and on both occasions the particular candidate he was referring to did not get the employment. He posed the question: "Sir, is this centralizing or devolution?"[89]

Intrusiveness of the Presence of the Army in the Northern Province

8.99 Representations were made before the Commission that there remained a sense of unease in the Northern Province owing to the overt presence of the Army there. A leading public figure stated that he had been told that there was a need to get Ministry of Defence clearance even for private civil functions like weddings which he stated denied the people of the North the freedom enjoyed by other citizens in the country. He also commented that the Army was running civilian businesses.[90]

8.100 Representations were also heard where the conduct of the Army was praised – 'their conduct is exemplary' but at the same time it was stated that there was no civilian rule

[88] Dr. Nath Amarakoon before the LLRC at Colombo on 13th December 2010

[89] Representations made by a civilian before the LLRC at Jaffna on 12th November 2010. LLRC/FV/12.11.10/02.

[90] Mr. Mangala Moonesinghe. - 'Muruhandy is a religious place on the way from Colombo to Jaffna. Everybody gets down – whether it is Hindus, Muslims, Buddhists – they get down, break coconuts and they pray there ….since it is an important place and everybody stops little boutiques – Tamil boutiques- had grown around there to sell coconuts and feed people. Now the Army has been putting their own people to run boutiques. So that gives some suspicion whether the siege is still going on.'

as such. 'For everything and anything the people have to go to the Army camp. Even the GA has to listen to the Army……even the Police officers have to listen to the Army. So civilian rule must be brought back. I accept the Army's conduct is good. This is not the 80's Army. This is a professional Army but it is bad because we feel that civilian administration must be brought back. Even if I have a wedding in my house which is in recently cleared areas or the earlier LTTE controlled areas, I have to inform the camp…..these things must be changed.'[91]

8.101 A member of the public making representations before the Commission regarding the Muslim Community which was displaced from the Northern Province stated that the extreme militarization of many of the areas – especially in Mannar – made the returnees uneasy. Many had mentioned that they feared for the safety of their daughters due to harassment by some soldiers, who it was said followed the movements of young women with their mobile phone cameras. At the same time it was acknowledged that in Kilinochchi, especially in the Nachchikuda area, people had said that it was with the assistance of the military that they (the displaced Muslims) were able to resettle and start even the minimal livelihood activities that they were currently engaged in.[92]

8.102 Senior Defence and Military Officials who made representations to the Commission stated that while the military involvement in civilian activities will be phased out, it did not mean that there will be a complete pull out of the Army. It was stated that considering the 30 year conflict, it was necessary to take certain security measures and to keep a security presence to prevent any future threats to security. The need to secure the coast and the territorial waters was emphasized.[93] It was stated that maintenance of law and order would be gradually transferred to the Police with the setting up of new Police Stations, and ensuring that Police Officers could speak Tamil. The Commission heard that for this purpose steps had been taken to establish a Tamil Training School for Police Officers.[94] It was also stated that while there was a large number of troops positioned in the conflict areas during the period of operations this had totally changed with large numbers moving to other areas.[95] It was further stated that the new thinking for the Army was that there would be one battalion of about 600 troops in every district

[91] Mr. D. Siddhathan before the LLRC at Colombo on 25th October 2010

[92] Dr. Mrs. F. Haniffa before the LLRC at Colombo on 04th November 2010. Please see also representations of Rt. Revd. Dr. Rayappu Joseph at Mannar on, 08th January 2011 – 'Almost 20 months after the end of the war, and after more than a year since the resettlement process started we are disturbed that there is a heavy military presence in Mannar district particularly in the recently resettled areas of Manthai East, Madhu and Musali Divisions."

[93] Mr. Gotabhaya Rajapakse before the LLRC at Colombo on 17th August 2010

[94] *Ibid*

[95] Lt. Gen. Jagath Jayasuriya, before the LLRC at, Colombo on 08th September 2010.

with the ultimate objective of giving the Police the total control of the district with the Army being kept in reserve.[96]

8.103 An academic appearing before the Commission stated that the Army had played a very admirable role in the North and East,[97] particularly in building roads, in developing the North and East, and that they should remain there until these areas stabilize.[98] This fact was also acknowledged by several civilians during the Commission's sittings in the Provinces.

Concerns regarding Demographic Change

8.104 Representations were made regarding apprehensions in the minds of people in the North and East that there is a concerted effort to change the demography in these areas with the systematic State sponsored settlement projects.[99] A religious leader from Mannar said that there were reports that several individuals and groups from outside the district were already occupying lands, for example, in the Musali Division, and that this seemed to be done with the blessings of a Government Minister. He also mentioned the building of a Buddhist place of worship in a town where there was a Hindu kovil. This had caused great concern, particularly as there was no Buddhist population in the area.[100]

8.105 In response to a question posed by the Commission in respect of allegations of attempts to make changes in the demographic patterns in those areas through settlement schemes, Hon. V. Muralitharan who was the Minister responsible for resettlement, stated that nothing like that had happened, and he further stated that more than thirty years ago many Sinhalese people lived in the North and East and those people could now be resettled in their original properties if they wish to return.[101]

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[96] *Ibid*

[97] Prof. Rohan Gunaratne before the LLRC at Colombo on 01st October 2010.

[98] *Ibid.* 'when rehabilitation of the LTTE members first started this responsibility was given to the civilian authority but the civilian authority failed because they didn't have vehicles, they didn't have security, they didn't have access, It was given to the Military. The Military moved very rapidly and got everything organized, got the food supplies organized, got the security organized. So the Military can operate very efficiently in the North and East because they have been in that area for such a long period of time. I believe that if you take the Army down it will not only be a security problem it will be an issue of maintaining those services in the North and East.'

[99] Mr. D. Siddhathan before the LLRC at Colombo on 25th October 2010 -…the Army has built a Buddhist Temple in the Kaddaparichan area which is a village in the East. It is said to have been built on private land and the owner does not wish to demolish it for reasons that it may be bad to demolish a temple.
Dr M. Vallipuranathan before the LLRC at Colombo on 08th December 2010 – AGA Division Mannar there are 52 person belonging to 7 Sinhalese families who have been settled and in the Nanattan AGA Division there are 19 families.

[100] Rt. Revd. Dr. Rayappu Joseph at Mannar on 08th January 2011

[101] Hon V. Muralitharan before the LLRC at Colombo on 13th December 2010

8.106 It was also stated before the Commission that the Northern and Eastern Provincial Administration is being ethnically transformed. [102] [103] A Muslim party official referring to key administrative positions in the North and East Administrations stated that a former Trincomalee GA, was the Chief Secretary and ex-servicemen were in key administrative positions. He went on to state that the appointment of ex-servicemen to key administrative posts had been criticized by the members of the administrative service. He added, however, that the fact remained that the combination of retired administration and security officials were well equipped to implement the 'Sinhalisation process in the East'. [104]

8.107 The view was also expressed that no part of Sri Lanka belonged to any ethnic group. It was stated that due to terrorist activities, Sinhalese people from the North and East had been chased away, and that these people should be taken and resettled in the North.[105] It was highlighted that as far as the North was concerned there had been a fairly substantial Sinhala population, such as the bakers, who maintained an identity there but mingled with the population and got on with them, and they should be encouraged to return. Similarly it was stated that Muslims were domiciled in Jaffna and had been pushed away and should be encouraged to return. It was stated that worries would only arise if the State started transporting large numbers who had no roots in those areas, but sending people back to their original roots is a good thing.[106]

8.108 A Senior Public Official from Kilinochchi was questioned by the Commission regarding this matter, and it was stated that there were no 'forced' settlements in Kilinochchi but only voluntary resettlement.[107] A senior Public Official from Jaffna also confirmed this position.[108]

Sinhalese Villages adjacent to the former conflict areas

8.109 A member of the public who had returned from the North raised concern about the surviving families in the Sinhalese villages adjacent to the former conflict areas. He stated that:

[102] Representations made by a civilian before the LLRC at Trincomalee on 3rd December 2010. Transcript No. LLRC/FV/03.12.10/01
[103] See representations made by Rt. Revd. Dr. Rayappu Joseph at Mannar on 08th January 2011
[104] Mr. M.I.M. Mohideen before the LLRC at Colombo, on 03rd September 2010
[105] Mr. Amara Hewamadduma before the LLRC at Colombo on 20th January 2011
[106] Mr. Rajan Asiriwathan before the LLRC at Colombo on 18th August 2010
[107] Mrs. R. Ketheeswaran before the LLRC at Colombo on 25th November 2010
[108] Mrs. Imelda Sukumar before the LLRC at Colombo on 04th November 2010

'the surviving Sinhalese families in these villages are being left in the wilderness, fending for themselves, as the Government and NGO's rush to service the Tamil dominated areas in the North and the East. This is a fact because I have just returned from the North. Civilians who survived the terror perpetrated by the LTTE from these threatened villages need to be treated as national heroes as they bore the brunt of Tiger brutality and provided the rest of the country with a buffer. My point here is that they equally deserve to reap the benefits and enjoy the dividends of peace. This is a must-do task to sustain communal harmony in clusters of villages dominated by different ethnic communities, as we must not create fully serviced Tamil villages and underdeveloped Sinhala villages, cohabiting side by side, as this could lead to frustrations and communal tension. This is happening as I speak.[109]

8.110 Another member of the public appearing before the Commission made similar representations regarding the civilians in the villages bordering the Northern and Eastern Provinces. She said that while much interest had been generated regarding the IDPs after the conflict from the international community, the international community showed absolutely no interest when the Sinhala and Muslim people who were evicted by the LTTE lived in refugee camps in Mannar, Weli Oya, Trincomalee and Vavuniya. She also stated that while much assistance had been given to IDPs who were being resettled, there was no assistance to people who were returning to Weli Oya (Janakapura and Monaraweva) and the people were living in dire poverty. She added that she was aware of this through personal experience because they had visited the villages many times.[110]

Please also refer Chapter 6 on Land Issues: Return and Resettlement and Section II of this Chapter.

Resettlement of Northern Muslims

8.111 The Commission heard several representations on behalf of members of the Muslim Community who were living in Jaffna, and who had been displaced in 1990.[111]

8.112 It was stated on behalf of the Northern Muslims that they felt marginalized by the fact that the State had:

a. No policy on protracted displacement
b. No public acknowledgement of the old IDPs[112] and their needs
c. No cash grants for resettlement assistance
d. No commitment to assist with housing

[109] Dr. Dasarath Jayasuriya before the LLRC at Colombo on 27th December 2010
[110] Dr. Mrs. Anula Wijesundera before the LLRC on 26th November 2010
[111] Mrs. F Haniffa before the LLRC at Colombo on 04th November 2010
[112] Compared with the IDPs immediately after the conflict

e. No provision to address damages to property due to 20 years of neglect through no fault of their own
f. No provision to address damage to social networks due to the conflicts and the expulsion, no assistance with livelihoods
g. No plans for compensation.[113]

For a detailed analysis of the issues relating to the Muslim Community which was displaced from the North please refer Chapter 6 on Land Issues: Return and Resettlement; Chapter 5 on Human Rights and Section II of this Chapter.

High Security Zones/Land and Buildings used by the Security Forces and its impact on Resettlement

8.113 Representations were made both during its sittings in Colombo and during field visits regarding a number of issues involving High Security Zones, including the restitution of original lands, and the difficulties in doing that due to the existence of High Security Zones. It was acknowledged that HSZs were a narrow strip of land at the outset, and that the expansion of the HSZs was done in the light of the enhanced long range power of the LTTE and the need to push the LTTE especially from the Jaffna Peninsula.[114]

8.114 Referring to the existence of HSZs in the Eastern Province it was stated that people in Sampur, had led a peaceful life with their livelihood of fishing. As the fighting extended towards the Sampur area the local population was pushed from their original lands, and they were now accommodated in the Kiliveddi Camp. Sampur had been declared a HSZ. It was contended that fishermen can find their living only through fishing and there is an urgent need to resettle the people of Sampur in their original lands. It was stated before the Commission that about 5,000 acres of land had been taken for the HSZ in Sampur and as such about 1,600 people were still in welfare camps in various parts of the Eastern Province. It was contended that the land should be restored to them, and if this was impossible alternative lands should be provided and adequate compensation should be paid.[115] [116]

[113] Mrs. F Haniffa before the LLRC at Colombo on 04th November 2010
[114] Mr. Austin Fernando before the LLRC at Colombo on 18th November 2010; Mr. Harim Peiris before the LLRC at Colombo on 07th October 2010; Representations made by a civilian before the LLRC at Jaffna on 12th November, 2010. Transcript No. LLRC/FV/12.11.10/02;
[115] Representations made by a civilian before the LLRC at Batticaloa on 09th October, 2010. Transcript No. LLRC/FV/09.10.10/01
[116] Representations made by a civilian before the LLRC at Muttur on 04th December 2010. Transcript No. LLRC/FV/04.12.10/01 - Muttur East has been the most affected during the 30 year conflict. The common people were affected in round ups and cordon and search operations. Between 2008 and 2009, out of 11 GN Divisions 7 GN Divisions were resettled. But 4 GN divisions (Koonitivu, Navaratnapuram, Sampur East and Sampur West) comprising 1,850 families remain in welfare camps in

8.115 It was also mentioned that due to the fact that Palaly had been declared a HSZ for many years, large tracts of land were occupied by the military aggravating the limited availability of land for housing and cultivation etc.[117]

8.116 A leading lawyer making representations before the Commission said that he was aware that one of the issues that had troubled people in the North was the security zones. He welcomed the Government's decision to reduce the extent of the HSZs and to give back the land to lawful holders of title. He also acknowledged that if land was still being retained it was important to pay compensation. He did however recognize that the situation does not warrant completely doing away with HSZs at this stage. He stated that HSZs are necessary for the security of the country and although they should probably be reduced, some areas should be retained.[118]

8.117 During its field visits the Commission heard representations from several civilians who had been unable to return to their original lands due to the existence of the HSZs and were therefore scattered all over outside and facing hardships.

8.118 Reference was also made in the course of representations to a Supreme Court Judgment where it was held that people should be resettled in the HSZs and permitted to do their cultivation; but it was contended that this judgment was never put into practice.[119]

8.119 During its sittings in Kilinochchi, representations were made by the Chief Trustee of the Battapalai Kannahi Amman Temple who stated that he was a resident from Batapalai and that the people of the area had no cemetery as it was in the High Security Zone. He also stated that since the Pillayar temple also was within the HSZ the people had no access to it.[120]

8.120 A senior Defence Official stated that during the conflict the Security Forces had occupied certain Government buildings and even schools, but most of these had been or were in the process of being released. Any delays, he said, were due to the delay in building their own accommodation. He confirmed that the military will be located only on State land and not on private land. He also confirmed that there were no housing schemes

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Kattaparichan, Kiliveddi, Pattichennal and Manachenai. They have been there for 5 years. 10,000 acres of land has been brought under the HSZ.

[117] Revd. Fr. George Sigamoney before the LLRC at Colombo on 04th November 2010

[118] Mr.Gomin Dayasiri before the LLRC at Colombo on 28th October 2010

[119] Representations made by a civilian before the LLRC at Tellipalai on 12th November, 2010. Transcript No. LLRC/FV/12.11.10/03– Petition filed by Mavil Senathirajah, Rajadurai, Wigneswaran and Thangarajah.

[120] Representations made by a member of the clergy before the LLRC .at Mullaittivu on 20th September 2010. Transcript No. LLRC/FV/20.09.10/02. Village of Battapalai falls under Teppapilavu GN Division and the whole of Teppapilavu falls under the HSZ.

planned for army personnel, but what was being built were army barracks to house soldiers. He added that the Government had not sponsored settlements in any areas.[121]

8.121 However, it was acknowledged that there was a long standing problem with regard to the Palaly HSZ and the KKS HSZ. In 2000, the Government had taken a lot of land owned by private individuals surrounding Palaly for security reasons, and they were in the process of identifying exactly what was needed now. He stated that surveys were being done, and if private properties are acquired compensation would be paid and alternative land and a house would be given. He also stated that in Mullaittivu some lands which housed the LTTE leader's bunkers and the LTTE headquarters had been acquired.[122]

8.122 The Commission inquired from a Senior Public Official responsible for the Kilinochchi District whether military families were being settled in the Kilinochchi district, to which she responded that that was not the case. However she stated that there were some areas which were occupied by the LTTE which had now been taken over by the Security Forces, and residents had not been able to re-settle in these areas. She added that this affected only a few families, and until the Government decided what to do, these people had been provided alternative places.[123]

8.123 A civilian in Jaffna made representations that about 548 acres of land in Myliddy and Palaly area had been taken over for airport extension, and the people whose lands had been acquired had not received compensation nor had they been given alternative lands. It was confirmed that the acquisition had been gazetted. The Commission brought it to the attention of the GA Jaffna who agreed to rectify the position.[124]

8.124 A Senior Military Official stated that there were some private lands being utilized by the Army but they would be vacating them.[125]

8.125 Representations were also made that the inhabitants of Mullikulam in the Mannar district who were fisherfolk had been pushed away from their original lands due to the conflict and were now in temporary shelters in Mullikulam. It was further stated that a large area of Mullikulam was fenced off with barbed wire, and the Navy was visible in

[121] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010
[122] *Ibid.*
[123] Mrs. Imelda Sukumar before the LLRC at Colombo on 04th November 2010. Mrs. R. Ketheeswaran at Colombo on 25th November 2010.
[124] Representations made by a civilian before the LLRC at Ariyalai on 11th November 2010. Transcript No. LLRC/FV/11.11.10/01
[125] Lt. Gen. Jagath Jayasuriya before the LLRC at Colombo on 08th September 2010.

that area. The parish church was also located in this area and the people could not go for their worship to the church. [126] [127] [128] [129]

8.126 Reference was also made to areas in Kalpitiya where people used to go for fishing, which had now been taken over for security reasons, and no relief had been offered to the people who had been deprived of their fishing.[130]

8.127 The Bishop of Mannar during the course of his representations before the Commission stated that the public were disturbed that in some areas they were not able to go back and live in their own lands due to occupation of their houses and lands by the military, such as in Sanar and Mullikulam.

8.128 A native of Silavaturai in the Mannar district who was residing in Puttalam stated that her village in Silavaturai was occupied by the Navy. The Navy had taken occupation in 2007 after the area had been liberated. Prior to that the land had been given by the Tamil administration in Musali division to the Mahaweer families – martyrs' families. She said she had not received any compensation and there were nearly 500 families affected.[131]

For further details on the current status of HSZs and Resettlement, please refer Chapter 6 on Land Issues: Return and Resettlement.

Clearing of Land Mines

8.129 Commenting on the demining process, a Senior Defence Official stated that most of the IDPs had been resettled, and that it was only the Puthukudiyiruppu area that was still being cleared as there were a lot of mines in that area. He further stated that once an area is cleared of mines the UNHCR has to provide a certificate of clearance to re-settle people. For issue of this certificate there has to be absolute security without land mines, and also basic requirements like water….He further stated that the Army is working 24 hours clearing the land mines and INGOs were also carrying out demining activity. He

[126] Revd. Fr. George Sigamoney before the LLRC at Colombo on 03rd November 2010

[127] Refer also representations made by a civilian before the LLRC at Nedunkerny on 15th August, 2010. Transcript No. LLRC/FV/15.08.10/01– 'I was told about resettlement here in Nedunkerny so I came here and I went to see my farm and I found the Army is occupying it so I am helpless.'

[128] Refer also representations made by a civilian before the LLRC at IDP Manik Farm on 14th August, 2010. Transcript NO. LLRC/FV/14.08.10/01 – we were displaced from our areas and when we were asked to get ready for resettlement it did not happen. We are from the Mullaittivu District Murukandy village. The GA Mullaittivu had advised that the resettlement had been temporarily stopped because the Army had taken over the land.

[129] Representations made by a civilian before the LLRC at Mannar on 08th January 2011. Transcript No. LLRC /FV/08.01.11/01 – Displaced since 1990 no compensation offered, no offer of alternate land.

[130] Representations made by a civilian before the LLRC at Puttalam on 07th January 2011. Transcript No. LLRC/FV/07.01.11/01

[131] Representations made by a civilian before the LLRC at Puttalam on 07th January 2011. Transcript No. LLRC/FV/07.01.2011/01

added that the Army was doing everything possible to expedite the process and training its troops and engineers, and increasing the number of personnel and resources available for this purpose.[132]

8.130 A senior Military Official when questioned by the Commission stated that demining activity in Kilinochchi West of A9 had been completed, and East of A9 was done up to Visuamadu. He said they had not yet gone towards Puthukudiyiruppu area West of Nanthi Kadal lagoon. Mullaittivu South had been demined and people had been resettled.[133]

8.131 The Commission during its visit to Mullaittivu was told by a military official that while de-mining is going on in the North, it is concentrated more in the areas where civilians are to be resettled, which would expedite the resettlement process. He said that there are 764 families (2,781 persons) to be settled in Maritimepattu and 5,737 families (18,592 persons) from Puthukudiyiruppu.[134]

8.132 During its sittings in Kudathanai East, it was brought to the attention of the Commission that 3,500 people belonging to the villages of Vettalakerni, Kattaikadu, Koperaku and Chundikulam were not re-settled due to demining activities not being complete, and that since 1990 these families have been with relatives and now in welfare centres. Likewise, in Nagar Kovil area 685 families consisting of 2,700 individuals were in various welfare camps and had not been resettled.[135]

For further details on the current status on land released for residential purposes and livelihood purposes, please refer Chapter 6 on Land Issues: Return and Resettlement.

Post conflict Diaspora Issues

8.133 Concerns were expressed by certain members of the public who appeared before the Commission regarding the diaspora. It was stated that the threat to sustainable peace will be driven from overseas, mainly with the energies of the remnant Tamil diaspora favouring the LTTE. However it was recognized that the patriotic diaspora if mobilized

[132] Mr. Gotabhaya Rajapaksa before the LLRC at Colombo on 17th August 2010
[133] Lt. Gen. Jagath Jayasuriya before the LLRC at Colombo on 07th September 2010.
[134] Briefing at Security Forces Headquarters Mullaittivu on 20th September 2010. Transcript No. LLRC/IS/20.09.10/01
[135] Representations made by a civilian before the LLRC at Kudathanai East on 13th November 2010. Transcript No. LLRC/FV/13.11.10/01

correctly had the capacity and numbers to counter-balance the behaviour of the others.[136]

Perception Management

8.134 Representations were made before the Commission about the perceptions that some people have regarding the conflict areas which is relevant in the context of overall rehabilitation and resettlement with a view to bringing a lasting solution.

8.135 It was stated that perceptions exist about the conflict areas, what happened in the conflict areas, what is being done in conflict areas, what is the thinking of the people in the conflict areas etc. According to the representations heard, all of these have an impact upon the perceptions, and these perceptions, rightly or wrongly, have entered the minds of the those who are in those areas, their relations overseas, their friends overseas, the Diaspora, the international businesses, the international media, powerful international opinion makers, institutions and nations, as much as other minority communities and also the majority community. It was contended therefore that it was necessary to focus on perception management as a priority.[137]

[136] Dr. Dasarath Jayasuriya before the LLRC at Colombo on 24th December 2010; See also representations of Mr. Douglas Wickramaratne at Colombo on 24th December 2010

[137] Mr. Chandra Jayaratne before the LLRC at Colombo on 23rd September 2010. Some of the perceptions described are : IDPs are denied access to their former places of residence; their title to premises are being challenged, large tracts of previously occupied land has been demarcated as high security zones, unjustified land acquisitions have taken place for security considerations but they are not allocated for security purposes, publicly announced resettlement benefits have not gone to the people equitably and according to the schemes, there is lack of basic amenities, water, sanitation and power, there is no proper housing to the newly resettled people, resource allocations are not determined by community priorities and are allocated without consultation sometimes missing the most vulnerable. For further reading, Mr. Chandra Jayaratne's presentation to the Commission in September 2010

SECTION II

Reconciliation

8.136 The ending of a nearly three decades of protracted and bloody conflict has opened many opportunities for bringing about reconciliation between the different communities, especially among the Sinhalese, Tamils and the Muslims. It becomes necessary to articulate a common vision of an interdependent, just, equitable, open and diverse society. The development of a vision of a shared future requires the involvement of the whole of society. Acknowledging the losses and suffering of the past and providing mechanisms for recompense, social justice and for restoration of normalcy and expressions of empathy and solidarity, are steps aimed at redress. Relationship - building following violent conflict, addressing issues of lack of trust, prejudice, and intolerance whilst accepting commonalities and differences**,** is the essence of reconciliation.

8.137 The culture of suspicion, fear, mistrust and violence needs to be removed and opportunities and space opened up in which people can hear each other and be heard. A culture of respect for human rights and human diversity needs to be developed creating an environment where each citizen becomes an active participant in society and feels a sense of belonging, of being Sri Lankan. For this purpose the social, economic and political structures which gave rise to the conflict and estrangement need to be identified and addressed.

8.138 Hundreds of persons who appeared before the Commission or otherwise communicated with it have conveyed a near unanimous and unmistakable message. That message is twofold.

8.139 Firstly, having emerged from a painful and debilitating conflict that lasted for nearly three decades, people of all communities now yearn for lasting peace, security, amity and harmony. They have been equally emphatic that we must do all we can to ensure, that never again should there be blood-letting on this blessed land in order to find solutions to problems that political leaders of this country were either unable or unwilling to resolve. The next generation of this country should not have to pay the price for such failures on the part of political leaders. This applies to terrorism practiced by the insurgents in the South as well as to the separatist terrorism in the North and East. It also brings into sharp focus the largely unimplemented recommendations of the Youth Commission of the 1980s and many other Commissions that followed.

8.140 Secondly, there was also a clear message that the ending of LTTE terrorism and the advent of a strong and broad-based Government led by an executive President has provided a great window of opportunity – an opportunity to forge a consensual way forward to address a range of governance issues in a manner that will promote reconciliation, amity and cooperation among all communities, provide political solutions to the grievances of minorities and ensure the realization of the legitimate rights of all citizens. People from all corners of the country who came before the Commission left with the Commission an almost palpable impression that this is Sri Lanka's moment of opportunity for Sri Lankans to collectively chart a vision for a harmonious future for our nation and a wholesome Sri Lankan identity.

8.141 What needs to be done for reconciliation and nation building is that the State has to reach out to the minorities and the minorities, in turn must, re-position themselves in their role *vis a vis* the State and the country. This was a conflict dominated by terrorism and violence. However, there is something much more deeply ingrained in that conflict, a sense of grievance, some real, some perceived which remain unaddressed. The situation was exploited by the LTTE, who claimed they fought on behalf of the Tamil people, to further their own agenda. Terrorism was the LTTE's weapon of choice, exploiting minority grievances. From the representations made to the Commission it has formed the distinct impression that the problem is far from solved. There is a sense of unhappiness among the minorities that the State had neglected its responsibility towards them. Since it is a political problem, it needs to be addressed politically. It is necessary to address the root causes of the conflict. It is the primary duty of the State to be proactive and the citizenry should respond in a spirit of give-and-take.

8.142 There must be willingness on the part of all political parties to give up adversarial politics and have consensual decision making on national issues. In order to meet the challenges of this opportunity there has to be courage and political will on the part of all political parties. Reconciliation cannot be achieved unless there is political commitment on the part of the leadership of all political parties and the leaders of all communities.

8.143 Representations before the Commission were equally loud and clear that the people of all communities are ready and willing, as they have always been, to use this opportunity to promote reconciliation, amity and cooperation if the political leadership from all parties on all sides of the ethnic divide, are willing and able to lead the way. The Commission was further informed that it is possible to do this if the political leaders of all successive Governments, including the present Government, can summon the political will and the courage to introspect and reflect on the past failures and agree to

nurture consensual decision making on issues of national importance and do not resort to the adversarial politics of the past, that sought short term electoral gain as against the long term national interest.

8.144 Among those appearing before the Commission were Sinhalese from Galle who shed tears while giving an eye witness account of the shocking vandalism of burning down the Jaffna Library, as well as Tamils from Jaffna who apologized for the brutal terrorism perpetrated by the LTTE, and Muslims of the East who suffered LTTE atrocity and the massacre of Muslims at the Kattankudi Mosque.

8.145 This clear message thus came from all communities, from all walks of life and from all strata of society irrespective of ethnicity, religion, caste or creed. What was common among them was, that they were all victims of the conflict.

8.146 Many who appeared before the Commission emphasized that what had been achieved by the Security Forces should be invested in a political process that will usher in an era of sustainable peace and security for the nation and lasting amity, friendship and harmony within and between communities. The Commission again found significant common ground among a broad spectrum of persons who made representations that this task can and should be achieved whilst upholding the territorial integrity and sovereignty of the nation and safeguarding the long cherished Sri Lankan values of democracy, tolerance and power sharing. To this end, there should be no room for triumphalism. It is important that all leaders and all of the citizenry must empathize with all victims of conflict and terrorism whether they are Sinhala, Tamil, Muslim or others, or whether they are civilians or soldiers. In this regard political leaders and the country as a whole should take a cue from the disabled soldiers who expressed their sentiments that they have no hatred or rancour against the LTTE combatants who attacked them.[138] If the political leadership on all sides do not shed their parochial interests, electoral or other, and find a consensual way forward towards achieving these objectives of critical national importance at this juncture of unprecedented opportunity, the country will regress and future generations might be called upon to bear the brunt of another crisis.

8.147 The Commission was also reminded that despite the lapse of two years since the ending of the conflict, the violence, suspicion and sense of discrimination are still prevalent in social and political life. Delay in the implementation of a clearly focused post conflict peace building agenda may have contributed to this situation.

[138] Field visit to Ranaviru Sevana, Ragama on 4th of April 2011

8.148 The observations/recommendations appended below therefore represent the considered views of the Commission derived from these clear and present dangers as well as the opportunities outlined by a number of people who appeared before it; and they seek to foster a collective effort to be undertaken by all Sri Lankans at three levels: i.e. at the level of the political leadership; at the level of civil society and at the level of the individual citizens.

8.149 The Commission however wishes to emphasize that the responsibility for being the prime mover of this process lies squarely with the Government. Since reconciliation is a process and not a onetime event, the efforts towards that objective should be continuous and broad based whilst being fully supported by the elected Government.

