



32 A Retreat Road, Colombo 00400, Sri Lanka

14 March 2012

## BROKEN PROMISES

### TNA response to the position of the Government of Sri Lanka at the 19<sup>th</sup> session of the UN Human Rights Council

1. **The Government of Sri Lanka has serious issues with regard to telling the truth and keeping its promises**
  - 1.1. In response to Minister Mahinda Samarasinghe's statement to the 18<sup>th</sup> Session of the United Nations Human Rights Council [UNHRC] on 12 September 2011, the Tamil National Alliance [TNA] issued a statement the very next day correcting the record and urging the Sri Lankan government "to be more forthright and honest in its representation of the situation in Sri Lanka to the international community." Unfortunately, the government continues to mislead the international community at the ongoing 19<sup>th</sup> Session of the UNHRC sessions as well.
  - 1.2. As Sri Lanka approaches the three-year mark since the end of the war, which lasted almost three decades, and though nearly six decades have lapsed since the commencement of exclusionary policies targetting the Tamil people, various pledges made by the Government of Sri Lanka with regard to human rights, accountability and evolving a political settlement have not been fulfilled. The post-independence history of Sri Lanka contains stark reminders of the disturbing ramifications of broken promises and recurring violence.
  - 1.3. Sri Lanka (then Ceylon) gained independence in 1948 under the 'Soulbury Constitution'. The 'Soulbury Constitution' provided for some minimal safeguards to minorities. Section 29 contained prohibitions on discriminatory legislation. In particular, Section 29(2)(b) and (c) prohibited Parliament from passing any laws that (i) made persons of any community or religion liable to disabilities or restrictions that persons of other communities or religions were not subject to; or (ii) conferred on persons of any community or religion any privilege or advantage that is not conferred on persons of other communities or religions. Yet, notwithstanding the operation of section 29(2), Sri Lanka's legislature passed a number of discriminatory laws. The Citizenship Act of 1948, which denied citizenship to Tamils of Indian origin who constituted approximately 11 percent of the country's total population at the time, and the Official Language Act of 1956, which made Sinhala the only official language, were the most notable of these laws. Similarly, the government began to intensify the practice of altering the demographic composition of the Eastern Province by actively supporting Sinhala colonization in areas inhabited by the Tamil speaking people.
  - 1.4. Between 1947 and 1981, while the national increase of the Sinhala population was 238 percent, the increase of the Sinhala population in the Eastern Province was 883 percent.

- 1.5. The Bandaranaike–Chelvanayakam Pact of 1957, and later the Dudley Senanayake–Chelvanayakam Pact of 1965 intended to resolve the festering inter-ethnic disputes between the constituent Peoples of the country through legislation that recognized and preserved the linguistic and cultural identity of the Northern and Eastern Provinces. However, under pressure from an extremist fringe within the Sinhala community, the first of these agreements was abrogated while respective Prime Ministers did not implement the second.
- 1.6. In 1972, a new Constitution that formally sanctioned policies targetting the Tamil speaking people was promulgated. This Constitution entrenched the unitary character of the state, conferred on Buddhism the foremost place in the Republic, and gave constitutional primacy to the Sinhala language. This was enacted without the consent or participation of the Tamil people.
- 1.7. The 1972 Constitution also dispensed with the salient minority safeguards found in section 29(2) of the ‘Soulbury Constitution’. In fact, the Privy Council, the apex court until 1971, described the minority safeguards in section 29(2) as representing “the solemn balance of rights between the citizens of Ceylon, the fundamental conditions on which *inter se* they accepted the Constitution: and these are therefore unalterable under the Constitution.” [Lord Pearce, *Bribery Commissioner v. Ranasinghe* (1964) 66 NLR 73, at 78].
- 1.8. The repeal of this historic compact, the very basis on which the constituent Peoples of Ceylon accepted the ‘Soulbury Constitution’, which in turn led to independence, heaped scorn on legitimate Tamil aspirations. The 1978 Constitution followed in the footsteps of the 1972 Constitution and entrenched the foremost place given to Buddhism, continued to give primacy to the Sinhala language, and by entrenching the unitary character of the State, excluded the Tamils from the democratic exercise of political power.
- 1.9. A disturbing feature of Sri Lanka’s post-independence history was that of organized violence in the form of racial pogroms being periodically unleashed on the Tamil People in 1956, 1958, 1961, 1977, 1981 and 1983. These attacks were a direct response to the articulation of their political aspirations by the Tamil people.
- 1.10. The consistent democratic verdicts of the Tamil people since 1956, expressing their political aspiration for substantial self-rule in the Northern and Eastern Provinces, were denied under the above two constitutions. This factor, together with the discriminatory policies pursued under these two constitutions, particularly in education, employment and economic opportunities, the state-aided Sinhala settlements in the Northern and Eastern Provinces and the anti-Tamil racial pogroms gave birth to armed resistance by Tamil youth.
- 1.11. International concern that followed from the massive anti-Tamil pogrom of 1983, led to the Indo-Lanka Accord of 1987 and the passage of the Thirteenth Amendment to the Constitution. While this established Provincial Councils and devolved a measure of legislative power to the Provinces, it fell far short of meaningful power-sharing. Nevertheless, it represented an initial minimal step towards devolution of power to the Provinces. A significant provision of the Indo-Lanka Accord – an international treaty –

