

# We Accuse: War Crimes and Genocide

A Brief for an Independent International Investigation



**WE ACCUSE:  
WAR CRIMES  
AND GENOCIDE  
IN SRI LANKA**

**A brief for an Independent International Investigation**



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# CONTENTS

PREFACE.....	1
EXECUTIVE SUMMARY .....	6
INTRODUCTION .....	10
BACKGROUND OF THE CONFLICT.....	11
HISTORY AND HIGHLIGHTS OF THE UNSG EXPERT PANEL REPORT .....	15
EXCERPTS FROM COMMENTS FROM NGO’S PERTAINING TO UN PANEL OF EXPERTS REPORT .....	21
THE CHANNEL 4 DOCUMENTARY “THE KILLING FIELDS OF SRI LANKA’S HARD EVIDENCE.....	23
HISTORY AND HIGHLIGHTS OF THE FINDINGS OF THE LLRC .....	28
CHART COMPARING UNSG PANEL, CHANNEL 4, DUBLIN TRIBUNAL AND LLRC FINDING .....	50
SATELLITE IMAGES OF THE WAR ZONES FROM UN SATELLITES .....	64
A BRIEF HISTORY OF THE SRI LANKAN GOVERNMENT’S TACTICS IN ESTABLISHING COMMISSIONS TO WARD OFF INTERNATIONAL OR DOMESTIC PRESSURES. ....	68

THE CLAIM OF GENOCIDE DIRECTED AGAINST TAMILS AND THE DOCTRINE OF DOUBLE EFFECT .....	90
THE STRUCTURAL GENOCIDE OF THE TAMILS CONTINUES .....	95
THE RATIONALE FOR AN INTERNATIONAL INVESTIGATION.....	112
THE INTEGRITY OF THE UNHRC.....	124
PROPOSED COURSE OF ACTION .....	125
CONCLUSION.....	132
ADDENDUM: NGO’s Call for an Independent, International Commission.....	A

## **PREFACE**

The term “Mullivaikkaal” has etched itself as a deep but tender mark in the national psyche of a people. Just as the word “holocaust” holds a very special place in the collective memory of the Jewish people, so will the term “Mullivaikkaal” hold a special place in the collective memory not only of Eelam Tamils, but of Tamils all over the world. It is a special word that bears witness to the mass killing, a Genocide, that was unleashed on the civilian population of Eelam Tamils by the Sri Lankan Government. It was there that the Eelam Tamil people were hunted down and killed indiscriminately. They were killed while they were walking and while they were lying down, they were killed when they were eating, praying or sleeping and they were killed while they were sick, wounded and in hospital. No activity was a safe activity if you were a Tamil.

The Catholic Bishop of Mannar, Rev. Dr. Rayappu Joseph, pointed out in his submission to the Lessons Learned and Reconciliation Commission (LLRC) of Sri Lanka that, based on the number of people who came into the areas controlled by the Sri Lankan government forces between October 2008 – May 2009 and the population reported to be in Vanni in early October 2008, his estimate of the number of people not accounted for at the end of the war was a staggering 146,679 persons. This figure is an indicator of the tragedy that

befell the Tamil people in May 2009 also stands in sharp contrast to the distorted figures presented to the world by authorities.

The sad fact is that the international community, especially the United Nations, which was given adequate warning of what was to follow by people like Gareth Evans, the former Australian Foreign Minister, not only abandoned the entire mass of that population of Tamils, but also its own doctrine of Responsibility To Protect in ‘Mullivaikkaal’.

Today, as we write this, powerful governments and their powerful voices are disregarding their moral and legal obligations and by focusing exclusively on the LLRC Report, a report that has been rejected outright not only by the Tamil people as evidenced by the statements of the Tamil National Alliance, but also by Amnesty International, Human Rights Watch, and the International Crisis Group. Even the US government in its latest press release has acknowledged that the LLRC Report did not cover War Crimes allegations in sufficient detail. The South African Foreign Ministry in its press release last week stated that the LLRC Report “should have addressed in more detail the question of holding those people responsible for human rights violations to account.”

If the true desire of the powerful governments within the so called international community was to give the Government of Sri Lanka one more chance, they could maintain the focus on the LLRC Report, but at the same time also call for a resolution towards the establishment of an international investigation. These were precisely the recommendations of the Expert Panel appointed by the Secretary General of the UN.

The UN Panel recommended that the Government of Sri Lanka should initiate an effective accountability process. At the same time, it also said that the international community should proceed to establish an independent investigation mechanism. For the Expert Panel, the question was not about one or the other of the two mechanisms but of both.

We are, therefore, calling on all the member countries of the UN Human Rights Council to pass a resolution for the establishment of an international investigation on Sri Lanka that will be independent and one that will conduct investigations into human rights violations and international crimes perpetrated in Sri Lanka. We urge that such an international commission should also have the mandate to investigate if the LLRC's assertions are verifiable or not, given the criticism the LLRC Report has received from several non-governmental organizations.

When seeking accountability and justice to our people, we are compelled to bring to the world's attention the aggressive and persistent efforts being undertaken by the Government of Sri Lanka, since the conclusion of the war, to destroy the identity of the Tamil people. This is being conducted today through the systematic destruction of Tamil cultural symbols and through the use sexual violence, torture, extra judicial killing and disappearance in the military occupied North and East. The increase in the flow of Tamil refugees risking their lives in ships destined to Asia and African countries in recent months is a manifestation of the fact that the Tamils' very physical survival is threatened in the island of Sri Lanka at this point in time.

Our cry at this moment is for letting our people live with dignity and freedom in their own land.



Visuvanathan Rudrakumaran  
Prime Minister TGTE

TGTE is a new political concept. It is a new political formation based on the principles of nationhood, homeland and self-determination. The *raison d'etre* for the TGTE is lack of political space inside the island of Sri Lanka for the Tamils to articulate and realize their political aspirations fully due to Constitutional impediments, racist political environment and military

strangulation; and the coordination of diaspora political activities based on democratic principles and the rule of law. TGTE held international supervised elections in 12 countries. These elections were held to ensure that core believe of democracy be upheld within the TGTE and to demonstrate TGTE's belief and reliance upon democratic ideals. TGTE has a bicameral legislature and a Cabinet. Although an elected body, TGTE does not claim to be a government in exile. The Constitution of the TGTE mandates that it should realize its political objective through peaceful means.

For more information: [www.tgte-us.org](http://www.tgte-us.org) or [www.tgte.org](http://www.tgte.org)

## **EXECUTIVE SUMMARY**

The purpose of this booklet published by the Transnational Government of Tamil Eelam (TGTE), is to make the case for an international investigation, spearheaded by the United Nations Human Rights Council, into alleged War Crimes, Crimes against Humanity, and Genocide committed by the Government of Sri Lanka.

As the booklet points out, since independence there has been systematic human rights violations of the Tamil people in the island of Sri Lanka. During the final stages of the war the very right to life of the Tamil civilians had been flagrantly and systematically violated. Moreover, since the end of hostilities in May of 2009, the Government of Sri Lanka's increasing policy of "Sinhalisation" has continued to marginalize and destroy the identity of the remnants of the Tamil people.

It is with these facts in the foreground that the TGTE presents this booklet to the international community at the 19<sup>th</sup> session of the United Nations Human Rights Council in order to request that the international investigation, proposed by UN Secretary General's Panel of Expert Report as well as many NGOs be initiated.

## Overview

This booklet has been produced by Indian and North American academics to present facts in an illustrative manner of which Tamils, both in and out of the island of Sri Lanka, have been aware of for decades, namely that of the increasingly radical policies of the Government of Sri Lanka that have been implemented not for their stated purpose of merely winning a “war on terror”, but rather to marginalize and destroy the Tamils’ identity whose native homes lie in the Northern and Eastern reaches of the island of Sri Lanka. Both the Government of Sri Lanka’s strategies of waging an all-out war against the LTTE **as well as** the civilian Tamil population and the continued policies of “Sinhalisation” for the island of Sri Lanka illustrate one, the complete annihilation of Tamils as a distinct people who historically been associated with the regions they have viewed as their ancestral homeland.

With this booklet, the writers trace the history and rise of Sinhala chauvinism through the implementation of government mandates and decrees from the moment of Sri Lankan independence through the insufficient attempts at government accountability during the nearly 40 years of conflict to the eventual and current use of Constitutional and legal manipulations to bring about the apparent end goal of Sri Lanka’s Sinhalese regime: the

destruction of Tamil identity and the colonization of these lands by Sinhalese Population.

By examining and comparing both independent, non-partisan reports (including, but not limited to, the UN Sec.-Gen.'s Panel of Experts on Sri Lanka's Report, Dublin Peoples Tribunal on Sri Lanka's finding and UK Television Channel 4's documentary, the International Crisis Group report) as well as the Government of Sri Lanka's own Lessons Learned and Reconciliation Commission's (LLRC) Report, the writers of this booklet make a compelling case for two conclusive facts: 1) that international crimes namely War Crimes, Crimes against Humanity, and Genocide may very well have been committed and 2) that the Government of Sri Lanka's LLRC Report which adequately failed to address the allegations of violations of human rights and humanitarian laws demonstrates that there is no effective domestic mechanism to mete out justice and accountability.

It would be a fallacy to imagine, that the very power structure which has been accused of these international crimes, will begin a process to bring its own members to justice.

The booklet then compares the proposed international investigation with past and present international

mechanism in terms of numbers of casualties, the rational and the authority.

Picking from the Dublin Peoples Tribunal on Sri Lanka's Finding that "The attempt to annihilate the Tamil population with/without the use of illegal weapons certainly constitutes one form of war crime. The question remains if the government intended genocide in respect of the Tamil people in brutally suppressing armed and political resistance", the writers makes a case that there is ample evidence for a prima face case of genocide.

Focusing on the present situation – by aggressive colonization, destruction of Tamil cultural heritage and symbols, the sexual violence and humiliation, the Tamil nation is being subjected to structural genocide which presents a clear threat to the annihilation of the Tamils of Sri Lanka as a distinct people with their own language, culture and identity.

Therefore, the TGTE calls upon the member countries of this session of the UNHRC to take account of the facts referred to in this booklet and to begin the process of asking for accountability and justice by initiating an international investigation. Our conscience as members of the greater community of humanity demands us to embark on this process to ensure that these heinous crimes will never again occur on this earth.

## **INTRODUCTION**

Events for longer than the last quarter century have provided ample evidence that the Sri Lankan's government policy toward Tamils has constituted a consistent pattern of gross violations of human rights as well as serious breaches of humanitarian law. Perpetrators of human rights violations and international crimes have not been identified, held accountable for their acts or brought to justice.

Further, acts directed at the destruction of the Tamil Community, its identity and its very existence continue to be conducted by the Sri Lankan authorities.

This booklet summarizes the findings of IGO and NGO commentators who document human rights and international criminal law violations.

It is our firm belief, based on objective evidence, that the situation calls for international intervention to bring to justice wrongdoers, monitor the present situation and to ensure that the Tamil peoples are guaranteed their universal human rights now and in the future.

If there is ever to be true peace in the island of Sri Lanka, all its peoples must be afforded their human rights and the violators of past injustices must be brought to justice. Simply, we seek from the international

community a recognition of past crimes and the protection of the Tamil people who for too long have been denied their human dignity and often their lives.

## **BACKGROUND OF THE CONFLICT**

Sri Lanka received its independence from the British on the 4<sup>th</sup> of February 1948 without a freedom struggle unlike its neighbor India. The very first act of the Sri Lankan parliament was to disenfranchise the Tamils of Indian origin; they were brought to the island by the British in 1825 to work in the Tea estates of Central Sri Lanka. More than one million of them became stateless.<sup>1</sup> Since then Sinhala chauvinism has targeted the Tamil communit(ies). The next in line were the native Tamils of the northeast. The parliament passed acts such as the ‘Sinhala Only’ act of 1956, making Sinhalese the only official language of the country the Standardization of education in 1971<sup>2</sup>. This reverse form of affirmative action that further empowers the majority community discriminated Tamils in University admissions. The state also sponsored riots in 1956, 1958, 1977, 1981 burning of the Jaffna Library which was regarded as the most

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<sup>1</sup> See <http://pact.lk/issues/indian-tamil-issues/>

<sup>2</sup> see <http://tamilnation.co/indictment/indict011.htm>

sacred library of the Tamils and a symbol of Tamil identity in Jaffna.

Non – Violent resistance: Tamils resisted abuses and discrimination through peaceful and democratic means. Since 1956 Tamils held series of non-violent activities similar to Mahatma Gandhi's Sathyagraha, fasting, and other similar activities. For example, in 1961 Tamils peacefully blocked Sri Lankan Government offices for about two months, to press for changes in Government regulations and discrimination. Government crushed these peaceful activities, by declaring a state of emergency and used military to imprison Tamil leaders.

The 1983 Black July pogrom led the Tamils to resist the Sinhala onslaught through an armed struggle from 1983.<sup>3</sup> Several armed groups were trained in India to fight the Sri Lankan state oppression. The Liberation Tigers of Tamil Eelam (LTTE) emerged as the strongest with the will to win liberation for the Tamils and fight for their goal: the realization of their right to self - determination.