8.150 The Commission takes the view that the root cause of the ethnic conflict in Sri Lanka lies in the failure of successive Governments to address the genuine grievances of the Tamil people. The country may not have been confronted with a violent separatist agenda, if the political consensus at the time of independence had been sustained and if policies had been implemented to build up and strengthen the confidence of the minorities around the system which had gained a reasonable measure of acceptance.

8.151 A political solution is imperative to address the causes of the conflict. Everybody speaks about it, though there is no agreement about the diagnosis and the prescription. It is a process that is ongoing at the moment. At such a moment it is most opportune to look back at what is not so long a period of history of Sri Lanka as an independent country. As George Santayana put it**: "**Those who do not remember the past are condemned to repeat it;"[139] and some commentators even remarked that after 63 years of independence the country is, in some ways, back at square one.

Grievances of the Tamil Community

8.152 The grievances of the Tamil Community have figured prominently in the discourse on the ethnic conflict and its causes. There have been varying**,** and at times, sharply opposite points of view taken by the interlocutors for both communities. At one extreme, there are Sinhala groups who hold that the Tamil people have no serious cause for grievances and**,** at the other end**,** Tamil groups who tend to view all or most actions of the majority as the assertion of majoritarian power and discrimination against the minorities, ignoring national policies and programmes that benefitted the Tamil people along with the other communities.

[139] George Santayana, Reason in Common Sense. Vol I of The Life of Reason, 1905.

8.153 At the same time it is pointless and unrealistic to deny that the Tamil people have grievances. The articulation of grievances by the Tamil people continues to remain at the centre of the Sinhala – Tamil relationship and need to be recognized and addressed directly and fairly as the first step in the post conflict process of reconciliation and peaceful co-existence. No doubt these grievances have changed over time and some of them have been dealt with**,** at least partially. However, many new grievances have been added as the conflict escalated. In that process the majority community and other minorities have also had their share of grievances.

The Historical Background relating to Majority - Minority Relationships in Sri Lanka

8.154 The Soulbury Commission report devoted considerable space to what it called the grievances of minorities. The report stated that when a section of the population "finds itself in the position of a permanent minority it will tend to scrutinize with the utmost care everything the Government does and will be eager to stigmatize as discriminatory any provisions which appear in the slightest degree to favour one section of the community (which is the permanent majority) even though they may in fact be based on sound reasons of public policy."

8.155 The report went on to say: "A careful review of the evidence submitted to us provides no substantial evidence of a general policy of the Government of Ceylon of discrimination of minority communities. But when a minority rightly or wrongly feels itself to be forever debarred from obtaining an adequate share of the responsibilities of Government, it becomes particularly apprehensive of the actions of what it perceives to be an unassailable majority … It will behove the Sinhala majority to take the utmost care to avoid giving cause for any suspicion of unfairness or partiality..." The Soulbury Commission points to the vital link between discrimination and the lack of equitable participation in the affairs of Government and goes on to say that no safeguards that they devise would be eventually of much avail unless the Sinhala majority acts with that realization.

8.156 In its assessment of the relations between the different ethnic groups in Sri Lanka the Soulbury Commission identified certain features which were specific and almost unique to the Sri Lanka situation. They referred to a demographic situation in which there was a permanent majority constituting more than two third of the total population and the next largest segment of the population the Tamil minority (excluding the up country Tamils) around ten per cent. The Commission argued that the character of majority – minority relations were shaped by these demographic realities and were governed by

deep seated predispositions which were entrenched in the consciousness of both the majority and minority which were the cause of apprehension and distrust. The context in which these comments were made in the Soulbury Report at that time have only got more acute now.

8.157 The Soulbury Commission concluded that while administrative and constitutional safeguards were necessary to deal with the problems that were caused, none of these are adequate without a fundamental change in the predispositions of both the majority and minority towards each other. These perceptions on both sides had a crucial impact on the relationships between the two communities; and as Sri Lanka is in the process of reconciliation, these observations, in the Commission's view, are most pertinent in trying to answer questions such as what caused the just ended conflict.

The Different Phases in the Narrative of Tamil Grievances

8.158 For a full understanding of the present situation it would be helpful to examine the grievances in their different phases. During the first phase, when the consensus reached at the time of independence continued up to 1955, there was no clearly identifiable ideological dimension in the articulation of grievances. The concern of the Tamils was with practical issues of implementation and sharing of benefits. Regional autonomy or devolution of powers had not gained ascendancy in the Tamil political agenda. It is only after 1956, following the Official Language Act, that the political agenda of the Tamil parties underwent a fundamental change. For the first time after independence the statement of Tamil grievances is clearly presented in the Bandaranaike - Chelvanayakam Pact and explicitly linked to the need for political power at the regional level.

8.159 Successive Governments of both major parties were equally guilty of backtracking on the promises that were given. The Bandaranaike - Chelvanayakam Pact was abrogated unilaterally by Prime Minister Bandaranaike. This followed on the breach of the agreement on language. Thereafter, broken pledges on the part of successive Governments became a recurrent feature of the Sinhala – Tamil relationship and an overriding Tamil grievance. The Dudley - Chelvanayakam Pact on District Councils had to be laid aside. The 1972 Constitution that followed consolidated the unitary nature of the constitution and failed to provide for any form of devolution. The District Development Councils established in 1980 soon ceased to function owing to the failure to empower them adequately. The 13th amendment came about following a long process of frustrating negotiations and was eventually made possible only through external pressure. It therefore lacked the foundation of trust and confidence that comes from a

solution negotiated with goodwill between parties who are fully mindful of each other's needs and concerns.

8.160 There were four main issues dealt with in the Bandaranaike - Chelvanayakam Pact - language, land, citizenship of Tamils of Indian descent and the establishment of regional councils. Upon examination of the present situation in regard to these grievances it could be argued that the grievances of this phase have been dealt with, in large measure, and corrective policies formulated though problems of implementation remain.

8.161 The constitutional and legal provisions regarding the Tamil language are in place, but there are shortcomings and failures of implementation. The main principles concerning agricultural settlements have been agreed to and have been in operation for a long time. Here, too, breaches occur in the process of implementation. The problem of Indian citizenship has been resolved after negotiation with the leaders of that community. The issues of devolution of power to the regions were dealt with in the 13th Amendment but with the extent of power devolved and implementation still remaining an unresolved issue.

8.162 The process of addressing the grievances was not managed smoothly and with goodwill by the political leaders of the day. It was not a process in which the Tamil speaking minorities and other disadvantaged communities were treated with dignity. The strong sense of grievance that prevails in the Tamil Community arises from the travails and injustices of that process.

8.163 The decisive rift in the inter-ethnic relationship came first with the riots of 1958, then in 1977, and culminating in what is known as 'Black July' of 1983, and the heinous failure of the then Government to provide adequate protection to Tamil citizens. The problems pertaining to the Tamil Community and their grievances cannot be fully addressed without a fuller understanding of this culture of violence that marred the relationship between the Sinhala and Tamil communities.

8.164 The above issues and other post conflict grievances which are common to all communities are discussed later in this Chapter.

Grievances of the Muslim Community

8.165 The Muslims in Sri Lanka form the second largest minority next to the Tamils and constitute about seven percent of the island's population numbering over one million people.

8.166 The Muslims are spread out in all districts of the island, but do not constitute a majority in any district. There is a heavy concentration of Muslims in 3 districts: Batticaloa, Ampara and Trincomalee**,** which together comprise the Eastern Province. The Muslims had until very recently achieved a high degree of integration with the majority community, in the sense that the Muslims had no political party based on linguistic or religious issues in nominating candidates for parliamentary seats. Instead Muslims were represented and have risen to prominence in all major political parties in the island. Muslims have been voted to power from electorates with an overwhelmingly high majority community even when the opposing candidate happens to be a member of the majority community. However, in recent times separate political parties with a separate Muslim identity have emerged.

8.167 The problem of Muslims living in the North began with the forcible expulsion of the Muslim Community by the LTTE on the 30th of October 1990**.** According to representations made before the Commission, a large number of Muslims were living in the North and East particularly, in Jaffna and Mannar**.**[140] Positive evidence that Muslims lived in those areas are the mosques that are standing there now. It was stated that the Muslim Community living in Jaffna is a **"**minority within a minority**"**. The material placed before the Commission showed that the Muslims were the victims of ethnic cleansing in these areas, done at gun point by the LTTE. The acts of cruelty perpetrated by the LTTE forced the Muslims to become IDPs. A former Deputy Mayor of Jaffna who made representations before the Commission stated, "The Sinhalese and Muslim brothers were in the same plight".[141]

8.168 A Municipal Member[142] of the North Western Province complained about the changes affecting the Administrative Units of the area. According to him, the Pradeshiya Sabhas have not been functioning satisfactorily. He also contended that the language policy is not properly implemented. Further, the host community and the Muslims displaced from Jaffna are settled in the Puttalam district. While the IDPs are perceived as politically and economically well off, the host community feels they are discriminated. It was asserted that people of the Puttalam electorate have themselves been reduced to the status of refugees in their own areas.

[140] Representations made by a former Deputy Mayor of Jaffna before the LLRC at Puttalam on 7th January 2011 - Transcript No. LLRC/FV/07-01-11/01
[141] Ibid
[142] Representations made by Mr Abdeen Yehiya before the LLRC at Puttalam on 7th January 2011 - Transcript No. LLRC/FV/07-01-11/01

8.169 A native[143] of Mannar living in Puttalam for the last twenty years making representations complained about their language problems. It was his contention that although 57% of the schools are in Tamil medium all administrative correspondence is in Sinhala. He also complained that, the State and private buses ply with only Sinhala name boards, in hospitals forms are issued in Sinhala, and the hospital employees speak only in Sinhala and even death certificates are issued in Sinhala.

8.170 According to the representations of a resident[144] of Al Hasiniya Scheme all names of the IDPs have been removed from the resident registers of the voters list by the Grama Niladharis'. After the announcement of resettlement of IDPs in the North on 14th December 2010, the Grama Niladharis' have refused to issue extracts from the voters list. The IDPs who had been registered in Jaffna for the past thirty years, have been voting from the centres in the Puttalam district. Their request is to permit them to continue to do so until they are able to settle down permanently in the North. When questioned by the Commission as to how long they want to do so, they requested for another three years.

8.171 It was submitted to the Commission that the Muslims who were expelled from the Northern Province in October 1990 are not being categorized as IDPs as the Government seems to consider only those displaced from the Wanni as IDPs. Even though the Government has claimed that 90% of the IDPs have been resettled since the conclusion of the conflict, this does not include the Muslim Community of the Northern Province[145].

8.172 The treatment leveled at the Muslim Community of the Northern Province has led them to believe that they are at the bottom of the list of priorities of the Government, INGOs, NGOs and the international community. It was the host Muslim Community in Puttalam that had to be depended on for emergency assistance in their hour of need.

Recommendations

8.173 The Government should facilitate the early return of the displaced Muslims to return to their places of origin in the Northern Province.[146]

8.174 The Government should take immediate steps to assist in re-building of the mosques, houses and schools destroyed or damaged by the LTTE.

[143] Representations made by a civilian before the LLRC at Puttalam on 7th January 2011 - Transcript No. LLRC/FV/07-01-11/01
[144] Representations made by a civilian before the LLRC at Puttalam on 7th January 2011 - Transcript No. LLRC/FV/07-01-11/01
[145] Mrs. F. Haniffa before the LLRC at Colombo on 4th November, 2010.
[146] Please refer to Chapters 4, 5, and 7 on Land, Human Rights and Post Conflict Issues Reconciliation.

8.175 The national and international agencies implementing IDP welfare programs should bear in mind the perception of discrimination that exists between the so called 'old IDPs' and other IDPs. The international and national attention brought upon the new IDPs and the resultant advocacy and programmatic initiatives implemented on their behalf which are undoubtedly needed, would perhaps have sharpened the sense of discrimination felt by the 'old IDPs'. The Commission is inclined to agree that the perceptions of the 'old IDPs' regarding inequity have some merit. Equity and non discrimination are key principles of all UN human rights instruments to which Sri Lanka has subscribed. Thus it is incumbent upon the Government of Sri Lanka with the cooperation of its development partners, to take into account the equity and non-discriminatory principles in dealing with the situation of the 'old IDPs'.

Grievances of Sinhalese in Villages Adjacent to Former Conflict Areas

8.176 The Commission visited some of these villages in Weli Oya, Moneragala, and Kebethigollawa and heard representations. The perception of people in these areas was that the Government tended to overlook the civilians who lived in these villages, and who had survived the terror perpetrated by the LTTE. The people in these villages had continued to live under tremendous threats to their lives without migrating to safe areas in the South. Apart from facing severe security risks, the people living in these villages have faced severe hardships in education, disrupted and fractured livelihoods, paucity of health care and transport facilities. These villagers articulated the need to be treated equally to enjoy the dividends of peace.

8.177 A representer who came before the Commission stated, that it was important that all communities who go back to their former places of residence are provided assistance equitably. Unfortunately, the Sinhala people who have returned to Weli Oya (Janakapura and Morawewa) are living in dire poverty, and have not received assistance similar to what the Tamil IDPs have received, when they returned to their places of residence. If they are not treated equally, there will be discontent amongst various communities and this would impact adversely on the reconciliation process."[147]

8.178 A villager making representations to the Commission on its field visit to Weli Oya stated,

> "there were 63 families that were left behind when the others went to refugee camps but the Government takes steps only to help the people who have come back and re-settled. The Government has no concern to provide facilities to people who remained in the village.

[147] Dr. Anula Wijesundere before the LLRC at Colombo on 26th November 2010

> As a result of artillery attacks by the LTTE many of the houses were damaged but nobody has come forward to assist these people in reconstructing their houses."[148]

8.179 A Representer from Digavapi in the Ampara district in his representations noted that,

> "the Eastern Province is archeologically very important as there are numerous archeological sites. The Tamil people living in these areas have no knowledge of their archeological value. The Sinhala people in the South think that the Tamil people are deliberately destroying these sites. On the other hand the Tamils who are living in these areas feel that the archeology and heritage sites are being used as a tool to discriminate against them. It is important that these different ethnic groups are taught about the culture and heritage of each other, otherwise it will remain a barrier to reconciliation."[149]

8.180 Many people who made representations before the Commission on its field visits to the Eastern Province highlighted the inadequacies of the administrative system. It was pointed out that Weli Oya comes under a number of districts. That is, a section comes under the Mullaitivu district, a section under the Vavuniya District and another under the Trincomalee District. As a result the people were faced with difficulties. In many of these districts work is done in Tamil, whereas people living in Weli Oya are predominantly Sinhalese.[150]

Recommendations

8.181 The Government should undertake an in-depth study to identify the needs of the people in these areas to address the question of improving their livelihood.

8.182 The Commission is of the view that the Government must ensure even-handed resource allocation and development of villages. If not, it could lead to frustration and communal tension in clusters of villages dominated by different ethnic communities, particularly in the Eastern Province.

Grievances of Tamils of Indian Origin

8.183 There were representations made to the Commission by Tamils of Indian origin who expressed concern about the lack of educational and health facilities in areas where they live and they also brought to the notice of the Commission the difficult living

[148] Representations made by a civilian before the LLRC at Weli Oya on 29th January 2011 – Transcript No. LLRC/FV/29-01-11/01
[149] Representations made by a civilian before the LLRC at Ampara on 25th March 2011 - Transcript No. LLRC/FV/25-03-11/01
[150] Representations made by a member of the clergy at Weli Oya on 29th January 2011 - Transcript No. LLRC/FV/29-01-11/01

conditions that prevailed on the estates.[151] The Commission appreciates these concerns and recommends to the Government that necessary steps should be taken to improve the health and educational facilities and also provide better living conditions in the estate areas.

8.184 The Commission also recommends that a larger post conflict development agenda and the programmes for reconciliation should take account of the essential needs of the Tamils of Indian origin.

Issues relevant to Addressing Grievances and Promoting Reconciliation

FAILURE TO GIVE EFFECT TO THE RULE OF LAW

8.185 Many persons who made representations before the Commission stated that a large number of persons having political patronage had committed offences, but the long arm of the law had not reached them because of the political pressure exerted on law enforcement authorities. Along with an independent Judiciary and a transparent legal process a strict adherence to the Rule of Law is a *sine qua non* for peace and stability which is of the essence, if there is to be any meaningful reconciliation. A democracy must assure a fair system of governance under the Rule of Law rather than the rule of men. The Commission reiterates that the lack of governance and non-observance of the Rule of Law would result in the creation of tension between communities. Respect for the rights and freedoms of the citizens of a country is the very essence of the concept of the Rule of Law. It was stated that lack of good governance, and non-observance of the Rule of Law coupled with a lack of meaningful devolution were causes for creating tension between communities.

8.186 Among the issues that emerged during the Commission's deliberations were the following:

a. Failure on the part of the law enforcement officers to investigate offences and bring offenders to book, where the offences are committed by persons with political connections.

b. Despite the end of the conflict significant issues of law and order still remain. There is apprehension in the minds of the people living in the North and the East, due to continuing acts of extortion, and other criminal acts such as abductions,

[151] Mr. P. Muthulingam before the LLRC at Colombo on 1st November 2010;Delegation on behalf of the Upcountry Plantation Community at Kandy on 20th March 2011. Transcript No. LLRC/FV/20.03.11/01

disappearances, robberies etc. by armed groups.[152] It was alleged that a number of politicians operate on the fringes of the law. Due to their interaction with criminal elements in society they subvert the course of justice by the undue influence exerted on the police resulting in the politicization of the police.

c. The political violence accompanied by the use of firearms has caused much concern among the law abiding citizens of this country. The Commission views with concern the escalation of political violence and unlawful possession and use of firearms by politicians and their supporters.

d. The Commission strongly recommends that the Government should take immediate action to disarm persons in possession of unauthorized weapons and also prosecute such offenders.

e. At the time of writing this report the Commission became privy to a serious shooting incident where two politicians of the same political party were involved, following the recently concluded local Government elections, resulting in a number of deaths and injuries. Such a deplorable lack of mutual accommodation by the politicians and resorting to such blatant violence to resolve issues, is hardly the example the peoples' representatives are called upon to set at this juncture of the national reconciliation process.

8.187 The Commission wishes to specifically highlight the following instances brought to its attention by a number of representers.

a. There were allegations made that one Bhareti is alleged to have committed several offences of abduction, extortion, robbery etc. in the Eastern Province. This matter was brought to the notice of the relevant authorities by the Commission. The Commission regrets to note that no meaningful action has been taken against the alleged wrongdoer, although many representers have referred to the participation of the said Bhareti in connection with the offences referred to above.

b. Two senior retired police officers and two representers[153] who had been victims of an abduction along with around six hundred police officers, referred to the alleged involvement of Karuna the then LTTE leader of the Eastern Province and several

[152] Concerns regarding abductions and disappearances have been dealt with in greater detail in the chapter dealing with Human Rights.

[153] Retired Senior Police Officers, Messrs Anton Jeyanathan before the LLRC at Colombo on 28th December 2010 and Tassie Seneviratne before the LLRC at Colombo on 24th January 2011

other members of the LTTE, regarding the murder of the police officers, who had been ordered to lay down arms and surrender to the LTTE.

c. Pursuant to the allegations made by the representers the Commission questioned Mr Muralidharan *alias* Karuna about the allegations leveled against him. He denied the allegations in respect of these murders.

d. However, this Commission regrets to note that up to date no investigation has been conducted in respect of this allegation of the killing of six hundred policemen. The two senior police officers said that there had not even been a departmental inquiry into the circumstances that led to the surrender of these police officers to the LTTE. Nor have the dependants of the police officers who lost their lives been recompensed. The Commission is of the view that this matter warrants a full investigation because of the nature of the crime and the bearing it has on reconciliation.

e. Several representers complained about acts of extortion that were being committed by members of the Eelam Peoples' Democratic Party. When the leader of the EPDP was questioned he stated that, "after the rains there is wetness." The Commission regrets to note that this approach by the EPDP leader does not augur well in fostering respect for the Rule of Law.

f. The Commission is of the view that since there are several complaints against the EPDP there should be a full investigation regarding these allegations. Absence of an investigation would create a sense of impunity.[154]

8.188 Many representers brought to the attention to the Commission illegal activities of a gang led by a person called Major Seelan, in connection with offences of abduction, extortion and robbery using the Security Forces facilities as a cover. The Commission brought this to the attention of the DIG of the area. Consequently, an accomplice of Major Seelan was apprehended. However the alleged principal offender still remains at large.

[154] Please refer Chapter on Human Rights re: illegal armed groups.

Recommendations

8.189 In this regard the Commission reiterates the importance of giving full effect to all of its Interim Recommendations concerning illegal armed groups.

8.190 The Commission regrets that full effect has not yet been given to its Interim Recommendations. Delay in taking effective remedial action would only result in a breakdown of law and order and the consequent erosion of the Rule of Law and the confidence of the people in the reconciliation process.

8.191 The Commission notes that Police officers serving in the provinces do not have adequate access to legal expertise regarding investigations and the conduct of prosecutions. As a result a large number of investigations and prosecutions had been adversely affected resulting in persons committing serious crimes getting away with it, thereby causing frustration among victims of crime. In the circumstances the Commission strongly recommends setting up units of the Attorney General's Department in the provinces to guide and advise the Police regarding criminal investigations, prosecutions and other matters touching upon the criminal justice system.

8.192 The Commission emphasizes that all allegations should be investigated and wrongdoers prosecuted and punished irrespective of their political links, so as to inspire confidence among the people in the administration of justice.

8.193 The Police Department is a civilian institution which is entrusted with the maintenance of law and order. Therefore, it is desirable that the Police Department be de-linked from the institutions dealing with the armed forces which are responsible for the security of the State.

8.194 The Commission is of the view that an independent permanent Police Commission is a pre-requisite to guarantee the effective functioning of the Police and to generate public confidence. Such a Commission should be empowered to monitor the performance of the Police Service and ensure that all police officers act independently and maintain a high degree of professional conduct.

ISSUES OF GOVERNANCE

8.195 The Commission heard submissions that some minority grievances stem from deficiencies in the system of administration and lack of good governance that affect all citizens regardless of ethnicity. These deficiencies require concerted action by all

stakeholders. However specific action is needed where the system functions particularly to the disadvantage of the minorities.

8.196 Over a period of time there has been a weakening of public institutions vital to the functioning of democracy thereby eroding the sovereignty of the people.

8.197 The political culture of the country has made the general public powerless and helpless to a point that they have become dependent on politicians to obtain many services and amenities they are entitled to.

8.198 The politicians and the political elite exercise the power of the State to the detriment of others. This has led to a high degree of corruption undermining the rights of the citizens. This naturally has had an impact on minority grievances, which would ultimately affect the process of reconciliation.

8.199 Any apathy on the part of the Government in quelling disturbances directed particularly at minority groups, as was the case in dealing with the deplorable communal disturbances of July 1983 will give rise to an inevitable perception among minority groups that the State either approves or condones the state of lawlessness unleashed by private individuals or groups against them.

8.200 The Commission concurs with these concerns.

Recommendations

A Special Institution to deal with Citizen Grievances

8.201 The present law that deals with the office of the Parliamentary Commissioner for Administration is inadequate to effectively deal with the grievances of citizens arising from State action, even though the amendment introduced by Act No 26 of 1994 has sought to improve the public petitions procedure. Therefore, the Commission recommends that the Government should establish an independent institution to address the grievances of all citizens, in particular the minorities, arising from the abuse of power of public officials and other individuals involved in the governance of the country. This mechanism should be invested with a strong investigative arm in order to enable it to effectively discharge its functions.

8.202 Any citizen of this country who has a grievance arising out of any executive or administrative act, particularly those based on ethnicity or religion, should have the right to seek redress before the independent institution.

8.203 There should also be provision to give effect to the decisions of this institution. Further in order to make the proposed institution effective, the law should provide for the imposition of sanctions in respect of persons who have abused power.

8.204 Interfaith Reconciliation and Peace Committees that may be established at District and Provincial levels could function as a feeder mechanism to support the functions of the Special Institution**,** in particular, by providing grass root level inputs in the implementation of measures aimed at inter - ethnic and inter - religious harmony.

8.205 The Commission notes the representations made regarding the absence of constitutional provisions for judicial review of legislation. There should be adequate legal provisions for the members of public and other organizations to effectively canvass before the Supreme Court the constitutionality of any proposed legislation. The time frame provided in the Constitution for canvassing constitutionality of proposed legislation before the Supreme Court, in particular of urgent bills, is grossly inadequate. The Supreme Court is called upon to make a determination in respect of urgent bills within a period of 24 hours or on a date not later than three days as specified by His Excellency the President (Article 122(1) of the Constitution). Public intervention regarding proposed legislation is an integral part of a vibrant democracy. Therefore, the Commission recommends, that the Government and the Opposition make all endeavours to reach a consensus on an appropriate constitutional amendment, to provide for an adequate timeframe to challenge proposed legislation.

Other Measures

8.206 Systems and procedures in the public service need to be guided by criteria, norms and codes of conduct that are sensitive to the concerns and apprehensions of all citizens in particular, the minorities. Full transparency and information regarding the rationale of Government decisions should be available to the people to prevent misperceptions that could give rise to a sense of grievance. Towards this end existing procedures and practices should be reviewed. This also requires training that promotes not only the professional skills but also the essential attitudinal changes in the public service.

8.207 The Government should ensure that development activities should be carried out in consultation and with the participation of the local people. Such a transparent approach in administration would make the people feel an ownership to the development activities**,** as well as give them a sense of participation in nation building.

8.208 The Commission recommends that a specific programme be conceived and implemented to bring about attitudinal changes including, through training programmes to enhance the work ethic of the Public Service.

8.209 An alarming phenomenon that was brought to the notice of the Commission was the high level of interference by politicians of the ruling party with regard to appointments, transfers etc of public officials. This is the very antithesis of good governance.

8.210 The Commission strongly recommends the establishment of an Independent Public Service Commission without delay to ensure that there is no political interference in the public service and that recruitment and promotions in the public service are in conformity with the equality provisions in the Constitution.

8.211 It is important that the Northern Province reverts to civilian administration in matters relating to the day-to-day life of the people**,** and in particular with regard to matters pertaining to economic activities such as agriculture, fisheries land etc. The military presence must progressively recede to the background to enable the people to return to normal civilian life and enjoy the benefits of peace.

THE NEED FOR DEVOLUTION OF POWER

8.212 Many persons who appeared before the Commission stated in clear terms that reaching a political consensus that will facilitate devolution of power to be of critical importance, to further the process of reconciliation after the ending of LTTE terrorism, which was the main obstacle against achieving such a consensus for a long time.

8.213 The issue of 'devolution' then is of national importance, affecting the people of the entire country. It is a matter on which the widest possible political consensus is required. It is the primary responsibility of the Government, in consultation with the public and the cooperation of all political parties to reach such a consensus through negotiations undertaken in good faith, without undue delay, bearing in mind the need to ensure and promote greater harmony and reconciliation within Sri Lanka, at this critical juncture of the country's history[155].

8.214 Historically, there has been a strong tradition of devolutionary and de-centralized governance, not necessarily based on ethnicity as such, but conceived and practiced in a manner that ensured both efficiency and broad basing of governance as well as national security. The principal constitutional framework within which devolution of powers is

[155] Rt. Revd. Dr. Dulip Chickera before the LLRC at Colombo on 29th October 1020.

presently facilitated is the 13th Amendment to the Constitution. Numerous attempts have been made in the past to reach a wider political consensus on the issue of more devolution but that consensus has remained elusive.

8.215 It is vital that the Government should provide leadership to a political process which must be pursued for the purpose of establishing a framework for ensuring sustainable peace and security in the post conflict environment. In this endeavour the rights of all communities**,** including those who have been members of the LTTE**,** must be ensured. To this end a political settlement based on devolution must address the ethnic problem as well as other serious problems that threaten the democratic institutions. This political process should culminate in a constitutional foundation and mechanisms that provide opportunities for development and implementation of necessary socio-economic policies.

8.216 Devolution should necessarily be people-centric in nature and the following considerations should be borne in mind –

8.217 Devolution should essentially promote greater harmony and unity and not disharmony and disunity among the people of the country. The promotion of this 'oneness' and a common identity should be the principal aim of any form of devolution while protecting and appreciating the rich diversity.

8.218 The focus should be to ensure that the people belonging to all communities are empowered at every level especially in all tiers of Government. Devolution of power should not privilege or disadvantage any ethnic community, and in this sense, should not be discriminatory or seen to be discriminatory by the people belonging to any ethnic community within the country.

8.219 The democratic empowerment of the people should take place within the broader framework of the promotion and protection of human rights, which is a fundamental obligation of the elected Government deriving from specific provisions of the Constitution and the Treaty obligations the country has voluntarily undertaken.

8.220 In addressing the question of devolution two matters require the attention of the government. Firstly, empowering the Local Government institutions to ensure greater peoples' participation at the grass roots level. Secondly, it is also imperative that the lessons learnt from the shortcomings in the functioning of the Provincial Councils system be taken into account, in devising an appropriate system of devolution that

addresses the needs of the people. It should at the same time provide for safeguarding the territorial integrity and unity of Sri Lanka whilst fostering its rich diversity.

8.221 An additional mechanism that may be considered is the possibility of establishing a Second Chamber comprising Representatives from the Provinces. Such a mechanism is likely to generate a sense of confidence among the political leadership and among the people in the Provinces, that they too have a vital role to play in the legislative decision making process, *inter alia*, by examining legislative measures that may have a bearing on issues of particular relevance to the Provinces.

Recommendations

8.222 All parties should recognize that the real issue of sharing power and participating in Government is the empowerment of the people and making the political leaders accountable to the people. This applies to Sri Lanka as a whole and includes the needs of citizens of all communities**,** Sinhala, Tamil, Muslim and others. The effective functioning of the democratic system which fulfils these needs, together with a consensual framework of devolution will, by virtue of attributes and institutions intrinsic to it, also provide the answer to the grievances of minorities.