providing for the merger of the Northern and Eastern Provinces has since been violated for spurious reasons.

- 1.12. Although public officials, members of the judiciary and elected representatives swear or affirm to uphold the Constitution, the Thirteenth Amendment has not been fully implemented. Even the limited provisions relating to the devolution of land and police powers to the Provincial Councils are deliberately violated.
- 1.13. Moreover, commitments made both domestically and internationally with regard to a political solution have not been honoured. Similarly, commitments made relating to human rights and accountability have been routinely dishonoured.
- 1.14. It is in this context that Minister Samarasinghe's recent statement on 27 February 2012 at the 19<sup>th</sup> Session of the UNHRC rings hollow.

## 2. Broken Promises on Political Settlement

- 2.1. The Sri Lankan government has for many years promised a power-sharing arrangement to share power equitably with the constituent Peoples of Sri Lanka. President Rajapaksa's Joint Statement with United Nations Secretary General Ban Ki-moon explicitly contained a number of assurances relating to a promised political solution, one of which was where:

"President Rajapaksa expressed his firm resolve to proceed with the implementation of the 13<sup>th</sup> Amendment, as well as to begin a broader dialogue with all parties, including the Tamil parties in the new circumstances, to further enhance this process and to bring about lasting peace and development in Sri Lanka." [Joint statement by UN Secretary-General, Government of Sri Lanka, 26 May 2009].

- 2.2. Even before the conclusion of the war, at the inaugural meeting of the All Party Representatives Committee (APRC) and its multi-ethnic Experts Committee appointed by the President to assist the APRC, on 11 July 2006, the President enunciated his vision for constitutional change, stating:

"People in their own localities must take charge of their destiny and control their politico-economic environment. Central decision-making that allocates disproportionate resources has been an issue for a considerable time. In addition, it is axiomatic that devolution also needs to address issues relating to identity as well as security and socio-economic advancement, without over-reliance on the centre ... In sum, any solution needs to as a matter of urgency devolve power for people to take charge of their own destiny. This has been tried out successfully in many parts of the world. There are many examples from around the world that we may study as we evolve a truly Sri Lankan constitutional framework including our immediate neighbour, India ... Any solution must be seen as one that stretches to the maximum possible devolution without sacrificing the sovereignty of the country given the background of the conflict."