Three wars were fought between 1983 to 2001. In 2002 a Ceasefire facilitated by Norway came into effect, but with the election of Mr. Mahinda Rajapakse as President of Sri Lanka, it became clear that the ethnic issue would

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<sup>3</sup>see <http://knol.google.com/k/sri-lanka-s-genocide-of-tamils#>

be settled through a war.<sup>4</sup>The genocidal war restarted in 2006 and culminated with the massacre of thousands of innocent civilians and surrendered combatants of the LTTE.<sup>5</sup>

The nature and conduct of this war against LTTE was not restricted to a war between two armed forces. It was revealed in the conduct of the war and celebrations of the victory by the Sri Lankan State and the Sinhala civil society, that this was a war against the ethnic Tamils in Sri Lanka. The divide within the civil society was more than clear with the Sinhalese, at large, celebrating the military victory in the streets while more than 300,000 Tamil civilians who survived the conflict were driven into detention centers euphemistically called welfare camps.<sup>6</sup>

The Sri Lankan State and the armed forces had demonstrated all the components of a strategy of final solution to end the ethnic question in Sri Lanka. The routine bombings inside the civilian areas including the schools and hospitals, extraordinary number of civilian deaths inside the No-Fire Zones and finally the internment of three hundred thousand Tamil civilians inside the camps support the conclusion that there was a

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<sup>4</sup>see [http://tamilnation.co/indictment/continuingwar/060804aid\\_workers.htm](http://tamilnation.co/indictment/continuingwar/060804aid_workers.htm)

<sup>5</sup> see <http://www.bbc.co.uk/news/world-asia-15868038>

<sup>6</sup> see <http://www.economist.com/node/13714158>

premeditated policy strategy and military conduct of this war. The end of the war did not, however, signify the end of the underlying conflicts that caused the war in Sri Lanka. At the end of the war which has been called as a 'war without witness' as the government forced International Humanitarian NGOs and independent media to move out of the war zones, many independent observers, human rights groups called for an impartial independent inquiry into the 'War crimes', 'Crimes against humanity' and possible 'Genocide of the Tamils'. The Permanent People's Tribunal, The International Crisis Group, Amnesty International, Human Rights Watch have all demanded International Investigations knowing the past history of Sri Lanka in setting up its own toothless domestic mechanisms of inquiry. It is in this context some of the arguments for the creation of an independent International Inquiry are put forward.

## **HISTORY AND HIGHLIGHTS OF THE UNSG EXPERT PANEL REPORT**

The three-member panel was set up in September 2010 following the Joint Statement made by UN Secretary–General Ban Ki Moon and Sri Lankan President Mahinda Rajapakse, after the Secretary-General Ban visited Sri Lanka shortly after the end of the conflict in May 2009. The panel consisted of Mr. Marzuki Darusman (Indonesia), Ms. Yasmin Sooka (South Africa) and Prof. Steven Ratner (USA).

The panel was tasked with examining “the modalities, applicable international standards and comparative experience with regard to accountability processes,” taking into account the nature and scope of any alleged violations of international humanitarian and human rights law during the final stages of the conflict in Sri Lanka. They began their work in September 2010.

The panel’s findings contradict many of Sri Lanka’s public assertions about the conduct of its troops and supports the critic arguments that the Sri Lankan military deliberately shelled civilians caught in the war zone. Tens of thousands of Tamil civilians trapped behind enemy lines may have died during the fighting.<sup>7</sup>

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7 see Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, United Nations, 31 March 2011 which put the number at up to 40000 (para 137, p 41)

Sri Lanka's government, which refused to cooperate with the panel, has criticized the Report's findings as "fundamentally flawed" and based on unverified claims.

The Panel calls on the Sri Lankan Government immediately to "commence genuine investigations into these and other alleged violations of international humanitarian and human rights law committed by both sides involved in the armed conflict." The report also recommends that the Secretary General "immediately proceed to establish an independent international mechanism".

The evidence obtained by the panel revealed "a very different version of the final stages of the war than that maintained to this day by the Government of Sri Lanka"<sup>8</sup>. The panel found "credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law were committed both by the Government of Sri Lanka and the LTTE, some of which would amount to war crimes and crimes against humanity".<sup>9</sup> The panel concluded that the "conduct of the war represented a grave assault on the entire regime of

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<sup>8</sup>ibid. p. ii.

<sup>9</sup>ibid

international law designed to protect individual dignity during both war and peace".<sup>10</sup>

The panel found "credible allegations" that the Sri Lankan military/government killed civilians through widespread shelling; shelled hospitals and humanitarian objects; denied humanitarian assistance; violated the human rights of civilians and Tamil Tiger combatants; and violated the human rights of non-combatants outside the conflict zone such as the media representatives.<sup>11</sup> The panel found "credible allegations" that the Tamil Tigers used civilians as a human buffer; killed civilians attempting to escape Tamil Tiger control; used military equipment in the proximity of civilians; forcibly recruited children; used forced labor; and killed civilians using suicide attacks.

### **Findings of the panel:**

The Sri Lankan military according to the Panel Report used large-scale and widespread shelling causing large numbers of civilian deaths. This constituted a violation of humanitarian law with the civilian population of Vanni suffering significant civilian casualties

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<sup>10</sup>ibid

<sup>11</sup>ibid

- The Sri Lankan government tried to intimidate and silence the media and other critics of the war using a variety of threats and actions, allegedly including the use of white vans to abduct and to make witnesses disappear.
- The Sri Lankan military shelled on a large scale the three Safe Zones where it had encouraged the civilian population to concentrate in order to seek safety. It did this even after saying it would cease using heavy weapons.
- The Sri Lankan military shelled the UN hub, food distribution lines and Red Cross ships coming to rescue the wounded and their relatives. It did this despite having intelligence as well as notifications by the UN, the Red Cross and others.
- Evidence supports that most of the civilian casualties were at the hands of the Sri Lankan military who shelled the supposed 'safe areas'.
- The Sri Lankan military systematically shelled hospitals on the frontlines, which were clearly marked and are supposed to be protected by international humanitarian law. All hospitals in the Vanni were hit by mortars and artillery, sometimes repeatedly, despite the Sri Lankan

military knowing their locations as sites that were to be legally protected.

- The Sri Lankan government systematically deprived civilians in the conflict zone of humanitarian aid, in the form of food and medical supplies, adding to their suffering. The government, arguably with intent, underestimated the number of civilians in order to deprive them of humanitarian aid.
- Tens of thousands of civilians were killed between January and May 2009. Many died anonymously in the final days and the actual numbers and identity are not known with accuracy.

After the war:

- The Sri Lankan government subjected the civilians who managed to escape the conflict zone to further deprivation and suffering.
- Screening for Tamil Tigers took place without any transparency or external scrutiny. Some of those separated by the screening were summarily

executed whilst women were raped.<sup>12</sup>Others simply disappeared.

- All IDPs were detained in closed overcrowded camps where they were deprived of their basic rights and dignity. The conditions in the camps resulted in many unnecessary deaths in contravention of international instruments that insist on the protection of IDP camps.
- There were illegal interrogations and allegations of torture in the camps. Suspected Tamil Tigers were separated and taken to other facilities where they faced further abuse.

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<sup>12</sup>ibid, paras 176& 214 p. 50, 60

## **EXCERPTS FROM COMMENTS FROM NGO'S PERTAINING TO UN PANEL OF EXPERTS REPORT**

The UN High Commissioner for Human Rights Navi Pillay issued a statement on 26 April 2011 welcoming the publication of the *report and supporting the report's call for further* international investigation.<sup>13</sup> The statement went on to state; "*The way this conflict was conducted, under the guise of fighting terrorism, challenged the very foundations of the rules of war and cost the lives of tens of thousands of civilians...I hope the disturbing new information contained in this report will shock the conscience of the international community into finally taking serious action...this report demand a full, impartial, independent and transparent investigation...Unless there is a sea-change in the Government's response, which has so far been one of total denial and blanket impunity, a full-fledged international inquiry will clearly be needed*".<sup>14</sup>

- 1) Amnesty International (AI) has called for international accountability for those responsible for the war crimes alleged in the report, stating that the "UN report finally exposes the Sri Lankan

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<sup>13</sup> "UN human rights chief welcomes Sri Lanka report, urges further investigation into conduct of final stages of the war". Office of the United Nations High Commissioner for Human Rights. 26 April 2011

<sup>14</sup> *ibid*

government's whitewash in its efforts to deny justice to the war's victims".<sup>15</sup> AI has urged the SG to ensure that the UN establishes "*...a commission of inquiry to collect evidence on the alleged crimes by both sides, to determine who did what to whom, and to recommend next steps for bringing suspected perpetrators to justice in a transparent and timely manner*".<sup>16</sup>

- 2) Human Rights Watch (HRW) stated, relying on the panel's findings, that both sides committed abuses and that the Sri Lankan government failure to hold its forces accountable showed the need for an international investigation.<sup>17</sup> HRW urged the SG to implement the panel's recommendation to establish an international independent investigation.<sup>18</sup> It has also urged Russia and China, "...to stop blocking efforts to find justice for victims in Sri Lanka and support the panel's recommendations".<sup>19</sup>
- 3) Eleven international human rights groups sent a joint letter to United States Secretary of State Hillary Clinton (27 May 2011) urging the US government to use the 17th session of the United Nations Human

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<sup>15</sup> "UN must act now on Sri Lanka war crimes report". Amnesty International. 26 April 2011

<sup>16</sup> ibid

<sup>17</sup> "Sri Lanka: UN Chief Should Establish International Inquiry". Human Rights Watch. 25 April 2011

<sup>18</sup> ibid

<sup>19</sup> ibid

Rights Council to press for international accountability for war crimes in Sri Lanka, welcome the expert panel's report, express concern at its findings and call for "full implementation" of the panel's recommendations.<sup>20</sup>

## **THE CHANNEL 4 DOCUMENTARY “THE KILLING FIELDS OF SRI LANKA’S HARD EVIDENCE**

The Channel 4 account of “the Killing Fields of Sri Lanka” that went on air on the 14<sup>th</sup> of June 2011, provided corroborative visual evidence in the form of eyewitness accounts, amateur film footage, photographs and mobile phone videos. The 48 minute film depicted "...death, injury, execution and evidence of sexual abuse and murder".

Two distinct kinds of footage had gone into the making of Channel 4's account of the closing weeks of the war against the Tamil Tigers. The first two sections consisted mainly of amateur film made by civilians, shot by the victims themselves, during or in the immediate aftermath of being shelled, trapped in the appalling "no fire zones" that were established by the Sri Lankan government. The

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20 Secretary Hillary Clinton U.S. Department of State'. Freedom House. 27 May 2011

footage was knowingly recorded to document crimes witnessed by the filmmakers. The footage, graphic and deeply disturbing, attests to the criminal acts perpetrated during duration of the conflict.

The final third of the program focused on mobile phone films of a series of live executions of prisoners, and the disposal and abuse of raped and mutilated bodies, filmed by the murderers themselves as trophy footage. Other soldiers could be seen filming the scenes with their phones at the same time. The film testimony provides incontrovertible evidence that war crimes had taken place.

Channel 4's film addressed -serious acts of omission as well – the failure of the international community to effectively protest against the treatment of civilians in the closing stages of the civil war constitutes a serious charge against the international community which via the Responsibility to Protect doctrine, as outlined by SG Ban Ki Moon, has an obligation; “ (Principle Three) focuses on the responsibility of international community to take timely and decisive action to prevent and halt mass atrocities when a State is manifestly failing to protect its populations”.<sup>21</sup>

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21 January 2009, UN Secretary-General Ban Ki-Moon, Implementing the Responsibility to Protect.

It began with the withdrawal of the United Nations from Kilinochchi, where the Tamil population centered in the north, after the Sri Lankan government had announced that it could no longer guarantee the safety of the UN mission, a move interpreted here as a premeditated plan to remove inconvenient witnesses. The "no fire zones" turned out to be a fatal ruse, being repeatedly shelled and subjecting civilians to injury and cruel death. Tamils makeshift hospitals were hit so frequently that they eventually asked the Red Cross not to pass on their GPS co-ordinates to the Sri Lanka military, fearing that they were being used for targeting rather than protective enclave from belligerent acts..

In the first half of the documentary it conclusively confirmed the belief that the Sri Lankans would pause after one shell and then fire another to intentionally kill the rescuers. It did corroborate eyewitness descriptions of appalling conditions on the shrinking strip of land occupied by the Tamils. Because it was filmed by the victims, it's all too easy for the Sri Lankan government to argue that it represents only the chaos of an ugly war, rather than hard evidence of a war crime. The Sri Lankan government used the strategy to dismiss the evidence as a fake, but the documentary incontrovertibly showed footage of Sri Lankan soldiers executing prisoners in cold blood. For Channel 4's technical analysts it was not fabricated, and nobody would think it would have looked

fake other than any viewer from within the Sri Lankan High Commission. "These are our state property. Let's shoot," said an off-camera voice, as bound prisoners were murdered. Is there no one here with the balls to shoot a terrorist?" yelled another soldier, impatient with his colleagues' irresolution in front of three kneeling prisoners. Most horrific of all of the footage was the ogling trophy footage of dead women stripped naked: "I really want to cut her tits off," if no one was around," was muttered by one of the filmed participants.

The removal of the UN staff from Kilinochchi on 15<sup>th</sup> September 2008 based on the orders of the Sri Lankan government left virtually no international witnesses in the area. After the UN had withdrawn, the Sri Lankan military launched a massive offensive into the Tamil Tiger held areas and captured Kilinochchi in January 2009. Hundreds of thousands of civilians fled the onslaught. Over the following four months they were trapped in an ever decreasing area and constantly bombed by the Sri Lankan military.<sup>22</sup> Tens of thousands died as result of deliberate Sri Lankan military fire.<sup>23</sup> The harrowing ordeal suffered by the civilians was filmed.

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22" Sri Lanka's Killing Fields". Channel 4.