8.223 All parties must commit themselves to finding solutions internally through negotiation with each other. The Tamil leaders should take account of the unnecessary internationalization of the ethnic issue and the external pressures exercised by the diaspora and its impact on the negotiations for a political settlement. The perceptions of external threat and intervention can create a sense of insecurity that can seriously impede the progress towards an acceptable solution.

8.224 The Commission is of the view that it is an imperative that any devolutionary or power sharing mechanism should be realized within the broad framework of a sovereign, politically independent and multi-ethnic Sri Lankan State. While the distribution of meaningful powers to the periphery is essential, there are powers which form the core responsibilities of the State and which cannot be so devolved, and need to be retained and exercised by the Government at the centre. It is also important to ensure that any power sharing arrangement has inbuilt mechanisms that would effectively address and discourage secessionist tendencies and safeguard the sovereignty and integrity of the State.

8.225 The Commission wishes to underline the critical importance of making visible progress on the devolution issue, in order to ensure the success of any process of lasting and

sustainable reconciliation. The Commission therefore recommends that the present opportunity be utilized to launch a good faith effort to develop a consensus on devolution, building on what exists – both, for maximum possible devolution to the periphery especially at the grass roots level, as well as power sharing at the centre. This consensus should be one that will enable peoples' participation in governance decisions affecting them and avoid costly and unnecessary duplication of political, bureaucratic and other institutional structures that hamper efficient, cost effective and transparent governance.

8.226 To this end, the Government must take the initiative to have a serious and structured dialogue with all political parties, and those representing the minorities in particular, based on a proposal containing the Government's own thinking on the form and content of the dialogue process envisaged. That dialogue must take place at a high political level and with adequate technical back-stopping.

THE LANGUAGE POLICY

8.227 The Commission heard from many Tamil persons and noted the sense of marginalization expressed by them due to the language policy and the deficiencies in its implementation followed by successive Governments.

8.228 Even though the Act making Sinhala the only official language of Sri Lanka was subsequently amended, first in 1958 to permit the use of Tamil in the North and East in administration, and then again, by the 13th Amendment to the Constitution in 1987 that made both Sinhala and Tamil official languages, the tardiness of Governments in giving effect to its implementation has further alienated the Tamil people, exacerbating their feelings of marginalization. This has resulted in a perception prevailing among the Tamil people of being second class citizens in their own country. The Commission during its visits to the affected areas witnessed firsthand, that even today many persons of the minority communities are made to transact business not in the language of their choice.

8.229 Whilst acknowledging the work in progress for recruiting Tamil speaking police officers, the Commission notes with regret that recommendations on urgent measures made by the Commission in its interim communication to the President on these matters have yet to be implemented.

8.230 A member of the Buddhist clergy[156] making representations before the Commission stated that in his view making Sinhala the official language was necessary. However that proper provision should have been made to use Tamil language in official work and it has to be accepted that the Tamil people were subjected to much injustice due to this factor. Today Tamil is also an official language but implementation is not properly done. In certain areas even at present there is no provision for Tamil people to transact with the Government in the Tamil language. This is an impediment to reconciliation.

8.231 Another representer[157] from the Buddhist clergy was of the view that Tamil teachers should be seconded to Pirivenas to teach young bhikkus the Tamil language. He further stated that if Tamil teachers taught at Pirivenas the interaction would bring about attitudinal change. He also observed that Sinhalese and Tamils were not aware of each other's literature. Therefore, there should be a program where Tamil literature is translated into Sinhala and Sinhala literature to Tamil.

8.232 An eminent representative from the Catholic Church[158] expressed the view that the 'Sinhala Only policy' of 1956 had disregarded the multicultural and pluralistic nature of Sri Lankan society and had paved the way for Sinhala dominance and the trend towards mono-culturalism. Since independence the gradual entrenchment of majoritarian democracy, where the language and religion of the majority community have been given priority has increased ethnic tension and undermined the concept of a multi-ethnic, multi-religious, and plural society.

8.233 He further stated that every attempt must be made to create a sense of belonging to this country among all the citizens irrespective of race, religion or social status. For this purpose it is necessary to promote trilingual education in this country. A trilingual education will allow children from very young days to get to know and understand each other to achieve reconciliation, peace and harmony among themselves. Any attempt to dominate through just one language will not heal this nation.

8.234 Another eminent member of the Christian Church[159] expressed the view that State sponsored integrated education was an urgent need, and that policy should be implemented to enable schools to work in Sinhala and Tamil under one roof. He stated that this privilege should be given to all the children and that for too long communities

[156] Most Ven. Prof. Bellanvila Wimalaratne Nayake Thero on behalf of the North-East Inter-faith Forum before the LLRC at Colombo on 24th September 2010.
[157] Most Ven. Dr Walpola Piyananda Thero before the LLRC at Colombo on 22nd November 2010.
[158] His Eminence Cardinal Malcolm Ranjith before the LLRC at Colombo on 3rd November 2010.
[159] Rt. Revd. Dr. Dulip Chickera before the LLRC at Colombo on 29th October 2010.

have been polarized, as Sinhala and Tamil speaking children grow up without encountering the presence of the other community and without hearing the other language.

Recommendations

8.235 The official bodies for executing the language policies and monitoring performance should have adequate representation of the Tamil speaking people and Tamil speaking regions. The full implementation of the language policy should include action plans broken down to the community level, and appropriately covering the Divisions and Local Bodies with targets that can be monitored with citizen participation.

8.236 The people of the North and East are separated from the people of the South due to communication barriers. Every attempt must be made to create a sense of belonging among all the citizens irrespective of race, religion or social status. It is language that unifies and binds a nation**.** Therefore, it is essential that policies relating to language are formulated towards this end. It is imperative that the official languages policy is implemented in an effective manner to promote understanding, diversity and national integration.

8.237 The learning of each others' languages should be made a compulsory part of the school curriculum. This would be a primary tool to ensure attitudinal changes amongst the two communities. Teaching Tamil to Sinhala children and Sinhala to Tamil children will result in greater understanding of each other's cultures.

8.238 The proper implementation of the language policy and ensuring trilingual (Sinhala, Tamil and English) fluency of future generations becomes vitally important. A tri-lingual education will allow children from very young days to get to understand each other.

8.239 The Commission therefore welcomes the Government initiative for a trilingual nation by the year 2020. To this end the necessary budgetary provisions must be made available on a priority basis for teacher training and staffing.

8.240 No district or province should be categorized in terms of language. Officers in Government service should possess language skills to serve in any part of the country.

8.241 It should be made compulsory that all Government offices have Tamil speaking officers at all times. In the case of Police Stations they should have bilingual officers on a 24 hour basis. A complainant should have the right to have his/her statement taken down in the language of their choice.

8.242 The Official Languages Commission is centralized and based in Colombo and not easily accessible to rural citizenry. The Official Languages Commission should be an authority with effective powers of implementation, and also with branches in every province.

8.243 Greater attention should be given to information technology which can be utilized as an instrument to overcome the language barrier. For this purpose, as a temporary measure, software programs can be used for translation from one language to another until long term policies and measures take effect. In this regard, the Commission also wishes to invite attention to its Interim Recommendation to station interpreters at Police Stations using retired police officers with bilingual fluency.

EDUCATION

Equal Opportunities

8.244 The policy of standardization in essence was an affirmative action scheme to assist students in disadvantaged areas to gain access to tertiary education. However, the combination of media wise standardization and district quotas according to population had a strong adverse impact on sections of the population, contributing to polarization between the communities.

8.245 Standardization was introduced to offset an imbalance of the resources in certain areas of the country. The Commission notes that the imbalance that was prevalent at the time of introduction has since been minimized to some extent.

8.246 In respect of admissions to schools, disqualifying students on ethnic or religious grounds does not augur well towards reconciliation. Any such practice should be discouraged.

8.247 Perceptions about access to educational opportunity only aggravated the conflicts that had arisen owing to questions of language and employment. Access to university education was clearly a major factor contributing to a sense of discrimination amongst Tamil youth.

Recommendations

8.248 The removal of this feeling of discrimination is a prerequisite for reconciliation between the Sinhalese and Tamils in a united Sri Lanka. Much water has flowed since the introduction of standardization as a means of affirmative action by the State to mitigate the imbalance in educational opportunities afforded to different communities. Therefore, in the best interest of future generations a careful review of this quota system would be timely, with a view to introducing a merit based admission system.

The Commission recommends that such a review should be undertaken by a committee of experts in education.

8.249 The Government must pursue with renewed vigour a programme of equitable distribution of educational facilities so that it will contribute towards a concerted effort to minimize any feeling of discrimination felt by the minorities**.** At present the proposed plan to upgrade one thousand secondary schools island wide from 2011, will provide another opportunity to minimize and eventually eliminate imbalances. This policy should be implemented without creating tensions and fissures in society. It is only if these schools are identified on the basis of objective criteria and on an apolitical selection process that this endeavour will prove to be a success. The Commission recommends that the inequality in the availability of educational facilities in different areas of the country should be reduced and eventually eliminated.

8.250 The Commission also recommends that the Government should have a pro-active policy to encourage mixed schools serving children from different ethnic and religious backgrounds. In this regard the Government should develop a carefully conceived policy facilitating the admission of children from different ethnic and religious groups to these schools.

8.251 In respect of admissions to schools, disqualifying students on ethnic or religious grounds does not augur well for reconciliation. Any such practice should be discouraged.

8.252 Mutual understanding and appreciation of the rich cultural diversity of different communities should be inculcated in the minds of school children and youth so that the process of reconciliation takes firm root in the social fabric of the country. The Commission therefore recommends that every encouragement be given to create greater interaction among students, through mechanisms such as twinning of schools from the different provinces, student exchange programmes and formation of Reconciliation Clubs in schools. In addition the National Youth Council should adopt more intensive exchange programmes at the youth level.

Peace Education

8.253 An eminent international jurist,[160] making representations before the Commission underlined the vital importance of peace education in promoting unity and reconciliation. It was stressed that peace education is most urgent for restoring goodwill

[160] Prof. C.G. Weeramantry before the LLRC at Colombo on 29th November 2010

and harmony among the communities. Towards this end peace education should be introduced into the school curriculum with active participation of the State.

8.254 He also maintained that school curricula should be reviewed in order to revise texts and lessons that perpetuate ethnic divisions through for instance, portrayal of certain ethnic communities as "invaders", "outsiders", "enemies", "subordinate" and the "other". All relevant curricula should infuse a strong sense of equal national entitlement and belonging to the various communities of Sri Lanka. "Celebrating the beauty of our diversity" should be the unifying theme that runs through the country's education system.

8.255 Similar ideas were expressed by a civil society group,[161] who stated that if Sri Lanka were to make a lasting attempt towards reconciliation, the concepts and philosophy of reconciliation need to find their place in the country's education system.

8.256 The following were highlighted in the course of these representations –

- Inclusion of lessons on the richness of Sri Lankan diversity and how it refines a nation is a very strong approach. This will create a stronger deterrent against prejudices and attempts to instill animosity in the minds of students. In the absence of resistance to the prevalent prejudices these students are bound to succumb to the hatred and perhaps repeat the cycle of distrust and division.

- The teaching of comparative religion and ethics in schools is advocated over teaching of one's own religion alone. Education must focus on values that are common to all faiths and the potential of those values to enrich life in a diverse society.

- Students of different ethnic and religious backgrounds should be encouraged to interact with each other and create networks in order to develop leadership qualities. Thousands of Sri Lankans born to the so called 'war generation' may have not met a person of a different ethnicity. Encouragement of sports, aesthetic and other extracurricular activities are means of bringing students of different ethnic backgrounds together.

Recommendations

8.257 In giving effect to a trilingual policy, measures should be taken to ensure, as far as possible, that students of different communities should have every opportunity to interact. Interaction in the same class room should be encouraged, as far as practicable.

[161] Mr. Mahen Dayananda on behalf of The Friday Forum before the LLRC at Colombo on 1st December 2010

However, for subjects taught in different languages they could be streamed into different class rooms.

8.258 Steps must be taken to ensure public universities have ethnically mixed student populations with a choice of courses offered in all three languages. Until recently, it appears that most Tamil speaking undergraduates were confined to the North and the East, and the Sinhala speaking undergraduates to the South.

8.259 The Commission is of the view that sports, builds up inter-personal contacts amongst people of different communities which is essential in the process of reconciliation. With this in view, the Commission recommends that sports tournaments should be conducted at inter-provincial levels and important national sports competitions should be conducted throughout the island, especially, in the North and East.

DIASPORA

8.260 The Commission heard a range of views concerning the Sri Lankan expatriate community's role in the post-conflict processes in Sri Lanka, especially in reconciliation and socio-economic development. Different views were expressed regarding the various 'diaspora groups', the roles they play and the impact they can have, particularly on the reconciliation effort. The Commission noted that while some 'Tamil diaspora groups' seek to contribute constructively to broad-based reconciliation efforts, other diaspora groups, especially, those described by some as supporting the LTTE, seem to adopt an adversarial approach. Some cite an alleged lack of meaningful dialogue with the Tamil political parties to find political solutions to post conflict issues such as devolution and other unmet minority grievances pertaining to equality and justice, as justification for their actions.

8.261 It is clear to the Commission that these 'hostile diaspora groups' can potentially undermine the genuine efforts in Sri Lanka towards reconciliation. The Commission therefore feels that the Government together with the relevant stakeholders, especially civil society, should develop a comprehensive approach to harness the potential of the expatriate community.

8.262 The main elements of such an approach should be to:

- engage the elected representatives of the minority parties in a meaningful dialogue on devolution and other grievances. The most efficacious way to make the 'hostile diaspora groups' irrelevant will be to make the local minority parties relevant through a structured dialogue that has visibility and recognition at a high political level;

- take action to constructively engage those groups that still harbour adversarial attitudes and the LTTE approach of separation, and find space for those groups to contribute to the local reconciliation and development efforts.

- engage in a proactive diplomatic initiative with the international community, especially those countries that host these diaspora groups. The purpose of this initiative should be to brief those countries on the meaningful dialogue referred to above and the effective and visible action being taken to address the post conflict issues, including the implementation of recommendations of the present Commission. It is by doing so that the Government can persuade the host countries to listen less to these hostile diaspora groups**,** while being more receptive to the information provided by the Government. In addition, the Government must also be proactive in encouraging and supporting the work of the expatriates who do not advocate the discarded LTTE ideology of violence and separation and who espouse the democratic principles of ethnic harmony and consensual politics.

- the Government must also have more liberal policies and attitudes towards those expatriates who wish to invest and work in Sri Lanka, for instance by making it easier to obtain dual nationality status, effect remittances and be able to travel throughout the country without undue restrictions.

8.263 These elements require a carefully worked out programme of action on a broad front here in Sri Lanka and through the Sri Lanka diplomatic missions and with civil society groups here and abroad.

8.264 It is imperative that the Government take the initiative to constructively engage its development partners in Sri Lanka and abroad in order to develop a self-reliant, future oriented community in the Wanni, with open minds to build on and sustain reconciliatory community relationships. This is an area where the Sri Lankan 'diaspora' can support the Government of Sri Lanka, working in cooperation with the development partners, in areas such as housing, schooling, healthcare and livelihood activities.

Recommendations

8.265 The Commission, recommends that the Government constitute a Multi - Disciplinary Task Force that will include representatives from the Presidential Secretariat, External Affairs, Defense, Foreign Employment, the Private Sector, and Academia, to propose a programme of action to harness the untapped potential of the expatriate community**,** and to respond to the concerns of the so-called 'hostile diaspora groups**,**' and to engage them constructively with the Government and other stakeholders involved in the

reconciliation process. If such a comprehensive approach is not adopted urgently, the Commission feels that the current momentum towards creating a hostile external atmosphere could grow, and those groups that advocate such a process would continue to promote polarization that will significantly impair the genuine efforts of others who espouse reconciliation back home in Sri Lanka.

INTERFAITH ACTIVITIES – ROLE OF RELIGION IN RECONCILIATION

8.266 Several religious delegations making representations before the Commission emphasized that Sri Lanka is enriched by the traditions of four world religions, Buddhism, Hinduism, Islam and Christianity.

8.267 It was stated that reconciliation following a prolonged conflict is difficult to achieve in the short term. It should, therefore, become part of a long term rebuilding exercise. Institutional arrangements will be required in order to keep reconciliation in focus, anticipate potential breaches of social harmony, and diffuse them before they reach dangerous proportions.

8.268 The Commission was deeply concerned to hear of several recent incidents where places of worship have been vandalized by unknown mobs.

8.269 The continuation of these incidents would certainly be inimical to the reconciliation process. Strong deterrent action should be taken to prevent such incidents. The Commission notes with regret that law enforcement agencies have hitherto failed to investigate and prosecute persons responsible for such unlawful action. The Government should make every endeavour to arrest the occurrence of such incidents. Such action would instill a sense of security and confidence among the affected groups.

8.270 All religious leaders must unitedly provide leadership, encouraging people of all faiths to act with wisdom and understanding, and to view the conflict and its aftermath from a perspective of tolerance and mutual accommodation. This should be achieved by emphasizing religious commonalities, and focusing on factors that contribute to a shared vision and unity of action.

8.271 In this context the Commission wishes to emphasize the constructive role that inter-faith religious groups could play in promoting ethnic and religious harmony, by planning and executing such united and collective action.

8.272 Religious dignitaries representing different faiths who appeared before the Commission stressed the value of religion and faith in healing the wounds of conflict and fostering

reconciliation. They pointed out that religious leaders and institutions could play a lead role in the process of reconciliation. It was stated that the spirituality and common human values founded and strengthened by the different religious teachings should be used as a force to promote inter-ethnic understanding and social cohesion. In this context spirituality was accepted as the ability to recognize among the diverse doctrines a common space and substance from which can emerge a shared vision to promote action for unity in humanity[162]. They expressed the view that compassion and pardon are valued principles in every faith and that true compassion always ends in pardon. In order to prevent the emergence of future conflicts, forgiveness and tolerance should be the common language of spirituality. They stressed that there is a need to have some mechanism of accountability if serious violations of human rights have taken place, though not in terms of punishment. It was stated that merely punishing another person alone does not bring about reconciliation, but there must be a mechanism to work out how each one is accountable to each other, especially for what occurred during the time of the conflict. This will enable the people to understand their moral obligation, and responsibility towards the future. It is necessary to promote a spiritual form of accountability that will strengthen or build trust in the people, to this end, they expressed their willingness to work together to contribute towards people to people reconciliation[163].

8.273 A member of the Mahatma Gandhi Centre[164] making representations before the Commission emphasized on the need for development activities to be guided by ethical precepts. The Centre stressed that if people at the grassroots level had the authority to make and implement decisions on matters affecting their lives, it would contribute to diffusing tensions and frustrations. They advocated a system of Peoples' Councils at village level where the villagers elected their representatives to administer their day-to-day affairs. They also reiterated the need for every village to cooperate with the neighbouring villages to solve common problems for mutual benefit. This would enable communities to interact with each other and regain trust among themselves to co-exist in peace.

Recommendations

8.274 There was general acceptance by different inter-faith and religious groups who appeared before the Commission that a mechanism to serve as an early warning system

[162] Moulavi Ayub Azmin, on behalf of the North-East Inter-Faith Forum before the LLRC at Colombo on 1st December 2010.
[163] Bishop Ebenezer Joseph of the Methodist Church on behalf of the Congress of Religions before the LLRC at Colombo on 24th September 2010.
[164] Dr Manohara Kurukkal on behalf of the Mahathma Gandhi Centre before the LLRC at **C**olombo on 24th September 2010.

could be a useful preventive measure to ensure that communal or religious tension or friction does not lead to conflict**,** undermining law and order and efforts towards reconciliation and peace building. The Commission recommends that the Government should facilitate the establishment of such a mechanism in consultation with inter-faith groups, with a mandate to serve as an early warning and early diffusing procedure.

ART AND CULTURE

8.275 A number of persons who made representations before the Commission, coming from wide and varied backgrounds and disciplines, expressed a range of views on the role of art and culture in promoting national reconciliation.

Linguistic and Cultural Affinities as Instruments for Promoting Reconciliation

8.276 In the course of these representations, the need to identify the linguistic and cultural commonalities and affinities in establishing a Sri Lankan identity was particularly emphasized. It was also pointed out that both the Government and the public had failed to utilize the potential of the promotion of the creativity of arts, for the betterment of society**,** and that there was also a failure to realize that arts could contribute substantially to bring about understanding among the communities.

8.277 The need for a revival of the trend which was there in the early 1960s where dramatic productions had taken cognizance of the need to bring about a greater understanding among the communities in Sri Lanka was also emphasized.[165]

8.278 Another representation made before the Commission underlined the importance of cultural affiliations in the process of national reconciliation**,** and emphasized the fact that Sinhalese and Tamil cultures had very rich roots**,** and that there must be a cultural renaissance through art, drama, and music "like what happened in 1956."

8.279 Referring to the cultural affinities among the communities that existed it was stated: "we don't play on the pluses; we are looking for minuses. So I think those are the bonds that you must have, a society where you give importance and develop the cultures in parallel, but each culture must be developed."[166]

8.280 On the commonalities that existed in the Sinhala and Tamil scripts, a view was expressed that they had evolved at different times in history from the same Brahmi script. It was further stated that there appears to be ignorance among the people and the leaders

[165] Mr Namel Weeramuni before the LLRC at Colombo on 3rd of January 2011
[166] Mr Gomin Dayasiri before the LLRC at Colombo on 28th October, 2010

about these common origins**,** which in turn had contributed to the growing sense of disharmony among the ethnic communities.[167]

8.281 An eminent member of the Buddhist clergy[168] pointed out that in understanding the Sinhala - Tamil conflict**,** as well as promoting unity and reconciliation among different communities in Sri Lanka, the mode of governance of the Kandyan Kingdom, in the latter part of the Kandyan era could be taken as a positive example. The Tamil princes of South India who were enthroned as kings of the Sri Lankan Kandyan Kingdom clearly contributed substantially to promote unity and cooperation between communities, and did not undermine the rights of the Sinhala people and the customs and traditions related to Sinhala Buddhist culture. The Kandyan (Tamil) kings who governed as Buddhist kings also introduced Hindu religious rituals into Buddhist worship. This approach of giving a due place to Buddhist customs, traditions and governance aspects, whilst respecting and accepting Hindu religious customs and traditions**,** clearly promoted friendship and collaboration between Tamil and Sinhala communities. He further stated that even in the Gampola and Dambadeniya periods, Tamil language was used substantially**,** and in fact going back further in history one of the respected and erudite commentators of the Tripitaka, Ven. Buddhagosha Thero was said to be an ethnic Tamil.

8.282 Another eminent member[169] of the Buddhist clergy stated that it should be understood and accepted that the Sinhala Buddhist culture is an important aspect of the country's heritage. However, he further stated that it should also be understood that it is not the only culture and that the other cultures have a right to co-exist with the Sinhala Buddhist culture.

8.283 He expressed the view that it is appropriate for Sinhala children to learn the Tamil language and Tamil children to learn the Sinhala language. He strongly recommended that Buddhist priests should learn the Tamil language. He pointed out that at present in some Pirivenas Tamil language is taught as an optional subject. He further stated that the learning of Tamil language by Buddhist priests is desirable. He also proposed that there should be 'exchange tours' between children in the North and East and the South of the country to nurture greater understanding between the two communities.

[167] Mr Srilal Perera before the LLRC at Colombo on 25th November 2010

[168] Ven Niyangoda Dharmakirthi Sri Sangarakkitha Vijithasiri, Anuanayake Thero of the Malwatte Chapter at Kandy on 20th March 2011.

[169] Most Ven. Galagama Aththadassi, Anunayake Thero of the Asgiriya Chapter of the Siam Nikaya, at Kandy on 20th March 2011.

8.284 He acknowledged that some degree of devolution of power should be given to the Northern and Eastern Provinces, to enable the people living in these areas to manage their own affairs, subject to the unitary nature of the State and the territorial integrity of the country.

8.285 Elaborating on the aspect of cultural affinities**,** and in particular**,** the alternate use of Tamil and Sinhala language in ancient religious traditions and practices relating to Pattini worship, a Basnayake Nilame of a Pattini Devale in Kegalle district pointed out that verses in ancient texts had been chanted alternatively in Sinhala and Tamil, and concluded that there was "a huge ancient religio-cultural precedent among the practice of the people" and that "in the contemporary religio-cultural area also, if such practice is adhered to, certainly both Sinhala and Tamil people will be able to relate to it."

8.286 He further related an episode which underscored the importance of religious commonalities. When a message of peace had been taken from Kataragama to Sri Naga Vihara in Jaffna in 2002 by "Ruwan Raja"**,** a tusker that had (later) carried the sacred relics of the Dalada Maligawa at the Kandy Perahera, despite certain apprehensions, the elephant had continued its journey beyond Omanthai and had received veneration from the people in these areas, including the LTTE cadres, as symbolizing Lord Ganesh.

8.287 He concluded:" From this I gathered that Hindu belief of the Tamils, irrespective of whether they were terrorists or innocent civilians, had a great influence on them, than the brain washing attempts of the LTTE organization. They could relate to the tusker through the deeply embedded belief of "Pulleyar", the predominant god of the people of the Wanni."

8.288 Further elaborating on linguistic and cultural affinities, another representer who came before the Commission pointed out that there are five Tamil epics, three out of which are based on Buddhist topics namely, "Kundalakesi", "Manimekalai" and "Seelapadhikaram".[170] It was further stated that these three epics had been translated and printed sometime back by the Ministry of Cultural Affairs, and that there was a need to continue with such translations and publications in the current reconciliation context.

8.289 A representer from the Buddhist clergy[171] stated that Buddhist Shrines, Hindu Kovils, Muslim Mosques and Christian Churches that were destroyed during the years of conflict should be renovated and reconstructed and brought back to their pristine glory.

[170] Mr Amara Hewa Madduma before the LLRC at Colombo on 20th January 2011
[171] Most Ven. Dr Walpola Piyananda Thero before the LLRC at Colombo on 22nd November, 2010.

8.290 The Commission was gratified to note the emergence of such common ground among the most venerable religious leaders, artists and many other right thinking citizens of the country as these profound commonalities will certainly provide good augury for a viable process of reconciliation and peace building, if only the politicians on all sides shed parochial interests and provide consensual leadership to bring that process to fruition.

National Anthem

8.291 Several views were expressed concerning the use of the National Anthem as a unifying factor**,** and in bringing about greater understanding among the communities. One view was that it would be advisable to reflect the two national languages policy by symbolically introducing at least two lines in Tamil to the National Anthem.[172] It was pointed out that this would be a major step towards healing the wounds of the past.

8.292 According to another view the National Anthem should be sung in both languages. It was stated in this connection that in 1951 the National Anthem was officially accepted and from that day the National Anthem was also sung in Tamil and there was no necessity for change at this stage.[173]

Recommendations

8.293 The Commission is of the view that creating greater awareness of linguistic and cultural affinities among the different communities would be an effective instrument for promoting greater reconciliation. This must be given the highest priority by the State and made part and parcel of a proactive State policy and program**.**

8.294 In this regard special attention must be given to translation and publication of major literary works in Tamil into Sinhala, and similarly Sinhala literary works into Tamil. Dissemination of such publications particularly among school children and youth would be of critical importance to foster a greater sense of understanding of and sensitivity to each other's cultures.

8.295 Cinema, TV and stage drama, productions that highlight commonalities and mutual understanding between communities should be encouraged and disseminated specially for the benefit of the younger generation.

8.296 On the question of the National Anthem, the practice of the National Anthem being sung simultaneously in two languages to the same tune must be maintained and

[172] Mr Srilal Perera before the LLRC at Colombo on 25th November 2010
[173] Mr Amara Hewa Madduma before the LLRC at Colombo on 20th January 2011

supported. Any change in this practice at the present time would only create a major irritant which would not be conducive to fostering post conflict reconciliation.

People to People Contact

8.297 During its sittings, especially during the field visits, the Commission heard a clear call from the people of all communities regarding the importance of people-to-people contact in promoting understanding, amity and reconciliation. The Commission strongly endorses this view, not least because face-to-face interaction is a proven instrument for building consensus and promoting harmony.

8.298 In this regard the youth can play a special role, particularly since they have been the worst affected by the conflict. The youth from all communities had to bear the brunt of the conflict and its consequences. Throughout the conflict, they did not have the time and space to meet each other and understand each other, except in situations of blood-letting.

8.299 In this context, the Commission is pleased to note certain initiatives taken by the Government and civil society groups, particularly the Ministry of Youth Affairs, which has an ongoing programme to have a "Youth Parliament" and an exchange programme called "From Palmyrah Grove to Coconut Grove."

Recommendations

8.300 The Commission encourages such initiatives and strongly recommends that all the Government Ministries and other agencies in the relevant fields initiate such creative programmes falling within the purview of their responsibilities. This must be done in cooperation with civil society groups, so that such exchange programmes can be supported, expanded and broad based. Care must be taken, however, that such programmes are carried out with due respect to the cultural and language sensitivities of the visiting community as well as the host community.

NEED FOR POLITICAL CONSENSUS

Observations/Recommendations

8.301 One of the dominant factors obstructing reconciliation in Sri Lanka is the lack of political consensus and a multi-party approach on critical national issues, such as the issue of devolution. This is an observation that many people shared, and one which was referred to in the submissions made before the Commission. It is an unfortunate aspect in the political life of the country, since independence**,** that political considerations and narrow

political gain is uppermost in the minds of politicians, and not necessarily the rights and interests of the people. It is of the utmost importance that political parties eschew adversarial politics which has torn asunder the body politic of this country. Ethno-centric politics practiced by politicians of all communities for the purpose of electoral gain divide communities and create disharmony. Politicians must provide the necessary leadership and a sense of direction in building reconciliation among the diverse communities by practicing consensual politics on vital national issues.

8.302 The Commission observes that during the last four to five decades there have been instances where 'hate speech' had contributed to major communal disharmony. Since 'hate speech' relating to ethnicity, religion and literature exacerbate ethnic and religious tension**,** creating disunity and conflict, deterrent laws must be enacted to deal with such practices**,** and these laws should be strictly enforced.