- 2.3. In confirmation of the above, President Rajapaksa gave the visiting Indian Foreign Secretary Shivshankar Menon, in November 2006, details of the work being done by the APRC and the multi-ethnic group of experts to provide a framework for the resolution of the ethnic problem.
- 2.4. The multi-ethnic experts committee - appointed by the President - through a majority report made its proposals to the APRC. The deliberations of the APRC, which was set up in July 2006, were repeatedly held out by the Government of Sri Lanka as the mechanism by which a political settlement would be achieved. The APRC met 128 times for almost three years. But its final report has not even been made public. Significantly, however, the TNA was not invited to the APRC and did not participate in its deliberations.
- 2.5. The President's commitment to implement the Thirteenth Amendment, while also initiating a process that would take into account the aspirations of the Tamil people, was also repeatedly made at the UNHRC. At the 10<sup>th</sup> Session of the Council held three years ago, in March 2009, Minister Mahinda Samarasinghe reiterated the President's pledge, stating:
- “Our national discourse has been dominated for decades by an ethnic issue, which requires a political solution as a means to resolve problems. This political solution could never be imposed by force of arms and certainly not gained by acts of terrorism. It is for this reason that we are also trying to forge a sustainable political solution acceptable to all Sri Lankans ... [o]n a recommendation of the All Party Representatives Committee, we are able to properly implement the 13<sup>th</sup> amendment to the Constitution, which was passed in 1987.”
- 2.6. A few months later, in his statement made at the 11<sup>th</sup> Special Session of the UNHRC on 26 May 2009, Minister Samarasinghe stated:
- “We have always said that the only durable and lasting solution is a political process which addresses the socio-economic and political grievances and expectations of our citizens through a home grown process acceptable to all sections of our multicultural society. The efforts in this direction Mr. President have already commenced.”
- 2.7. When the Sri Lankan External Affairs Minister G.L. Peiris visited New Delhi in May 2011, a joint press statement with the Minister of External Affairs of India stated as follows:
- “... the External Affairs Minister of Sri Lanka affirmed his government's commitment to ensuring expeditious and concrete progress in the ongoing dialogue between the government of Sri Lanka and representatives of Tamil parties. A devolution package, building upon the Thirteenth Amendment, would contribute towards creating the necessary conditions for such reconciliation.”
- 2.8. More recently on 17 January 2012 – subsequent to his meeting with the President of Sri Lanka – visiting Indian Minister for External Affairs, Hon. S. M. Krishna speaking at a joint press conference with Sri Lankan External Affairs Minister G. L. Peiris, said:

“The Government of Sri Lanka has on many occasions conveyed to us its commitment to move towards a political settlement based on the full implementation of the 13<sup>th</sup> Amendment to the Sri Lankan Constitution, and building on it, so as to achieve meaningful devolution of powers. We look forward to an expeditious and constructive approach to the dialogue process.”

- 2.9. The assurances made to the Government of India in January 2012 are not novel. Many such assurances have been made to the Prime Minister and Government of India, as well as to the Co-Chairs of the Tokyo Conference. To quote Indian External Affairs spokesman on 25 December 2011:

“[I]n this context we have been assured by the government of Sri Lanka on several occasions in the past, of its commitment towards pursuit of a political process ... leading to the full implementation of the Thirteenth Amendment to the Sri Lankan Constitution, and to go beyond, so as to achieve meaningful devolution of powers and genuine national reconciliation.”

- 2.10. While Minister Samarasinghe now claims that the government has “commenced bilateral discussions with Tamil political parties,” the reality is that bilateral discussions commenced between the government and the TNA in January 2011 and continued for over a year without progress, consequent to the government reneging on its own commitment to respond to the TNA proposals made in February/March 2011.
- 2.11. Consequent to the government’s lack of response, at a meeting held on 2 September 2011, between the President and the Leader of the TNA, it was agreed that a number of past proposals for constitutional reform, including the Mangala Moonesinghe Select Committee Report, the 1995, 1997 and 2000 Proposals for constitutional reform and the majority Report of the multi-ethnic APRC experts committee appointed by the President, be brought into the negotiation process.
- 2.12. It was also agreed at this meeting that the consensus reached between the TNA and the government delegation at the bilateral talks would be presented to the Parliamentary Select Committee [PSC] as the position of the government or as the joint position of the government and the TNA; and that the TNA would participate at the PSC on substantial consensus being reached at such bilateral talks.
- 2.13. The said agreement was recorded in the minutes of the bilateral talks of 16 September 2011, stating: “once agreement was reached with the government delegation at these talks, which can be placed before the PSC as suggested, they [TNA] would join the PSC process.” These minutes were confirmed at the meeting held on 20 October 2011.
- 2.14. However, in January 2012, in direct violation of the said agreement, the government unilaterally withdrew from discussions with the TNA, introducing a precondition that the TNA nominate its members to the PSC for the continuation of the bilateral talks. This was not only in violation of the agreement arrived at, but would also have nullified the opportunity of arriving at a measure of consensus at the bilateral talks.

- 2.15. The cumulative actions of the government, therefore, do not evince any honest commitment on its part to engage the Tamil people in a serious process of dialogue that would lead to a meaningful and durable resolution of the national problem. Thus Minister Samarasinghe's claims regarding the government's efforts to evolve a solution to the national problem are not true and are meant to mislead the international community.