23ibid

The program features the first video testimony of a Tamil woman who says she and her daughter were gang-raped by Sri Lankan Army soldiers. The film reinforces the findings of the UN panel – namely that combatants of both sides committed war crimes and crimes against humanity. It documents by graphic footage in a documentary format of the outrages of human rights and humanitarian law violations that lasts one hour. For many it has a greater impact than a written report and its showing should be encouraged for all those who question the claimed violations of human rights claimed by the critics of the combatant's actions, strategies and behavior. There is ample evidence and testimony that the Sri Lankan Army systematically and knowingly bombed hospitals and civilians, with the oversight and possible approval of senior military and government officials.

The Sri Lankan government's only response to these documents has been to question Channel 4's "standards and fairness", presumably confident that there's no great appetite in the international community to pursue the matter. The failure of the UN Security Council to insist on an independent investigation is "inexplicable and morally quite indefensible," said Steve Crawshaw of Amnesty International. But it's all too explicable I fear, even if the explanation involves a squalid combination of *realpolitik* and self-interest. "Will they be failed again?"

asked Snow, the principal commentator of the Ch. 4 documentary, at the end, over footage of Tamil civilians desperately pleading for help.

The United Nations' Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has also concluded that the video is authentic. The film has been important, making it implausible for diplomats to ignore that a consistent pattern of gross human rights violations took place.

## **HISTORY AND HIGHLIGHTS OF THE FINDINGS OF THE LLRC**

**The Lessons Learnt and Reconciliation Commission (LLRC)** was a commission of inquiry appointed by Sri Lankan President Mahinda Rajapaksa in May 2010 to look back at the Sri Lankan Civil War a conflict which was fought in Sri Lanka from 1983 to 2009, and to provide recommendations for an era of healing and peace building. After an 18 month inquiry, the commission submitted its report to the President on 15 November 2011. The report was made public on 16 December 2011, after being tabled in the parliament.

## **Mandate**

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:

- The facts and circumstances which led to the failure of the ceasefire agreement operationalised on 21st February, 2002 and the sequence of events that followed thereafter up to the 19th of May, 2009.
- Whether any person, group or institution directly or indirectly bear responsibility in this regard
- The lessons we would learn from those events and their attendant concern, in order to ensure that there will be no recurrence
- The methodology whereby restitution to any person affected by those events or their dependants or their heirs, can be affected
- 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 the 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 the Warrant.

### **Findings of the LLRC**

- The 2002 ceasefire agreement (CFA) which was signed between the Sri Lankan government and LTTE, although brought about a short lived respite to the country, was unstable and eventually unproductive.
- Conceptual flaws and the untenable dual roles of the Government of Norway, as facilitator of the peace process and the head of the Sri Lanka Monitoring Mission paved the way to its failure.
- The military strategy of the Sri Lanka Armed Forces during Eelam War IV is satisfactory. It gave the highest priority to the protection of civilian population.
- Security Forces had not deliberately targeted civilians in the No Fire Zones (NFZs), which were declared in the final stages of the war.
- Given the complexity of the situation and based on the Principle of Proportionality, commission concluded that the Security Forces were

confronted with an unprecedented situation where no other choice was possible other than returning fire into the NFZs in reply to the incoming fire, and all "feasible precautions" that were practicable in the circumstances had been taken. Determining and obtaining of a reconstruction of all the conditions under which the "combat action" took place would be "next to impossible".

- Shells had in fact fallen on hospitals causing damage and resulting in civilian casualties. But evidence submitted is equivocal in nature and does not warrant a definitive conclusion that one party or the other was responsible for the shelling.
- The Government of Sri Lanka with the co-operation of the aid agencies has taken all possible steps in getting food, medical supplies and other essential items across to the entrapped civilians. However there appears to have been a paucity of medicines and the medical facilities appear to have been inadequate.
- The LTTE was engaged in grave violations of core principles of International humanitarian law (IHL) by using civilians as human shields, placing and using military equipment in civilian

centers, shooting at civilians trying to escape into safe areas, conscripting young children to engage in combat etc.

- Absence of a proper verification process during the final stages of the war has contributed to the unverified sweeping generalizations of a highly speculative nature, as regards casualty figures.
- There are a number of shortcomings in the existing IHL regime pertaining to internal conflicts involving states and non-state armed groups.
- Technical ambiguities, electronic tampering and the artificial construction of the 'blood effect' in the 3 separate videos (originally in 3GP format) that appears in Channel 4 documentary *Sri Lanka's Killing Fields*, cast significant doubts on their authenticity, leading to questions on whether the incidents are 'real' or 'staged'.
- There were an alarmingly large number of representations made in front of the commission alleging abductions, unlawful arrests, arbitrary detention and involuntary disappearances, regarding which no official action has been taken.

- Programs in rehabilitation centers for ex-LTTE combatants are conducted in a professional and caring manner.
- The grievances of the Tamil community have been a root cause for the ethnic conflict.
- Along with an independent judiciary and a transparent legal process, strict adherence to the rule of law is a *sine qua non* for peace and stability of the country.
- An independent and permanent Police Commission is a pre-requisite to guarantee the effective functioning of the Police service.
- 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.

### **Recommendations of the LLRC**

- Further investigations should be carried out regarding four particular incidents which caused

death or injury to civilians, on possible implication of the security forces.

- Necessary investigations should be carried out into specific allegations of disappearances after surrender/arrest, and where such investigations produce evidence of any unlawful act on the part of individual members of the Army, the wrongdoers should be prosecuted and punished.
- Take due account on surrendered LTTE cadres against whom investigations reveal prima facie material for prosecution.
- IHL regime should take into account the grey areas in the existing legal framework applicable to internal conflicts involving states and non-state armed groups.
- A professionally designed household survey should be conducted 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.
- Institute an independent investigation into Channel 4 videos.

- A special commissioner should be appointed to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings as appropriate.
- Death certificates should be issued and monetary recompense should be provided where necessary. Steps should be taken to effectively implement the amendment to the Registration of Deaths Act (2006).
- Appoint an independent advisory committee to monitor and examine detention and arrest of persons under any regulations made under the Public Security Ordinance or the Prevention of Terrorism Act (PTA).
- Domestic legislation should be framed to specifically criminalize enforced or involuntary disappearances.
- Prepare a centralized and comprehensive database containing a list of detainees and make that available to their next of kin.
- All illegal armed groups should be disarmed.
- Grant the legal ownership of land to those who have been resettled.
- In instances where there is prima facie evidence of conscription of children as combatants (by both

LTTE and TMVP), any such alleged cases should be investigated and offenders must be brought to justice.

- Increased employment opportunities should be provided to those in the former conflict affected areas.
- An inter-agency task force mandated to addressing the needs of vulnerable groups like women, children, elderly and disabled, must be established.
- Investigate and inquire into alleged incidents of serious violations of human rights including the 2006 Trincomalee massacre and the 2006 massacre of 17 aid workers.
- The land policy of the government should not be an instrument to effect unnatural changes in the demographic pattern of a given province.
- A National Land Commission (NLC) should be established in order to propose appropriate future national land policy guidelines.
- All political parties should arrive at a bipartisan understanding on national land policy and recognize it as a national issue. Land policy should not be used as a tool to gain narrow political advantage.

- The role and capacity of the Rehabilitation of Persons, Properties and Industries Authority (REPPIA) should be reviewed, giving its primary focus in providing compensatory relief for persons affected by the conflict. Ex-LTTE combatants and next of kin should also be considered eligible for compensatory relief.
- Involvement of the security forces in civilian activities in North Eastern Province should be phased out. Private lands should be used giving reasonable time lines.
- A proper investigation should be carried out on the alleged involvement of Vinayagamoorthy Muralitharan *alias* Karuna Amman and Sivanesathurai Chandrakanthan *alias* Pillayan in the 1990 massacre of Sri Lankan Police officers.
- A full investigation should be done on the alleged acts of extortion committed by members of the Eelam People's Democratic Party (EPDP).
- Steps should be taken to neutralise the 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.

- Units of the Attorney General's department should be set up in the provinces to guide and advise the Police regarding criminal investigations, prosecutions and other matters touching upon the criminal justice system.
- An independent Public Service Commission should be established without delay to ensure that there is no political interference in the public service.
- A good-faith effort should be taken to develop a consensus on power devolution, building on what exists – both, for maximum possible devolution to the periphery, as well as power sharing at the centre.
- Learning of each other's languages should be made a compulsory part of the school curriculum.
- All Government offices should have Tamil-speaking officers at all times. Police Stations should have bi-lingual officers on a 24-hour basis.
- A proactive policy should be implemented to encourage mixed schools serving children from different ethnic and religious backgrounds.
- Government should engage with the so-called 'hostile diaspora groups' constructively and address their concerns.

- National anthem should be sung simultaneously in two languages to the same tune.
- Laws should be strictly enforced on the instances of hate speech that contributes to communal disharmony.
- A separate event should be set apart on the National Day (4th of February) to express solidarity and empathy with all victims of the tragic conflict and pledge the collective commitment to ensure that there should never be such blood-letting in the country again.

### **Observations of the UN Panel of Experts on the nature of the LLRC**

The Panel concluded that the Government's notion of accountability is not in accordance with international standards. The government appointed Lessons Learnt and Reconciliation Commission has been under scrutiny by the panel as the report says, "...the LLRC is deeply flawed, does not meet International standards for an effective accountability mechanism and, therefore, does not and cannot satisfy the joint commitment of the

President of Sri Lanka and the Secretary-General to an accountability process”.<sup>24</sup>

### **The flawed LLRC report reiterates the need for an impartial International Inquiry into War Crimes**

The LLRC was formed to bail out the Sri Lankan government when the noose was tightened by the human rights groups western governments to set up an independent commission of enquiry to investigate the allegations of state sponsored large scale war crimes.

At the very outset, the Commission was set up after considerable pressure as Sri Lanka was criticized by international NGOs and was indicted for war crimes by the Permanent People’s Tribunal on War Crimes against Sri Lanka held at Dublin in January 2010, followed by the report of the International Crisis Group in March 2010 and then the United Nations Secretary General, Ban Ki Moon appointing a very credible Panel of Experts(Marzuki Darusman with Yasmin Sooka and Steve Ratner).

It was only after this that the Sri Lankan government appointed the eight member Lessons Learnt and

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<sup>24</sup> supra 7 at p.v

Reconciliation Commission with only a few members from the principally aggrieved community.

From the beginning International Human Rights groups were against a domestic investigation for the simple reason that the previous Presidential commissions on many other issues did not bear any positive outcomes for the victims.

The Chairman of the Commission C. R. De Silva was the Attorney General and the chief law officer of the present government. Silva was accused of interfering in a previous commission, the *2006-2009 Presidential Commission of Inquiry* into allegations of serious human rights violations by the security forces. The International Independent Group of Eminent Persons, who had been invited by the President to oversee the Commission's work, resigned in April 2008 citing De Silva's behaviour as one of major reasons for doing so. Another member was part of the UN ad-hoc Committee on Measures to Eliminate International Terrorism (what is to be noted here is that the Sri Lankan government branded all Tamils as either LTTE terrorists or sympathizers), a third member H. M. G. S. Palihakkara served as Sri Lanka's Permanent Representative to the United Nations during the final stages of the war and publically defended the actions of the Sri Lankan military during the final months of the civil war. A. Rohan Perera was legal

advisor to the Foreign Ministry during the period investigated by the LLRC.

Most of the commissioners are well known to be close to the ruling political power and there was great doubt that they would be objective to draft a credible report against the institutional mechanisms used to commit crimes during the course of the war.

The LLRC made only 17 days of field visits and just 6 days to the war theatre in Vanni out of nearly 18 months. This raises questions as to how they could draft a credible report!

The commission lacked a victim centric approach as it was at the very first instance it was housed in Colombo with no professional counselors who could aid the victims deposing before them. The LLRC lacked gender sensitivity and a victim centered approach as there are no emotional and psychological recourse to victims' giving testimony. 80% of the victims are women and children but the eight member team had only one woman. There was a lack of transparency as nobody knew what the commission was working on and they did not seek outside support. Significantly, the commission had no mandate for a grievance redressal mechanism.

There was no witness security or subsequent protection. After making allegations witnesses had to go back and

live with the accused perpetrators of the crime; the Sri Lankan armed forces which had taken possession of over 40% of land belonging to the Tamils. Cultivation and other livelihood activities of the Tamils were critically affected.

The members did not make an attempt to mention of the exact or approximate numbers of civilians killed, missing or unaccountable; certainly an important aspect of any objective finding of humanitarian law violation.

According to the records of the Sri Lankan Government Agent offices of Mullaitivu and Killinochchi districts, the population of Vanni was 429,059 in October 2008. The total number of people who were put under Sri Lankan government control after the war was 282,380, according to the UN update (10 July 2009). “Due clarification should be made regarding what happened to 146,679 people, which is the discrepancy between the number of people who came to government controlled areas between October 2008 – May 2009 and the population reported to be in Vanni in early October 2008,” said the Catholic Bishop of Mannaar, Rt. Rev. Dr. Rayappu Joseph in his submission to the LLRC on the 9<sup>th</sup> of January 2011. The Bishop also raised the issues of militarization, colonization, land grab, Sinhalization, Buddhicisation and civil as well as human rights abuses that continue to take place in the Tamil land following

the war. There are no answers in the report to these critical queries.

The continuation of the control of the area by high security zones comes at a high human cost. In Jaffna peninsula alone there are more than 60,000 Tamils who are rendered homeless. Restriction of fishing and cultivation continues in the High Security Zones. Outside the High security zones fishermen need to collect 24 signatures from Sri Lankan officials for themselves, crews and their boats to begin the fishing essential for their well being and the food needs of the local people.