8.303 The process of reconciliation requires a full acknowledgement of the tragedy of the conflict and a collective act of contrition by the political leaders and civil society**,** of both Sinhala and Tamil communities. The conflict could have been avoided had the southern political leaders of the two main political parties acted in the national interest and forged a consensus between them to offer an acceptable solution to the Tamil people. The Tamil political leaders were equally responsible for this conflict which could have been avoided had the Tamil leaders refrained from promoting an armed campaign towards secession, acquiescing in the violence and terrorist methods used by the LTTE against both the Sinhala and Tamil people**,** and failing to come out strongly and fearlessly against the LTTE, and their atrocious practices. A collective act of contrition for what happened would not come easily to either party. It would come only if they are ready to make a profound moral self appraisal in the light of the human tragedy that has occurred. Seeds of reconciliation can take root only if there is forgiveness and compassion. Leaders on all sides should reach out to each other in humility and make a joint declaration, extending an apology to innocent citizens who fell victims to this conflict, as a result of the collective failure of the political leadership on all sides to prevent such a conflict from emerging. Religious leaders and civil society should work towards it and emphasize the healing impact it would have on the entire process of reconciliation.

8.304 Given the traumatic nature of the long drawn out conflict and the massive toll in human life and property that it brought about, almost all the people who appeared before the Commission articulated a clear need for the nation to collectively empathize with all those victims of the conflict whether they are civilians or soldiers, or whether they

belong to Sinhala, Tamil, Muslim or other communities. The Commission, therefore, strongly recommends that a separate event be set apart on the National Day to express solidarity and empathy with all victims of the tragic conflict and pledge our collective commitment to ensure that there should never be such blood-letting in the country again. Based on testimonies it received the Commission feels that this commemorative gesture, on such a solemn occasion, and at a high political level**,** will provide the necessary impetus to the reconciliation process the nation as a whole is now poised to undertake.

Follow Up

8.305 A number of persons making representations before the Commission stated that the recommendations made by past Commissions of Inquiry have not been implemented and they expressed concern whether the recommendations of this Commission would also suffer the same fate. The Commission shares these concerns and is of the considered view that these recommendations should be implemented expeditiously. In view of the cross-cutting nature of the recommendations involving various sectors and different Government institutions, it is important that a high level monitoring mechanism is established to oversee the implementation of these recommendations.

8.306 The Commission strongly feels that if these recommendations are not expeditiously implemented the all-important efforts towards reconciliation and lasting peace may not be achieved and the country will continue to face an uncertain future.

Post Script

8.307 A few days before the Commission finalized its report, it became aware, through the media, of a document published and tabled in Parliament on behalf of a group of Members of Parliament, which contained a number of alleged concerns and issues affecting the North and East that are of significant interest to the Commission[174]. While noting that the Commission did not have the benefit of these submissions directly from the parties concerned, the Commission nevertheless felt that cognizance should be taken of these allegations in terms of their relevance to the Commission's Warrant. The document contains some serious allegations and assertions. A number of issues under reference i.e. law and order, human rights, land, livelihood, military presence, restoring civil administration, resettlement etc are commented upon in detail in the respective sections of the report based on firsthand accounts of witnesses who appeared before the Commission. However, the Commission notes that significantly new assertions are raised in the document. Given the time frame referred to above the Commission was not able to independently verify the same. The Commission recommends that the government carefully examine them and if proven true take immediate remedial measures. If such concerns remain unattended and assertions remain unverified they can constitute a major obstacle to winning hearts and minds of the people.

[174] Situation in North-Eastern Sri Lanka: A Series of Serious Concerns tabled in Parliament by Hon. M.A. Sumanthiran, MP appearing in Vol. 203, No 5, Column 727 of the Hansard dated 21st October 2011.

Chapter 9 - Principal Observations and Recommendations

Section	Paragraph Numbers
Chapter 2 – Ceasefire Agreement	**9.1 – 9.3**
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Issues Impacting on Post Conflict Reconciliation	**9.167 – 9.172**
Reconciliation	**9.173 – 9.285**

Chapter 9 – Summary of the Principal Observations and Recommendations

Set out below is a summary of the principal observations and recommendations contained in the Report

Chapter Two: Observations on the Ceasefire Agreement

9.1 The CFA brought about a short lived respite to a country and people who had suffered decades of terrorism and counter violence. However unstable and eventually unproductive, the CFA gave an opportunity, albeit without necessarily providing a sound political or security framework, for all parties concerned to make an effort to lay a foundation for a process leading to a negotiated solution. However, as the events unfolded it was clear that none of this materialized.

9.2 Conceptual flaws and implementational deficits of the CFA process including the untenable dual roles Norway took on as facilitator of the peace process on the one hand and the Head of the SLMM on the other, and the CFA's failure to provide locomotion to a sustainable peace process indicate that it was not proven to be a successful model for peace making between State and non-State actors. The clearly manifest LTTE disinterest in any negotiated solution other than its declared goal of Eelam and the absence of consensual approaches to vital national issues among different political parties including Tamil political parties within the 'mainstream' democratic system of the country, too contributed to this unhappy and damaging experience.

9.3 The LTTE clearly capitalized on the CFA deficiencies both conceptual and implementational, and consolidated the territorial rewards, and recognition accorded to them; benefited from the parity of status and the lack of reciprocity; exploited the absence of any provisions to start political negotiations, let alone decommissioning of weapons; abused the provisions of the CFA to exclude legitimate maritime activity by the Sri Lanka Navy thus facilitating illicit arms trafficking in contravention of national and international law, including UNSC *Res. 1373 of 2001*; benefited from the absence of any credible verification regime to deter violations; insidiously abused the total absence of any human rights obligations, let alone an effective regime against the abhorrent practice of employing child soldiers.

Chapter Three: Narration of Events only.

Chapter Four: Observations and Recommendations IHL Issues relevant to the final phase of the conflict

Measures to safeguard civilians and avoid civilian casualties

9.4 In evaluating the Sri Lanka experience in the context of allegations of violations of IHL, the Commission is satisfied that the military strategy that was adopted to secure the LTTE held areas was one that was carefully conceived, in which the protection of the civilian population was given the highest priority. The Commission also notes in this regard that the movement of the Security Forces in conducting their operations was deliberately slow during the final stages of the conflict, thereby evidencing a carefully worked out strategy of avoiding civilian casualties or minimizing them.

9.5 These factors are consistent with the position that protection of civilian life was a key factor in the formulation of a policy for carrying out military operations. They militate against any proposition that deliberate targeting of civilians was part and parcel of a policy, although specific episodes which warrant further investigation are referred to above in Chapter 4 Section II – vide paragraphs 4.106, 4.107, 4.109, 4.110 and 4.111.

No Fire Zones (NFZs)

9.6 On consideration of all facts and circumstances before it, the Commission concludes that the Security Forces had not deliberately targeted the civilians in the NFZs, although civilian casualties had in fact occurred in the course of crossfire. Further, the LTTE targeting and killing of civilians who attempted to flee the conflict into safe areas, the threat posed by land mines and resultant death and injuries to civilians, and the perils inherent in crossing the Nanthi Kadal Lagoon, had all collectively contributed to civilian casualties. It would also be reasonable to conclude that there appears to have been a *bona fide* expectation that an attack on LTTE gun positions would make a relevant and proportional contribution to the objective of the military attack involved.

9.7 Having reached the above conclusions, it is also incumbent on the Commission to consider the question, while there was no deliberate targeting of civilians by the Security Forces, whether the action of the Security Forces of returning fire into the NFZs was excessive in the context of the Principle of Proportionality. Given the complexity of the situation that presented itself as described above, the Commission after most careful consideration of all aspects, is of the view that the Security Forces were

confronted with an unprecedented situation when no other choice was possible and all "feasible precautions" that were practicable in the circumstances had been taken.

9.8 It would also be pertinent in this context to recall that, in determining questions of State responsibility in respect of death, injury or property damage in the course of military operations, international tribunals referring to doctrinal authorities, have described as "next to impossible", the obtaining of a re-construction in front of a tribunal of all the conditions under which the "combat action" took place with an adequate reporting of all accompanying circumstances.

Specific Instances of Death or Injury to Civilians

9.9 The Commission is faced with similar difficulties in attempting a re-construction of certain incidents involving the loss of civilian lives which have been brought to the attention of the Commission. While the Commission finds it difficult to determine the precise circumstances under which such incidents occurred (as described in Chapter 4 Section II above, vide paragraphs 4.106, 4.107, 4.109, 4.110, and 4.111) the material nevertheless points towards possible implication of the Security Forces for the resulting death or injury to civilians, even though this may not have been with an intent to cause harm. In these circumstances the Commission stresses that there is a duty on the part of the State to ascertain more fully, the circumstances under which such incidents could have occurred, and if such investigations disclose wrongful conduct, to prosecute and punish the wrong doers. Consideration should also be given to providing appropriate redress to the next of kin of those killed and those injured as a humanitarian gesture that would help the victims to come to terms with personal tragedy, both in relation to the incidents referred to above and any other incidents which further investigations may reveal.

Hospitals/Makeshift Hospitals

9.10 The Commission is satisfied, on a careful consideration of all the circumstances, that shells had in fact fallen on hospitals causing damage and resulting in casualties. However, the material placed before the Commission points to a somewhat confused picture as to the precise nature of events, from the perspective of time, exact location and direction of fire.

9.11 In this backdrop, the challenge faced by the Commission is the determination of responsibility for the acts in question, on the basis of concrete evidence.

9.12 In making its determination, the difficulty faced by the Commission is twofold;

a. It is evident to the Commission that no immediate investigation in the nature of a crater analysis had been undertaken, presumably given the intensity of the conflict, in the areas in question.

b. None of the persons making representations was able to state with certainty that they were in a position to definitely confirm that the shells which fell on the hospitals, originated exclusively from the side of the Sri Lanka Army or from the LTTE. Civilians who appeared before the Commission stated that there had been shelling from both sides. One civilian stated that 'when a shell lands, the general anticipation was that it was the Army – cannot state exactly'. Another ex LTTE cadre in the course of his representations had stated that the Puthumatthalan hospital was in fact accidentally shelled by the LTTE for which they had subsequently apologized.

9.13 Thus the Commission's task of reaching a definite conclusion as to who was responsible for the shelling of hospitals and loss of lives/ damage to property is made extremely difficult by the non – availability of primary evidence of a technical nature and also the fact that supportive civilian evidence is equivocal in nature and does not warrant a definitive conclusion that one Party or the other was responsible for the shelling.

9.14 Although the Commission is not in a position to come to a definitive conclusion in determining responsibility that one party or the other was responsible for the shelling, nevertheless given the number of representations made by civilians that shells had in fact fallen on hospitals causing damage to the hospitals and in some instances loss or injury to civilian lives, consideration should be given to the expeditious grant of appropriate redress to those affected after due inquiry as a humanitarian gesture which would instill confidence in the reconciliation process.

Supply of humanitarian relief, including food and medicine to civilians in conflict areas

9.15 The Commission notes that the supply of food to the civilians held by the LTTE up to early 2009 was at reasonably adequate levels approximating by and large to the internationally accepted nutrition intake for refugees. This was possible through the food convoys sent by land up to January 2009. However, these adequacy levels appear to have declined during the months of February, March, April and the first half of May 2009 as the conflict intensified and the Government was compelled to resort to a sea supply route to provide essential supplies to a large number of people held by the LTTE in the narrow stretch of land in Puthumatthalan area across the Nanthi Kadal lagoon. It becomes evident to the Commission from the material before it that these supplies had

been taken despite enormous logistical difficulties of sustaining a continuous flow of humanitarian supplies amidst an ongoing conflict.

9.16 It must be acknowledged that the maximum quantities of food supplies, that were possible under the prevailing circumstances had been delivered by the sea route to ameliorate the conditions confronting the affected civilians mainly due to the collective efforts of the Government of Sri Lanka, in particular the GAs and the Security Forces as well as international agencies such as the ICRC and WFP, and other volunteers who had provided selfless service on the spot in the final No Fire Zones.

9.17 Despite the unprecedented constraints imposed by the dynamics of the conflict and the deficiencies in the distribution system evident under those circumstances, the practices of the LTTE to appropriate food supplies that restricted a reasonable and equitable distribution of the limited supplies available, the Government of Sri Lanka, especially the CGES, the international agencies such as those referred to above and other volunteer organizations, provided praiseworthy services and assistance in ensuring the maximum possible supplies to those affected persons during the last several weeks of the conflict.

9.18 However, notwithstanding these efforts the fact remains that the civilians had been affected in terms of the adequacy of readily available food supplies to meet their nutritional needs particularly with the intensification of the conflict. The extreme conditions which appear to have prevailed after February 2009 are set out in detail in Chapter 4 Section II above.

9.19 Having examined the material before it, the Commission is of the view that the Government of Sri Lanka with the co-operation of the international community, in particular the agencies referred to above as well as civil society groups had, in a spirit of international co-operation and solidarity, taken all possible steps in getting food and medical supplies and other essential items across to the entrapped civilians despite enormous logistical difficulties of the operation.

9.20 The Commission also wishes to refer to the fact that it had before it material giving varying estimates of the number of civilians who were held hostage by the LTTE in the NFZs. Despite the Commission's best efforts to verify the estimates with documentary evidence from relevant civilian authorities, it has not been possible to secure any original documentation. However, the non availability of such documentation does not have a decisive bearing on the fact that what was practically feasible under the circumstances was undertaken. The strenuous efforts taken by the Government of Sri Lanka in co-ordination with international agencies such as the ICRC and WFP, as

described above, does not warrant any possible inference that there was a deliberate intention to downplay the number of civilians in the NFZs for the purpose of starving the civilian population as a method of combat.

Medical Supplies

9.21 The only possible conclusion that the Commission could arrive at on a consideration of all the factors (as described in Chapter 4 Section II) is that by objective standards applicable under normal circumstances, there appears to have been a paucity of medicines and the medical facilities appear to have been inadequate. However this factor has to be placed in the context of the extraordinary conditions which prevailed amidst the intensity of the conflict and the proximity of the hospitals to the theatre of conflict.

9.22 The Commission also recognizes that given the inconclusive nature of the material before it, the issue of medical supplies to civilians in the conflict areas during the final days of the conflict is a matter that requires further examination given the humanitarian considerations involved. Such an examination should take into consideration all relevant factors such as the number of civilians injured, the types of injuries, the number of LTTE cadres injured and treated, and the capacity to treat the injured in the makeshift hospitals, against which the actual supplies could be assessed.

Alleged disappearances after surrender/arrest

9.23 The Commission must emphasize that in respect of the representations (as set out in Chapter 4 Section II paragraphs 4.242 to 4.258) from a number of people who stated that they had directly witnessed certain persons surrendering to the custody of the Army, it is the clear duty of the State to cause necessary investigations into such specific allegations and where such investigations produce evidence of any unlawful act on the part of individual members of the Army, to prosecute and punish the wrongdoers. The Commission must also stress in this regard that if a case is established of a disappearance after surrender to official custody, this would constitute an offence entailing penal consequences. Thus the launching of a full investigation into these incidents and where necessary instituting prosecutions is an imperative also to clear the good name of the Army who have by and large conducted themselves in an exemplary manner in the surrender process and when civilians were crossing over to cleared areas, which conduct should not be tarnished by the actions of a few.

The Conduct of the LTTE

9.24 The grave violations of Human Rights by the LTTE have been dealt with in detail in the Chapter on Human Rights and in the accompanying Annexes.

9.25 The grave violations of core Principles of IHL by the LTTE are referred to in Chapter 4 Section II, particularly with regard to the NFZs. However by way of concluding observations, it is incumbent on the Commission to advert to the following:

a. the very fact of using civilians as human shields to advance their military strategy, together with;
b. the practice of placing and using military equipment in civilian centres,
c. the shooting at civilians trying to escape into safe areas,
d. the conscription of young children to engage in combat even in the final stages of the conflict,
e. the laying of landmines and Improvised Explosive Devices (IEDs) knowing that civilians would be exposed to danger even outside the conflict zone,
f. the forcible use of civilians to provide support services to them to carry out their military objectives – thereby making the identification of civilians and combatants an almost impossible task particularly in the congested final NFZs, and
g. the continued use of suicide attacks causing loss of innocent civilian lives,

underpins not only the blatant disregard of Principles of IHL by the LTTE, but also highlights the task that the Security Forces were faced with in securing a military advantage while combating an enemy which had no respect for civilian life.

9.26 In framing charges against LLTE cadres against whom investigations reveal prima facie material for prosecution, due account must be taken of the violation of core Human Rights and International Humanitarian Law Principles so that appropriate punishment, commensurate with the grave nature of such crimes could be meted out.

Observations on the IHL Regime in its application to Internal Conflicts

9.27 Given the rudimentary nature of the legal framework regulating internal conflicts involving non state armed groups, issues which constantly arise in such situations such as, the cynical disregard by the non state armed groups to the traditional protection afforded to the civilian – e.g. integration of 'Safety Zones' into combat strategy and the use of civilians as human shields, leave grey areas in the existing legal framework applicable to internal conflicts involving States and non state armed groups. The resulting position is that the civilian is placed in jeopardy when the State is compelled to

resort to counter measures to deal with the combat strategy of the non state armed groups, such as in situations which require neutralizing military positions established within civilian 'Safety Zones'.

9.28 As the unprecedented Sri Lankan experience has demonstrated, where the non state armed group has no intention whatsoever of agreeing to a negotiated declaration of such Zones providing for civilian protection and once unilaterally declared by the State, utilize them to advance its combat strategy and operations (for example, using civilians within the Zone as human shields), the State and Field Commanders are faced with the dilemma of protecting civilians on the one hand and neutralizing the enemy fire power emanating from within the NFZ, on the other.

9.29 The Sri Lankan experience has in fact given rise to a debate as to whether, by unilateral declaration of a No Fire Zone, the Government unwittingly provided the LTTE an opportunity to consolidate itself amongst the civilian enclave for strategic purposes.

9.30 A host of such difficult issues arise, including the question of verification of actions of non state armed groups in relation to compliance with IHL requirements relating to the preservation of the sanctity of No Fire Zones. The development of appropriate standards and procedures to deal with such situations becomes an imperative need in addressing contemporary challenges to the existing IHL regime in internal conflict situations.

9.31 The careful construction of a legal framework governing conflicts between States and non state armed groups as in the case of general principles of international law governing inter- state conflicts taking into account all the complexities and challenges posed by internal conflicts as described in Chapter 4 could provide the answer in ensuring greater compliance with IHL principles by the non state armed groups. These complex issues of contemporary relevance to the application of IHL must engage the immediate attention of the international community of States and relevant international organizations such as the UN and the ICRC, so that appropriate legal instruments are put in place to fill the existing lacunae in IHL in its application to internal conflicts.

9.32 This is a clear lesson that could be learnt from the Sri Lanka conflict spanning 30 years causing the tragic loss of innocent human lives. Formulating an effective legal framework drawing from these experiences is a clear obligation that the International Community owes to all victims of conflict.

Observations and Recommendations on the issue of Casualties

9.33 Based on the firsthand accounts and other material placed before it by the affected civilians and detainees, it was clear to the Commission that despite the efforts by the Security Forces to avoid harm to people, there have been instances of exchanges of fire over the civilian areas including NFZs causing death and injury to civilians.

9.34 The Commission recognizes the complex challenge faced by the Security Forces in neutralizing a suicide cult based terrorist group seeking security behind a human shield. It also appreciates that the priority, and indeed the natural instinct, of the security forces and other authorities was to 'save lives rather than count bodies.' The Commission however notes with regret that there is no official record or a post conflict estimate of civilian casualties either by the civilian administrative authorities in the area or by the defense authorities. Whilst the Security Forces had their own casualty figures and an estimate of the LTTE casualties, the absence of authoritative civilian casualty records, with the exception of the limited data from the Ministry of Health, has led to widely varying figures of civilian casualty estimates by different entities, media organizations and authorities.

9.35 The fact that there was no proper verification process, either by the civilian administration or by the military has contributed to the unverified sweeping generalizations, of a highly speculative nature as regards casualty figures.

9.36 It is the considered view of the Commission however, that eye witness accounts and other material available to it indicate that considerable civilian casualties had in fact occurred during the final phase of the conflict. This appears to be due to cross fire, the LTTE's targeted and deliberate firing at civilians, as well as due to the dynamics of the conflict situation, the perils of the geographical terrain, the LTTE using civilians as human shields and the LTTEs refusal to let the hostages get out of harm's way.

9.37 The Commission therefore recommends that action be taken to;

a. Investigate the specific instances referred to in observation 4.359 vi. (a) and (b) and any reported cases of deliberate attacks on civilians. If investigations disclose the commission of any offences, appropriate legal action should be taken to prosecute/punish the offenders.

b. Conduct a professionally designed household survey covering all affected families in all parts of the island to ascertain firsthand the scale and the circumstances of death

and injury to civilians, as well as damage to property during the period of the conflict.

Observations and Recommendations on 'the Channel 4 Video'

9.38 With reference to the considerations contained in Section V – Chapter 4 concerning the Channel 4 video, the Commission, has the following observations/ recommendations to make:

a. The images contained in the footage are truly gruesome and shocking, irrespective of whether the incidents are 'real' or 'staged' ones.

b. While the Government of Sri Lanka emphatically stated that the video seeks to artificially construct the incidents, the technical experts commissioned by the UN Special Rapporteurs emphasize that the video provides prima facie material on possible summary executions and sexual assault involving people who appear to be in captivity. Both the Government as well as the Rapporteurs' experts, however point to several technical ambiguities in the video which remain un-clarified.

c. There are further technical issues and forensic questions brought out by independent experts, Dr. Chathura de Silva and Prof. E. A. Yfantis that cast significant doubts about the authenticity of the video, especially the probability of electronic tampering and the artificial construction of the 'blood effect' in the video.

d. The non-availability of a copy of the broadcast footage has not helped in finding conclusive clarification of such technical ambiguities.

e. Consequently, the Commission finds that there are troubling technical and forensic questions of a serious nature that cast significant doubts about the authenticity of this video and the credibility of its contents. It is also observed that trauma evident on the bodies of victims does not appear to be consistent with the type of weapon used and the close range at which the firing is seen to have taken place. The Commission wishes also to note however that someone had recorded or otherwise produced these images and the video and made it available to the Broadcaster concerned. One expert enlisted by the Commission observes that 'the segments of the footage appear to have been recorded in a natural environment' and that some of the bodies of alleged victims show 'no artifacts of manipulation' either physically or by digital means.

f. The Commission regrets the fact that the Broadcaster did not respond positively to the request made by the Commission to provide more comprehensive information. Greater cooperation by the organization that provided to the television stations these video images and by the Producer/Broadcaster that aired this footage is essential to establish facts of this case.

9.39 Based on the available material and taking into account the above considerations, the Commission wishes to recommend that the Government initiate an independent investigation into this matter to establish the truth or otherwise of the allegations arising from the video footage.

9.40 The Commission considers this course of action as necessary and urgent for two reasons:

a. Firstly, if as claimed by the informants who supplied the images and by the experts enlisted by Messrs Alston and Heyns, the footage reflects evidence of real incidents of summary execution of persons in captivity and of possible rape victims, it would be necessary to investigate and prosecute offenders as these are clearly illegal acts. It is also the obligation of the Government to clear the good name and protect the honour and professional reputation of soldiers who defended the territorial integrity of Sri Lanka and particularly the many thousands of soldiers who perished carrying out their combat duties cleanly and professionally against a widely condemned terrorist group who used most inhumane tactics in combat. Offences if any, of a few cannot be allowed to tarnish the honour of the many who upheld the finest traditions of service.

b. Secondly, if on the other hand footage is artificially constructed or the incidents are staged as contended by several experts, the issue becomes even more serious and the need to establish facts of this case, equally compelling. The Commission shares some of the significant doubts expressed on the integrity of the video and feels strongly that if that were to be the case, whoever constructed the video and the organization that broadcast it should be held responsible for a serious instance of gross disinformation. Such conduct would constitute grave damage and injustice to the people of Sri Lanka and to those soldiers who fought professionally and sacrificed their lives in order to save other innocent lives from the LTTE stranglehold. Equally, it would also represent a body blow to the notion of the Freedom of Expression. From the perspective of its Warrant, the Commission is also concerned that such acts would seriously prejudice and place major obstacles in the way of the

ongoing efforts, both national and international, to promote and consolidate a viable process of reconciliation, healing and reconstruction in Sri Lanka.

9.41 The Commission therefore recommends that the Government of Sri Lanka institute an independent investigation into this issue with a view to establishing the truth or otherwise of these allegations and take action in accordance with the laws of the land. Equally, the Commission feels that arrangements should be made to ensure and facilitate the confidentiality and protection of information and informants. The Commission strongly urges all those concerned, especially the organizations that provided the original images and the broadcasting organization, to extend fullest cooperation by providing the necessary information to facilitate this work.

Chapter Five: Observations and Recommendations on Human Rights

General

9.42 During the public sittings and its field visits to conflict affected areas, a large number of representations were made before the Commission alleging the violation of fundamental rights and freedoms of people affected by the conflict. These include abductions, enforced or involuntary disappearances, arbitrary detention, conscription of underage children, extrajudicial, summary or arbitrary executions, violation of the freedom of expression, movement, association, freedom of religion and the independence of the media etc. Representations were also made on issues pertaining to the rights of IDPs, and other vulnerable groups such as women, children and disabled. The Commission considers that its recommendations on these human rights issues are critically relevant to the process of reconciliation.

Allegations concerning missing Persons, disappearances and abductions

9.43 During the public sittings and its field visits to conflict-affected areas, the Commission was alarmed by a large number of representations made alleging the violations of fundamental rights and freedoms of people affected by the conflict. The Commission also heard a substantial number of allegations of abductions and disappearances by the LTTE. A large number of representations were made with regard to those whose whereabouts are unknown, sometimes for years, as a result of abductions, unlawful arrests, arbitrary detention, and involuntary disappearances.

9.44 Many persons who made representations impressed upon the Commission that definitive action against alleged cases of disappearances as well as preventive measures

would have a significant impact on the reconciliation process. Repeated reminders were also made during the course of representations on the fundamental need to ensure that lessons from past experiences be learnt so as to prevent any recurrence.

9.45 There were strong concerns among members of public who made representations that criminal investigations, law enforcement, and the police administration have been adversely affected due to political interference resulting in an erosion of confidence in the criminal justice system.

9.46 During the public sittings and its field visits, including to the conflict-affected areas, the Commission was alarmed by a large number of representations made alleging abductions, enforced or involuntary disappearances, and arbitrary detention. In many instances, it was revealed that formal complaints have been made to police stations, the Human Rights Commission of Sri Lanka and the ICRC. In some cases, submissions had also been made to the previous Commissions of investigation. Yet, the next of kin continue to complain that the whereabouts of many of those missing persons are still unknown. The Government therefore is duty bound to direct the law enforcement authorities to take immediate steps to ensure that these allegations are properly investigated into and perpetrators brought to justice.

9.47 The Commission wishes to emphasize that it is the responsibility of the State to ensure the security and safety of any person who is taken into custody by governmental authorities through surrender or an arrest.

9.48 A comprehensive approach to address the issue of missing persons should be found as a matter of urgency as it would otherwise present a serious obstacle to any inclusive and long-term process of reconciliation. It is noted that given the past incidents of disappearances from different parts of the country and investigative efforts thereon, the past Commissions have recommended, inter alia, a special mechanism to address this issue and deter future occurrences. These recommendations warrant immediate implementation, as these will help address this serious issue, which has arisen in the human rights context and left unimplemented by successive Governments. Continued failure to give effect to such critical recommendations of past commissions give rise to understandable criticism and skepticism regarding Government appointed Commissions from which the LLRC has not been spared.

9.49 The Commission also emphasizes that the relatives of missing persons shall have the right to know the whereabouts of their loved ones. They also have the right to know the truth about what happened to such persons, and to bring the matter to closure.

Reconciliation is a process. Closure is the first difficult emotive step in that long and complex journey irrespective of whether they are victims of conflict or victims of LTTE terrorism. This will also enable them to seek appropriate legal remedies including compensation.

9.50 All efforts should be made by the law enforcement authorities, in cooperation with relevant agencies, especially the ICRC, to trace the whereabouts of the missing persons and ensure reunification with their families. The families should be kept informed of the progress being made in that regard.

9.51 Given the complexity and magnitude of the problem and considering the number of persons alleged to have disappeared, and the time consuming nature of the investigations involved, the Commission recommends that a Special Commissioner of Investigation be appointed to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings as appropriate. The Office of the Commissioner should be provided with experienced investigators to collect and process information necessary for investigations and prosecutions. This mechanism should also devise a centralized system of data collection at the national level, integrating all information with regard to missing persons currently being maintained by different agencies.

9.52 The issuance of death certificates and monetary recompense where necessary should be addressed as a matter of priority, taking into account applicable international standards. In this regard, the Commission notes the recent amendment to the Registration of Deaths Act, which provides for the next of kin to apply for a Certificate of Death in respect for a person who is reported missing and not been heard of for a period exceeding one year by those who would naturally have heard of him/her, and his/her disappearance is attributable to any terrorist or subversive activity or civil commotion which has taken place in Sri Lanka. All measures necessary for the effective implementation of this law must be taken at the administrative level within a published timeframe. In particular, adequate publicity should be given to the relevant provisions of this Act through the media, Grama Niladharis etc., especially in the conflict affected areas, in order to facilitate access to the procedures and remedies provided under this Act.

9.53 The Commission heard a number of allegations concerning persons taken into custody without any official record. The Commission therefore recommends that applicable legal provisions should be adhered to by the law enforcement authorities when taking

persons into their custody, such as issuing of a formal receipt regarding the arrest and providing details of the place of detention etc. Such persons should be detained only at formal places of detention declared under the law. Adequate publicity should be given to such authorized places of detention, with access to next of kin.

9.54 In keeping with the obligations Sri Lanka has undertaken in applicable international human rights instruments, and in accordance with the requirements of its national laws, the following measures should be taken:

a. An arrested person should be promptly produced before a Magistrate to be dealt with in accordance with the law.
b. Any change of the place of detention should be promptly notified to the family of the arrested person and the Human Rights Commission of Sri Lanka.
c. Magistrates should visit the places of detention every month.
d. Release from detention should be done through courts.