### 3. Broken Promises on Human Rights

- 3.1. The government's callous disregard for fulfilling its own promises applies equally to the government's assurances on human rights. In 2006, the Udalagama Commission of Inquiry [Col] was mandated with the power to investigate a number of grave human rights abuses including the killing of five Tamil students in Trincomalee and the massacre of 17 aid workers in Muttur. On 13 May 2008, Mr. Yasantha Kodagoda, a senior officer of the Attorney General's Department and a member of the Sri Lankan delegation at the UNHRC made the following assurances to the Council:

"Mr. President, let me assure you that all cases involving human rights violations will continue to be impartially and comprehensively investigated and inquired into by the several agencies entrusted with that task including the Col, and their findings made public and perpetrators prosecuted in court."

- 3.2. Contrary to the government of Sri Lanka's assurances to the Council made in 2008, the findings of the Col were never made public and the perpetrators of the violations it was tasked to investigate were never brought to justice. Instead, after a tortuous three-year process during which the Col did not even complete its investigations into all the human rights abuses included in its mandate, its proceedings came to an end. It is not known whether a Report of the Col was handed over to the President. In these circumstances, assurances by the government that the recommendations of the Col report would be implemented are highly questionable.
- 3.3. The Col was designed to fail. Four of the Commissioners resigned during the course of its sittings. Moreover, there were major conflicts of interest involving the office of the Attorney General. On the one hand, officers of the Attorney General's Department led evidence of the victims at the Col. On the other, these same officers advised and defended the government at international fora, despite the fact that the government's security forces were accused of those crimes. The absence of victim and witness protection laws also posed serious challenges to the credibility of the Col.
- 3.4. In light of the fact that most key witnesses had sought refuge overseas, the Col commenced recording their evidence, including that of Dr. Manoharan, the father of one of the five students executed in Trincomalee, through video conferencing. This was arbitrarily discontinued and brought to an abrupt end. Thereafter, the government tabled a weak Victim and Witness Protection Bill in Parliament, which was not proceeded with and subsequently abandoned. The lack of witness and victim protection mechanisms has severely undermined the work of Commissions of Inquiry in Sri Lanka, including the Udalagama Col and the LLRC.

- 3.5. An International Independent Group of Eminent Persons [IIGEP] chaired by former Chief Justice of India, J. N Bhagwati, was charged with observing the proceedings of the Udalgama Col, to offer suggestions, and to assess the conduct of the proceedings against international norms and standards. In March 2008, however, the IIGEP terminated their involvement with the Col, stating:

“... the IIGEP concludes that the proceedings of inquiry and investigation have fallen far short of the transparency and compliance with basic international norms and standards pertaining to investigations and inquiries. The IIGEP has time and again pointed out the major flaws of the process: first and foremost, the conflict of interest at all levels, in particular with regard to the role of the Attorney General’s Department. Additional flaws include the restrictions on the operation of the Commission through lack of proper funding and independent support staff; poor organisation of the hearings and lines of questioning; refusal of the State authorities at the highest level to fully cooperate with the investigations and inquiries; and the absence of an effective and comprehensive system of witness protection ... These inherent and fundamental impediments inevitably lead to the conclusion that there has been and continues to be a lack of political and institutional will to investigate and inquire into the cases before the Commission. The IIGEP is therefore terminating its role in the process not only because of the shortcomings in the Commission’s work but primarily because the IIGEP identifies an institutional lack of support for the work of the Commission.” [IIGEP Public Statement, 6 March 2008].

- 3.6. In 2006, the centrally controlled Police Force in Sri Lanka became impotent in the face of a spate of abductions and ransom demands exclusively targetting Tamil speaking people in the capital city of Colombo. A one-man Commission of Inquiry, known as the ‘Mahanama Tillekeratne Commission’, was tasked to inquire into these abductions and disappearances. After the Commissioner issued a string of glib public statements - contrary to normal practices - dismissing many of the allegations of disappearances, in most cases made by families of the disappeared themselves, he is supposed to have handed over a Report to the President that has not been made public. To date, no one has been charged or prosecuted for these crimes.
- 3.7. Furthermore, repeated assurances made by the Sri Lankan government at the 17<sup>th</sup> and 18<sup>th</sup> Sessions of the UNHRC that the interim recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) would be implemented through the Inter Agency Advisory Committee have been dishonoured.
- 3.8. These modest interim recommendations were made in September 2010 and included the publication of a list of detainees and the disarming of armed paramilitary groups. Notably, the LLRC in its final Report commented on the non-implementation of these recommendations, noting:

“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.” [LLRC Report, para.8.190].