There is also a clear instruction from the government to the churches and the Non-Governmental Organizations not to counsel the war affected Tamils or organize life skill training as they do not want to rekindle the old wounds. Civilian life cannot return to normal unless these and other issues are appropriately addressed and the end of the three decade trauma begins in a constructive manner. The commission could have dealt on with these very important human issues that could have brought solace, improved economic conditions and true peace to the Tamils who remain in what was the war zones.

The UN panel report also documents rapes and sexual violence against Tamil women in the final stages of the

war and its aftermath. Many cases were unreported as a result of cultural sensitivity and cultural stigma that remain among the Tamil people. Video evidence depicted naked bodies of dead and mutilated women alleged to be fighters. There were also reports from International agencies working in camps of instances of rape in the IDP camps and it was reported that the military had warned the IDPs not to report these cases. The LLRC does not respond to any of these charges.

Although the war is over for two and a half years the draconian Prevention of Terrorism Act continues, the LLRC has made no mention of this continuation of this war time measure even after ‘the peace’ has been declared.

The commission speaks of individual excesses by the state forces but does not speak of institutional violence perpetrated by the state during the war.

According to the UNSG Panel Report, the casualties are more than 40,000. According to Bishop Ryappu, 146,679 people are not accounted for. The LLRC only identified four instances in which there could have been individual excess by the armed forces. Surely, four instances of individual excess could not have resulted in more than 40,000 mass casualties. Thus, the LLRC is an attempt to hide the policy-oriented, institutionalized international crimes. Such a characterization of isolated

excess also provides an escape channel from the serious charges mentioned in the UNSG Panel Report.

The commission in its report stated that the military strategy of the Sri Lankan forces was satisfactory and that it gave the highest priority to the protection of the civilian population. Whereas, a Federal Court of Appeal in Australia in SZITR v. Minister of Immigration and Multicultural Affairs, [2006] FCA 1759 noted that the tribunal had found “the Sri Lankan security forces, including the army, during the relevant period committed acts of torture against Tamil civilians of such number and routine frequency as to constitute widespread or systematic attack against the Tamil population even if there was no formally stated army or defense ministry policy promulgated in this connection.” It further noted that the Applicant in that case had “seen many dead bodies of civilians and had seen soldiers shoot innocent civilians, which was to ‘create fear and terror in the Tamil race’.”

The commission does not answer the questions raised by the Human Rights groups regarding the expulsion of INGOs and NGOs from the war zones in September 2008, as well as the ban on private and independent media covering the war.

Among violations not considered by the Commission were: the white van abductions of anti-war activists

across the whole island; the killing of independent journalists across the island; the recruitment of Child Soldiers by pro-government paramilitary groups; torture; the uncertain future of the 90,000 war widows from the north and the east; the disruption of education of children; the fate of orphans; the incarceration of 282,000 Tamils in the Manik Farm camps for more than a year; the restriction of movement of the Tamils; among other efforts to burden the Tamil people from respecting their culture and lives. Accordingly a void in the Commission's findings are: the economic embargo on the Tamil areas from the end of 2007; the starvation of civilians from June 2008; the continuous aerial bombings on civilian targets; using the deprivation of food, water and medicine as weapons of war; the ineffective and less than complete resettlement of Tamils; the desperate state of Tamil refugees forced to leave their home and find refuge around the world as well as a multitude of other policies that impact Tamils and their way of life.

The commission has recommended granting compensation (often inadequate) to victims only as an empty gesture rather than a right of the victim to get fair compensation and/or justice. It further does not speak of the economic losses sustained by the Tamils during the course of the war in not allowing development and investment in the traditional areas of Tamil habitation.

It must be admitted despite not addressing the vast number of violations of human dignity that positive outcomes are the recommendations to demilitarize the north and east and to dismantle the paramilitary groups. This alone will not allow growth and well-being of the regions which Tamils traditionally call their home.

Yet again this commission has come to the aid of the Sri Lankan President in buying time of nearly one and a half years and paving way for buying more time in the wake of recommending setting up of more commissions to enquire into many other allegations, especially into atrocities committed by individual soldiers.

The UN Panelists report very clearly states that time and again their offices, hubs and even relief distribution centers were relentlessly attacked and questioned why the UN did not bring it to the notice of the outer world or warn the Sri Lankan forces who deliberately bombed the UN establishments. The satellite photographs of the UN SAT are there as concrete evidence, which the LLRC cannot refute.

The world has read and seen the gory incidents of the war against civilians when they read the UN panel of Experts report submitted in March 2011; 'The Cage', a book written by Gordon Weiss, former UN Spokesperson of Sri Lanka. Then the visual documentaries: 'The Killing Fields of Sri Lanka' by

Channel 4; 'I witnessed Genocide' by Headlines Today and 'Sri Lanka's lies', produced by Indian Channels, the BBC and Al Jazeera telecasting stories of war crimes. Clearly the media has not accepted the LLRC report which is viewed by many commentators as biased and not representative of the actual history and situation of the policies of the Sri Lankan government towards the Tamils of Sri Lanka

It is shameful that this commission's findings have furthered the cause of impunity of the ruling class which committed the heinous crime of killing and injuring civilians in the name of "eliminating terrorism." The commission, in short, asserted its loyalty to the President as it did not seek to discuss the root causes of the so called "terrorism of LTTE" and does not discuss the "state terrorism" of the Sri Lankan government.

The question must be posed; what were the lessons learnt? By whom? There can be no substitute to a professional International Inquiry that satisfies the calls of justice by the Tamils without which there cannot be a realistic reconciliation and/or a political resolution which must be the foundation of a lasting and just peace.

## **CHART COMPARING UNSG PANEL, CHANNEL 4, DUBLIN TRIBUNAL AND LLRC FINDING**

**The following Chart compares the salient facts of the UN Panel Report and Channel 4, findings of the Dublin People’s Tribunal, of the U.S. Government and the LLRC’s response to those facts.**

<b>UN Panel of Experts Report</b>	<b>Channel 4’s Killing Fields of Sri Lanka<sup>25</sup></b>	<b>People’s Tribunal on Sri Lanka (Dublin – July 2009)</b>	<b>U.S. Department of State Report to Congress (2009)</b>	<b>Lessons Learnt and Reconciliation Commission (LLRC)</b>
<b>Large scale military shelling on civilian targets resulting in killing of thousands of civilians</b>	Video evidence filmed by Channel 4 available	Proven through witness evidence	Many thousands were either killed or injured due to excessive shelling.	Security Forces gave the highest priority to the protection of civilian population

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25<http://www.channel4.com/programmes/sri-lankas-killing-fields/4od>

<p><b>Sri Lankan government tried to intimidate and silence the media</b></p>		<p>No comment on this issue</p>	<p>Since at least March of 2008, the GSL placed strict restrictions on the ability of national and international media to travel to and report on events within the conflict zone and IDP camps. Some organizations allege that when journalists did write</p>	<p>No comments on the issue</p>
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			articles or produce television reports on the conflict that were critical of GSL actions, their reporting resulted in their being detained or expelled from Sri Lanka.	
<b>Sri Lankan military shelled on large scale the three Safe Zones</b>	Video evidence filmed by Channel 4 available	Proven through witness evidence	Sources alleged that the majority of shelling in the NFZ was from Govt.	Security Forces had not deliberately targeted civilians in the No Fire Zones (NFZs), which were declared

			forces.	in the final stages of the war
<b>Sri Lankan military shelled the UN hub, food distribution lines and Red Cross ships coming to rescue the wounded</b>		Proven	An organization's source witnessed the SLA heavily shelling an area of the NFZ where local government officers were distributing food items to IDPs, killing 300 people on	LTTE was engaged in grave violations of core principles of International humanitarian law (IHL) by using civilians as human shields, placing and using military equipment in civilian centers

			the spot and injuring many others.	
<b>Most of the civilian casualties were caused by Sri Lankan military shelling</b>	Video evidence filmed by Channel 4 available	Proven through witness evidence	An analysis of source reports point to this conclusion	The military strategy of the Sri Lanka Armed Forces during Eelam War IV is satisfactory.

<p><b>The Sri Lankan military systematically shelled hospitals on the frontlines</b></p>	<p>Video evidence filmed by Channel 4 available</p>	<p>Proven</p>	<p>Source reports suggest that shelling on hospitals ‘allegedly’ came from Sri Lankan military side.</p>	<p>Shells had in fact fallen on hospitals causing damage and resulting in civilian casualties. But evidence submitted is equivocal in nature and does not warrant a definitive conclusion that one party or the other was responsible for the shelling</p>
<p><b>The Sri Lankan government systematically deprived</b></p>	<p>Video evidence filmed by Channel 4</p>	<p>Proven</p>	<p>While some incidents reported cite deliveries of up to</p>	<p>Government of Sri Lanka took all possible steps in getting food, medical supplies and other essential</p>

<p><b>civilians in the conflict zone of humanitarian aid, in the form of food and medical supplies</b></p>	<p>available</p>		<p>500 MT of foodstuffs to the NFZ, the majority point to significant gaps between food, medicine, and clean water needs and the available supplies in the NFZ and IDP camps. These reports include instances of severe food shortages, malnutriti</p>	<p>items across to the entrapped civilians. However there appears to have been a paucity of medicines and the medical facilities appear to have been inadequate.</p>
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			on, particularly among the very young and old, as well as surgeries being performed with little or no anesthetic.	
<b>Tens of thousands of civilians were killed between January and May 2009. Many died anonymously in the final days.</b>	Video evidence filmed by Channel 4 available	No comment (refers to media reports of thousands dead)	Reports point to such a conclusion (refers to media reports, INGO reports and foreign government sources)	Absence of a proper verification process during the final stages of the war has contributed to the unverified sweeping generalizations of a highly speculative nature, as regards

				casualty figures
<b>The Sri Lankan government subjected the civilians who managed to escape the conflict zone to further deprivation and suffering</b>	Video evidence filmed by Channel 4 available	Proven	Many disappearances took place in the camps.	Mandate does not cover post-war situation (May 19 <sup>th</sup> 2009 onwards)

<p><b>Screening for Tamil Tigers took place without any transparency or external scrutiny</b></p>		<p>No comment</p>	<p>An organization reported that the SLA was separating people into small groups of 10-12 for screening before the civilians reached the official IDP screening center. Only three to five members of each of the smaller groups later returned to</p>	<p>Programs in rehabilitation centers for ex-LTTE combatants are conducted in a professional and caring manner</p>
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			the larger group. The local staff did not know what happened to the remaining people in the screened groups.	
<b>Some of those separated by the screening were summarily executed whilst women</b>	Nick Paton Walsh report for Channel 4 available on youtube <sup>26 27</sup> ,	Proven	An organization's local sources reported that at night young girls would be	A special commissioner should be appointed to investigate alleged disappearances and provide material to the Attorney-

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<sup>26</sup><http://www.youtube.com/watch?v=BbKrPOkwFJ4>

<b>were raped. Others simply disappeared</b>			taken out from the IDP camps in Vavuniya and never returned.	General to initiate criminal proceedings as appropriate
<b>All IDPs were detained in closed overcrowded camps</b>	Video evidence filmed by Channel 4 available	No comment	Did not address the issue.	Mandate does not cover post-war situation (May 19 <sup>th</sup> 2009 onwards)
<b>The conditions in the camps resulted in many unnecessary</b>	Nick Paton Walsh report for Channel 4 available on	No comment	Did not address the issue.	Mandate does not cover post-war situation (May 19 <sup>th</sup> 2009 onwards)

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27[http://www.channel4.com/news/articles/politics/international\\_politics/grim+scenes+at+sri+lankan+camps+/3126257.html](http://www.channel4.com/news/articles/politics/international_politics/grim+scenes+at+sri+lankan+camps+/3126257.html)

<b>y deaths</b>	youtube 28			
<b>There were interrogations and torture in the camps</b>	Nick Paton Walsh report for Channel 4 available on youtube 29	Proven	Did not address the issue.	Investigate and inquire into alleged incidents of serious violations of human rights including the 2006 Trincomalee massacre and the 2006 massacre of 17 aid workers
<b>Suspected Tamil Tigers were taken to other facilities where they faced</b>	Video evidence filmed by Channel 4 available	Proven	Did not address the issue.	Take due account on surrendered LTTE cadres against whom investigations reveal prima facie material

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28ibid

29ibid

<b>further abuse.</b>				for prosecution
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**NOTE: The LLRC Report states that “Technical ambiguities, electronic tampering and the artificial construction of the 'blood effect' in the 3 separate videos (originally in 3GP format) that appears in Channel 4 documentary *Sri Lanka's Killing Fields*, cast significant doubts on their authenticity, leading to questions on whether the incidents are 'real' or 'staged’”.**

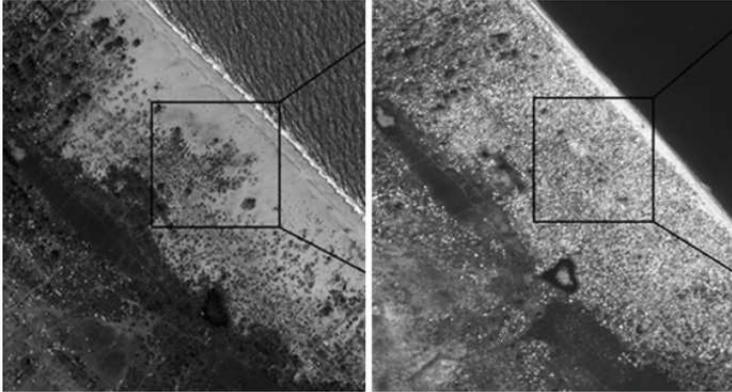
# SATELLITE IMAGES OF THE WAR ZONES FROM UN SATELLITES



5 MAY 2009

10 MAY 2009





Satellite photos of the war zone in February (left) and April show a large number of new tents



Scene 1: Wetlands Thousands of new shelters for the displaced were set up in wetlands between early February and early March.