9.55 The failure or refusal by the Police to record an arrest, detention and transfer or to record complaints of abductions and failure to investigate the same would constitute a criminal offence and steps should be taken to prosecute such wrongdoers.

9.56 The Commission also heard allegations that a number of persons have been taken into custody and detained under the Emergency Regulations although the facts of some cases do not disclose any offence related to public security. In this regard, the Commission takes note of the Government's decision to lift the Emergency Regulations as a significant and a positive step towards reconciliation and restoration of normalcy. Many representations made before the Commission gave a clear impression that with the ending of the LTTE terrorism, the people's preference was that the governance be carried out under the normal laws of the land that will uphold the supremacy of the Rule of Law. The Commission also expresses the hope that the civilian life will receive the fullest benefit of the lifting of the Emergency Regulations and that any further regulations would not impair the full enjoyment of such benefits.

9.57 The Commission has observed instances of persons being detained in custody for a long period of time under the Prevention of Terrorism Act (PTA). In this regard, the Commission recommends that an Independent Advisory Committee be appointed to monitor and examine detention and arrest of persons taken into custody under any regulations made under the Public Security Ordinance or the PTA.

9.58 The families need to be assisted to deal with the trauma of not knowing the whereabouts of their family members, in some cases for years. They could also be assisted financially in situations where the missing persons had been the breadwinners. Legal aid should also be provided as and when necessary.

9.59 In order to address this issue comprehensively and to eliminate this phenomenon in the future as well as to fill an existing lacuna, the Commission strongly recommends that domestic legislation be framed to specifically criminalize enforced or involuntary disappearances.

9.60 There is also a fundamental need to ensure that lessons from these past incidents be learnt in a manner that they will never be repeated again. In this regard, the Commission also stresses the need for comprehensive, island-wide human rights education programmes targeting the school children, youth, members of the Security Forces, and the Police etc.

Treatment of detainees

9.61 The Commission visited several rehabilitation centers and was impressed by the professional and caring manner in which the programmes are being conducted. The goodwill and confidence generated and the vocational capacity building resulting from these programmes will certainly contribute towards reconciliation.

9.62 The Commission also visited a number of places of detention and had discussions with inmates as well as relevant officials. Among the representations made by the detainees at the Boossa Detention Center where hardcore LTTE suspects have been detained, were those narrated by several young inmates of the circumstances under which they were forcibly conscripted by the LTTE, their attempts to escape from the LTTE's clutches and how they were re-recruited. They have spent long periods in detention without charges being preferred and consequently their educational prospects have been severely affected. This matter has already been dealt with under the Interim Recommendations of the Commission where it recommended that a special mechanism be created to examine such cases on a case-by-case basis and recommend a course of action in regard to disposal of each case, as appropriate.

9.63 The next of kin of the detainees have the fundamental right to know the whereabouts of their family members who are in detention. Therefore there is a need for a centralized comprehensive database containing a list of detainees, which should be made available

to the next of kin with names, place of detention as well as record of transfers so that families have access to such information.

9.64 The Commission wishes to urge that the Government direct the relevant authorities to ensure the full implementation of all Interim Recommendations pertaining to detainees.

9.65 The next of kin have the right of access to detainees. Therefore, any practices that violate this principle should be removed. The Commission has observed that some next of kin are only provided information verbally. Moreover, having travelled very far, some family members have not been allowed to see the detainees in person. The Commission recommends that the relevant authorities in cooperation with the ICRC and voluntary organizations enhance current facilities for the transportation of the next of kin to visit their family members at the places of detention.

9.66 The Commission visited several places of detention, especially the high security facilities at Omanthai and Boossa. It notes that the Omanthai center has since been closed. The Commission notes with appreciation the caring attitude of the authorities towards the inmates at these centers and the fact that the ICRC has access to these places of detention, including for private meetings with detainees. The Commission welcomes this policy of cooperation with the ICRC and strongly recommends that the Government expands this policy of cooperation and constructive engagement with the ICRC and other similar humanitarian organizations to ensure the welfare of the detainees.

9.67 All places of detention should be those, which are formally designated as authorized places of detention and no person should be detained in any place other than such authorized places of detention. Strict legal provisions should be followed by the law enforcement authorities in taking persons into custody, such as issuing of a formal receipt of arrest and providing details of the place of detention.

9.68 The Commission recommends that special attention be given to young detainees, in particular those whose education has been disrupted due to conscription by the LTTE and who expect to complete their formal education. Priority should be given to investigation and the speedy disposal of their cases. In this regard, the Commission notes with appreciation that the rehabilitation programme has enabled many detainees to sit for the national examinations.

9.69 A proper screening process should be in place to identify special cases such as those with young children, physically disabled and those who are recovering from injury, and medical interventions. They must be provided special assistance that they may require.

There may also be cases where some inmates require counseling due to long periods of detention and lack of access to relatives.

9.70 The Commission notes with appreciation the action taken by the Government to process the cases relating to a significant number of detainees based on the Interim Recommendations of the Commission. However, the Commission expresses concern over some detainees who have been incarcerated over a long period of time without charges being preferred. The Commission stresses again that conclusive action should be taken to dispose of these cases by bringing charges or releasing them where there is no evidence of any criminal offence having being committed.

9.71 With regard to those who have been rehabilitated, the Government must implement programmes to ensure that they are integrated into the mainstream of civilian life. For this purpose, the Commission is of the view that the Government should actively encourage a greater role for the civil society organizations that could provide both financial and human resources towards that end.

Illegal Armed Groups

9.72 Activities of illegal armed groups, especially during the period under review are of serious concern to the Commission. According to a number of representations made before the Commission during its field visits to conflict affected areas, it appeared that the dominating presence and activities of such groups have created fear among the general public, contributing to an environment of impunity. Some of their illegal activities have affected the basic rights of people such as the right to life as there have been a number of alleged incidents of abduction, wrongful confinement and extortion by these groups. The whereabouts of most abductees are still unknown while some others have since been found dead. These acts, if proven to be true, constitute a violation of basic freedoms and fundamental rights of people.

9.73 The Commission is of the view that proper investigations should be conducted in respect of the allegations against the illegal armed groups with a view to ascertain the truth and the institution of criminal proceedings against offenders in cases where sufficient evidence can be found.

9.74 Action should also be taken to disarm and put an end to illegal activities of these groups, as it would otherwise present a serious obstacle to the on-going process of reconciliation. In this regard, the Commission strongly reiterates its Interim Recommendation seeking to disarm all illegal armed groups. While the Commission

notes that some action has been taken in this regard, it regrets that no conclusive action has been taken. It is essential that conclusive action should be taken to address this issue as part of a time-bound and verifiable process. The Commission is of the view that had timely action been taken with regard to the Commission's Interim Recommendations, serious incidents such as the recent attack on the Editor of the Uthayan Newspaper may have been averted.

Conscription of Children

9.75 During its field visits to the conflict affected areas, a number of representations were made with regard to child conscription and, according to the parents, the whereabouts of many of these children are still unknown. Conscription of children was one of the worst forms of crimes committed by the LTTE during the time of the conflict.

9.76 There were also concerns about recruitment of underage children in the East by groups other than the LTTE. In this context, the Commission wishes to note the Tripartite Action Plan between the TMVP, Commissioner General of Rehabilitation, and the UNICEF signed in December 2008 to "ensure that the practice of child recruitment by the TMVP is stopped and that all children recruited or used by the armed group are released and provided with reintegration assistance."

9.77 The rehabilitation of the ex - child combatants should be the utmost priority of the Government in the immediate post-conflict phase. The Commission was pleased to note the rehabilitation programme of the Government, which has resulted in the rehabilitation, and reintegration of hundreds of former child combatants, and in particular the approach of the community based correctional programme of the Commissioner General of Childcare and Probation. The Commission recommends that the same community based approach be adopted for the rehabilitation of the former child combatants in cooperation with NGOs and civil society organizations.

9.78 In the process of rehabilitation, the Commission calls on the relevant rehabilitation authorities to ensure that the children be allowed to live with their families no sooner they complete the rehabilitation programme, and help them earn a living and to assist them to continue their formal or informal studies. In this regard, the Commission stresses the importance of children staying with parents and/or extended family members within their own communities, which is an integral part of cultural traditions that need to be respected. This would also help their long-term reintegration with their own families and communities.

9.79 In instances where there is *prima facie* evidence of conscription of children as combatants, any such alleged cases should be investigated and offenders must be brought to justice. In this regard, the complaints of alleged recruitment of children by illegal armed groups/groups affiliated with the LTTE or any political party should be investigated with a view to prosecuting the offenders to ensure that the practice would not occur in the future. The Commission calls for the full implementation of the Action Plan between the TMVP, Commissioner General of Rehabilitation, and the UNICEF with immediate effect so that the practice of child recruitment by the TMVP ceases, children recruited are released and reintegrated with their families and communities after rehabilitation.

9.80 The Commission urges the relevant authorities in consultation with the private sector to provide increased employment opportunities in the former conflict affected areas. Some element of flexibility should be given in respect of child combatants who have missed school. Further, these former child combatants should be encouraged and facilitated to complete their formal education requirements while engaging in gainful employment.

9.81 The Government should also explore the possibility of securing assistance from relevant UN agencies, ICRC, INGOs, NGOs and civil society organizations who have knowledge and experience in dealing with children exposed to armed conflict, especially the UNICEF. In this context, the Commission notes as a positive step the establishment of the Family Tracing and Reunification (FTR) Unit with UNICEF assistance, and the progress it has achieved in matching data on children. The Government should actively encourage and support this initiative and all agencies, especially the security agencies should cooperate in this process so that matching could lead to actual reunification of the children with their families. The Government must also consider establishing a national, Government led, multidisciplinary task force to develop and implement a comprehensive child-tracing programme.

9.82 Priority should be given to examining on a case-by-case basis, the cases relating to young LTTE suspects with a view to either instituting legal action without delay or rehabilitating and/or releasing them.

Vulnerable Groups

General

9.83 The conflict has given rise to many problems concerning vulnerable groups such as women, children, IDPs and disabled. The Commission heard several accounts of these

groups who have suffered considerably. The meeting of basic needs of these groups should be a matter of priority for the Government in the current post-conflict environment, while durable solutions should be found in the medium and long-term, without which a sustainable and all inclusive reconciliation process cannot be achieved.

9.84 During the Commission's field visits, it became evident that women, children and elderly are the segments that have taken the brunt of the conflict, seriously disrupting their lives. Many women have either lost their husbands or their whereabouts are unknown. Despite such trauma and hardship, they continue to support their families with young children and aging parents. In these efforts, women need to feel that they live in a secure environment and their human dignity is safeguarded and protected.

9.85 The Commission wishes to specifically highlight an observation made by a large number of individuals who stated that all that a family wishes is to have confirmation whether their loved ones are either alive or deceased so that they can perform their cultural and religious rites accordingly and get on with their lives. The Commission sympathizes with those observations and recognizes that there is a need to bring about a sense of closure, which would be an important contributory factor for any meaningful process of healing and reconciliation.

Women

9.86 Having listened to many women headed households and organizations who represented them, and given the fact that there is a large number of such women (over 59,000 - according to the Government sources) in the country in the aftermath of the conflict, the Commission recognizes the welfare of these women and the women-headed households as a major post-conflict challenge that needs to be addressed as a matter of priority by the Government and all other stakeholders, in a collective effort towards reconciliation.

9.87 Many women have either lost their husbands or do not know their whereabouts. In some cases, their husbands have been kept in detention camps for long and unspecified periods. Despite such trauma, women are expected to support their families. Many such families have young children and aging parents. In view of the above, immediate needs of women, especially widows who most often have become heads of their households must be met. These immediate needs include economic assistance by way of providing them with means of livelihood and other income generating means so that they could reduce the immense economic hardships and poverty under which they and their families are living at present.

9.88 The Government should make greater and sustained efforts to enlist and engage the services of relevant international organizations and civil society groups who have expertise and resources in these areas to assist in this task. Most importantly, the community level associations and support groups who help the communities through supporting the families and villages can play a significant role in this regard. Through such associations, single mothers, those recently resettled, and those who are disabled could make collective efforts to address the issues they confront and bring them to the attention of local governmental institutions, political leadership and other support structures such as NGOs and civil society organizations. Such community level support groups can also address emotional and spiritual needs of people who have been under trauma due to difficult conditions and personal tragedies under which they have lived through the conflict. The Commission strongly recommends that the Government should encourage and facilitate such cooperation.

9.89 There are many women who, due to the protracted conflict and the fact that men in the family have gone missing, have not been able to continue with their formal education. The Commission recommends that in a post-conflict environment, opportunities and options should be provided to such women to continue with their formal education or pursue other forms of informal education and/or vocational training that may facilitate in finding employment and/or engaging in other livelihood activities.

9.90 Women also need to feel that they live in a secure environment and their basic human dignity is safeguarded and protected. The Commission is of the view that the Government has a responsibility to create such a conducive environment in all areas of the country, especially the conflict affected areas as an essential prerequisite for the reconciliation process.

9.91 The issues pertaining to missing persons, abductions, arbitrary detentions, long and indefinite detentions, and disappearances have a direct bearing on women as the victims are most often their husbands, sons, fathers and brothers etc. who play a vital role in a traditional household as breadwinners as well as providers of security. As such, these issues need to be addressed as a matter of priority recognizing that these women have a right to know the whereabouts of their loved ones, have the right to the truth and legal remedies as equal citizens of the country. These are prerequisites for any successful, durable and all inclusive reconciliation process.

9.92 The Commission is of the view that this enormous challenge can be met and durable solutions found only by a coordinated inter-agency effort, dealing with many

crosscutting issues and needs. Accordingly, an Inter-Agency Task Force mandated to addressing in a comprehensive manner, the needs of women, children, elderly and other vulnerable groups such as disabled affected by conflict, and providing necessary relief, must be established without delay.

Children

9.93 The Commission strongly recommends that support for children especially in their education should remain a key priority. Providing schools, teachers, school supplies, financial and other forms of support such as scholarships should be considered in this regard. The provision of better educational and health facilities, and the continued support, financial and material, for children's homes and orphanages are also vital in this endeavor.

9.94 The Commission notes that there are children who suffer from trauma and other psychological disorders as they have been exposed to violent conflict and the loss of their loved ones - sometimes their own father, mother etc. This could severely hamper their growth and education. The Commission strongly recommends that the Government should identify such children who need special attention as a matter of priority through the formal education system as well as other community, civil society groups who work in such areas. Special attention and care should be provided to these children, including professional counseling where necessary. The identification of children who live in women headed households can be one way of addressing this problem.

9.95 The Commission strongly encourages the Government, local authorities and other stakeholders, including community and civil society organizations to pay special attention to create child-friendly environments in the areas affected by the conflict, including easy access to schools, better healthcare facilities, recreation facilities such as play grounds, and children's parks.

Elderly

9.96 The Commission recognizes that elderly in the conflict affected areas have suffered immensely, and sometimes left to provide for their extended families for many years throughout the conflict as their children and grandchildren have become direct victims of the conflict. Physical difficulties, psychological trauma and economic hardships that this segment of the society has undergone needs more recognition. Therefore, the Commission strongly recommends that:

a. Programmes aimed at improving the conditions of families who have been affected by the conflict must include provisions to reduce the burden on elderly in maintaining and taking care of their extended families.

b. The Government and other stakeholders pay attention to the special needs of the elderly due to disability and other long-neglected health issues, including conflict-related trauma.

9.97 The Commission is of the view that the facilitation of easy and unhindered access to spiritual and cultural activities will help the elderly deal with trauma. In that regard, the Commission encourages the community and civil society organizations, especially those with expertise and resources, to play a key role in assisting the elderly. The Commission calls on the local religious bodies and the places of worship and the clergy also to play an active role in this regard. The Government should facilitate such efforts.

Disabled Persons

9.98 The Commission recognizes that there is an urgent need to support the disabled people in conflict affected areas who in many cases had been breadwinners for their families. Assistance should be obtained from international organizations and civil society organizations that have experience and expertise in assisting people with disabilities. The Government must also, as a matter of priority, address the economic needs of the families with disabled members as in many instances, disability has a serious economic impact on the survival of the family. The social, cultural and spiritual needs of the disabled also require special and urgent attention of the authorities.

9.99 The authorities should encourage people with disabilities to organize themselves as community groups that will help facilitate mutual support and obtain necessary assistance for them through international organizations and civil society groups who have expertise and resources in this area.

9.100 The Commission recommends that necessary national legislation be put in place to realize the rights of persons with disabilities in line with the UN Convention on Rights of Persons with Disabilities. Such action would have a positive impact, including obtaining international assistance, on matters affecting a large number of disabled persons, especially in the conflict affected areas.

Internally Displaced Persons

9.101 The Commission received a number of representations on the issues pertaining to IDPs. At the time of writing the report, the Commission was pleased to note that most of the IDPs who were displaced during the final stage of the conflict have been resettled. However, it is still necessary to pay attention to the continuing needs of people who have been resettled and are in the process of making efforts to rebuild their lives.

9.102 The process of returning the IDPs who were displaced during the final stage of the conflict has been largely completed for which the Government and all stakeholders should be commended. However, attention should be paid to the continuing needs of the re-settled people.

9.103 Assistance should be provided for returnees to repair or build permanent houses as many people still live in makeshift structures. In this regard, self-help and mutual assistance programmes such as "Shramadana" must be encouraged. Adequate provisions should be made to provide infrastructure needs such as roads, schools and hospitals in the areas where people have been resettled. The Commission notes with satisfaction the ongoing programmes and urges the authorities to continue to attach priority to this area in cooperation with other stakeholders, including the NGOs and the donor community. The Commission is of the view that assistance and cooperation of voluntary groups such as the civil society should also be encouraged particularly in the field of housing.

9.104 There is a need to grant the legal ownership of land to those who have been resettled.

9.105 The civil society should be encouraged to engage in community development at the grass roots level to help communities who are making a collective effort to reconstruct and rebuild their lives.

9.106 There is a need to respect a person's freedom of movement to re-settle in their places of origin, in accordance with internationally accepted principles governing voluntary return. In this regard, the Government must be clear in its policy with regard to the areas that are available for people to resettle and more awareness should be created among people about such policies and the options available to them. Such clear-cut and well thought-out policy on options available for people to resettle would help address some of the misunderstandings and misgivings related to the resettlement programme.

9.107 Needs of people including the security needs should be approached in such a manner that it does not lead to an environment of fear, apprehension or mistrust. It is only in

such an environment of security and confidence that the benefits of resettlement could be harnessed towards a genuine process of reconciliation.

9.108 Displaced persons living in India who wish to return to Sri Lanka and resettle on their own volition should be facilitated and encouraged by the Government. In this regard, essential facilities will have to be made available if they are to return to Sri Lanka. The Commission notes that the flow of returnees from India has continued at the time of writing this report. It is also important to ensure that there is no room for a feeling of discrimination in facilities available to the returnees from India and to the local IDPs returning to their lands. It is also recommended that a formal bilateral consultation process, take place between Sri Lanka and India to enable the displaced persons to take considered decisions with regard to their return to Sri Lanka.

Concerns relating to the Muslim Community in North and East

9.109 The issue of Muslim IDPs who were displaced from five districts (Jaffna, Mannar, Kilinochchi, Mullaittivu and Vavuniya) due to LTTE threats as far back as October 1990 remains one of the key post-conflict challenges, which also has a significant impact on the process of reconciliation. A large number of representations were made before the Commission on the plight of these IDPs who have been living under dire conditions for more than two decades.

9.110 The Commission is of the view that durable solutions should be found to address this long-standing IDP issue concerning the Muslims evicted from the North, which contains the seeds of disharmony and dissension if it remains unaddressed.

9.111 Solutions should be found to address the plight of the Muslim Community as one of the long-standing IDP issues arising out of the protracted conflict in Sri Lanka. This could be achieved through the creation of a uniform State policy aimed at resettlement of these IDPs and/or integrating them into the host community. This policy needs to be communicated to the IDPs so that they could take considered decisions with regard to the resettlement options available to them either in their original places of habitat or in the host communities.

9.112 Such State policy should also include an assistance package including financial assistance and other material support such as support for housing construction.

9.113 A special committee should be appointed to examine durable solutions and to formulate a comprehensive State policy on the issue, after having extensive consultations with the IDPs and the host communities.

Freedom of Expression and the Right to Information

9.114 The Commission was deeply disturbed by persistent reports concerning attacks on journalists and media institutions and killing of journalists and the fact that these incidents remain to be conclusively investigated and perpetrators brought to justice. The Commission was also alarmed by the deplorable attack on the Editor of the Uthayan newspaper in Jaffna, which occurred while the Commission's sittings were still in progress. The Commission condemns this attack. Such actions clearly place great obstacles in the way of any reconciliation efforts. Any failure to investigate and prosecute offenders would undermine the process of reconciliation and the Rule of Law.

9.115 Freedom of expression and right to information, which are universally regarded as basic human rights play a pivotal role in any reconciliation process. It is therefore essential that media freedom be enhanced in keeping with democratic principles and relevant fundamental rights obligations, since any restrictions placed on media freedom would only contribute to an environment of distrust and fear within and among ethnic groups. This would only prevent a constructive exchange of information and opinion placing severe constraints on the on-going reconciliation process. The Commission strongly recommends that:

a) All steps should be taken to prevent harassment and attacks on media personnel and institutions.

b) Action must be taken to impose deterrent punishment on such offences, and also priority should be given to the investigation, prosecution and disposal of such cases to build-up public confidence in the criminal justice system.

c) Past incidents of such illegal action should be properly investigated. The Commission observes with concern that a number of journalists and media institutions have been attacked in the recent past. Such offences erode the public confidence in the system of justice. Therefore, the Commission recommends that steps should be taken to expeditiously conclude investigations so that offenders are brought to book without delay.

d) The Government should ensure the freedom of movement of media personnel in the North and East, as it would help in the exchange of information contributing to the process of reconciliation.

e) Legislation should be enacted to ensure the right to information.

Freedom of Religion, Association and Movement

9.116 Any credible and sustainable process of reconciliation requires the creation of an environment, which respects, promotes and protects people's right to freely engage in observing their religion, and other freedoms such as freedom of association and movement. This is particularly important in the case of people living in conflict affected areas as these freedoms enhance their confidence and trust in the on-going reconciliation process as a genuine and inclusive process. Therefore, the Government must ensure that such rights are not arbitrarily restricted or violated by any state institution, especially by the Security Forces and the Police. The Commission strongly feels that such agencies must work as agents of change in assisting people to fully harness and enjoy these rights ensuring a sustainable process of reconciliation. The Commission emphasizes the need to bring to a closure the sense of uncertainty among victims by facilitating their attendance at religious ceremonies, without placing any hindrance to such activities.

9.117 The Government should take immediate steps to remove any remaining restrictions on visiting places of worship with the only exception being made in respect of the restrictions necessitated by mine-clearance activities. This should also include access to places of religious worship within the HSZs. Assistance of the Police could be provided where security arrangements are required.

9.118 People, community leaders and religious leaders should be free to organize peaceful events and meetings without restrictions.

9.119 Visitors from overseas should be allowed to visit their friends and relatives in recently resettled areas without any undue restrictions.

Follow up Action on the Reports of Past Commissions of Inquiry

9.120 The Commission strongly recommends the implementation of the recommendations of the Report of the Presidential Commission of Inquiry Appointed to Investigate and Inquire into Alleged Serious Violations of Human Rights Arising Since August 2005, particularly those relating to further investigation and prosecution of offenders involved in the incidents of the death of 5 students in Trincomalee in January 2006 and 17 aid workers of the ACF in August 2006. Such action would send a strong signal in ensuring respect for the Rule of Law, which in turn tends to contribute to the healing process.

Chapter Six: Observations and Recommendations on Land Issues: Return and Resettlement

9.121 The Commission recognizes the fact that although it is not an easy task to restore the pre-conflict status quo in a country immediately after a prolonged conflict, it is important to ensure that illegal land transfers and alienation triggered by violence, intimidation and ethnic cleansing are not allowed to be perpetuated or institutionalized. This is critical for nurturing ethnic harmony and national reconciliation, for if left unsolved this would transform into trigger points for future conflict.

9.122 To those reviewing the return and resettlement programmes in Sri Lanka, the research done by Sarah Pantuliano on return and resettlement of IDPs in varying socio-political-cultural contexts may be enlightening ……" Land issues often come to the fore in the post-conflict periods as populations seek to claim and reclaim land …… Even in supposedly "post conflict" environment, it is not a simple process for refugees to return home ……. This is a complex issue and every situation is different, conflict is a highly transformative process and pre-war status quo can never be established completely, even if that were desirable" – Sarah Pantuliano, Unchartered Territory, Land Conflict and Humanitarian Action Overseas Development Institute, November 2009.

9.123 The above reasoning applies with equal force to the post conflict situation in Sri Lanka and the Commission's recommendations take into account this reality.

9.124 Any citizen of Sri Lanka has the inalienable right to acquire land in any part of the country, in accordance with its laws and regulations, and reside in any area of his/her choice without any restrictions or limitations imposed in any manner whatsoever. The land policy of the Governments should not be an instrument to effect unnatural changes in the demographic pattern of a given Province. In the case of inter provincial irrigation or land settlement schemes, distribution of State land should continue to be as provided for in the Constitution of Sri Lanka.

9.125 The Commission appreciates the Government's land policy concerning return and resettlement of displaced persons and the associated Programme proposed in July 2011, titled 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' designed to resolve problems relating to land documentation and disputes in ownership and user-rights of the displaced persons. The Commission notes that the Programme is innovative, and seeks to utilize where appropriate, mechanisms that are less bureaucratic mainly informal and designed to release the vast majority of

the displaced persons from having to use the formal court system which would be complex, time-consuming and expensive for litigants.

9.126 The Commission would however like to strongly recommend to the authorities concerned to make it quite clear and assure the people, through an appropriate publicity effort, that this programme and associated mechanisms are not a substitute for recourse to the Courts of Law where people are in possession of valid legal proof of their claim to the land/s in question and that it seeks to make available land to all returning IDPs as expeditiously as possible, especially to those who do not have documentary proof due to conflict related reasons. This is necessary to allay the understandable concerns of the people about the paucity of information on the objectives of this programme.

9.127 The Commission offers the following recommendations to ensure implementation effectiveness and outcomes.

9.128 The Commission recommends that an apolitical approach be adopted in the implementation of the Programme, combined with a strong political will to ensure that it is completed as planned and any problems and constraints that arise are resolved effectively and promptly. The Commission recommends that the Government provides the needed human and financial resources for the successful implementation of the Programme.

9.129 A strong administrative will on the part of the civil administration beginning at the highest levels of officialdom to ensure impartiality and justice in implementation will also be critical. The Commission recommends effective supervision of civil administration officers tasked with the implementation of the Programme, by the respective Government Agents, and the monitoring of implementation quality by the Land Commissioner General at the national level to ensure impartiality and transparency.

9.130 The Commission believes that the success of the Programme would substantially depend on a clear and unambiguous understanding of the principles, the purpose, the objectives, and the methodology of the Programme by political leaders, the implementers, in this case the public officers and community leaders who would be the members of the various implementing Committees, and the beneficiaries, i.e. the heads of the households of the returned/resettled displaced persons. In this regard the Commission wishes to make the following observations and recommendations. (i) Although in the main done with good intensions, the public information so far

disseminated on the proposed new Programme has resulted in insufficient clarity regarding the purpose and the methodology of the proposed Programme. The following factors may have contributed to this state of affairs - (a) un-researched or inadequately researched information on the new Programme disseminated by the Media as well as various political personalities; and (b) inadvertent mix-up of the content and the methods of the proposed new Programme with some other land titling and user-right consolidation programmes currently under implementation by the Ministry of Lands. Although the recent advertisement on the proposed new Programme inserted by the Land Commissioner General in all three languages in the print media, provided some coherence, it may not be adequate to remove mixed messages and sometimes confusing information coming through the Media, the web pages, and political pronouncements.

9.131 The Commission recommends that a well planned media seminar on the proposed new programme could be organized by the Land Commissioner General's Department to enable the Media to project an accurate and clear view of the new Programme, devoid of political posturing.

9.132 The Commission recommends that the Land Commissioner Generals Department and the respective Governments Agents conduct well designed training programmes for all officers and community leaders selected for various Committees. The training should be based on a short and simple but written training manual in order to ensure that all training is identical and similar messages are delivered through the training activities in all Divisions and Districts. Short case studies of various possible scenarios on problems that are anticipated in the field can be developed with role plays or similar training methods used to simulate problem solving. This would enhance the skills and self confidence of the officers and community leaders in coming to terms with real problems in the field. A specialized training Institute such as the Sri Lanka Institute of Development Administration could be commissioned to partner the Land Commissioner General and the Government Agents in organizing the training, as they have expertise and experience in training public officers in a variety of disciplines. These would incur additional expenditure as well as time, but would definitely improve the effectiveness and the outcome of the Programme.

9.133 The Commission also recommends the launching of a well designed, settler centered communication campaign primarily in simple Tamil language, as well as in Sinhala language, incorporating information on what specific action the displaced persons should take with regard to different services provided by the Programme. The

communication campaign design should take into consideration clients' knowledge and understanding levels, as well as their existing communication networks; and should include 'how to do' and 'what to do' information in clear and simple language. This would help displaced persons to come forward to benefit from the Programme with confidence.

9.134 The Programme envisages the nomination of the area civil coordination officer, who is a Security Forces officer, into the two Committees proposed to be established to review land documentation and user-right issues. The Commission notes that the two Committees will be chaired by senior civil administration officers, and that the majority of the members are drawn from the civil administration. The Commission, as a policy, strongly advocates and recommends to the Government that the Security Forces should disengage itself from all civil administration related activities as rapidly as possible. With regard to the participation of security forces officers in the proposed land restitution process, the Commission being cognizant of the fact that that some lands are currently being utilized for security purposes recommends that such participation be confined to and used optimally to expedite releasing maximum extents of such land, while taking account of security considerations, but according primacy to the policy objective of allowing people to settle in areas convenient to them.