- 3.9. In fact, in Chapter 2 of the TNA's analytical response to the LLRC Report, we highlighted the fact that many of the constructive recommendations made by the LLRC were near identical to recommendations made by various Commissions in the past, such as the 1994 Western, Southern and Sabaragamuwa Disappearances Commission, the 1994 Northern and Eastern Disappearances Commission, the 1994 Central, North Western, North Central and Uva Disappearances Commission and the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island) (1998). What has been clearly and persistently lacking is the political will to implement these recommendations.
- 3.10. This lack of political will is demonstrated by the fact that a simple recommendation made in the LLRC's Report – the singing the National Anthem at state functions in both Sinhala and Tamil – was ignored at the recent National Day celebrations held on 4 February 2012. The non-implementation of this simple step – which required virtually no effort or time to implement – is again indicative of the negative attitude of the government towards the recommendations of the LLRC.
- 3.11. Thus, while Minister Samarasinghe assures the UNHRC that Sri Lanka is “best placed to successfully conclude a homegrown process of reconciliation,” the reality on the ground is very different. In fact, that reality is better reflected in the comments of Minister Samarasinghe's cabinet colleague Minister Champika Ranawaka, who is reported in the ‘Daily Mirror’ of 11 August 2008 as having said:
- “The government's path is based on a three dimensional approach towards a solution – demilitarization, democratization and development. It is the old paradigms that believed in political solutions. This vocabulary exists only within the NGO, INGO and embassy officials of western nations ... This will ensure that the dream of Tamil Eelam of the TNA or the dreams of the Muslim parties will not be realized when our approach works ... The Sinhala nationalist movement has finally taken the reigns; the others will simply have to fall in line.”
- This Minister, other Ministers and other organizations have denounced the LLRC Report and demanded that its recommendations should not be implemented. This is the continuing refrain of such persons within Sri Lanka.
- 3.12. It is this agenda, and not the platitudes and promises trotted out by Minister Samarasinghe in Geneva, that the Tamil people of the North and East are forced to contend with.
- 3.13. Despite the LLRC identifying the EPDP as an illegal armed group and recommending that armed paramilitary groups be investigated and disarmed, Minister Douglas Devananda (Leader of the EPDP) – whose attitude was condemned by the LLRC as being inimical to the rule of law - continues to function as the Cabinet Minister for Traditional Industries and Small Enterprise Development. In fact, in a further show of disdain, he was chosen as a member of Sri Lanka's delegation to the ongoing 19<sup>th</sup> UNHRC sessions.
- 3.14. The National Action Plan on the Promotion and Protection of Human Rights that the government has publicized in Geneva has come under heavy criticism from members of the human rights community in Sri Lanka, who in fact contributed their ideas to the



formulation of this Plan at the initial stages. However, their suggestions and recommendations have reportedly been omitted from what is now a watered down draft. More troubling, however, is the fact that this Plan has not been tabled in Parliament or publicly presented before the citizens of Sri Lanka. This failure gives rise to the legitimate apprehension that the Plan is a mere device for overcoming questions on human rights at international fora, and not a genuine roadmap for the promotion and protection of human rights.