### Seeking Shelter In the 'Safe Zone' Of Sri Lanka

The number of civilians seeking refuge in a government-designated "safe zone" increased more than tenfold from February to March, forcing many to set up shelters in areas prone to flooding, according to a satellite imagery analysis by Unosat. The zone is the last sliver of land held by the Tamil rebels.

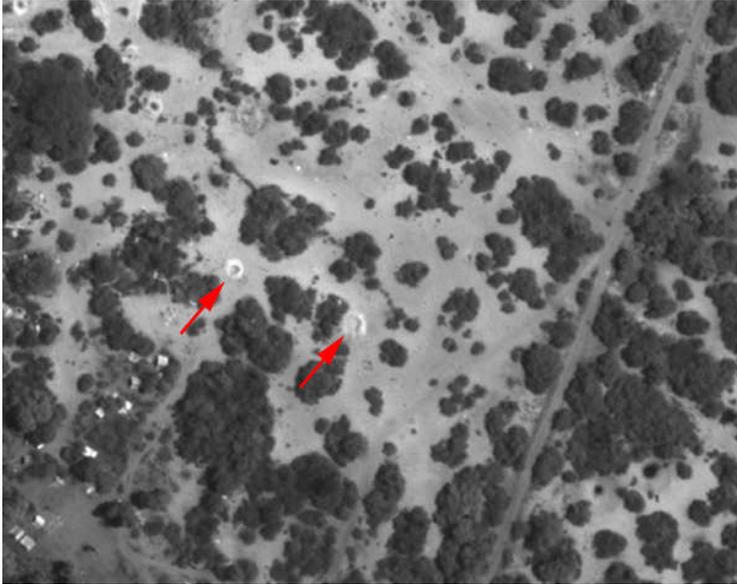


Scene 2: Beaches Several thousand shelters were set up within 650 feet of the coastline.

THE NEW YORK TIMES SATELLITE IMAGES BY DIGITAL GLOBE



Before and After: Right image (May 10) shows significant removal of IDP shelters compared to left image (May 6)



**This image shows apparent impact craters in the “Safe Zone” on May 10, 2009, which was not present in the May 6 image.**

**“FEIGNING CIVILIZATION TO HIDE BARBARISM”**

## **A BRIEF HISTORY OF THE SRI LANKAN GOVERNMENT'S TACTICS IN ESTABLISHING COMMISSIONS TO WARD OFF INTERNATIONAL OR DOMESTIC PRESSURES.**

The history of the creation of commissions of inquiry dates back to the passing of the Commissions of Inquiry Ordinance No. 9 of 1872, which may be regarded as the legislative precursor to the present COI Act of 1948. Prior to the adoption of this ordinance, such Commissions were appointed pursuant to Article VII of the Letters Patent constituting the office of Governor and Commander in Chief of the island of Ceylon, then a crown colony.

With the coming into operation of the Independence Constitution, power formerly vested in the Governor stood conferred on the Governor General as the representative of the Monarch in England, the nominal Head of State. The President de facto assumed the Governor General's role with the entry into force of the 1972 Constitution, which preserved the "Westminster" model of cabinet government. The promulgation of the 1978 Constitution gave the newly established Executive President the power to appoint such commissions (The continuation of the COI Act of 1948 was preserved

mutatis mutandis in terms of Article 16(1) of the 1978 Constitution).<sup>30</sup>

## **1) The Sansoni Commission**

**Appointed on:** 9<sup>th</sup> November, 1977

**Reported on:** 2<sup>nd</sup> July, 1980

**Mandate:** To inquire into the incidents that took place between 13<sup>th</sup> August and 15<sup>th</sup> September, 1977, to ascertain:

- The circumstances and the causes that led to the incidents that took place between 13 August, 1977 and 15 September, 1977, resulting in death or injury to persons, the destruction or damage of property of any person or state property;
- Whether any person or body of persons or any organization or any person or persons connected with such organization, committed or conspired to commit, aided or abetted or conspired thereto to aid or abet or assisted and encouraged or conspired thereto or encouraged the commission of such above mentioned acts; and

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<sup>30</sup>See Section 2(1) of the COI Act of 1948.

- To recommend such measures as may be necessary to rehabilitate or assist such affected persons and to ensure the safety of the public and prevent a recurrence of such incidents.

**Findings:** Though there was a general condemnation of ‘unruly’ behavior of the police, this disposition to accept police versions of particular incidents solely on the basis that no complaint had been made to the police,<sup>31</sup> and to dismiss eye-witness accounts of ‘a reign of police terror’ during the 1977 communal violence, raised unresolved questions about the Sansoni Report.

## **2) Inquiry into attack on MSF Vehicle (Palampiddi-Iranai Road Inquiry)<sup>32</sup>**

**Appointed on:** 9<sup>th</sup> May, 1991

**Reported on:** June, 1991

**Mandate:** to inquire into the shooting and attack by aircraft which caused injury and damage to personnel and property of Medecins Sans Frontieres (MSF) on 3

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<sup>31</sup> The Sansoni Commission report, Sessional Paper No. VII, July 1980, at p.93

<sup>32</sup> Appointed by President R. Premadasa. L. H de Alwis functioned as the one-man Commissioner. This is commonly referred to as the MSF Commission report.

May, 1991 and to ascertain whether the firing upon of the MSF vehicle by a government helicopter was intentional or accidental. The Commission found that the MSF officers had not obtained the requisite permission regarding route clearance from the Joint Operations Command (JOC) to use the Palampiddi-Iranai road which route was, at that point, near an ongoing military operation with a curfew having been declared in Vavuniya.<sup>33</sup>

**Findings:** The Commission concluded that though JOC had approved a particular route on the main Mannar-Vavuniya road, MSF had not taken that route but had followed the Palampiddi-Iranai road. It also concluded that the firing was accidental, that the shooting or attack was not conducted without due care and precautions for the safety of persons, but was due to a mistake made in good faith.<sup>34</sup>

The Commission's finding, however, was contrary to evidence from the injured MSF personnel that after the first shot was fired at their vehicle (which was clearly marked from all sides with the MSF emblem) from the army helicopter, the four personnel had commenced to wave the MSF flags in order to establish identity. However, despite their doing so, the shooting continued,

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<sup>33</sup> MSF Commission report

<sup>34</sup>ibid

followed by the dropping of bombs on the vehicle. It was at that point that the MSF personnel were injured.<sup>35</sup>

### **3) The Kokkadicholai Commission of Inquiry**

**Appointed on:** 18<sup>th</sup> June 1991

**Reported on:** 9<sup>th</sup> March 1992

**Mandate:** To report on whether there was any connection between the two incidents of the explosion of a device on 12 June 1991 resulting in the deaths of two soldiers and the injury to another and the killing of sixty-seven civilian inhabitants of nearby villages in Batticaloa. It was also required, inter alia, to report on whether the civilian deaths resulted from actions of the armed forces.

The Commission was established by then President R. Premadasa, responding to public pressure to identify the perpetrators of the massacre. The Commission, in its Final Report, found the killings of the civilians directly attributable to the soldiers stationed in the Kokkadicholai army camp. The actions were stated to disclose penal offences; namely murder, arson, robbery, unlawful assembly and similar offences.

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<sup>35</sup>ibid

However, in an assessment of the context and circumstances surrounding the massacre, it was concluded that the civilian killings were the result of unrestrained behavior of soldiers after the explosion and death of two of their colleagues and the injury of yet another.

**Findings:** That the witnesses from the villages involved were questioned as to whether before this incident, there was any harassment by or bad conduct of the soldiers. The villagers were unanimous in stating that since the Camp was established at Kokkadicholai about 6 months prior to June 1991, there had been no harassment from the soldiers and that it appears there had been cordial relations with the soldiers.<sup>36</sup>

**Action:** Accordingly, the killings were not found to be the result of military action but rather, offences committed by soldiers who ran amok. The Commission opined that the offences were punishable in terms of the Penal Code but that, due to the finding that there was no evidence against any particular soldier or soldiers as

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<sup>36</sup>Final report of the Kokkadicholai Commission of Inquiry, Sessional Paper No. 11, 1992, at p. 6.

such, it was determined that “the offenders cannot be brought before a criminal court of law.”<sup>37</sup>

#### **4) The 1991-93 Presidential Commissions (1991-1993)**

##### ***Commissions appointed by President R. Premadasa***

**Appointed on:** 11 January 1991; 13 January 1992; 25 January 1993<sup>38</sup>

**Reported on:** Not Published

**Mandate:** To inquire into and obtain information and report in respect of the period commencing 11 January 1991 (thereafter 13 January 1992 and 25 January 1993) until twenty-four months following upon the date hereof. The Commission was to inquire into allegations “that persons are being involuntarily removed from their places of residence by persons unknown” and report on the following:

- (i) Any complaints of such alleged removal, and/or the subsequent lack of information of the whereabouts of the person or persons so removed;

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<sup>37</sup>ibid

<sup>38</sup> Warrants of the Commissions Gazette No. 644/27, 11.01.1991, Gazette No. 697/5, 13.01.1992, Gazette No. 751/1, 25.01.1993.

- (ii) The evidence available to establish the truth of such allegations;
- (iii) The present whereabouts of the person or persons so removed;
- (iv) The identity of the person or persons or groups responsible;
- (v) The evidence available to establish the truth of such allegations;
- (vi) The steps at law to be taken against such persons responsible;
- (vii) Whether such illegal acts took place by reason of any lack of legal provision in the present laws relating to law enforcement;
- (viii) The remedial measures necessary to prevent the future occurrence of such illegal activity.<sup>39</sup>

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<sup>39</sup>The Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary, No. 644/27, 11.01.1991, Schedule A. Warrants of the Commissions Gazette No. 644/27, 11.01.1991, Gazette No. 697/5, 13.01.1992, Gazette No. 751/1, 25.01.1993.

## **5) Commission Appointed by President D.B. Wijetunge**

**Appointed on:** 13<sup>th</sup> September 1993<sup>40</sup>

**Reported on:** Not published

**Mandate:** to inquire into past involuntary removal of persons during 1991-1993 and

- (i) whether such illegal acts took place by reason of any lack of legal provision in the present laws relating to law enforcement;
- (ii) the remedial measures necessary to prevent the future occurrence of such illegal activity.<sup>41</sup>
- (i) any complaints of such alleged removals, and/or the subsequent lack of information of the whereabouts of the person or persons so removed;
- (ii) the credibility of such complaint;
- (iii) your recommendation as to whether or not further investigations into such complaint are warranted for the purpose of the institution of legal proceedings<sup>42</sup>

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<sup>40</sup>The Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary, No. 784/1,13.09.1993. This fourth Commission was appointed by President D. B. Wijetunge upon assuming the office of the Executive Presidency shortly following President R. Premadasa's assassination by an LTTE suicide bomber on 01.05.1993.

<sup>41</sup>ibid, Schedule "A".

## **6) The 1994 Commissions of Inquiry into Disappearances**

**Appointed on:** 30<sup>th</sup> November 1994.

**Reported on:** September 1997.

**Mandate:** to inquire into and report on the following matters:

- (a) whether any persons have been involuntarily removed or have disappeared from their places of residence in the [Central, North Western, North Central and Uva Provinces/Northern & Eastern Provinces/ Western Province, Southern Province and the Sabaragamuwa Province] at any time after 1 January 1988;
- (b) the evidence available to establish such alleged removals or disappearances;
- (c) the present whereabouts of the persons alleged to have been so removed, or to have disappeared;
- (d) whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances;

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<sup>42</sup>ibid, Schedule "B".

- (e) the legal proceedings that can be taken against the persons held to be so responsible;
- (f) the measures necessary to prevent the occurrence of such alleged activities in the future;
- (g) the relief, if any, that should be afforded to the parents, spouses and dependents of the persons alleged to have been so removed or to have disappeared; and
- (h) to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant. In view of the importance of these Commission Reports, the following analysis deals with different aspects of their establishment, functioning and recommendations.

These three Commissions investigated a total of 27,526 complaints out of which 16,800 cases were established to amount to enforced disappearances. Out of the 16,800 cases, the three Commissions were of the opinion that, there was evidence indicative of the identities of those responsible for the relevant involuntary removal of persons and their subsequent disappearances in respect of 1,681 cases.<sup>43</sup>

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<sup>43</sup>United Nations Human Rights Committee, Fourth Periodic Report of Sri Lanka, CCPR/C/LKA/2002/4, 18/10/2002, at para. 156.

**Findings: The 1994 Commissions Reports** are unambiguous with regard to the expectation that justice and reparations follow their determination of truth as disclosed through their inquiries. This Commission recommends a vigorous prosecution of those responsible for disappearances.<sup>44</sup> Severe disciplinary measures should be meted out to Government Officials who have failed to take adequate measures to prevent disappearances.<sup>45</sup> The Recommendations of the 1994 Disappearances Commissions in relation to reforms of the law and legal process included the following:

Investigations into all acts of gross human rights abuses should be carried out through a special unit of the police under the direct supervision of an officer not below the rank of a Deputy Inspector General of Police;<sup>46</sup> An Independent Human Rights Prosecutor should be established as an institution similar to the Commissioner

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44Final report of the 1994 Western, Southern and Sabaragamuwa Disappearances Commission, Sessional Paper No. V, 1997, at p. 175.