9.135 The Commission notes that the new Programme has introduced a measure of community consultation through the Observation Committees linked to the First (Investigation) Committee and the Second (Investigation) Committee. The Observation Committees constituting community members are expected to monitor the investigation decision process and provide locality specific information to the two Committees as necessary. While appreciating the opportunity provided for some measure of community consultations, the Commission recommends that the First Committees in each of the District Secretariat areas organize and hold a well publicized 'Community Consultation Meeting' prior to the launch of the First Committee investigation process. This would provide an opportunity for the returned /resettled communities in the respective areas to air their problems and constraints, as well as make useful and constructive suggestions to improve the investigation process. The First Committee could also use this forum to explain to the community how the investigations regarding land problems would be conducted, and what specific action and procedures each category of prospective applicants should adopt to facilitate reasonably quick resolution of their problems. This will give a sense of confidence to the people that they were also listened to. The First Committee will also get a preview of

what type of problems to expect in their respective areas. The Commission recommends that the planning and conduct of such Community Consultation Meetings be based on the experiences of the traditional Land Kachcheri system.

9.136 The Commission also recommends that the Land Commissioner General establishes a mechanism to rapidly consider the constructive suggestions made through the 'Community Consultation Meetings', and to consider using these suggestions as appropriate to further improve the field level methodology of the Programme.

9.137 The Commission recommends that arrangements be made to strengthen the human resource teams at all levels of implementation, through temporary secondment, and /or contracting qualified and skilled retired staff, and assignment of additional administrative service staff to the Land Commissioner General's Department through new recruitment and/ or secondment for a stipulated period of time to support effective and efficient implementation of the Programme.

9.138 The Commission realizes that implementation of some of the aforementioned recommendations would require additional financial allocations and lead-time. The Commission is of view that the proposed additional activities would, nevertheless, strengthen Programme implementation, and increase benefits to the community.

9.139 The Commission notes that the new Programme also envisages the granting of land to genuine landless families in the North and the East. The Commission recommends that all families who have been secondary occupants, whether at the behest of LTTE or not, be given land, if the lands they are currently in occupation are awarded to the genuine original permit holders on the results of the Investigating Committee decisions. However, the Investigating Committees should clarify, without any doubt, whether the secondary occupiers are genuinely landless**,** as some unscrupulous persons would use secondary occupation to gain more land in times of transition.

9.140 The Commission also recommends that strict controls be applied to prevent any alienation of State land other than for IDPs, except where State land is required for other approved purposes, until the proposed Programme is implemented. As there is information regarding alienation of State land through spurious deeds, legal provision should be made to enable relevant authorities to investigate and institute legal action in appropriate cases against any public officer, Attorney-at–Law, or Notary Public who commits such illegal acts or any other person aiding and abetting such acts.

9.141 The Commission believes that international financial assistance geared to supplement national counterpart funding through multilateral or bilateral development partners could help in the implementation of the Programme. Such an arrangement could prevent any possible slowing down of Programme implementation, as competing demands for the development of the Northern and Eastern provinces could negatively affect financial disbursements to the land sector. The Commission recommends that the Government of Sri Lanka actively seeks the cooperation of a development partner to support the Programme, based on the understanding that Government of Sri Lanka will be responsible for Programme policy, decision making, and implementation.

9.142 The Commission appreciates the fact that the two HSZs in Palaly and Trincomalee-Sampoor respectively have been reduced and that an estimated 21,491 persons have been returned to land. However, in the two reduced HSZ areas an estimated 26,755 persons are still displaced. The Commission recommends that the two existing HSZs in Palaly and Trincomalee-Sampoor, as well as small extents of private land currently utilized for security purposes in the districts be subject to review with a view to releasing more land while keeping national security needs in perspective. The Commission also recommends that all families who have lost lands and or houses due to formal HSZs or to other informal or *ad hoc* security related needs be given alternate lands and or compensation be paid according to applicable laws. The Commission further recommends that provision of alternate lands and or payment of compensation be completed within a specific time – frame.

9.143 The Commission recommends that the Government with the assistance of the development partners extend livelihood assistance to 'new IDP' families as needed, on an area by area basis for a longer period of time than planned, to ensure family sustenance. The Commission is pleased to note that in some areas of the Northern Province, the livelihood support initiative has been extended from the original period of 6 months to 9 months. The Commission recommends further extension of livelihood assistance including schemes for providing micro-credit for peasant farmer groups, tractors for farmer cooperatives, as well as extension advise and other support such as for introducing possible pilot projects on application of dry-farming methods for cultivation of upland crops in un-irrigated areas in the North. The Commission notes (according to data submitted by the Government Agents in the Northern districts) that a substantial proportion of irrigation tanks in the Northern Province are now in operation. The Commission recommends that the current momentum of renovating irrigation tanks

in the Province be continued till all the remaining small irrigation tanks are brought back into operation, possibly with UN System assistance.

9.144 The Commission recommends that the land issues of Muslim families who were forcibly ejected by the LTTE from their agricultural land in the Eastern province, and whose living conditions have drastically deteriorated as a result, be effectively and expeditiously resolved, as very little progress has been made in the East, especially in the Batticaloa district, even though about 04 years have elapsed since the end of the conflict in the East.

9.145 The Commission notes that the available official data with regard to the eviction of Sinhalese families from the Jaffna district appears to be inaccurate and recommends that this aspect be reviewed in a dispassionate and low-key but methodical manner without arousing any communal passion or tensions, in order to arrive at more precise data. The Commission also recommends that the Sinhalese families who were evicted from Jaffna and the rest of the Northern Province, and who volunteer to go back, be returned to own land or resettled in alternate land as expeditiously as possible, as the progress in this regard has been unsatisfactory**.**

9.146 The Commission notes that with respect to Muslim families evicted from Jaffna and the Northern Province, good progress has been made in return and resettlement as per information provided by the Government Agents of Jaffna, Mannar, and Mullaittivu. The Commission recommends that the return and resettlement of the remaining Muslim families who volunteer to return to Jaffna and the Northern Province be expedited.

9.147 The Commission notes with regret that the land issues and livelihood issues of some families living in the former Threatened Villages, especially families whose bread-winners were killed in LTTE attacks or were forced to be 'night-displaced' for family security, remains largely forgotten and unaddressed. Up to the time of compiling the Report, the Commission did not receive adequate information on the current situation of these families, a considerable proportion of whom are presumed to be headed by females, grandparents, older siblings, and single fathers. The Commission recommends that a focal agency be designated to study the special nature of problems and displacement of families in former Threatened Villages, with a view to designing a special mechanism to resolve their current problems expeditiously, as they lack the political patronage or power to influence the existing governmental administrative machinery as well as the evolving national post-conflict development agenda.

9.148 The Commission is of view that in order to prevent legitimizing of forced eviction and secondary occupation of private lands in the North and the East, the law pertaining to prescription should be amended in its application to land transfers/occupation effected during the period of conflict.

9.149 The Commission is concerned with the situation faced by so called **'**old IDPs' - persons displaced prior to April 2008, with a considerable proportion of them being displaced since 1980s. The old IDPs feel that they have suffered discrimination by non-action or slow-action of the State and other stakeholders. This recommendation is linked to recommendations [9.151, 9.153, 9.154, 9.155 and 9.156], being the umbrella recommendation that advocates for the return and resettlement of 'old IDPs'. The Commission is of view that the Government should ascertain the magnitude of the problems of the 'old IDPs' and with the assistance of the United Nations, begin a Programme to return or resettle these displaced persons who wish to return voluntarily. The proposed project described in [9.138 above could also be utilized to assist the voluntary return or resettlement of old IDPs and restoration of their homestead and agricultural lands. Any sense of injustice and discrimination welling up in their hearts and mind would adversely affect the nurturing of ethnic harmony and national reconciliation. It is also pertinent to note that the United Nations Guiding Principles on Displacement as well as the United Nations Guiding Principles on Restitution of Land of Displaced do not qualify displaced persons by period of displacement or reasons of displacement. All displaced persons enjoy equal rights, notwithstanding convenient administrative definitions coined to restrict benefits due to financial limitations, political concerns or international pressure.

9.150 The Commission is of view that the Government should expedite action on the establishment of a National Land Commission (NLC) in order to propose appropriate future national land policy guidelines. In formulating land policy the proposed NLC should include Guidelines for the equitable distribution of State land. The Commission regrets to note that although this is a requirement under the 13th Amendment, and a draft Bill has been framed, successive Governments have failed to get it passed through the Parliament.

9.151 The Commission is of view that a land use plan for each district in the North and East should be developed with the participation of district and national experts drawn from various relevant disciplines to guide the district administration in land conservation and alienation in order to ensure protection of environment and bio-diversity; sustainable economic development; leisure and recreational standards; religious, cultural, and

archeological sites with a view to improving the quality of life of the present and future generations.

9.152 The Commission appeals and recommends to all political parties to arrive at a bi-partisan understanding that 'restitution of land to displaced persons in Wanni and Jaffna and persons who lost agricultural land in the Northern Province, and in the Eastern Province and homes in the Threatened Villages', (i.e. to both the' new' and 'old) is recognized as a national issue and would not be used as a tool by political parties in the Government and the Opposition to gain narrow political advantage. The Commission is strongly of the view that such a bi-partisan approach is an imperative in promoting national reconciliation.

Chapter Seven: Observations and Recommendations on Restitution / Compensatory Relief

9.153 It is well recognized that while restitution enjoys primacy as a legal principle other forms of relief such as compensation and monetary relief is commonly sought. The Commission has considered, in particular, the role of compensatory relief in facilitating resettlement and reconciliation, the structures in place and the current status of payment. The Commission's recommendations seek to ensure that those who are eligible for payments have access to it within a reasonable timeframe.

9.154 REPPIA (Rehabilitation of Persons, Properties and Industries Authority) is the specialized institution responsible for implementing the Government of Sri Lanka policy on compensatory relief for the person/s who has suffered loss/damage due to terrorist violence and operations of the Government Security Forces. Chairman REPPIA conceptualized compensatory relief provided by REPPIA as 'consolation and relief.' Its purpose is to complement the variety of relief and reconstruction programmes in operation.

9.155 Based on representations made before the Commission and in the light of Commission's consideration of relevant norms and standards of compensatory relief, the Commission recommends that the state should review the role and capacity of REPPIA with a view to streamlining and augmenting its role and resources in undertaking post-conflict requirements.

9.156 The severe lack of funds to meet eligible payments is the single most critical issue in providing relief to affected persons. Providing an urgent solution to this problem is

essential for any progress to be made. Other administrative constraints appear to be at a manageable level.

9.157 The Government needs to take responsibility for prioritizing payments in full, and in time. Funding has to be procured to clear the backlog of cases as well as to prevent lack of funds being the reason for delays and non-payment in the future.

9.158 The responsibility of ensuring payments needs to be taken on by REPPIA. It should not be the responsibility of the individual to obtain their entitlements. REPPIA needs to set itself a target time frame to ensure that all entitlements are met.

9.159 A time limit should be set for completion of payments for losses suffered up to the end of the conflict. This needs to be done for two reasons: 1) for those who are entitled to payments to obtain it while the financial need is most acute. 2) for REPPIA to bring its responsibilities towards those affected by the conflict to a close.

9.160 In setting a time limit for payments to be completed, the following need to be considered: 1) Reasonable time needed for those making applications. The particular circumstances of IDPs and those who had been living in areas dominated by the LTTE should be taken into account when deciding on a time limit. 2) A reasonable minimum and maximum time taken for processing applications and payments given REPPIA's capacity and other relevant factors. Extensive publicity needs to be given to ensure all entitled persons to apply.

9.161 While the Commission acknowledges that the education and livelihood projects are critical to the needs of people of affected areas, the primary focus of REPPIA should be in providing compensatory relief for persons affected by the conflict. As such, the supplementary projects should be taken over by other relevant state authorities.

9.162 REPPIA should urgently priorities the 'General Public' and 'Public Servant' payment of death, injury and housing entitlements. The problem of public servants being disqualified from NGO assistance programmes, particularly housing assistance, needs to be revisited.

9.163 Requests to increase the compensation amount have been made to REPPIA. However, given the financial commitment needed to clear the backlog of cases and pending applications, the Commission does not consider an increase in amount as a viable step. Further, given the principles of reparation the more reasonable strategy would be for Government to provide for complementary schemes to ensure rebuilding and resettlement.

9.164 A decision has to be taken on compensatory relief for death and injury for those involved with the LTTE. From the broad reconciliatory perspective, the Commission takes the view that in principle, ex-combatants and next of kin should also be considered eligible for compensatory relief. However, the priority of REPPIA should be with the affected civilians who are most in need.

9.165 Housing needs have to be addressed urgently. Housing is a fundamental issue for returning IDPs, that needs special assistance, beyond the scope of compensatory relief and the mandate of REPPIA. Given the number of houses required and the extensive costs, the Government should access all possible sources of assistance from institutions and individuals both national and international.

9.166 In conclusion, the Commission observes that providing compensatory relief cannot be considered in isolation. The specific role of compensatory relief has to be seen against the overall resettlement and development strategy that is being operationalised in the areas that had been the centre of conflict. These include the operation of the basic national welfare services such as health, education, food, water and agriculture, infrastructure, as well as the complementary State programmes such as livelihood development and village development programmes.

Chapter Eight: Reconciliation - Section I: Observations on issues impacting on Post Conflict Reconciliation

9.167 Representations were made before the Commission; during it sittings in Colombo and particularly during its field visits, regarding issues that were of concern to persons who have been either directly or indirectly affected due to the conflict.

9.168 The Commission deemed it necessary to consider these issues in the context of reconciliation and building amity and national harmony. With regard to several of the issues highlighted which are directly relevant to day to day living, the Commission sought updates from civilian administrators (Government Agents) and the Security Forces, and the Commission also took cognizance of the Report of the Presidential Task Force for Resettlement, Development and Security in the Northern Province issued in the year 2011, the Reports of the Central Bank and the Ministry of Economic Development as well as the Joint Humanitarian and Early Recovery Update Reports prepared by OCHA, all of which indicate that by and large significant progress has been made and is continuing to be made on the issues raised.

9.169 The Commission notes from the material examined by it, including the responses of the GAs that :

- concerted efforts are being made in all affected districts to address re-settlement, livelihood, education, medical, transportation and permanent shelter needs of the people and much progress has been made (including through the grant of financial and other assistance packages). Agriculture which is the mainstay of most of the affected districts has seen increased production and fisheries production has also shown improvement. Infrastructure development is well underway. However, there continue to be needs which are still unmet in these areas. Certain fishing grounds are still inaccessible and in some districts permits are required from the Navy for fishing. While a significant number of irrigation tanks have been rehabilitated and are being used, an accelerated program with regard to the rehabilitation of the remaining tanks would further assist the Agriculture production. Resettlement assistance is still pending in some cases and there appear to be difficulties in providing the requisite documentation for eligibility. Teacher accommodation appears to be a common problem across districts.

- land related issues continue to be a challenge.

- permanent shelter requirements as against actual commitments and delivery is a matter of serious concern.

- the needs of certain vulnerable groups of persons requires a more focused approach.

- the re-establishment of civilian administration is still lagging in certain districts. Many vacancies exist in GN positions – The Commission is of the view that filling these vacancies should be a priority given the fact that the GN is the focal point of civilian administration at the grass roots level.

9.170 The Commission however recognizes the fact that considering the protracted nature of the conflict spanning a period of thirty years, resolving all such issues would naturally take time and require significant resources and financing. The Commission also notes that the Government of Sri Lanka has in fact committed considerable funding and resources to the North and East and Sri Lanka's development partners are contributing to these efforts and working in co-operation with the Government agencies. These actions of the Government of Sri Lanka demonstrate an acknowledgement and commitment on its part to ensure that citizens throughout the country are assisted with

their basic needs and can share equally in economic dividends. At the same time the Commission takes the view that the Government of Sri Lanka must adopt a more engaged and constructive policy towards its development partners at home and abroad in order to realize the full potential of the latter towards mobilizing the resources, knowhow and experience. Such a policy will stand in good stead in meeting the remaining challenges of reconstruction, development and in reconciliation.

9.171 The Commission further notes from the responses received from the civilian administrators and others that, while the Security Forces have worked and are continuing to contribute to re-construction and development, there were concerns that they also continue to be engaged in small businesses and farming on private lands in some districts. Moreover it appears that the permission of the Security Forces is required in some districts for various activities, including in some instances, for selecting beneficiaries for housing assistance. The responses also indicate that certain State buildings and private land/buildings in the North and East continue to be used by the Security Forces. The Commission recommends the phasing out of the involvement of the Security Forces in civilian activities and use of private lands by the Security Forces with reasonable time lines being given.

9.172 When analyzing the data, particularly those provided by the civilian administrators, there **is** a need for a uniform and transparent approach to reporting progress/issues by each district, together with a gap analysis of needs as against progress achieved, through a standard reporting mechanism. Considering the multidisciplinary nature of the issues involved this may be a difficult task but it would go a long way in enabling a broader understanding of the key issues, at a macro as well as micro level, which still need to be addressed.

Chapter Eight: Reconciliation - Section II: Observations and Recommendations on Reconciliation

9.173 The ending of a nearly three decades of protracted and bloody conflict has opened many opportunities for bringing about reconciliation between the different communities, especially among the Sinhalese, Tamils and the Muslims. It becomes necessary to articulate a common vision of an interdependent, just, equitable, open and diverse society. The development of a vision of a shared future requires the involvement of the whole of society. Acknowledging the losses and suffering of the past and providing mechanisms for recompense, social justice and for restoration of normalcy and expressions of empathy and solidarity, are steps aimed at redress. Relationship

building following violent conflict, addressing issues of lack of trust, prejudice, and intolerance whilst accepting commonalities and differences**,** is the essence of reconciliation.

9.174 The culture of suspicion, fear, mistrust and violence needs to be removed and opportunities and space opened up in which people can hear each other and be heard.

9.175 Hundreds of persons who appeared before the Commission or otherwise communicated with it have conveyed a near unanimous and unmistakable message. That message is twofold.

9.176 Firstly, having emerged from a painful and debilitating conflict that lasted for nearly three decades, people of all communities now yearn for lasting peace, security, amity and harmony. They have been equally emphatic that we must do all we can to ensure, that never again should there be blood-letting on this blessed land in order to find solutions to problems that political leaders of this country were either unable or unwilling to resolve.

9.177 Secondly, there was also a clear message that the ending of LTTE terrorism and the advent of a strong and broad based Government led by an executive President has provided a great window of opportunity – an opportunity to forge a consensual way forward to address a range of governance issues in a manner that will promote reconciliation, amity and cooperation among all communities, provide political solutions to the grievances of minorities and ensure the realization of the legitimate rights of all citizens.

9.178 What needs to be done for reconciliation and nation-building is that the State has to reach out to the minorities and the minorities**,** in turn must**,** re-position themselves in their role *vis a vis* the State and the country.

9.179 There must be willingness on the part of all political parties to give up adversarial politics and have consensual decision-making on national i**s**sues. In order to meet the challenges of this *o*pportunity there has to be **c**ourage and political will on the part of all political parties.

9.180 Many who appeared before the Commission emphasized that what had been achieved by the security forces should be invested in a political process that will usher in an era of sustainable peace and security for the Nation and lasting amity, friendship and harmony within and between communities. The Commission again found significant common ground among a broad spectrum of persons who made representations that this task

can and should be achieved whilst upholding the territorial integrity and sovereignty of the nation and safeguarding the long-cherished Sri Lankan values of democracy, tolerance and power-sharing.

9.181 The Commission was also reminded that despite the lapse of two years since the ending of the conflict, the violence, suspicion and sense of discrimination are still prevalent in social and political life. Delay in the implementation of a clearly focused post-conflict peace building agenda may have contributed to this situation.

9.182 The observations/recommendations appended below therefore represent the considered views of the Commission derived from these clear and present dangers as well as the opportunities outlined by a number of people who appeared before it. And they seek to foster a collective effort to be undertaken by all Sri Lankans at three levels: i.e. at the level of the political leadership; at the level of civil society and at the level of the individual citizens.

9.183 The Commission however wishes to emphasize that the responsibility for being the prime mover of this process lies squarely with the Government. Since reconciliation is a process and not a one-time event, the efforts towards that objective should be continuous and broad-based whilst being fully supported by the elected Government.

9.184 The Commission takes the view that the root cause of the ethnic conflict in Sri Lanka lies in the failure of successive Governments to address the genuine grievances of the Tamil people.

9.185 A political solution is imperative to address the causes of the conflict. Everybody speaks about it, though there is no agreement about the diagnosis and the prescription.

Grievances of the Tamil Community

9.186 The grievances of the Tamil community have figured prominently in the discourse on the ethnic conflict and its causes.

9.187 The articulation of gr**i**evances by the Tamil people continues to remain at the centre of the Sinhala – Tamil relationship and need to be recognized and addressed directly and fairly as the first step in the post-conflict process of reconciliation and peaceful co-existence. No doubt these grievances have changed over time and some of them have been dealt with**,** at least partially. However, many new grievances have been added as the conflict escalated. In that process the majority community and other minorities have also had their share of grievances.

The Historical Background relating to Majority-Minority Relationships in Sri Lanka

9.188 The Soulbury Commission report devoted considerable space to what it called the grievances of minorities.

9.189 The Soulbury Commission concluded that while administrative and constitutional safeguards were necessary to deal with the problems that were caused, none of these are adequate without a fundamental change in the predispositions of both the majority and minority towards each other. These perceptions on both sides had a crucial impact on the relationships between the two communities and as Sri Lanka is in the process of reconciliation these observations, in the Commission's view, are most pertinent in trying to answer questions such as what caused the just-ended conflict.

9.190 The process of addressing the grievances was not managed smoothly and with goodwill by the political leaders of the day. It was not a process in which the Tamil speaking minorities and other disadvantaged communities were treated with dignity. The strong sense of grievance that prevails in the Tamil community arises from the travails and injustices of that process.

9.191 The decisive rift in the inter-ethnic relationship came first with the riots of 1958, then in 1977, and culminating in what is known as 'Black July' of 1983, and the heinous failure of the then Government to provide adequate protection to Tamil citizens. The problems pertaining to the Tamil community and their grievances cannot be fully addressed without a fuller understanding of this culture of violence that marred the relationship between the Sinhala and Tamil communities.

The principal observations and recommendations on the grievances of the Tamil community and other post conflict grievances which are common to all communities are set out from paragraph 9.200 onwards.

Grievances of the Muslim Community

9.192 The problem of Muslims living in the North began with the forcible expulsion of the Muslim community by the LTTE on the 30th of October 1990**.** The Muslims were the victims of ethnic cleansing in these areas, (North and East) done at gun point by the LTTE.

9.193 The treatment leveled at the Muslim community of the Northern Province has led them to believe that they are at the bottom of the list of priorities of the Government, INGOs, NGOs and the international community.

9.194 The Government should facilitate the early return of the displaced Muslims to return to their places of origin in the Northern Province.

9.195 The Government should take immediate steps to assist in re-building of the mosques, houses and schools destroyed or damaged by the LTTE.

9.196 The national and international agencies implementing IDP welfare programs should bear in mind the perception of discrimination that exists between the so called 'old IDPs' and other IDPs. The international and national attention brought upon the new IDPs and the resultant advocacy and programmatic initiatives implemented on their behalf which are undoubtedly needed, would perhaps have sharpened the sense of discrimination felt by the 'old IDPs'. The Commission is inclined to agree that the perceptions of the 'old IDPs' regarding inequity have some merit. Equity and non discrimination are key principles of all UN human rights instruments to which Sri Lanka has subscribed. Thus it is incumbent upon the Government of Sri Lanka with the cooperation of its development partners, to take into account the equity and non-discriminatory principles in dealing with the situation of the 'old IDPs'.

Grievances of Sinhalese in Villages Adjacent to Former Conflict Areas

9.197 The perception of people in these areas was that the Government tended to overlook the civilians who lived in these villages, and who had survived the terror perpetrated by the LTTE. The people in these villages had continued to live under tremendous threats to their lives without migrating to safe areas in the South. Apart from facing severe security risks, the people living in these villages have faced severe hardships in education, disrupted and fractured livelihoods, paucity of health care and transport facilities. These villagers articulated the need to be treated equally to enjoy the dividends of peace.

9.198 The Government should undertake an in-depth study to identify the needs of the people in these areas to address the question of improving their livelihood.

9.199 The Commission is of the view that the Government must ensure even-handed resource allocation and development of villages. If not, it could lead to frustration and communal tension in clusters of villages dominated by different ethnic communities, particularly in the Eastern Province.

Grievances of Tamils of Indian Origin

9.200 There were representations made to the Commission by Tamils of Indian origin who expressed concern about the lack of educational and health facilities in areas where

they live and they also brought to the notice of the Commission the difficult living conditions that prevailed on the estates. The Commission appreciates these concerns and recommends to the Government that necessary steps should be taken to improve the health and educational facilities and also provide better living conditions in the estate areas.

9.201 The Commission also recommends that a larger post conflict development agenda and the programmes for reconciliation should take account of the essential needs of the Tamils of Indian origin.

Issues relevant to addressing Grievances and Promoting Reconciliation

FAILURE TO GIVE EFFECT TO THE RULE OF LAW

9.202 Many persons who made representations before the Commission stated that a large number of persons having political patronage had committed offences, but the long arm of the law had not reached them because of the political pressure exerted on law enforcement authorities. Along with an independent Judiciary and a transparent legal process a strict adherence to the Rule of Law is a *sine qua non* for peace and stability which is of the essence, if there is to be any meaningful reconciliation. It was stated that lack of good governance, and non-observance of the Rule of Law coupled with a lack of meaningful devolution were causes for creating tension between communities.

9.203 Among the issues that emerged during the Commission's deliberations were the following:

a. Failure on the part of the law enforcement officers to investigate offences and bring offenders to book, where the offences are committed by persons with political connections.

b. Despite the end of the conflict significant issues of law and order still remain. There is apprehension in the minds of the people living in the North and the East, due to continuing acts of extortion, and other criminal acts such as abductions, disappearances, robberies etc. by armed groups. It was alleged that a number of politicians operate on the fringes of the law. Due to their interaction with criminal elements in society they subvert the course of justice by the undue influence exerted on the police resulting in the politicization of the police.

c. The political violence accompanied by the use of firearms has caused much concern among the law abiding citizens of this country. The Commission views with concern

the escalation of political violence and unlawful possession and use of firearms by politicians and their supporters.

9.204 The Commission strongly recommends that the Government should take immediate action to disarm persons in possession of unauthorized weapons and also prosecute such offenders.

9.205 At the time of writing this report the Commission became privy to a serious shooting incident where two politicians of the same political party were involved, following the recently concluded local government elections, resulting in a number of deaths and injuries. Such a deplorable lack of mutual accommodation by the politicians and resorting to such blatant violence to resolve issues, is hardly the example the peoples' representatives are called upon to set at this juncture of the national reconciliation process.

9.206 The Commission wishes to specifically highlight the following instances brought to its attention by a number of representers.

9.207 There were allegations made that one Bhareti is alleged to have committed several offences of abduction, extortion, robbery etc. in the Eastern province. This matter was brought to the notice of the relevant authorities by the Commission. The Commission regrets to note that no meaningful action has been taken against the alleged wrongdoer. Two senior retired police officers and two representers who had been victims of an abduction along with around six hundred police officers, referred to the alleged involvement of Karuna the then LTTE leader of the Eastern Province and several other members of the LTTE, regarding the murder of the police officers, who had been ordered to lay down arms and surrender to the LTTE.

Pursuant to the allegations made by the representers the Commission questioned Mr Muralidharan *alias* Karuna about the allegations leveled against him. He denied the allegations in respect of these murders.

However, this Commission regrets to note that up to date no investigation has been conducted in respect of the killing of six hundred policemen. The Commission is of the view that this matter warrants a full investigation because of the nature of the crime and the bearing it has on reconciliation.

9.208 Several representers complained about acts of extortion that were being committed by members of the Eelam Peoples' Democratic Party. The Commission is of the view that since there are several complaints against the EPDP there should be a full investigation

regarding these allegations. Absence of an investigation would create a sense of impunity.

9.209 Many representers brought to the attention to the Commission illegal activities of a gang led by a person called Major Seelan, in connection with offences of abduction, extortion and robbery using the security forces facilities as a cover. The Commission brought this to the attention of the DIG of the area. Consequently, an accomplice of Major Seelan was apprehended. However the alleged principal offender still remains at large.

9.210 In this regard the Commission reiterates the importance of giving full effect to all of its Interim Recommendations concerning illegal armed groups.

9.211 The Commission regrets that full effect has not yet been given to its Interim Recommendations.

9.212 The Commission notes that Police officers serving in the provinces do not have adequate access to legal expertise regarding investigations and the conduct of prosecutions. In the circumstances the Commission strongly recommends setting up units of the Attorney General's Department in the Provinces to guide and advise the Police regarding criminal investigations, prosecutions and other matters touching upon the criminal justice system.

9.213 The Commission emphasizes that all allegations should be investigated and wrongdoers prosecuted and punished irrespective of their political links, so as to inspire confidence among the people in the administration of justice.

9.214 The Police Department is a civilian institution which is entrusted with the maintenance of law and order. Therefore, it is desirable that the Police Department be de-linked from the institutions dealing with the armed forces which are responsible for the security of the State.

9.215 The Commission is of the view that an independent permanent Police Commission is a pre-requisite to guarantee the effective functioning of the Police and to generate public confidence. Such a Commission should be empowered to monitor the performance of the Police Service and ensure that all Police officers act independently and maintain a high degree of professional conduct.

9.216 The Commission heard submissions that some minority grievances stem from deficiencies in the system of administration and lack of good governance that affect all citizens regardless of ethnicity. These deficiencies require concerted action by all stakeholders. However specific action is needed where the system functions particularly to the disadvantage of the minorities.

9.217 The political culture of the country has made the general public powerless and helpless to a point that they have become dependent on politicians to obtain many services and amenities they are entitled to.