- 3.15. The spate of killings and abductions, even in the last few months; the intrusive presence of the military in governance, on the streets, in trade and business as well as in the day-to-day lives of citizens; the negation of effective civilian administration in the North; the expropriation of private lands; the arbitrary utilization of state lands for sectarian purposes; the erection of massive military cantonments in areas where people should have been allowed to resettle; and the abuse of women and children, are all manifestations of how the social and political freedom of the Tamil people in the North and East of Sri Lanka are being severely jeopardized.
- 3.16. Just in the last five months, over 32 persons have been abducted or have gone missing. At least ten bodies, most of which bear marks of execution, have been found in public places. Women from the North are increasingly being rendered vulnerable to paramilitary run prostitution rackets and trafficking, while many are coerced into playing the role of comfort women to military personnel stationed in the North.
- 3.17. The democratic voice of the Tamil people, repeatedly expressed through their electoral verdicts for well nigh sixty years, has continuously resisted these attacks on their dignity and way of life; and now, the government is attempting to silence that voice. The government is engaged in irreversibly altering the demographic composition of the North and East through the establishment of Sinhala settlements, the entrenchment of the military, and the systematic exclusion of Tamil people from the civil service. Thus, while Minister Samarasinghe states that “the civil service in the North and the East is largely representative of the Tamil and Muslim communities,” the reality is that 94 percent of the civil service is Sinhalese, when, according to the Government’s submission at the Universal Periodic Review at the UNHRC in 2008, the Sinhalese constitute 74 percent of the country’s population. The Tamil-speaking people thus constitute a mere 6 percent of the civil service. Moreover, the Governors of the Northern and Eastern Provinces – who wield executive power and are directly answerable to the President in terms of the Thirteenth Amendment – are retired military officers from the Sinhala community. The Government Agent/District Secretary of the Trincomalee District is a Sinhalese retired military official, and the Government Agents/District Secretaries of Amparai and Mannar Districts are also from the Sinhala community, though the majority population in each of these three Districts is Tamil speaking. Sinhala speaking officials also hold other key positions, both at the Provincial and District levels in the North and East. Moreover, though the government claims that there has been recruitment of Tamil police officers recently, Tamil police officers constitute less than 2 percent of the total Police Force. These are perhaps the reasons why the Sri Lankan government has defaulted on its obligation to submit a 10<sup>th</sup> Periodic Report to the Committee on the Elimination of Racial Discrimination since 2003.

- 3.18. The demographic changes that have taken place in what was known as the Koddayar Pattu Assistant Government Agent's division in the Trincomalee District, is only one example to illustrate the point. The census of 1881 recorded the ethnic distribution of the Koddayar Pattu division as follows: 3027 Tamils, 1673 Muslims, 11 Sinhalese. Today, this Koddayar Pattu AGA's division has been divided into three divisional secretary's divisions – Muttur, Seruvila and Echchilampattai. The total Tamil population is 43,638, the total Muslim population stands at 32,275 and the total Sinhalese population at 8,586. The Seruvila divisional secretary's division of 13,886 persons who are predominantly Sinhalese is given a total of 377 square kilometers of land, while the Echchilampattai division, where the population of 11,923 is exclusively Tamil, is given a mere 98 square kilometers. The Muttur divisional secretary's division, which has a total population of 63,690 predominantly Tamil speaking people, has only been given an extent of 179.4 square kilometers of land. The vast majority of Sinhalese in this area are settlers who have been brought into the territory after independence, and the allocation of maximum land to the majority Sinhala Seruvila division is to facilitate further Sinhala settlement. This pattern is replicated in the demarcation of divisional secretaries' divisions in other areas as well.
- 3.19. The government and the military are also relentlessly engaged in transforming the cultural, linguistic and religious composition of the North and East and forcibly imposing the dominant culture on those areas. This is evident in the destruction of numerous Hindu places of worship, and the proliferation of new Buddhist shrines.
- 3.20. Thus, the government's claim that it has not been given sufficient time and space since the publication of the LLRC Report to implement its recommendations is wholly untenable. As the Report itself bears out, many of the positive recommendations have been in the public domain for many years. The TNA contends that the time and space sought by the government is not to implement the recommendations of the LLRC, but to pursue the agenda of permanently and irreversibly altering the demographic composition of the North and East.

#### **4. Concealing the truth and promises not kept on the conduct of the war**

- 4.1. The shocking rate of civilian casualties caused during the last stages of the war was a direct consequence of the failure of the Sri Lankan government to fulfill not merely its international legal obligations, but also the specific assurances it made to the international community in late 2008 and early 2009. The LTTE's conduct during the war – however reprehensible and violative of international humanitarian and human rights laws – does not exculpate the government of its responsibilities for its conduct.
- 4.2. Notwithstanding the assurances made by the government, as representatives of the people who were trapped in the Vanni during the last stages of the war, the TNA repeatedly raised its voice in Parliament and placed on record the fact that atrocities were being committed, as and when they occurred. On one such occasion the leader of the TNA, Mr. R Sampanthan told Parliament:

“There is constant aerial bombing, continuous aerial bombing, sometimes several bombings per day. There is constant artillery fire, all into civilian populated areas. Is this happening in any other part of the world? Are civilian

populated areas being bombed aerially and are multi-barrel rocket launchers and heavy artillery being fired into civilian populated areas in any other part of the world? People are being killed in several numbers every day ... There is death; there is devastation; there is destruction; our houses are being destroyed. We are losing both our residential and occupational assets. Our farming equipment, our fishing equipment, our livestock, our plantations have all been destroyed. We have been reduced to a state of penury and destitution.” [Hansard, 21 January 2009].