45Final report of the 1994 Commission of Inquiry into the Involuntary Removal or Disappearance of Persons in the Central, North Western, North Central and Uva Provinces, Sessional Paper No VI-1997, at p. 3.

46Ibid, at pp. 68 and 171. Following these recommendations, a Disappearances Investigation Unit(DIU) was established under the Deputy Inspector General of Police of the Criminal Investigations Department. It has been consistently maintained by the government that police officers are 'hand picked' for this Unit and that great care is taken to ensure that they have a 'good record' – as

reiterated in confidential interviews with police officers conducted for the purpose of this research. However the performance of this Unit has been poor despite the good intentions of some police officers who have attempted to do their work properly. In certain instances, officers had been transferred out from the Unit after they tried to investigate their senior officers for alleged abuses. Cases investigated by the DIU which appear to result in credible evidence against state officers are referred to the Missing Persons Unit (MPU) of the Attorney General's Department for prosecution.

of Elections and the Auditor General with funds provided by Parliament; Evidentiary rules in regard to cases of enforced disappearances and extrajudicial executions should remain that of the normal law. However, once detention is established, the burden should shift to the person charged in the absence of an explanation.

Legal principles relating to chain-of-command liability should be clarified by the Supreme Court in the exercise of its jurisdiction in terms of Article 126 of the Constitution. Due obedience should not be entertained as a defense to abuses.

The Reports of the Commissions submitted to President Kumaratunge in 1997 were not made publicly available in a generalized way until some years later, even though the Sessional Papers themselves are dated 1997. In any event, some portions of these reports have still not been made public. The relatives of the victims and those who appeared before the Commissions were not individually or collectively informed of the findings of the Commissions. Except for the payment of compensation in certain cases, no effective action was forthcoming in displacing the systems and structures that permitted and encouraged the disclosed crimes.

**Action:** A factor that is sometimes overlooked in this context is that apart from prosecutions, the findings in these Commission Reports would have warranted internal disciplinary action to be taken in respect of officers found credibly implicated in the incidents investigated in terms of internal departmental orders of the police and services Regulations of the forces. However, whatever action taken on this basis has also been negligible. Further, as adverted to later, a 1996 presidential direction to the Commander of the Armed Forces to send 200 services personnel implicated in the findings of the three 1994 Disappearances Commissions on compulsory leave, was ignored.

## **7) The 1998 All Island Disappearances Commission**

**Appointed on:** 30<sup>th</sup> April 1998.

**Reported on:** March 2001.

**Mandate:** to inquire into and report on the following matters:

- (a) The allegations about the involuntary removal of persons from their residences, or the disappearances of persons from their residences, made to the Commissions of Inquiry appointed under the Commissions of Inquiry Act, and terms of reference

of which are published respectively, in Gazettes No. 855/18, 855/19 and 855/20 of January 25, 1995, being allegations in respect of which no investigations have commenced on the respective dates, appointed by the respective warrants appointing such Commission of Inquiry, for the rendering of the reports of such Commissions of Inquiry;

- (b) The evidence available to establish such alleged removals or disappearances;
- (c) The present whereabouts of persons alleged to have been so removed or to have so disappeared;
- (d) Whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances;
- (e) The legal proceedings that can be taken against the person held to be so responsible;
- (f) The measures necessary to prevent the occurrence of such alleged activities in the future;
- (g) The relief if any that should be afforded to the parents, spouses and dependents of the persons alleged to have been so removed or to have disappeared; and to make such recommendations

with reference to any of the matters that have been inquired into under the terms of this warrant.

The 1998 All-Island Disappearances Commission sent a list of individuals implicated in the enforced disappearances under confidential cover to the President, following the 1994 Disappearances Commissions' procedures in not embarking to the second stage of affording the alleged perpetrators an opportunity to testify.<sup>47</sup> It was concluded that in the 4,473 cases where enforced disappearances had been proved, agents of the state, paramilitaries acting in collaboration with them, as well as subversive groups, were implicated.<sup>48</sup> Personal enemies and unknown persons were also noted to be responsible for some of the cases.

**Findings:** The Commission recommended, *inter alia*, the following measures in respect of legal proceedings against those responsible for gross human rights violations:

- *The creation of an office of an Independent Human Rights Prosecutor*

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<sup>47</sup>Report of the 1998 All-Island Disappearances Commission, Sessional Paper No 1, 2001, at p.9.

<sup>48</sup>*ibid*, at p. 10.

- *The creation of a crime of enforced disappearances and inclusion of the concept of command responsibility<sup>49</sup>*
- *Interdiction from service of alleged perpetrators to take place following the initiation of criminal and/or disciplinary proceedings*
- *Affirmation of the principle of accountability in respect of past acts for the good of society in the future*

**Action:** Recommendation not implemented

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<sup>49</sup>Report of the 1998 All-Island Disappearances Commission, Sessional Paper No 1, 2001, at pp. 16-17.

## **8) The Presidential Truth Commission on Ethnic Violence (1981-84)**

**Appointed on:** 23 July 2001<sup>50</sup>

**Reported on:** September 2002<sup>51</sup>

**Mandate:** Inquire and report on the following matters:

- (a) The nature, causes and extent of –
  - (i) The gross violation of human rights; and
  - (ii) The destruction of and damage to property committed as part of the ethnic violence which occurred during the period commencing from the beginning of the year 1981 and ending in December 1984, with special reference to the period of July 1983, including the circumstances which led to such violence;
- (b) Whether any person, group or institution was directly or indirectly responsible for such violence;
- (c) The nature and extent of the damage, both physical and mental, suffered by the victims of such ethnic violence;

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<sup>50</sup>Appointed by President Chandrika Kumaratunge. The Commission comprised S. Sharvananda (Retired Chief Justice as Chairman) and SS Sahbandu and MM Zuhair (Presidents' Counsel) as members

<sup>51</sup>The Final report of the Presidential Truth Commission on Ethnic Violence (1981-1984) is published as Sessional Paper No. III, 2003.

- (d) What compensation or solatium should be granted to such victims or to their dependents or heirs;
- (e) the institutional, administrative and legislative measures which need to be taken in order to prevent a recurrence of such violations of human rights and destruction or damage of property in the future and to promote national unity and reconciliation among all communities and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant.

**Recommendations:** The Report of this Commission reveals witness testimony and other evidence in regard to the burning of the Jaffna Public Library in 1981, the District Development Council elections (1981), the July riots (1983) and the killing of prisoners at the Welikada Prison (1983). The Commission report had, in fact, minimal positive impact on public opinion and did not serve as a mechanism for accountability or redress

**Action:** Despite the many pronouncements of this Commission as to the taking of measures that were deemed necessary for national healing, there was no implementation of any of these recommendations.

## 9) The Bindunuwewa Commission

**Appointed on:** 8th March, 2001<sup>52</sup>

**Reported on:** November 2001 (Not Published)

**The incident:** 28 Tamil youth between the ages of 14-23 years were killed while some 14 other Tamil youth were seriously injured.

**Mandate:** To inquire into questions of responsibility, rehabilitation, administration, and prevention in respect of incidents that occurred at the Bindunuwewa Rehabilitation Centre during the month of October 2000.

**Findings:** The Commission report held liable the two senior police officers, ASP Dayaratne and HQI Seneviratne, for not taking action to prevent the attacks and for ordering the police to shoot into the crowd of detainees. It further held their junior officers, Subinspectors Walpola, Ratnayake and Abeynarayana, responsible for engaging in the attacks willfully.

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<sup>52</sup>Appointed by President Chandrika Kumaratunge. The Commission was headed by Justice PHKKulatilleke.

**Action :**Recommendation not implemented.

**10) The International Independent Group of Eminent Persons (IIGEP)**, was a group of individuals nominated by international donor countries and the government of Sri Lanka, vested with a wide mandate to observe all investigations and inquiries conducted by and on behalf of the Commission of Inquiry into alleged human rights abuses in Sri Lanka.

**Appointed on:** November 2006

**Reported on:** Not Published

**Mandate:** The Presidential Warrant limits the scope of the Commission to a retrospective and fact-finding role. The core work of the Commission is to obtain information, investigate and inquire into alleged serious violations of human rights arising since 1 August 2005, including 16 specific cases; and to examine prior investigations into these cases. The Commission is required to make findings and report to the President on the facts and circumstances pertaining to each case; the descriptions, nature and backgrounds of the victims; the circumstances that may have led to, or resulted in, those persons suffering such deaths, injury or physical harm;

the identities, descriptions and backgrounds of the persons and groups responsible for the commission of deaths and other acts; measures of reparation to be provided to the victims; and recommendations in order to prevent the occurrence of incidents in the nature of those investigated and any other recommendations considered as relevant.

**Resignation:** The members of IIGEP at their November 2007 plenary concluded that they would terminate the IIGEP observation role with effect from April 1, 2008 and informed President Mahinda Rajapakse of their decision. In their concluding public statement, they outlined that they did not see that continued observation would change the situation, and that despite IIGEP drawing attention to defects in the workings of the Commission, their recommendations have been largely disregarded.

The main concerns of the IIGEP were:

- A lack of political will from the Government of Sri Lanka to support a search for the truth.
- A conflict of interest in the proceedings before the Commission, with officers from the Attorney

General playing an inappropriate and impermissible role in the proceedings.

- Lack of effective victim and witness protection
- Lack of transparency and timeliness in the proceedings
- Lack of full cooperation by State bodies
- Lack of financial independence of the Commission

## **THE FINDINGS OF THE DUBLIN TRIBUNAL**

### **THE CLAIM OF GENOCIDE DIRECTED AGAINST TAMILS AND THE DOCTRINE OF DOUBLE EFFECT**

In recognition of the war crimes and crimes against humanity committed by the Sri Lankan government and its authorities, we need to ask whether there is a unique case or distinct crime here of Genocide.

The facts repeatedly verified by IGO and NGO sustain a conclusion that acts of Genocide, attempted Genocide, conspiracy to commit Genocide require a official condemnation of perpetrators.

The genocide of Tamils in Sri Lanka has taken place over a period of time involving several steps and strategies. This includes continuous attack and destruction of the essential foundations of human life of the Tamils in Sri Lanka. To be precise, the Sri Lankan government has employed the **‘doctrine of double effect’**, meaning the brutal military means combined with the long-term strategy directed at the Tamil community that can be considered a policy of ‘ethnic cleansing’.

As some anthropologists argue “genocidal massacres” often presage a genocide. Genocidal massacres are slaughters on a smaller scale and results from a general attitude of hate towards the other groups. Between 1956 and 2008, Tamils have witnessed 156 genocidal massacres followed by the genocide in May 2009.

Crimes of Genocide require a finding of a ‘mens rea’ or simply ‘genocidal intent’. The Sri Lankan government’s acts and policies is a clear exhibition of this **‘doctrine of double effect.’**<sup>53</sup>

The claims of superiority prevalent among the current Sinhala elites, similar to the Aryan superiority claimed by the Nazis in the mid-twentieth century, warrants an investigation of genocide in order to ensure that this

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<sup>53</sup> Manivannan, Ramu, Political Construction of the Genocide of Tamils in Sri Lanka, forthcoming.

heinous crime does not take place again and those guilty of criminal acts be brought to justice to serve as a general deterrent for the perpetration of future crimes.

### **The Mullivaikkaal Genocide**

What transpired in is Mullivaikkaal during the last stages of the war is nothing short of a act of genocide as defined by the 'Convention on the Prevention and Punishment of the Crime of Genocide', adopted by the UN General Assembly (1948), entered into force (1951) and ratified by Sri Lanka.

According to the Convention, genocide means *any of the following acts* committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

***(a) Killing members of the group;***

As the evidence, widely disseminated and corroborated, it can be argued that the indiscriminate aerial bombing and shelling of the Tamil civilians falls within the purview of article II (a) of the Genocide Convention.

*(b) Causing serious bodily or mental harm to members of the group;*

Just in the last week of the assault on the Tamil population in May 2009 over 50,000 civilians were killed by the Sri Lankan army. The massacre is a clear instance of not just war crimes but also crimes against humanity and the most stark evidence of the genocidal mindset of the Sri Lankan state against the country's Tamil population – violation of article II (b) of the Genocide Convention.

*(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*

Systematic denial of the basic needs of food, shelter, and medicine, the conditions were created to bring about the Tamils physical destruction, in whole or in part, in violation of article II (c) of the Genocide Convention.

*(d) Imposing measures intended to prevent births within the group;*

There are over 90,000 Tamil war widows due to the killing of male members of the community by the Sri

Lankan state. Besides this hundreds of Tamil women have been raped, many of them killed, by the Sri Lankan security forces.

*Today, more and more evidence and claims are emerging to argue that Tamil women were subjected to forceful abortion and sterilization; this, if properly investigated and verified constitute acts of genocide in violation of Article II (d) of the Genocide Convention..*

***(e) Forcibly transferring children of the group to another group.***

Following the end of the civil conflict in 2009, over 10,000 Tamil youth (many of them children) were detained by the Sri Lankan army, their whereabouts and safety are still uncertain after a period of over 2 years. Clearly these claims require an objective investigation and an honest pursuit for verification of these serious charges.

### **The Intent Necessary for the Finding of Genocide**

Since the creation of international criminal tribunals there has been jurisprudence to further explain the nature of the crime of genocide and the evidentiary proof

necessary for a finding of accountability. In *Akayesu*, the first ever genocide prosecution in an International Tribunal the International Criminal Tribunal for Rwanda (ICTR-96-4-T at Par. 523), the Court found that “the genocidal intent inherent in a particular act” may “be inferred ... from the general context” in which the act occurred.