A Special Institution to deal with Citizen Grievances

9.218 The present law that deals with the office of the Parliamentary Commissioner for Administration is inadequate to effectively deal with the grievances of citizens arising from state action, even though the amendment introduced by Act No 26 of 1994 has sought to improve the public petitions procedure. Therefore, the Commission recommends that the Government should establish an independent institution to address the grievances of all citizens, in particular the minorities, arising from the abuse of power of public officials and other individuals involved in the governance of the country. This mechanism should be invested with a strong investigative arm in order to enable it to effectively discharge its functions.

9.219 Any citizen of this country who has a grievance arising out of any executive or administrative act, particularly those based on ethnicity or religion, should have the right to seek redress before the independent institution.

9.220 There should also be provision to give effect to the decisions of this institution. Further in order to make the proposed institution effective, the law should provide for the imposition of sanctions in respect of persons who have abused power.

9.221 Interfaith Reconciliation and Peace Committees that may be established at District and Provincial levels could function as a feeder mechanism to support the functions of the Special Institution**,** in particular, by providing grass root level inputs in the implementation of measures aimed at inter - ethnic and inter - religious harmony.

Other Measures

9.222 Systems and procedures in the public service need to be guided by criteria, norms and codes of conduct that are sensitive to the concerns and apprehensions of all citizens in

particular, the minorities. Full transparency and information regarding the rationale of government decisions should be available to the people to prevent misperceptions that could give rise to a sense of grievance. Towards this end existing procedures and practices should be reviewed.

9.223 The Government should ensure that development activities should be carried out in consultation and with the participation of the local people. Such a transparent approach in administration would make the people feel an ownership to the development activities**,** as well as give them a sense of participation in nation building.

9.224 The Commission recommends that a specific programme be conceived and implemented to bring about attitudinal changes including, through training programmes to enhance the work ethic of the Public Service.

9.225 An alarming phenomenon that was brought to the notice of the Commission was the high level of interference by politicians of the ruling party with regard to appointments, transfers etc of public officials. This is the very antithesis of good governance.

9.226 The Commission strongly recommends the establishment of an Independent Public Service Commission without delay to ensure that there is no political interference in the public service and that recruitment and promotions in the public service are in conformity with the equality provisions in the Constitution.

9.227 It is important that the Northern Province reverts to civilian administration in matters relating to the day-to-day life of the people**,** and in particular with regard to matters pertaining to economic activities such as agriculture, fisheries land etc. The military presence must progressively recede to the background to enable the people to return to normal civilian life and enjoy the benefits of peace.

9.228 The Commission notes the representations made regarding the absence of constitutional provisions for judicial review of legislation. There should be adequate legal provisions for the members of public and other organizations to effectively canvass before the Supreme Court the constitutionality of any proposed legislation. The time frame provided in the Constitution for canvassing constitutionality of proposed legislation before the Supreme Court, in particular of urgent bills, is grossly inadequate. The Supreme Court is called upon to make a determination in respect of urgent bills within a period of 24 hours or on a date not later than three days as specified by His Excellency the President (Article 122(1) of the Constitution). Public intervention regarding proposed legislation is an integral part of a vibrant democracy. Therefore, the

Commission recommends, that the Government and the Opposition make all endeavours to reach a consensus on an appropriate constitutional amendment, to provide for an adequate timeframe to challenge proposed legislation.

THE NEED FOR DEVOLUTION OF POWER

9.229 Many persons who appeared before the Commission stated in clear terms that reaching a political consensus that will facilitate devolution of power to be of critical importance, to further the process of reconciliation after the ending of LTTE terrorism, which was the main obstacle against achieving such a consensus for a long time.

9.230 It is vital that the Government should provide leadership to a political process which must be pursued for the purpose of establishing a framework for ensuring sustainable peace and security in the post-conflict environment. In this endeavour the rights of all communities**,** including those who have been members of the LTTE**,** must be ensured. To this end a political settlement based on devolution must address the ethnic problem as well as other serious problems that threaten the democratic institutions. This political process should culminate in a constitutional foundation and mechanisms that provide opportunities for development and implementation of necessary socio-economic policies.

9.231 Devolution should necessarily be people-centric in nature and the following considerations should be borne in mind –

a. Devolution should essentially promote greater harmony and unity and not disharmony and disunity among the people of the country. The promotion of this 'oneness' and a common identity should be the principal aim of any form of devolution while protecting and appreciating rich diversity.

b. The focus should be to ensure that the people belonging to all communities are empowered at every level especially in all tiers of Government. Devolution of power should not privilege or disadvantage any ethnic community, and in this sense, should not be discriminatory or seen to be discriminatory by the people belonging to any ethnic community within the country.

c. The democratic empowerment of the people should take place within the broader framework of the promotion and protection of human rights which is a fundamental obligation of the elected government deriving from specific provisions of the Constitution and the Treaty obligations the country has voluntarily undertaken.

d. In addressing the question of devolution two matters require the attention of the government. Firstly, empowering the Local Government institutions to ensure greater peoples' participation at the grass roots level. Secondly, it is also imperative that the lessons learnt from the shortcomings in the functioning of the Provincial Councils system be taken into account in devising an appropriate system of devolution that addresses the needs of the people. It should at the same time provide for safeguarding the territorial integrity and unity of Sri Lanka whilst fostering its rich diversity.

9.232 An additional mechanism that may be considered is the possibility of establishing a Second Chamber comprising Representatives from the Provinces. Such a mechanism is likely to generate a sense of confidence among the political leadership and among the people in the Provinces, that they too have a vital role to play in the legislative decision making process, *inter alia*, by examining legislative measures that may have a bearing on issues of particular relevance to the Provinces.

9.233 All parties should recognize that the real issue of sharing power and participating in government is the empowerment of the people and making the political leaders accountable to the people. This applies to Sri Lanka as a whole and includes the needs of citizens of all communities**,** Sinhala, Tamil, Muslim and others. The effective functioning of the democratic system which fulfils these needs, together with a consensual framework of devolution will, by virtue of attributes and institutions intrinsic to it, also provide the answer to the grievances of minorities.

9.234 All parties must commit themselves to finding solutions internally through negotiation with each other. The Tamil leaders should take account of the unnecessary internationalization of the ethnic issue and the external pressures exercised by the Diaspora and its impact on the negotiations for a political settlement. The perceptions of external threat and intervention can create a sense of insecurity that can seriously impede the progress towards an acceptable solution.

9.235 The Commission is of the view that it is an imperative that any devolutionary or power sharing mechanism should be realized within the broad framework of a sovereign, politically independent and multi-ethnic Sri Lankan State. While the distribution of meaningful powers to the periphery is essential, there are powers which form the core responsibilities of the State and which cannot be so devolved, and need to be retained and exercised by the Government at the centre. It is also important to ensure that any power sharing arrangement has inbuilt mechanisms that would effectively address and

discourage secessionist tendencies and safeguard the sovereignty and integrity of the State.

9.236 The Commission wishes to underline the critical importance of making visible progress on the devolution issue, in order to ensure the success of any process of lasting and sustainable reconciliation. The Commission therefore recommends that the present opportunity be utilized to launch a good-faith effort to develop a consensus on devolution, building on what exists – both, for maximum possible devolution to the periphery especially at the grass roots level, as well as power sharing at the centre. This consensus should be one that will enable peoples' participation in governance decisions affecting them and avoid costly and unnecessary duplication of political, bureaucratic and other institutional structures that hamper efficient, cost-effective and transparent governance.

9.237 To this end, the Government must take the initiative to have a serious and structured dialogue with all political parties, and those representing the minorities in particular, based on a proposal containing the Government's own thinking on the form and content of the dialogue process envisaged. That dialogue must take place at a high political level and with adequate technical back-stopping.

THE LANGUAGE POLICY

9.238 The Commission heard from many Tamil persons and noted the sense of marginalization expressed by them due to the language policy and the deficiencies in its implementation followed by successive Governments.

9.239 The Commission during its visits to the affected areas witnessed firsthand, that even today many persons of the minority communities are made to transact business not in the language of their choice.

9.240 Whilst acknowledging the work in progress for recruiting Tamil-speaking Police officers, the Commission notes with regret that recommendations on urgent measures made by the Commission in its interim communication to the President on these matters have yet to be implemented.

9.241 The official bodies for executing the language policies and monitoring performance should have adequate representation of the Tamil speaking people and Tamil speaking regions. The full implementation of the language policy should include action plans broken down to the community level, and appropriately covering the Divisions and Local Bodies with targets that can be monitored with citizen participation.

9.242 The people of the North and East are separated from the people of the South due to communication barriers. Every attempt must be made to create a sense of belonging among all the citizens irrespective of race, religion or social status. It is language that unifies and binds a nation**.** Therefore, it is essential that policies relating to language are formulated towards this end. It is imperative that the official languages policy is implemented in an effective manner to promote understanding, diversity and national integration.

9.243 The learning of each others' languages should be made a compulsory part of the school curriculum. This would be a primary tool to ensure attitudinal changes amongst the two communities. Teaching Tamil to Sinhala children and Sinhala to Tamil children will result in greater understanding of each other's cultures.

9.244 The proper implementation of the language policy and ensuring trilingual (Sinhala, Tamil and English) fluency of future generations becomes vitally important. A tri-lingual education will allow children from very young days to get to understand each other.

9.245 The Commission welcomes the government initiative for a trilingual nation by the year 2020. To this end the necessary budgetary provisions must be made available on a priority basis for teacher training and staffing.

9.246 No district or province should be categorized in terms of language. Officers in Government service should possess language skills to serve in any part of the country.

9.247 It should be made compulsory that all Government offices have Tamil-speaking officers at all times. In the case of Police Stations they should have bi-lingual officers on a 24-hour basis. A complainant should have the right to have his/her statement taken down in the language of their choice.

9.248 The Official Languages Commission is centralized and based in Colombo and not easily accessible to rural citizenry. The Language Commission should be an authority with effective powers of implementation, and also with branches in every province.

9.249 Greater attention should be given to information technology which can be utilized as an instrument to overcome the language barrier. For this purpose, as a temporary measure, software programs can be used for translation from one language to another until long term policies and measures take effect.

9.250 In this regard, the Commission also wishes to invite attention to its Interim Recommendation to station interpreters at Police Stations using retired police officers with bilingual fluency.

EDUCATION

Equal Opportunities

9.251 The removal of the feeling of discrimination is a prerequisite for reconciliation between the Sinhalese and Tamils in a united Sri Lanka. Much water has flowed since the introduction of standardization as a means of affirmative action by the State to mitigate the imbalance in educational opportunities afforded to different communities. Therefore, in the best interest of future generations a careful review of this quota system would be timely, with a view to introducing a merit based admission system. The Commission recommends that such a review should be undertaken by a committee of experts in education.

9.252 The Government must pursue with renewed vigour a programme of equitable distribution of educational facilities so that it will contribute towards a concerted effort to minimize any feeling of discrimination felt by the minorities**.** At present the proposed plan to upgrade one thousand secondary schools island wide from 2011, will provide another opportunity to minimize and eventually eliminate imbalances. This policy should be implemented without creating tensions and fissures in society. It is only if these schools are identified on the basis of objective criteria and on an apolitical selection process that this endeavour will prove to be a success. The Commission recommends that the inequality in the availability of educational facilities in different areas of the country should be reduced and eventually eliminated.

9.253 The Commission also recommends that the Government should have a proactive policy to encourage mixed schools serving children from different ethnic and religious backgrounds. In this regard the Government should develop a carefully conceived policy facilitating the admission of children from different ethnic and religious groups to these schools. In respect of admissions to schools, disqualifying students on ethnic or religious grounds does not augur well for reconciliation. Any such practice should be discouraged.

9.254 Mutual understanding and appreciation of the rich cultural diversity of different communities should be inculcated in the minds of school children and youth so that the process of reconciliation takes firm root in the social fabric of the country. The Commission therefore recommends that every encouragement be given to create

greater interaction among students, through mechanisms such as twinning of schools from the different provinces, student exchange programmes and formation of Reconciliation Clubs in schools. In addition the National Youth Council should adopt more intensive exchange programmes at the youth level.

Peace Education

9.255 An eminent international jurist, giving evidence before the Commission underlined the vital importance of peace education in promoting unity and reconciliation. Comments of the Commission on possible curriculum changes are reflected in the body of the Report.

9.256 In giving effect to a trilingual policy, measures should be taken to ensure, as far as possible, that students of different communities have every opportunity to interact. Interaction in the same class room should be encouraged, as far as practicable. However, for subjects taught in different languages they could be streamed into different class rooms.

9.257 Steps must be taken to ensure public universities have ethnically mixed student populations with a choice of courses offered in all three languages. Until recently, it appears that most Tamil-speaking undergraduates were confined to the North and the East, and the Sinhala-speaking under graduates in the South.

9.258 The Commission is of the view that sports builds up inter-personal contacts amongst people of different communities which is essential in the process of reconciliation. With this in view, the Commission recommends that sports tournaments should be conducted at inter-provincial levels and important national sports competitions should be conducted throughout the island, especially, in the North and East.

DIASPORA

9.259 The Commission noted that while some 'Tamil diaspora groups' seek to contribute constructively to broad based reconciliation efforts, some other diaspora groups, especially, those described by some as supporting the LTTE, seem to adopt an adversarial approach.

9.260 It is clear to the Commission that these 'hostile diaspora groups' can potentially undermine the genuine efforts in Sri Lanka towards reconciliation. The Commission therefore feels that the Government together with the relevant stakeholders, especially civil society, should develop a comprehensive approach to harness the potential of the expatriate community.

9.261 The main elements of such an approach should be to:

a. engage the elected representatives of the minority parties in a meaningful dialogue on devolution and other grievances. The most efficacious way to make the 'hostile diaspora groups' irrelevant will be to make the local minority parties relevant through a structured dialogue that has visibility and recognition at a high political level;

b. take action to constructively engage those groups that still harbour adversarial attitudes and the LTTE approach of separation, and find space for those groups to contribute to the local reconciliation and development efforts.

c. engage in a proactive diplomatic initiative with the international community, especially those countries that host these diaspora groups. The purpose of this initiative should be to brief those countries on the meaningful dialogue referred to above and the effective and visible action being taken to address the post-conflict issues, including the implementation of recommendations of the present Commission. It is by doing so that the Government can persuade the host countries to listen less to these hostile diaspora groups**,** while being more receptive to the information provided by the Government. In addition, the Government must also be proactive in encouraging and supporting the work of the expatriates who do not advocate the discarded LTTE ideology of violence and separation and who espouse the democratic principles of ethnic harmony and consensual politics.

d. The Government must also have more liberal policies and attitudes towards those expatriates who wish to invest and work in Sri Lanka, for instance by making it easier to obtain dual nationality status, effect remittances and be able to travel throughout the country without undue restrictions.

e. These elements require a carefully worked out programme of action on a broad front here in Sri Lanka and through the Sri Lanka diplomatic missions and with civil society groups here and abroad.

9.262 It is imperative that the Government take the initiative to constructively engage its development partners in Sri Lanka and abroad in order to develop a self-reliant, future oriented community in the Wanni, with open minds to build on and sustain reconciliatory community relationships. This is an area where the Sri Lankan 'diaspora' can support the Government of Sri Lanka, working in cooperation with the development partners in areas such as housing, schooling, healthcare and livelihood activities.

9.263 The Commission, recommends that the Government constitute a Multi - Disciplinary Task Force that will include representatives from the Presidential Secretariat, External Affairs, Defense, Foreign Employment, the Private Sector, and Academia, to propose a programme of action to harness the untapped potential of the expatriate community, and to respond to the concerns of the so-called 'hostile diaspora groups,' and to engage them constructively with the Government and other stakeholders involved in the reconciliation process. If such a comprehensive approach is not adopted urgently, the Commission feels that the current momentum towards creating a hostile external atmosphere could grow, and those groups that advocate such a process would continue to promote polarization that will significantly impair the genuine efforts of others who espouse reconciliation back home in Sri Lanka.

INTERFAITH ACTIVITIES – ROLE OF RELIGION IN RECONCILIATION

9.264 Several religious delegations making representations before the Commission emphasized that Sri Lanka is enriched by the traditions of four world religions, Buddhism, Hinduism, Islam and Christianity.

9.265 It was stated that reconciliation following a prolonged conflict is difficult to achieve in the short term. It should, therefore, become part of a long term rebuilding exercise. Institutional arrangements will be required in order to keep reconciliation in focus, anticipate potential breaches of social harmony, and diffuse them before they reach dangerous proportions.

9.266 The Commission was deeply concerned to hear of several recent incidents where places of worship have been vandalized by unknown mobs.

9.267 The continuation of these incidents would certainly be inimical to the reconciliation process. Strong deterrent action should be taken to prevent such incidents. The Commission notes with regret that law enforcement agencies have hitherto failed to investigate and prosecute persons responsible for such unlawful action. The Government should make every endeavour to arrest the occurrence of such incidents. Such action would instill a sense of security and confidence among the affected groups.

9.268 All religious leaders must unitedly provide leadership, encouraging people of all faiths to act with wisdom and understanding, and to view the conflict and its aftermath from a perspective of tolerance and mutual accommodation. This should be achieved by emphasizing religious commonalities, and focusing on factors that contribute to a shared vision and unity of action.

9.269 In this context the Commission wishes to emphasize the constructive role that inter-faith religious groups could play in promoting ethnic and religious harmony, by planning and executing such united and collective action.

9.270 There was general acceptance by different inter-faith and religious representatives who appeared before the Commission that a mechanism to serve as an early warning system could be a useful preventive measure to ensure that communal or religious tension or friction does not lead to conflict, undermining law and order and efforts towards reconciliation and peace building. The Commission recommends that the Government should facilitate the establishment of such a mechanism in consultation with inter-faith groups, with a mandate to serve as an early warning and early diffusing procedure.

ART AND CULTURE

Linguistic and Cultural Affinities as Instruments for Promoting Reconciliation

9.271 In the course of representations before the Commission, the need to identify the linguistic and cultural commonalities and affinities in establishing a Sri Lankan identity was particularly emphasized. It was also pointed out that both the Government and the public had failed to utilize the potential of the promotion of the creativity of arts, for the betterment of society, and that there was also a failure to realize that arts could contribute substantially to bring about understanding among the communities.

9.272 Representations made before the Commission underlined the importance of cultural affiliations in the process of national reconciliation, and emphasized the fact that Sinhalese and Tamil cultures had very rich roots, and that there must be a cultural renaissance through art, drama, and music "like what happened in 1956."

9.273 The Commission was gratified to note the emergence of common ground among the most venerable religious leaders, artists and many other right thinking citizens of the country as these profound commonalities will certainly provide good augury for a viable process of reconciliation and peace building, if only the politicians on all sides shed parochial interests and provide consensual leadership to bring that process to fruition.

9.274 The Commission is of the view that creating greater awareness of linguistic and cultural affinities among the different communities would be an effective instrument for promoting greater reconciliation. This must be given the highest priority by the State and made part and parcel of a proactive State policy and program.

9.275 Special attention must be given to translation and publication of major literary works in Tamil into Sinhala, and similarly Sinhala literary works into Tamil. Dissemination of such publications particularly among school children and youth would be of critical importance to foster a greater sense of understanding of and sensitivity to each other's cultures.

9.276 Cinema, TV and stage drama, productions that highlight commonalities and mutual understanding between communities should be encouraged and disseminated specially for the benefit of the younger generation.

9.277 On the question of the National Anthem, the practice of the National Anthem being sung simultaneously in two languages to the same tune must be maintained and supported. Any change in this practice at the present time would only create a major irritant which would not be conducive to fostering post-conflict reconciliation.

PEOPLE TO PEOPLE CONTACT

9.278 During its sittings, especially during the field visits, the Commission heard a clear call from the people of all communities regarding the importance of people-to-people contact in promoting understanding, amity and reconciliation. The Commission strongly endorses this view, not least because face-to-face interaction is a proven instrument for building consensus and promoting harmony.

9.279 In this regard the youth can play a special role, particularly since they have been the worst affected by the conflict. The youth from all communities had to bear the brunt of the conflict and its consequences. Throughout the conflict, they did not have the time and space to meet each other and understand each other, except in situations of blood-letting.

9.280 In this context, the Commission is pleased to note certain initiatives taken by the Government and civil society groups, particularly the Ministry of Youth Affairs, which has an ongoing programme to have a "Youth Parliament" and an exchange programme called "From Palmyrah Grove to Coconut Grove."

9.281 The Commission encourages such initiatives and strongly recommends that all the Government Ministries and other agencies in the relevant fields initiate such creative programmes falling within the purview of their responsibilities. This must be done in cooperation with civil society groups, so that such exchange programmes can be supported, expanded and broad-based. Care must be taken, however, that such

programmes are carried out with due respect to the cultural and language sensitivities of the visiting community as well as the host community.

NEED FOR POLITICAL CONSENSUS

9.282 One of the dominant factors obstructing reconciliation in Sri Lanka is the lack of political consensus and a multi-party approach on critical national issues, such as the issue of devolution.

9.283 The Commission observes that during the last four to five decades there have been instances where 'hate speech' had contributed to major communal disharmony. Since 'hate speech' relating to ethnicity, religion and literature exacerbate ethnic and religious tension**,** creating disunity and conflict, deterrent laws must be enacted to deal with such practices**,** and these laws should be strictly enforced.

9.284 The process of reconciliation requires a full acknowledgement of the tragedy of the conflict and a collective act of contrition by the political leaders and civil society**,** of both Sinhala and Tamil communities. The conflict could have been avoided had the southern political leaders of the two main political parties acted in the national interest and forged a consensus between them to offer an acceptable solution to the Tamil people. The Tamil political leaders were equally responsible for this conflict which could have been avoided had the Tamil leaders refrained from promoting an armed campaign towards secession, acquiescing in the violence and terrorist methods used by the LTTE against both the Sinhala and Tamil people**,** and failing to come out strongly and fearlessly against the LTTE, and their atrocious practices. A collective act of contrition for what happened would not come easily to either party. It would come only if they are ready to make a profound moral self appraisal in the light of the human tragedy that has occurred. Seeds of reconciliation can take root only if there is forgiveness and compassion. Leaders of all sides should reach out to each other in humility and make a joint declaration, extending an apology to innocent citizens who fell victim to this conflict, as a result of the collective failure of the political leadership on all sides to prevent such a conflict from emerging. Religious leaders and civil society should work towards it and emphasize the healing impact it would have on the entire process of reconciliation.

9.285 The Commission, strongly recommends that a separate event be set apart on the National Day to express solidarity and empathy with all victims of the tragic conflict and pledge our collective commitment to ensure that there should never be such blood-letting in the country again. Based on testimonies it received the Commission feels that

this commemorative gesture, on such a solemn occasion, and at a high political level**,** will provide the necessary impetus to the reconciliation process the nation as a whole is now poised to undertake.

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Appendix 04

Sri Lanka

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05 February 2019

Volume 795

Question for Short Debate

7.23 pm

Asked by

Lord Naseby

To ask Her Majesty's Government, following the resignation of the government of the United States from the United Nations Human Rights Council where they co-sponsored with the United Kingdom Resolution 30/1 in 2015 and Resolution 34/1 in 2017, in regard to Sri Lanka, and given the progress made towards many aspects highlighted in the resolutions, what assessment they have made of whether to annul or withdraw those resolutions.

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Lord Naseby (Con)

My Lords, it is my privilege to introduce this debate this evening. In doing so, I declare an interest in that I started the All-Party Parliamentary Group on Sri Lanka in 1975 and had the privilege of being made its honorary president four years ago.

In a sense, this evening is almost an auspicious day in Sri Lankan terms. Yesterday was the 71st anniversary of the independence of Sri Lanka, so it is no young nation—indeed, it is a very senior nation—and, in democratic terms, it is looked upon as the leading democracy in that part of the world, with regular elections, Governments changing here and there, and so far, thankfully, no sign of any dictator.

The reason for this evening's debate is very straightforward. I thought about this six months ago and realised that the UN Motions on Sri Lanka will be reviewed in March 2019—that is, next month—by the UNHCR in Geneva, and I decided to initiate a debate. It is, after all, nearly four years since the resolutions were passed, having originally been moved by the US and the UK. They were co-sponsored by the Government of Sri Lanka, who welcomed help along the way.

There are two resolutions: one was adopted in September 2015 and the other in March 2017. The key point about them is that they promoted reconciliation, accountability and human rights in Sri Lanka. The cause was really the war in Sri Lanka, and the end of that war has resulted in Eelam being something that nobody in Sri Lanka, other than the Tamil Tigers, really wants. Certainly it is not wanted today and it is not wanted by India. However, unfortunately the UN received the Darusman report, which indicated that 40,000 civilians had been killed.

I have done a great deal of research. Nearly three years ago I made a request under the Freedom of Information Act and secured the publication of Colonel Gash's dispatches to the United Kingdom. I have 40 pages of them here, some of which have been totally redacted, and I shall quote from one this evening. It is the dispatch of 16 February 2009 and concerns 400 IDPs being transferred from the fighting area to Trincomalee. Colonel Gash writes:

"The operation was efficient and effective, but most importantly was carried out with compassion, respect and concern. I am entirely certain that this was genuine—my presence was not planned and was based on a sudden opportunity".

There are many more references in the dispatches to the fact that it was never a policy of the Sri Lankan Government to kill civilians.

I have one other reference that I think is useful. It comes from the University Teachers for Human Rights, which is essentially a Tamil organisation. It says:

“From what has happened we cannot say that the purpose of bombing or shelling by the government forces was to kill civilians … ground troops took care not to harm civilians”.

There is a host of other references but I shall quote one more:

“Soldiers who entered the No Fire Zone on 19th April 2009 and again on the 9th and 15th May acted with considerable credit when they reached … civilians. They took risks to protect civilians and helped … the elderly who could not walk. Those who escaped have readily acknowledged this”.

Again, that provides proof.

Interestingly, the US has now withdrawn from being a sponsor. My personal guess, following some inquiries, is that the US Government now assess that the Sri Lankan Government have done a huge amount to meet the UN requirements, so they see very little purpose in prolonging what is in effect almost a policing surveillance of the actions of another sovereign state which is now 71 years old. Nevertheless, I think it is right to evaluate what has happened over the last four years.

I pay tribute to Her Majesty’s Government for some of the help they have given, particularly in the reconciliation process, through their Conflict, Stability and Security Fund. The HALO Trust has done a wonderful job. I have visited the de-mining operation on two occasions and have seen the very careful work of a Sri Lankan individual clearing one square metre a day. It is very dangerous work and is being done beautifully, so I thank all those involved and look forward to the day in 2020 when the million-plus mines will have been removed.

The UK has also assisted in setting up the Office on Missing Persons. Reflecting on the work I have done, I have noticed that more and more missing persons have reappeared. I received notification three weeks ago of a well-known Tamil activist appearing in the middle of France, complete with wife and children. I believe that this is not terribly unusual, but it is quite some time since the war ended and people are still reappearing.

The Sri Lankan Government have set up their Office for Reparations, which is useful and doing good work. They have also set up a framework for a truth and reconciliation commission. This is absolutely vital in my judgment. It means that all those who were involved have to be prepared

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to come and give evidence, including members of the LTTE who have disappeared to Canada, the USA or Australia. They must be subpoenaed to attend; otherwise the process will be totally one-sided. Even in the UK, we still have people such as Mrs Balasingham who was a real activist for the LTTE in the recruitment of child soldiers.

I understand why the Sri Lankan Government believe that the judges should be Sri Lankan; I think that they are right. If nothing else, the recent argument in the Supreme Court indicated that the Supreme Court rules supreme in Sri Lanka, whatever the politicians might think. There is a new counterterrorism Act on the way; 90% of the land requisitioned during the war has now been returned to the original citizens; 880,000 displaced people have been resettled, which is a huge achievement, by any yardstick, for any country; and 12,000 former LTTE cadres have been rehabilitated and integrated back into society—I have met some of them, and they are most grateful for what was done for them.

In reality, Sri Lanka has taken positive steps on the four pillars of transitional justice: truth, reconciliation, accountability and guarantees of non-recurrence, which must be taken into account by the Human Rights Council. Add to this the continuing co-operation, almost on a daily basis, with human rights people on the ground in Sri Lanka and the question has to be asked: what is the point of continuing with these resolutions?

It is 10 years, almost to the day, since the end of the war. Surely now is the time for closure and to let this proud country stand on its own two feet. Is it really a good use of resources for Sri Lanka to be monitored by the West almost every day? My view as president of the all-party group is: no, it is not. Frankly, I say to my noble friend on the Front Bench, too easily do we forget what a good friend Sri Lanka has been to the UK over decades. When it was a colony, thousands of Sri Lankans volunteered for the two World Wars. Indeed, the eighth-largest number of people who gave their lives for us in the United Kingdom were from this small island; and, as my noble friend must know, Sri Lanka was one of just seven countries to support us over the Falklands War.

There is a very old adage, “Keep your friendships in repair”. Today, there is peace in Sri Lanka. You can go wherever you like. In the north, the infrastructure is repaired—that is pretty crucial —and the trains run on time. They do not run on time on the Peterborough line, I can tell you.

The final proof of the normality of life are the 254,176 visitors from the UK who went to Sri Lanka in 2018—up 20%. They voted with their money and feet. I submit that Her Majesty's Government should do the same in Geneva: recognise the good, genuine work done, show some leadership, bring closure to the UN resolution and, in doing so, make it quite clear that there were not 40,000 civilians killed—and, if it helps, I will give all the evidence I have to my noble friend on the Front Bench, so that he can be totally convinced that that is indeed the case.

Share

7.34 pm

Lord Framlingham (Con)

My Lords, I start by congratulating my noble friend Lord Naseby on obtaining this most important and timely debate. It is many years since I visited Sri Lanka as part of an all-party delegation led by him. I am not an expert on Sri Lankan affairs and do not pretend to speak with any authority but simply as someone who cares for Sri Lanka and who has watched with great sadness as it has gone from being an idyllic island, through indescribable horrors, and is now in the difficult process of reconciliation and rebuilding.