- 4.3. In the TNA’s analytical response to the LLRC, it was noted that based on the testimony of witnesses who appeared before the LLRC, the estimated number of civilians who were trapped in the Vanni in late 2008 was between 360,000 and 429,000. Thus, given that only 282,380 civilians came out of the Vanni into government-controlled areas, the number of persons unaccounted for remains between 75,000 and 146,000.
- 4.4. Towards the last stages of the war, the Sri Lankan government estimated that the number of civilians trapped in the war zone did not exceed 70,000, and repeatedly assured the world, including the UNHRC, that it was supplying sufficient food and humanitarian supplies to those civilians. Eventually, however, when 282,380 civilians emerged from out of the Vanni area, it was clear that the figure of 70,000 stated by the government was a deliberate underestimation.
- 4.5. The UN Secretary General’s Panel of Experts on Accountability in Sri Lanka characterized this underestimation as giving rise to credible allegations of the war crime of starvation, which in light of the widespread and systematic nature of the practice, also gave rise to credible allegations of the crimes against humanity of extermination and persecution.
- 4.6. The testimony of Ms. Imelda Sukumar, Mullaitivu Government Agent before the LLRC clearly established that even the government’s own officials were aware that the number of persons trapped in the Vanni exceeded 360,000. The TNA now notes that when the results of the Statistical Handbooks of 2004, 2005 and 2007 - which are published by the Department of Census and Statistics – are collated, the number of those who inhabited the Vanni in the years preceding the war appears to exceed 402,000. All this evidence suggests that the government had every reason to believe and indeed was aware that the number of civilians trapped inside the Vanni was in excess of 350,000, while they cynically claimed that number to be no more than 70,000.
- 4.7. The government was not truthful about the nature of their operations during the last stages of the war either. In an interview on *BBC HARDtalk* dated 2 March 2009, Minister Samarasinghe – speaking from Geneva - responded to a question on the justifiability of using heavy weapons. The Minister stated:

“There is absolutely no justification to use heavy weapons and, in fact, about ten days ago, the armed forces took a conscious decision not to use any heavy weapons. We have not been using heavy weapons; we are fighting man-to-man, door-to-door and street-to-street. This is the way that we are going to ensure that terrorism is wiped out because, as you know, the LTTE is now restricted in fact to a very small area of about 48 sq. km. and we cannot use heavy weapons.”

- 4.8. Yet, as even the LLRC acknowledged, heavy weapons were in fact used to fire into the 'No-fire zones' during the last stages of the war, up until hostilities ceased in May 2009. As noted at page ii of the Executive Summary of the United Nations Secretary General's Panel of Experts on Accountability in Sri Lanka: the government "shelled in spite of its knowledge of the impact, provided by its own intelligence systems and through notification by the United Nations, the ICRC and others. Most civilian casualties in the final phases of the war were caused by Government shelling."
- 4.9. The government with cynical indifference to the assurances it gave the international community persisted in military action that resulted in massive civilian casualties.
- 4.10. The government is now claiming that a 'census' has determined that the number of casualties is close to 8,000. However, the methodology adopted by those involved in carrying out this 'census' is deeply suspect. No official census has been carried out in the North and East since 1981. In early 2011, when it came to the TNA's attention that members of the armed forces together with members of the civil administration were involved in illegally collecting data from families in the Jaffna District, five Members of Parliament representing the TNA petitioned the Supreme Court [SC FR 73/2011] to stop any illegal data collection from taking place. In the Supreme Court, a Deputy Solicitor General representing government officials gave an undertaking to stop such data collection forthwith.
- 4.11. The carrying out of this 'census' in direct violation of this undertaking, is not only in contempt of the Supreme Court, but is also illustrative of the breakdown of law and order in the North and East, and the intense militarization of governance in those areas. The circumstances described above also fatally undermine the credibility of the 'census' process. Furthermore, in the context of the information presented above, the outcome of the purported 'census' is highly suspect and questionable.
- 4.12. The harsh reality that all of Sri Lanka must urgently reckon with, is that the government – which is now struggling to explain away emerging evidence of war crimes and crimes against humanity - took deliberate steps to ensure that its conduct of the war would be without witness. On 5 September 2008, just prior to the final assault on the Vanni, the government ordered all NGO and INGO personnel who were not permanent residents of the Vanni to withdraw all their assets and leave the area immediately. Only the International Committee of the Red Cross [ICRC] – who are committed to maintaining confidentiality – were permitted to remain. Furthermore, the said order also prohibited any travel by humanitarian workers beyond the Omanthai checkpoint. Ultimately, in February 2009, even the ICRC was forced to remove its presence from the Vanni. This forced evacuation of all aid workers from the Vanni not only exposed the besieged population to terrible starvation and deprivation – particularly in the context of the government having grossly underestimated the total population of the Vanni - but was also calculated to remove all potential independent witnesses to the crimes that would ensue.
- 4.13. The exclusion of media personnel and journalists from the theatre of war was also designed to prevent information on the nature of the government's conduct being known to the outside world. However, this silencing of the media was not restricted to denying