Via a consideration of the scale of the atrocities committed and the systematic targeting of the protected group, an intent can be inferred. The killing of nearly 100,000 Tamils under the pretext of ‘wiping out’, killing, less than 10,000 LTTE members establish an intent of an act of genocide of Tamils.

## **THE STRUCTURAL GENOCIDE OF THE TAMILS CONTINUES**

The history of systematic discrimination and persecution of the Tamil speaking numerical minority population of Sri Lanka goes back to Independence from colonial rule. Not only have there been mass killings of civilians, displacements, alienation from ancestral lands there has also been the deliberate emasculation of Tamil culture through the burning of the Jaffna library, preventing access to government positions through the ‘Sinhala Only policy’, discrimination against Tamils in

educational institutions and the indiscriminate targeting of Tamils for arrests, illegal detention and torture by the state security forces.

### **Prohibiting Tamils from performing cultural and religious rites.**

The 18<sup>th</sup> of May is a day of mourning for every Tamil household since 2009 as someone dear and near to them was killed in the war. For the last couple of years on the eve of the anniversary the army commanders made it a special point to threaten religious leaders and not to allow any religious ceremonies commemorating the death of their loved ones.

### **Abductions – The white van incidents.**

What has become commonly called ‘white van abductions’ continue in Jaffna, Vavuniya, Colombo, Trincomalee and Batticaloa. The paramilitary groups work hand in glove with the armed forces in perpetrating this act. Usually the kidnapped person’s family is targeted and most likely they select people who have families supporting them from Europe, Australia or America. Then a ransom is demanded from the families of the abducted persons, when the amounts are not

delivered the abducted person is killed in brutal fashion or goes missing. The Guardian (UK), posted the following article in the Lanka Journal where they claimed that: *“There are 210 people from Colombo on the missing list here at the Civil Monitoring Commission headquarters in Pettah. All were reportedly abducted in a similar way, by one of the notorious white vans that many Tamils say are terrorising their communities in Colombo and elsewhere. Blame is leveled against the army, navy and police, but also against the government for failing to investigate the cases properly.”*<sup>54</sup>

## **Torture**

Also according to the US State Department Report 2010 Human Rights Report on Sri Lanka:

Civil society groups and former prisoners reported on several torture cases.

...

The detentions reportedly were followed by interrogations that frequently included torture.

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<sup>54</sup> <http://www.lankajournal.com/2010/06/sri-lankas-unreported-war/>

Also the latest report of the UN Committee on Convention Against Torture published on 8 December 2011 states *inter alia*:

Notwithstanding the new circumstances prevailing since the defeat of the Liberation Tigers of Tamil Eelam (LTTE) and the need of the military conflict that had consumed the country for 30 years, and the State party's public commitment to the Committee that it has a zero-tolerance policy on torture as a matter of State policy and practice, the Committee remains seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. The Committee is further concerned at reports that suggest that torture and ill-treatment perpetrated by State actors, both the military and the police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011.

...

Notwithstanding the statement of the Sri Lankan delegation categorically denying all allegations

about the existence of unacknowledged detention facilities in its territory, the Committee is seriously concerned about reports received from non-governmental sources regarding secret detention centers run by the Sri Lankan military intelligence and paramilitary groups where enforced disappearances, torture and extrajudicial killings have allegedly been perpetrated.

...

The Committee further notes with concern reports documenting individual cases of torture and ill-treatment where the victims were allegedly randomly selected by police to be arrested and detained for what appears to be an unsubstantiated charge and subsequently subjected to torture or ill-treatment to obtain a confession for those charges (art. 2, 11, 15 and 16).

...

### **Impunity for acts of torture and ill-treatment**

**18.** The Committee remains concerned about the prevailing climate of impunity in the State party and the apparent failure to investigate promptly

and impartially wherever there is reasonable ground to believe that an act of torture has been committed. It also notes the absence of an effective independent monitoring mechanism to investigate complaints of torture. The Committee expresses concern over reports that the Attorney General's office has stopped referring cases to the Special Investigations Unit (SUP) of the police and the large proportion of pending cases still outstanding. The Committee is also concerned at numerous reports concerning the lack of independence of the judiciary (arts. 11, 12 and 13).

...

The Committee notes that near the end of the armed conflict in 2009 over 280,000 people fled from the northern LITE-controlled areas to government-controlled territory in Vavuniya, Mannar, Jaffna and Trincomalee districts, where the vast majority of them entered closed military-run internment camps... The Committee, however, remains concerned about consistent allegations of torture and ill treatment during questioning of camp residents by the Criminal Investigation Department (CID) and the Terrorist Investigation Department (TID).

...

Committee notes that there have been a number of ad hoc commissions of inquiry looking into past human rights violations, including the Presidential Commission of Inquiry to investigate serious cases of human rights violations that occurred since 1 August 2005, which according to the International Independent Group of Eminent Persons (IIGEP) did not meet international standards of independence, witness and victim protection and transparency... The Committee, nevertheless, regrets the apparent limited mandate of the LLRC and its alleged lack of independence. In addition, it regrets the lack of information provided by the State party on the investigations undertaken into allegations of serious violations of international human rights law, such as torture, including rape and enforced disappearances, and other forms of ill-treatment that allegedly occurred during the last stages of the conflict and in the post-conflict phase, as reported by numerous sources, including the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Secretary-General's Panel of Experts on Accountability in Sri Lanka.

...

The Committee is also concerned about reported cases of war-time rape and other acts of sexual violence that occurred following the end of the conflict, in particular in military-controlled camps. (Arts. 2, 12, 13 and 16).

Following that the former Sri Lankan Supreme Court Justice, Mr. C.V. Wigneswaran stated *inter alia* in an interview published on 17 December 2011:

*Q: The UN Committee against Torture (CAT) in its concluding observations on Sri Lanka released on 25 November expressed concern about the "continued and consistent allegations of the widespread use of torture" and the existence of secret detention centres in Sri Lanka. Is this something that worries you?*

This has been worrying me from the time I was introduced to the several torture methods used by the military and the police when I heard PTA cases in the High Court of Colombo twenty years ago. At the end of every case where torture was used, the Registrar of the Court was directed to bring these matters to the notice of various authorities like the Ministry of Justice, Prisons and the IGP.

If steps were taken then to curtail or arrest such hideous indiscretions, the UN CAT may not have had occasion to express concern about continuation of torture in this country. Non-action on the part of the authorities has created a culture of impunity. It is significant to note that all that the Emergency Regulations shed by virtue of its removal have all been now brought back and added into the PTA. With the war over why should the state arm itself with these extraordinary provisions against which considerable public agitation took place earlier leading to the abrogation of the Emergency Regulations? Is it to continue violence against individuals?

The Tamil press reports corroborate the CAT's observations. In fact one of the constant concerns and demand among Tamils is to probe into and find out the whereabouts of a large number of detainees who remain missing. Why should anyone be kept incommunicado and in secret after May 2009 unless something terrible is being done to them; is the question asked. The Tamil community and others in Sri Lanka are perturbed that their politicians have not been able to adequately assist nor are the Courts responding to demands for justice.

...

After the war, is it human security that needs precedence, or state security? Yet the Sri Lankan government puts its emphasis on security at the expense of development and true reconciliation.

## **The Prevention of Terrorism Act**

Many Tamil detainees (the exact numbers are not known as the government has not produced any list of detainees) were arrested under the prevention of terrorism legislation introduced as a temporary law in 1979 and made permanent two years later. Under the act, suspects can be held for up to 18 months without charge or trial. But some detainees have spent more than 12 years in jail, with cases still pending in courts. Human rights activists say more than 650 Tamils, including about 50 women, are suspended in legal limbo in Sri Lankan jails<sup>55</sup>.

The basis of law is that one is presumed innocent until or otherwise proven guilty. But under the Prevention of Terrorism Act, one is presumed guilty until proven innocent. The prevention of terrorism act remains and even in late 2010, it was used to arrest and detain those

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<sup>55</sup> Legal limbo Tamils beg for mercy or trial, By Swaminathan Natarajan, BBC Tamil, 14 December 2010

<http://www.bbc.co.uk/news/world-south-asia-11808551>

opposing constitutional amendments. Though the war is over for more than 22 months these draconian laws haunt the people with bitter memories of the past.

## **The Continuation of Press censorship**

In June 2010, the NGO secretariat along with other key departments including the Attorney General's Department was brought under the Ministry of Defense<sup>56</sup>. This was done consciously to prevent any news critical to the government coming from the former war zones into the hands of the media. The Press, is effectively controlled by the Secretary of Defense, who has publicly threatened Human Rights Defenders (HRD) and journalists. New means of censorship have been used by Government of Sri Lanka to prevent independent media coverage and publication of material critical of the Government<sup>57</sup>. To date there is a strict ban on media permission to enter Killinochi and Mullaitivu and see what exactly happened in during the last days of the war. Reporters Sans Frontiers has called Sri Lanka

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56 <http://www.dailymirror.lk/print/index.php/news/front-page-news/13101-ngo-secretariatunder-defence-ministry-now-.html>

57 In July 2009 Government of Sri Lanka officially reactivated the Press Council Act of 1973, which includes powers to fine and/or impose punitive measures including lengthy prison terms, proscribed the publishing of articles that discussed internal communications of the government and cabinet decisions, military matters affecting national security, and details of economic policy that could lead to artificial shortages or speculative price increases. See RSF report at <http://en.rsf.org/sri-lanka-less-anti-media-violence-in-2010-30-12-2010,39197.html>

one of the most dangerous places on earth for journalists; their views echoed further by the Sri Lankan based Journalists for Democracy. To date more than 35 journalists are in exile mostly in European countries and a vast majority of them are Sinhalese who were critical of the present dynastic regime.

### **The Total Sinhalisation Policy- the new subjugation of Tamils**

During the course of the civil war in Sri Lanka, the then Commander of the armed forces, Gen. Sarath Fonseka remarked that in Sri Lanka there were only Sinhalese and that is what mattered to him. The same was reiterated in a similar tone by President Mahinda Rajapakse after the victory of the armed forces, when he stated that there was one nation and one people.

Then nobody could have imagined how these schemes would be implemented in the newly conquered areas. Sinhala and Sinhalisation are the watchwords in the predominantly Tamil areas of North Sri Lanka. Vavuniya, the first Tamil town in the north, is today dotted by Buddhist statues, viharas and stupas, they increase in numbers as one enters the Tamil heartland, once an exclusive bastion of traditional Hindu temples and Christian Churches.

All those entering into the north have to pass through the Omanthai Check point on A9 national highway, which is now written as Omantha, at this place where more than 90% of travelers are Tamil speaking, one needs to go with a person knowing Sinhala to answer the queries of the authorities who are from the armed forces, if the government had been really sensitive to the locals they would have appointed Tamil translators. The sight of the Buddhist statues increases as one heads towards Killinochchi or Mullaitivu.

The sight of military camps and Sinhala speaking soldiers is endless as they are present in more than 1/3 of the Tamil speaking areas. Out of a total land mass of 65,610 sq kms of land, the Tamils inhabit 18,880 sq kms of land in the north and east, after May 2009, the defense forces have occupied more than 7,000 sq kms of land.

This shows that the Tamil dominated areas have been used by Sinhala forces for their occupation in the name of security concerns utilizing water, land, forests, fish apart from polluting the peaceful village environment. Apart from this it also prevents the locals to lead a normal life when they are under the scrutiny of the occupying defense forces. It has also prevented the return of thousands of displaced people, who are still living in camps, with friends and relatives separated from the larger population.

It is also estimated that 2500 Hindu Kovils and 400 Christian churches have been destroyed. Many times the forces do not permit the people to reconstruct these places and lack of resources, have left them in dilapidated conditions. On the other hand in these Tamil areas where Buddhists are found only in the form of uniformed men, nearly 2500 Buddhist stupas and statues have come up.

The state encourages this by providing 5 acres of land as Sri Lanka upholds Buddhism as the dominant Sri Lankan religion, the armed forces and state machinery go all out to help construct these new structures. A Buddhist Vihara named Mahatota Raja Maha Vihara has come up within 50 meter distance of famed Thirukethiswaram temple in the Mannar district. The ancient traditional name for Thirukethiswaram area was Mahathottam.

The government's policy is expressed by a program called Vadakkin Vasantham (Uthuru Wasanthaya or Northern Springs). Infrastructure development, electricity, water supply and sanitation, agriculture, irrigation, livestock development, inland fisheries, health, solid waste disposal, education, sports, cultural affairs and transportation are some of the areas that will be covered under this program. The intent is to make Sinhala culture dominant at the expense of Tamil culture.

Who are the intended beneficiaries of this so-called development program? It is the Sinhala jobless youth from elsewhere in Sri Lanka who will get a chance to live and work in the north at the expense of the Tamils. Along with this, the Sinhala contractors will be the financial beneficiaries and the defense forces will be the ones who will be utilizing these entire newly developed infrastructures as a major chunk of the funds will be allocated towards road development, which will facilitate easy troop movement.

In Cheddikulam a housing scheme for Sinhala returnees is underway, one would have welcomed if it was the same 13 displaced families that were to return, but a set of 75 Sinhala families are being relocated with new houses being constructed for them. Already 165 Sinhala families have been resettled in the Sinhalese village of Kokkachchaankulam, which is to be renamed Kalabowasewa – the Sinhalese form of the name.

A new and well-designed Sinhala Maha Vidyalam for new returnees has been constructed on Madhu Road, whereas at the same time hundreds of schools of Tamil children are in a state of disarray.