Our visit gave us an opportunity to undertake a comprehensive survey of the island at that time; I have the most vivid memories of what we saw and the people we met. Everyone was extremely welcoming, the politicians were helpful, the tea plantations were fascinating and the landscape and beaches were beautiful. Even the place names were entrancing: Jaffna, Kandy, Trincomalee. I recall visiting what were called the tea lines: rows of low, whitewashed cottages where the tea pickers lived. We were there to study the workers' welfare and the conditions under which they lived. I will never forget, as we got back on our coach, looking at the somewhat anxious and drawn faces of my parliamentary colleagues and comparing them with the smiling and contented faces of the tea pickers, about whose welfare we were so concerned.

We had, of course, a comprehensive series of political meetings. We were made well aware of the dark clouds that were gathering and the reasons for them. The situation became even more obvious to us, and a little threatening, when we were warned to take great care when visiting the city of Jaffna; the army based there at that time were so beleaguered that they left their

barracks only to buy cigarettes and then only under armed guard. Soon after we left Colombo, there was an explosion in the hotel in which we had stayed. I believe that was the beginning of all the tragic events that followed and which are now only too well known by everyone. I still find it hard to imagine the people I met enduring the suffering that ensued.

After such terrible times, the task of rebuilding both trust and structures is huge. Sadly, this is not new to the world. South Africa and Northern Ireland are just two examples that remind us of all that is needed to make it work—to bring people together and rebuild co-operation and confidence.

In all this, the role of the United Nations—the subject of this debate—is very important. It must of course bring pressure to bear to maintain stability and move the various processes forward. These are the principal reasons for the resolutions that we are debating this evening. But the UN must always be prepared to provide assistance, understanding and an acknowledgement of progress being made. It is surely right at this juncture that, in taking any decision on its resolutions, the United Nations should take account of the progress to date and ask itself what purposes its resolutions are designed to achieve.

It is now 10 years since the end of the conflict, and much progress has been made. My noble friend has listed many of the advances: an independent and permanent Office on Missing Persons has been set up and is working; the Parliament has passed an Act to establish an Office for Reparations; a draft framework on the establishment of a truth and reconciliation commission has been submitted to the Cabinet of Ministers; new counterterrorism legislation is under consideration; 90% of state and private land used by the security forces has now been handed back for civilian use; around 800,000 displaced people have been resettled; and Sri Lanka is due to be declared a mine-free zone in 2020.

Alongside politics and the restoration of civic life, trade helps enormously to get a country back on its feet. The UK remains the second biggest market for Sri Lankan exports after the USA. We account for around one-third of Sri Lankan exports to the EU and are one of the major investors in Sri Lanka.

Tourism of course plays a major role in the life and economy of the country. Sri Lanka was rated by the Lonely Planet guide as a top destination for travellers in the coming year 2019, and in 2017 there was a 20% increase in tourists from the UK. There was an almost 30% increase in the number of cruise ships calling at Colombo port in the first 10 months of 2018, and it is now one of the world's fastest-growing ports. So great strides have been and are being made on all fronts. It is in the light of that progress that we are asked to consider the UN resolutions.

The *Irish Times* described Sri Lanka as:

"A tear-drop-shaped island that's heaven on earth".

In recent years, through civil war and tsunami, it has had its share of tears. The hope must be that everyone who cares for this wonderful island, including our own Government and the UN, will do all that they possibly can to help it to continue on its way to a safe and prosperous future.

Share

7.41 pm

Lord Low of Dalston (CB)

My Lords, I too am grateful to the noble Lord, Lord Naseby, for asking this Question for Short Debate.

I first became involved with Sri Lanka shortly after I joined this House, when I was invited to become a patron of DABAL, Deaf And Blind Aid Lanka, a small organisation of highly committed people in this country who raised funds for the support of schools for deaf and blind children in Sri Lanka. I declare my interest as a vice-president of the Royal National Institute of Blind People. Thanks to the good offices of the members of DABAL, I had the opportunity to visit Sri Lanka last summer and see for myself some of the schools that it assisted. Although the schools were staffed by highly dedicated individuals, it was clear that in all but two cases that had the benefit of private funding, the schools were chronically short of resources. We left hoping that the Government would do more in future to support the education of deaf and blind children in Sri Lanka.

I turn to the matters that are the specific subject of this debate. Like the noble Lord, Lord Framlingham, I am not an expert on the politics of Sri Lanka, so I shall just speak quite briefly. The essential question is how far a peacetime regime has truly replaced the kind of things that go on during war. As we have heard, in September 2015 and March 2017 the UN Human Rights Council adopted two resolutions requesting the Government of Sri Lanka to set up transitional justice mechanisms to address issues of reconciliation. The resolutions were co-sponsored by the Sri Lankan Government. If we look at what has happened since the end of the conflict in 2009, it is clear that the Sri Lankan Government have taken significant steps towards reconciliation, yet I am aware that Sri Lanka remains the object of considerable criticism from the international community. According to Amnesty International, Sri Lanka continues to pursue the commitments that it made in 2015 to deliver justice, truth, reparation and guarantees that crimes under international law will not recur but progress has slowed. There is still evidence of torture and other ill-treatment in police custody, while the Prevention of Terrorism Act is still used to arrest and detain suspects.

However, the positive steps that Sri Lanka has taken on the four pillars of transitional justice—truth, reconciliation, accountability and guarantees of non-recurrence—need to be recognised. We have heard about some of them already. An independent and permanent Office on Missing Persons has been set up. An Act to establish an Office for Reparations has been passed by the Parliament. Proposals have been brought forward for the establishment of a truth and reconciliation commission. New counterterrorism legislation that will repeal the existing Act and bring legislation into line with human rights standards is under consideration by the Parliament. As we have heard, 90% of state and private land used by security forces in the north and east of the island has been released for civilian use. As we heard from the noble Lord, Lord Naseby, around 880,000 displaced persons have been resettled, and around 12,000 former Tamil Tigers have been integrated back into society.

From this, I think it is clear that the Sri Lankan Government have done a great deal. However, there is still more to do and the Government cannot yet completely relax their efforts to bind up the wounds of a society that has so recently been riven by a protracted period of civil strife.

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Lord Sheikh (Con)

My Lords, I thank my noble friend, Lord Naseby, for this timely debate regarding Sri Lanka and Resolutions 30/1 and 34/1.

I have visited Sri Lanka on three occasions. I have travelled to various parts of the country and met Sri Lanka's leadership and other senior figures. My travels to and around Sri Lanka also allowed me to see first-hand the situation on the ground. Sri Lanka suffered a 26 year-long civil war that produced a great deal of suffering. The conflict ended 10 years ago and Sri Lankans are well on their way to reconcile, rebuild and reform.

During my visits to Sri Lanka I visited the Northern and Eastern provinces, where some of the land was occupied by the security services. The Tamil politicians were against the Government. I visited the Menik Farm camp for displaced Tamils. While much of the propaganda at the time was that they were confined to the camps, I observed that even at that time the displaced persons could come and go as they wished, and in fact I spoke to some of them. It is important that the displaced persons should be settled and rehabilitated. During my discussions with various Sri Lankans, I was made aware that there was a great deal of concern about missing persons.

I went to Kilinochchi, where demining was being undertaken by the HALO Trust, and I noted that it was indeed a very slow process. In Jaffna, I talked to ex-combatants who were being trained by the Government to obtain skills. Even today I closely follow the developments in Sri Lanka, and I cannot help noting the tremendous progress that the country has made to tackle burning issues, especially over the last three years.

I shall outline some of the key achievements of the country since then. The UK has now become the sponsor of the resolutions, which makes it imperative for us to take stock of those developments. The Sri Lankan Government have now declared that the country will be free of landmines by 2020, and Sri Lanka is part of the landmine ban convention signed in Ottawa in September 1997, which was supported by the UK as well. Over 880,000 displaced persons have been resettled since the end of the conflict in 2009. Sri Lankan security forces have returned

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90% of the state and private land they had been occupying and the remaining figure is less than 10%. Over 12,000 ex-combatants, including around 600 child soldiers, have been rehabilitated and reintegrated into society, with some pursuing higher studies or other vocations.

As I said earlier, I have spoken to some of the ex-combatants. Sri Lanka has now taken ownership of mechanisms created under the four pillars of transitional justice: truth, reconciliation, accountability and guarantees of non-recurrence. This includes the Office on Missing Persons, which has been set up and is now functioning well. It is due to open 12 regional offices. Sri Lanka has also ratified the International Convention for the Protection of All Persons from Enforced Disappearances and, incidentally, the country is now party to all nine core United Nations human rights instruments.

Another mechanism of transitional justice is the Office for Reparations, established and passed in Parliament on 10 October 2018. Today, the commissioners are in the course of being appointed. The draft framework for a truth and reconciliation commission has been submitted to the Cabinet Ministers by the Prime Minister.

An area for reform which has had national and international attention is the review and repeal of the Prevention of Terrorism Act. This will be replaced by the counter terrorism Act, which is in line with human rights standards. A Bill was presented in Parliament last year, after which it was challenged by some parties in the Supreme Court. The Supreme Court of the country has proposed some amendments which are now being considered at the committee stage in Parliament.

The Government have also become party to the optional protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which shows that they are taking allegations of torture very seriously and remain committed to carrying out investigations and prosecuting perpetrators. Sri Lanka has also retained a moratorium on the death penalty since 1976; I very much appreciate this action, as I am totally against the use of the death penalty.

These are some of the steps Sri Lanka has undertaken to engage fully with UN conventions on human rights. Sri Lanka respects the UN's systems and processes, has transparent processes and legislation regarding human rights and welcomes UN investigations into compliance. Furthermore, there is reconciliation between political parties where moderate Tamil parties play a significant role in democracy and government. As I mentioned earlier, the Tamil politicians were previously totally against the Government. I also add that, during the recent constitutional problems, the Tamil National Alliance played a key role and supported the democratic institutions in the country.

After 10 years of conflict, I feel it is fair to say that Sri Lanka is now graduating to upper middle income status. It is a recipient of the GSP+ tariff concessions of the European Union, which are based on adherence to core UN conventions on human rights, labour rights and the environment. Lonely Planet has termed Sri Lanka the best destination to visit for 2019, and I hope to visit as soon as I can. With the upcoming Port City on its western coast, it is fast becoming a hub in the Indian Ocean. It will bring more trade to the country and wealth and prosperity to all Sri Lankans.

Last October, I had the pleasure of receiving a personal briefing on Sri Lanka's development plans from the Minister in charge, Mr Ranawaka. I have developed a good relationship with the Sri Lankan High Commission here in London and I would like to make a personal comment on Sri Lanka's spirit for reconciliation between the communities. Throughout the year, the high commission holds different functions to celebrate religious holidays. Last year, I attended and spoke at the Christmas celebration held at the high commission. Even though Christians are a minority in Sri Lanka, making up 8% of the population, Christmas is celebrated in the country and at the high commission in London. It was significant that the diaspora attended the function at the Sri Lanka High Commission; it was a good example of promoting reconciliation, with the Sinhalese and Tamil chaplains of the Catholic Church in attendance.

Finally, I ask the Minister whether the Government appreciate the important progress Sri Lanka has made. What is being done to help Sri Lanka and what more can be done? I also ask whether there is any point in the resolutions being continued. Can there now be closure?

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7.57 pm

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Baroness Northover (LD)

My Lords, the noble Lord, Lord Naseby, has a long record of engagement in Sri Lanka, and over the years, the Governments there will have been very grateful to him for that support. I thank him for his detailed briefing documents, which other speakers have clearly derived information from, even though these do not quite square with the material I received from the House of Lords Library and elsewhere.

It was very welcome when the long-standing conflict in Sri Lanka came to an end. Its conclusion was very brutal, as the Government sought the total defeat of the Tamils. The UN claims that during this final offensive as many as 40,000 civilians were killed. The human rights abuses allegedly committed against the Tamils included enforced disappearances, torture and arbitrary arrest, though both sides have been accused of war crimes.

When President Sirisena, although a former ally of Rajapaksa's, was elected in 2015, it was a surprise win over the former President, who had a reputation for having encouraged severe repression of the minority Tamils. It was seen as a step in the right direction. The new President was backed by the Tamil National Alliance, as well as Tamil-speaking Muslims, largely due to his expressed commitment to reconciliation and government accountability. In coalition government, Mr Wickremasinghe—I apologise if I have not pronounced that correctly—became his Prime Minister, and halting but insufficient steps were taken toward addressing issues of accountability, missing persons, governance and land usage.

The last year has seen a move away from this settlement. The President dismissed the Prime Minister in October 2018 and, astonishingly, installed Rajapaksa instead. The original Prime Minister refused to step down. MPs voted to reinstate him twice, upon which the President tried to dissolve Parliament. He also attempted to call a snap election. Rajapaksa began operating with his own newly formed Cabinet, but an appeals court restrained this. In December, the Supreme Court ruled that the President had acted unconstitutionally; the original Prime Minister was reinstated. One of the encouraging features of this crisis has been the way in which the

courts have played a key role in upholding the Sri Lankan constitution. In this unstable situation, should the international community back away from the Human Rights Council resolutions in the light of the US withdrawal, which three noble Lords have just indicated should happen?

Resolution 30/1 in 2015 outlined many steps that the Government should take towards truth, justice, reparation and the prevention of human rights violations. Resolution 34/1 in 2017 called for any outstanding elements of the original resolution to be fully implemented. Sri Lanka co-sponsored both resolutions alongside the UK, the US, Macedonia and Montenegro. These resolutions will expire in March 2019, which is why this debate is indeed timely.

The implementation of these resolutions has been very slow. The first resolution committed to establishing four transitional justice mechanisms, including an Office on Missing Persons, an Office for Reparations, a truth and reconciliation commission and a judicial mechanism to investigate violations of human rights and international humanitarian law. So far, only one of these goals has been partially met, with the formation of the Office on Missing Persons in September 2018. However, the recommendations in the interim office's reports have not been implemented by the Government, although the briefing of the noble Lord, Lord Naseby, tells us that the Ministry of Finance is looking to include necessary funds in this year's budget. Can the Minister say whether the UK Government understand that to be the case? Does he have any explanation as to why this is taking so long?

A Bill to create an Office for Reparations was narrowly passed in October 2018 but no concrete steps towards implementation have yet been taken. The briefing of the noble Lord, Lord Naseby, states that nominations to this office will be approved by the President. Is the Minister concerned about that? The draconian Prevention of Terrorism Act remains in place, despite the recommendation to review and repeal it. New anti-terror legislation is under review but is still not up to international legal standards. Some steps have indeed been taken on returning land. In October 2018, the President finally called on authorities to return land in the north and east by the end of the year. The noble Lord's briefing reiterates this. However, Amnesty notes that the authorities are yet to comply fully with this request and emphasises that many communities remain displaced.

Amnesty also notes that welcome investigations have been opened into attacks on journalists, human rights defenders, religious minorities and civil society organisations. These investigations, however, have not resulted in any convictions. It describes,

“dismayingly limited progress on accountability for torture, rape, sexual abuse and gender-based violence”.

Sri Lanka established a consultative task force on reconciliation in January 2016. Over 7,000 Sri Lankans were consulted for the task force’s report, which urged the Government to chart a road map for fulfilling the UNHRC resolutions. But according to Amnesty the Government have ignored the task force’s findings, with the Minister of Justice saying that he had “no confidence” in them.

Under Resolution 30/1, a judicial mechanism—including the participation of Commonwealth and other foreign judges, also referred to as hybrid courts—was proposed by the Sri Lankan Government. To date, there has been no progress on this front. In fact, the Government have backtracked on their own commitments. In 2018, the President called for the international community to give Sri Lanka the room to solve the problems it is facing on its own. Government officials have rejected the involvement of foreign nationals in the hybrid courts. This kind of hybrid court surely must be held to, as was the case in Cambodia.

Many Tamils and most of the international community feel that reconciliation has stalled. For example, the President was meant to bring about a new constitution that would devolve more powers to the provinces, including land registration and police power, which would increase Tamil self-determination. Talks on constitutional reform have been gridlocked and devolution is now seen as a broken promise. The Tamil advocacy group Together Against Genocide has said that the Foreign Minister’s international statements are contradicted by what senior government officials do in practice; the Verité Research Group has echoed this.

In 2017, after a fact-finding mission, UN special rapporteur Pablo de Greiff said that the reconciliation process had become increasingly ethnicised, with transitional justice,

“represented as if it were essentially a threat to the majority community”.

The UK has supported implementation of the resolutions through the Conflict, Stability and Security Fund. The programme's mandate will expire in 2019. What plans are there to renew it? With the US's withdrawal from the Human Rights Council, there is concern that there will be less pressure put on Sri Lanka to implement the resolutions. The US has said that it will continue to engage with Sri Lanka on truth and reconciliation, despite its withdrawal, but no concrete steps have yet been announced. Can the Minister report on any discussions with the US on this matter?

Amnesty notes:

"As the tenth anniversary of the end of Sri Lanka's internal conflict looms in May, progress on UN Human Rights Council Resolution 30/1 has proceeded at a glacial pace, the hopes of the victims of crimes under international law and human rights violations and abuses during the conflict have been reduced to a flicker".

This does not argue for the international community to back away. Clearly, as we saw last year, Sri Lanka is in an unstable political situation. Progress thus far is of course to be welcomed, particularly the role of the courts in last year's political manoeuvres, but progress must be put in the context of what has been promised and needs to be achieved. It would be premature to remove any of the pressure on Sri Lanka to adhere to the Human Rights Council's conclusions and I hope that the Minister will share that view.

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8.07 pm

Lord Collins of Highbury (Lab)

My Lords, I too welcome the opportunity that the noble Lord, Lord Naseby, has given us to address the issues in Sri Lanka. There is no doubt that there has been progress but, as the noble Baroness, Lady Northover, said, it has been glacial. When we talk about truth, reconciliation and—the most important element—peace, we must not forget accountability. That is vital to ensure that reconciliation is sustainable. From the response to a number of Written Questions, it

certainly seems clear that the United Kingdom remains committed to the full implementation of the UN Human Rights Council resolutions, particularly Resolution 34/1. As the noble Baroness also highlighted, there has been such limited progress on accountability.

There is therefore a clear expectation among the Sri Lanka core group in Geneva, consisting of the United Kingdom and Germany, to ensure the adoption of a further rollover resolution at the upcoming Human Rights Council session, with the co-sponsorship of the Government of Sri Lanka. However, there is a great deal of concern that support from the Sri Lankan Government, which emanates largely from their Prime Minister's office and is perhaps better described as grudging acquiescence, could be derailed in the light of the open conflict between the Prime Minister and President of Sri Lanka, especially after the events of last December, as described by the noble Baroness, Lady Northover.

It would be easy to see the President seeking to gain political advantage by making a stink of the notion that the Prime Minister's party, the UNP, is selling out war heroes. The fact that we are having this debate leads me to think that there is absolutely no room for complacency. It is important to refocus our minds on the central reason that Sri Lanka came before the HRC in the first place: allegations of atrocity crimes. The fact is that these have not in any sense been addressed.

In his debate in October 2017, which I also participated in, the noble Lord, Lord Naseby, argued that the Government should drop their call for a credible accountability process to look into the wartime violations in Sri Lanka, in view of the exonerating contents of a series of confidential wartime British diplomatic dispatches obtained from the FCO via FoI request. The noble Lord referred to that again this evening. As it happens, in June 2018 *Private Eye* referred to the Sri Lanka Campaign's similar request for FoI over these dispatches. Its assessment suggested in particular that the casualty figures to which the noble Lord referred did not represent the independent assessment of the UK military's attaché, but rather were derived from UN Country Team estimates, which have been in the public domain since 2009 and remarked upon by subsequent UN investigations for the conservative nature of their methodology.

The other thing in that debate was giving the wrong impression that the statement "no cluster munitions were used" was attributable to, and represented the independent assessment of, the UK military attaché. As *Private Eye* revealed, this was in fact a description of the position of the then Sri Lankan Defence Secretary, Gotabaya Rajapaksa, an alleged perpetrator of grave human rights violations. Sadly, your Lordships' debate of 14 months ago continues to be used by hardliners in Sri Lanka to erode efforts to bring about a meaningful process of accountability and reconciliation for wartime atrocities. For example, in July last year, GL Peiris, a member of the former regime and Mahinda Rajapaksa ally, wrote to the new UK Foreign Secretary, calling on him to withdraw the UN Human Rights Council resolution on Sri Lanka, in view of the "entirely flawed" basis for it, as revealed by the noble Lord, Lord Naseby.

Many are concerned about how that FoI request and the dispatches will be used to sway international public opinion at crunch time at the Human Rights Council in March— next month. Therefore it is important to correct the dangerous and unhelpful narrative that the original debate of the noble Lord, Lord Naseby, has helped to foment in Sri Lanka.

If we are talking about anniversaries, as documented in great detail by the United Nations High Commissioner for Human Rights' 2015 investigation—

Share

Lord Naseby

My freedom of information request was duly passed to me. It is my privilege, according to the judge of the First-tier tribunal, to use that information as I see fit. I am more than happy to give copies to all Front-Bench persons present, and will make sure that happens immediately. However, those dispatches are not written by me, they are written by the official attaché from the United Kingdom who served throughout the war and was at the front line during that war.

Share

Lord Collins of Highbury

I am grateful for the offer. I am sorry it has come 14 months late, but I would have appreciated—and certainly the campaign for Sri Lanka would have appreciated—copies earlier. That is why, according to *Private Eye*, it put in its own FoI requests and has got the material. The important point about the narrative that we have heard this evening, which the noble Baroness, Lady Northover, also made, is that we want to see the full implementation of the resolution, which has not been properly addressed and certainly in no way can be considered fully addressed.

I want to point out something in that report of the UN High Commissioner for Human Rights in 2015 into the final stages of the civil war. On this day—5 February—10 years ago, the UN, the International Committee of the Red Cross and medical workers were finally forced to evacuate from PTK hospital. For three weeks, the hospital had been subjected to intense shelling by suspected government forces, which continued despite—or perhaps because of—the GPS co-ordinates having been communicated to them. It was the only hospital in the war zone that was equipped with an operating theatre, where hundreds of patients were being treated. To quote the report:

"Witnesses told investigators that as shells fell, people ran to take cover, including several patients who ran towards bunkers located outside the hospital, carrying their intravenous drips with them".

An attack on 3 February,

"hit a ward with women and children, killing at least four patients and injuring at least 14 others. The hospital was hit again during the following evening, damaging the children's ward, reportedly killing seven people, including one medical staff member and a baby … One hospital worker described the situation in the hospital by 4 February as 'carnage', the likes of which she had never seen before".

As we approach the 10th anniversary of these events, I hope the Minister will join me in expressing concern that, despite the various promises made by the Government of Sri Lanka before the Human Rights Council in October 2015, they have not yet succeeded in holding accountable a single member of the Sri Lankan armed forces for those appalling atrocities. I hope that he will reassure us that we will seek full implementation of those UN resolutions.

8.19 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con)

My Lords, I join all noble Lords in thanking my noble friend Lord Naseby for securing this timely debate. I pay tribute to his long-standing commitment to Sri Lanka, including in his current role as president of the all-party parliamentary group. I thank all noble Lords for their thoughtful contributions to this debate, which, as we have been reminded, comes at an important point in the run-up to the 40th session of the United Nations Human Rights Council in Geneva, which my right honourable friend the Foreign Secretary and I hope to attend, and its assessment of progress made by Sri Lanka in implementing its commitments under Resolution 30/1. As my noble friend is aware, that resolution, together with Resolution 34/1, set out a number of actions to be taken by the Government of Sri Lanka to further accountability—a point well made by the noble Lord, Lord Collins—reconciliation and human rights following the end of the decades-long civil war.

I make the Government's position clear from the outset: Her Majesty's Government have no plans to annul or withdraw those resolutions. The UK continues to believe that full implementation is essential, as the noble Baroness, Lady Northover, and the noble Lord, Lord Collins, made clear. Without truth, justice, and guarantees of non-recurrence, there can be no lasting reconciliation. In co-sponsoring Resolution 30/1, the Government of Sri Lanka also sent a clear signal that they recognised this.

My noble friend Lord Naseby rightly noted that the United States co-sponsored the resolutions. As I have said before from the Dispatch Box, we deeply regret the decision of the United States Government to resign from the Human Rights Council. However, as leader of the resolutions core group, we remain determined to see them implemented in full. To that end, and following consultation with the core group, I am pleased to notify your Lordships' House that Canada and Germany have agreed to join the United Kingdom, Macedonia and Montenegro as alternate

sponsors. Both Canada and Germany share our understanding of the importance of achieving reconciliation in Sri Lanka. At the same time, the US remains a strong external supporter of the resolution and an advocate for progress, a point made by the noble Baroness, Lady Northover.

On 21 March 2018, the UN High Commissioner for Human Rights rightly recognised the steps taken since January 2015 to improve the human rights situation in Sri Lanka, a point well made by my noble friend Lord Framlingham. We echo that report. As the UK's Human Rights Minister, I welcome progress on the restoration of important democratic checks and balances, improvements in respect for freedoms of expression and movement, the return of land held by the military to civilians, the establishment of the Office on Missing Persons, the ratification of the convention on enforced disappearances, and the passing into law of, and budget allocation for, the Office for Reparations Bill.

My noble friend Lord Sheikh raised the important issue of land rights. We welcomed the Sri Lankan Government's instruction to the military in 2016 that all land obtained from civilians should be released at the latest by 2018. However, as of January 2019, some land is still to be released. We encourage land returns. I assure noble Lords that, as a friend of Sri Lanka, we continue to support the return of land to civilians through direct funding for demining activities —mentioned by my noble friend—in the north of the country. In August 2018, my right honourable friend the Minister for Asia, Mark Field, announced a further £1 million increase in funding to support family resettlement and peacebuilding. From a governance perspective, while progress clearly still needs to be made, it is clear that Sri Lankans do not live in the same climate of fear that existed under the former Government, and that people now have greater confidence to speak openly and honestly, and with rising media freedom, about the challenges faced by the country. This point was well made by the noble Lord, Lord Low.

On the issues that confront the country, it is clear that the pace of change has been disappointingly slow, as the noble Baroness, Lady Northover, recognised. We must see further and faster progress by Sri Lanka towards implementing its commitments under Resolution 30/1. I will outline the further steps on four key issues. First, as the noble Lord, Lord Collins, reminded the House, is the establishment of a transitional justice mechanism, including a truth and reconciliation commission. Second is the urgent repeal and replacement of the Prevention of

Terrorism Act. I assure the noble Baroness, Lady Northover, that the British high commission in Colombo is in regular contact with government officials, including Tamil National Alliance MPs and civil society representatives, about the situation of detainees held under the PTA. We also continue to work on this issue with other diplomatic missions, including the EU and UN bodies.

The noble Baroness also asked whether funding for the Office on Missing Persons has been included in the budget. I understand that that office has now been established and is operating. However, a final decision has yet to be taken on funding the establishment of the Office for Reparations.

This underlines the important fact that the legacy of Sri Lanka's recent conflict can be addressed and lasting reconciliation achieved only if we see further progress in this regard. As the noble Baroness also rightly pointed out, there were deep concerns over recent political developments at the end of 2018, when President Sirisena dissolved the Parliament, in an apparently unconstitutional manner, in an attempt to dismiss Prime Minister Wickremasinghe and install former President Rajapaksa in his place. Ultimately, the peaceful resolution of the 51-day crisis was a welcome indication of resilience, as noble Lords have recognised. We need to recognise the progress that has been made in Sri Lanka's judicial and democratic institutions and on the effective checks and balances between state powers. This is an important step forward, but there were 51 more days when progress towards reconciliation came to a halt.

We have repeatedly urged the Government of Sri Lanka to go further and faster. On 21 January, I met the Minister of Finance and Mass Media, Mangala Samaraweera, in London. He has been a strong supporter of Sri Lanka's commitments to Resolution 30/1. It was a pleasant and constructive meeting, during which he took the opportunity to engage directly with representatives of the diaspora in the UK, including members of the Tamil community. My honourable friend the Minister for Asia and the Pacific did the same when he met Foreign Minister Marapana and a number of other Sri Lankan Ministers and officials in Colombo last October. Last September, the UK led a statement on behalf of the core group at the 39th session of the Human Rights Council, urging Sri Lanka to prioritise and drive forward the implementation of its commitments.

The noble Baroness, Lady Northover, asked questions about CSSF funding. We are providing £8.3 million for the current period and are evaluating projects and proposals for continued funding. She also asked whether the President would appoint commissioners for the Office on Missing Persons. We hope and expect that President Sirisena will appoint commissioners who command the full support of all communities.

The noble Lord, Lord Collins, asked an important question about the current situation in terms of accountability. There has been progress. The British Government are a friend of Sri Lanka and have supported projects to ensure a zero-tolerance approach to rape and gender-based violence in Sri Lanka. This has included the funding of a helpline for victims of domestic abuse and increasing police support for women and children. I assure him that the UK continues to support efforts by the Sri Lankan Government to develop a more professional and accountable police force, including increasing gender-sensitive policing. We have raised issues across the whole spectrum of human rights and continue to support various NGOs working in the community, including support for the Sri Lankan LGBT community.

Let me be very clear and assure all noble Lords that the United Kingdom is a friend of Sri Lanka. We have made a long-term commitment to work with Sri Lanka on improving human rights and supporting the rebuilding of the country after three decades of conflict. Our £8.3 million of funding over three years is an example of this. On the strength of our relationship, I know that my noble friend Lord Sheikh mentioned the positive outreach conducted by the high commission here in London. I very much look forward to paying tribute to the breadth and strength of our bilateral relationship with Sri Lanka when I speak at the Sri Lankan high commission tomorrow to recognise and celebrate Independence Day.

The UK remains convinced that Resolution 30/1 must be implemented in full if Sri Lanka is to achieve the long-term reconciliation that all its people need and, we all recognise, truly deserve. We recognise that progress has been made, as my noble friend highlighted in tabling this debate, but we also believe that—with a concerted effort by Sri Lanka and support from co-sponsors including the United Kingdom, as well as external advocates including the United

States, the European Union and the UNHRC—Resolution 30/1 can be fully implemented, allowing Sri Lanka to realise the true potential we all seek, as a stable prosperous country providing growth and opportunities for all Sri Lankans.

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House adjourned at 8.30 pm.

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