journalists access to the Vanni. The systematic targetting of journalists and human rights defenders who sought to report independently on the situation in the North was aimed at preventing exposure and criticism of the government's conduct. Many journalists were killed and abducted. In fact, as early as 2006, Reporters Sans Frontieres, an international media rights organization, identified Sri Lanka as one of the world's most dangerous countries for journalists. Moreover, even TNA Members of Parliament representing constituents who were caught inside the Vanni were prevented from entering the area, despite numerous requests made to the government.

- 4.14. When the civilian population eventually came out of the war zone, they were rounded up and interned in makeshift camps and were prevented from having any contact with the outside world. A fundamental rights application [SC FR 521/2009] supported in July 2009 before the Supreme Court on their behalf challenged the legality of their detention. Thirty-two months hence, this matter still awaits the Court's pronouncement on the threshold question of whether it would grant leave to proceed with the application.
- 4.15. Minister Samarasinghe's recent statement only briefly alluded to the question of accountability. He stated that the Army and the Navy had initiated Courts of Inquiry to investigate into the incidents earmarked for further investigation by the LLRC, as well as the Channel 4 video footage. The tasking of the military to conduct investigations into its own conduct - despite vehement and repeated denials of wrongdoing by senior officials of the military establishment - epitomizes the government's utter lack of commitment to investigate credible allegations of war crimes and crimes against humanity.

## 5. The importance of UNHRC Action

- 5.1. As the opportunities for post war peace and reconciliation in Sri Lanka gradually slip away, the members of the UNHRC must act urgently to prevent an ominous slide towards a recurrence of the tragedies of the past.
- 5.2. The Council must ensure that the Sri Lankan government immediately takes steps to offer a political solution to the Tamil people to resolve the long-festering and deep-seated national problem and also address serious concerns about human rights and governance.
- 5.3. The Council must also urgently address questions of truth and justice relating to grave violations of international human rights and humanitarian law, in order to transform the culture of impunity prevailing in the country to one of accountability.
- 5.4. The Sri Lankan government has persistently claimed that, if provided time and space, it will evolve homegrown processes that will address the need for a political solution, improvement in human rights and accountability. This claim must be evaluated against the chronic unwillingness of the government to honour its own commitments to the people of Sri Lanka and the international community. Some of these commitments have been repeated for many years, with no progress made on the ground.
- 5.5. Moreover, the trajectory of the government's conduct indicates that, if given time and space, that time and space will be utilized to pursue the agenda that the government has brazenly undertaken despite assurances to the contrary. That agenda entails the silencing

of the democratic voice of the Tamil people, the entrenching of power at the centre and the transformation of the linguistic, cultural and religious composition of the North and East so as to negate the need for a political solution.

- 5.6. Sri Lanka's failure to make good on its own assurances requires that the Council act now. The principle of complementarity in international law requires that where a state is unwilling or unable to institute credible measures to advance justice in keeping with its commitments, international mechanisms must be activated.
- 5.7. The TNA states that the failure of the Council to act will enable governments, which in fact demonstrate no commitment to change, to escape their obligations by merely making empty promises of reform. This will entrench a dangerous and harmful precedent of Council sanctioned impunity.
- 5.8. The TNA therefore fully supports action by the Council at its 19<sup>th</sup> Session as a first and necessary step towards ensuring peace, justice and reconciliation in Sri Lanka.
- 5.9. The TNA believes that action by the Council would be in the larger interest of all the constituent Peoples of Sri Lanka.



R. Sampanthan  
Leader, Tamil National Alliance.