The forest wealth in the Tamil areas are taken by the Sinhalese from the south who with the permission of the armed forces enter the forests for timber logging and take away the Tamil wealth safeguarded for years.

Traditional areas where Tamils fished and cultivated have now become places for the benefit of the Sinhalese.

Another important aspect of Sinhalisation is legitimizing the presence of Buddhism in the Tamil areas. The state sends Sinhala Buddhist archaeologists to new areas where they stay for a month or two in a particular spot, plant a Buddha statue and later in the presence of the media excavate the same to claim that it was a Sinhala Buddhist historical site.

All through the north in the formerly LTTE controlled areas where there were only a few old Sinhala sign boards pointing directions and names of places, today they are dominated with a large number of new Sinhala name/direction signs..

In what may be termed ‘economic Sinhalisation’, all large shops on A9 and other highways are run by the defense forces or Sinhala businessmen. It has considerably stressed the local economy and the Sinhalised food and dressing styles has entered the traditional Tamil areas.

In Mullaitivu and many other places in the north the Tamils are not allowed access to the sea. At the same time the Sinhala fishermen from the south exploit the sea. Clearly this double standard is at the expense of the Tamil community and its identity as distinct culture.

All petitions to government services and establishments since 2009 have to be given in Sinhala only, where the people are accustomed of using their own Tamil language which is a violation of the right to petition and to use one own language.

In the heart of Kilinochchi town, new name boards of streets such as the Mahinda Rajapaksa Mawatha, Aluth mawatte (The new road) have been erected. Three roads close to the A9 highway in Kanakarayankulam are given Sinhala names, Kosala Perera road, Anura Perera road, Rev Yatiravana Vimala Thero Street. The first two names are from the soldiers who took part in the war and the last one is a name of a Buddhist monk.

These are a continuing phenomenon, the erstwhile Mavirar Thuyilum Illam (the LTTE Cemetery) has been razed to the ground everywhere, in Kilinochchi it is converted into a war memorial for the Sinhala soldiers who have nothing to do with the local people. In Peria Pandivirichan it is converted into a football field for the soldiers. They may be wrong doer in the eyes of the Sinhala state, but loved lost family members in the eyes of the locals, in that they were sons, daughters, brothers, sisters, friends of some or the other in the local community. There is no point in waging a war against the dead and it is destructive of any opportunity to seek reconciliation and true peace.

LTTE destroyed armored carrier captured by army in Feb 2009, is kept as a war memento, where it is mentioned that it was captured from LTTE terrorists. The buildings from where the LTTE had its administrative units are now taken over by army establishments and become a symbol of the victors imposing their will on the vanquished populations.

The armed war may be over, but neo colonization of the Tamil areas in the form of Sinhalisation keeps the spirit of Eelam alive in the minds of those who have sacrificed everything to live another day. Will peace ever dawn in the island of Sri Lanka or will it be end of the Tamil identity or will there be a resurgence of the Eelam struggle in times to come, these are the questions that need to be answered by the ruling class of the so called land of Buddha.

## **THE RATIONALE FOR AN INTERNATIONAL INVESTIGATION**

The LLRC's findings pertaining to the final stages of the war were rejected outright by the Tamil political leadership and international civil society, specifically Amnesty International, Human Rights Watch, and International Crisis Group. The US State Department acknowledged that the LLRC report has not covered the

war crimes allegation in sufficient detail. The South African Foreign Ministry stated that the LLRC report “should have addressed in more detail the question of holding those people responsible for human rights violations to account.”

Also, as stated earlier, according to the UNSG Panel Report, the casualties are more than 40,000. According to Bishop Ryappu, 146,679 people are not accounted for. The LLRC only identified four instances in which there could have been individual excess by the armed forces. Surely, four instances of individual excess could not have resulted in more than 40,000 mass casualties. Thus, the LLRC is an attempt to hide the policy-oriented, institutionalized international crimes. Such a characterization of isolated excess also provides an escape channel from the serious charges mentioned in the UNSG Panel Report.

Also, the UNSG Panel observed that the Sri Lankan domestic justice systems “past performance and current structure, the Panel has little confidence that it will serve justice in the existing political environment. This is due much more to a lack of political will than to a lack of capacity.” Many NGOs have stated that the government of Sri Lanka lacks the political will and/or the capacity to investigate the international crimes. In this connection, it is brought to the attention the recent prosecution of Kenyan officials in the International

Criminal Court on the ground of lack of political will and/or capability to investigate the massacres.

There are already several precedents in recent history of international investigations and war crime tribunals being set up and as the situation in Sri Lanka being far worse than in these other cases merits a similar investigation even more urgently. Here are examples of precedents such as:

The **United Nations War Crimes Commission**, which was set up to investigate allegations of war crimes committed by the Nazi Germany and its allies in World War II and that led to the Nuremberg Trials. **The International Criminal Tribunal for the former Yugoslavia (ICTY)**, a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990's. Since its establishment in 1993 it has irreversibly changed the landscape of international humanitarian law and provided victims an opportunity to voice the horrors they witnessed and experienced.

The **International Criminal Court**, the permanent tribunal, set up on 1 July 2002, to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression. To date, the Court has opened investigations into seven situations in Africa: the Democratic Republic of the Congo; Uganda; the Central

African Republic; Darfur, Sudan; the Republic of Kenya; the Libyan Arab Jamahiriya and the Republic of Côte d'Ivoire. Of these seven, three were referred to the Court, by the state parties (Uganda, Democratic Republic of the Congo and the Central African Republic), two were referred by the United Nations Security Council (Darfur and Libya) and two were begun *propriomotu* by the Prosecutor (Kenya and Côte d'Ivoire).

It publicly indicted 27 people, proceedings against 21 of whom are ongoing. The ICC has issued arrest warrants for 18 individuals and summonses to nine others. Five individuals are in custody and are being tried while eight individuals remain at large as fugitives (although one is reported to have died). Additionally, two individuals have been arrested by national authorities, but have not yet been transferred to the Court; the national authorities have indicated to be willing to try the suspects themselves. Proceedings against six individuals have finished following the death of two and the dismissal of charges against the other four.

<b>International Tribunal/Investigation</b>	<b>Number of Casualties and/or Estimated Casualties</b>	<b>Rationale</b>
The United Nations War Crimes Commission (1943-1949)	Approximately 25 million civilians (in Allied States) and 5 million civilians (in Axis States)  Total death toll: 60 million upwards	To investigate war crimes allegations in order to establish tribunals that would condemn and punish the ‘great wrongs’ that were committed, in order to prevent similar occurrence in the future.
The International Criminal Tribunal for the Former Yugoslavia (1993 onwards)	Approximately 140000	UN SC Res. 808 and 827 (1993) state that prosecution of persons who violate

		<p>international humanitarian law would end such crimes and contribute to the restoration and maintenance of peace. (Established pursuant to Commission of Experts Report)</p>
<p>The International Criminal Tribunal for Rwanda (1994 onwards)</p>	<p>Approximately 800000</p>	<p>UN SC Res. 955 (1994)states that the prosecution of persons responsible genocide and for serious violations of international humanitarian law would put an end to such crimes and</p>

		would contribute to the process of national reconciliation and to the restoration and maintenance of peace. (Established pursuant to Commission of Experts Report)
Referral of the situation in Darfur to the ICC (2005)	Approximately 400000 upwards	To promote rule of law, protect human rights and combat impunity and to promote healing and reconciliation. (Established pursuant to Commission of Inquiry Report)
Special Court for Sierra	Approximately	UN SC

Leone (2002 onwards)	50000 upwards	Resolution 1315 (2000) states that a credible system of justice and accountability for the very serious crimes committed in Sierra Leone would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.
Extraordinary Chambers in the Courts of Cambodia (2003 onwards)	Approximately 2 million upwards	To hold accountable the senior leaders of the Khmer Rouge in order to provide

		justice to the Cambodian people and to deter future perpetrators of such atrocities.
Special Tribunal of Lebanon (created by UN SC on State's request) (2009)	23 persons	To hold trials for the people accused of carrying out the attack of 14 February 2005 which killed 23 people, including the former prime minister of Lebanon, Rafiq Hariri, and injured many others. (UN SC Resolution 1757)
The UN Fact Finding Mission on the Gaza Conflict (Goldstone	Approximately 1500-1700	To assess in an independent and impartial

<p>Report) (2009)</p>		<p>manner all human rights and humanitarian law violations committed in the context of the conflict which took place between 27 December 2008 and 18 January 2009 and provide much needed clarity about the legality of the thousands of deaths and injuries and the widespread destruction that occurred. It would contribute towards the peace process and to justice for</p>
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		the victims.
<i>Propriomotu</i> investigation on situation in Kenya by the ICC Prosecutor (2010)	Between 1133 and 1220 persons	To pursue justice for crimes against humanity committed during post-election violence  Lack of political will and/or capability to investigate these crimes domestically.
Proposed International Commission to investigate International Crimes in Sri Lanka	According to the UN Secretary-General's Panel Report, approximately 40000 upwards  According to the submission of Bishop of	Accountability for mass atrocities is an <i>ergaomnes</i> obligation, which the International Community cannot shy away from. There is a need to further

	<p>Mannar, Rev. Dr. Ryappu Joseph, 146,679 persons are unaccounted for</p>	<p>investigate the credible allegations found by the UN Panel of Experts on Sri Lanka in order to ensure such accountability is dispensed.</p> <p>Like in Kenya, the domestic mechanism is insufficient to address the international crimes. The Government of Sri Lanka lacks the political will and/or capability to address the international crimes.</p> <p>LLRC attempts to portray the</p>
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		<p>massacre simply as four isolated incidents and providing an escape route against the charges leveled in the UNSG Report.</p>
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## **THE INTEGRITY OF THE UNHRC**

During the final stages of the war, according to the UN Secretary-General’s Panel of Experts Report, more than 40,000 people died. According to the Bishop of Mannar, Rev Rayappu Joseph, more than 146,000 Tamil people remain unaccounted for. The Dublin People’s Tribunal found that “the attempt to annihilate the Tamil population with/without the use of illegal weapons certainly constitutes one form of war crime. The question remains if the government intended genocide in respect of the Tamil people in brutally suppressing armed and political resistance.” Despite serious warnings from people like the former Australian Foreign Minister, Gareth Evans, the international community, and

especially the United Nations, abandoned the Tamil people and with it also its own doctrine of Responsibility To Protect.

Adding insult to injury, immediately after the end of the war, the UN Human Rights Council passed a Special Session Resolution congratulating the Government of Sri Lanka (A/HRC/S-11/L.1/Rev. 2). Recognizing the absurdity of the resolution, the UN Secretary-General's Expert Council recommended that the UNHRC should be invited to reconsider its May 2009 special session resolution regarding Sri Lanka in light of its report.

A resolution calling for an international commission from the Council will contribute to upholding the very integrity of the council itself.

## **PROPOSED COURSE OF ACTION**

The United Nations Human Rights Council should pass a resolution calling for an establishment of an international mechanism to conduct investigations of the international crimes. Failing which the United Nations High Commissioner for Human Rights can play a part in redressing these international crimes on the basis of the systematic elimination of Tamils culminating with the genocidal war from 2006 to May 2009. Alternatively,

the Secretary General likewise as stated in the UNSG Panel Report should establish an independent, international mechanism.

The Sri Lankan government has so far not shown any commitment to try these crimes, nor will it in future as the very power structure is involved,

At this point, two alternatives are available: abandoning these cases without remedies or trying the cases under international law by a Tribunal established by the United Nations. When one considers the seriousness of the crime, however, there is only one alternative. The only solution is to establish an international tribunal and restore the system of justice in the island of Sri Lanka.

The rationale for an international investigation into war crimes, crimes against humanity and genocide in Sri Lanka arises from the overwhelming evidence of such acts against the Tamils during the final stages of the armed conflict. The end of the armed conflict in 2009 is being used as an excuse by the regime in Colombo to call for ‘forgetting excesses’ that may have happened and ‘moving on’ with rehabilitation and efforts for peace.

The fact is that after the end of the armed conflict the persecution of Sri Lankan Tamils has intensified and all efforts to find a solution to their long standing demand

for independence, autonomy or even greater political space under a more federal structure have been dismissed altogether. There cannot be any reconciliation in the island of Sri Lanka without the prosecution of high officials of the Sri Lankan state for their acts of genocide and that of the Sri Lankan security forces for war crimes and crimes against humanity.

Indeed such a prosecution, by an independent international tribunal, is a necessary pre-condition for the establishment of peace and healing of wounds between the various communities in the island. The absence of such a prosecution will mean justification by the international community and of the genocide against Tamils and needlessly lay the grounds for a fresh round of conflict in future in this war-torn country.

**International Investigation in Sri Lanka is Compatible with Both Values of the Western World as well as the Values of Asia, Africa, and Latin America.**

**Justice and accountability are universal values. Similarly, opposition to oppressive systems and unjust laws are universal.**

**Support for International Investigation**

**The United States of America**

On the 25<sup>th</sup> of April 2011, the US Permanent Representative to the United Nations Ms. Susan Rice on behalf of the US government issued a statement welcoming the report and its full publication. The statement went on to say "The report highlights the need for an independent and full accounting of the facts in order to ensure that allegations of abuse are addressed and impunity for human rights violations is avoided. We strongly support the Secretary General's call for the Sri Lankan authorities to respond constructively to the report and underscore our belief that accountability and reconciliation are inextricably linked".<sup>58</sup>

## **European Union**

The High Representative of the Union for Foreign Affairs and Security Policy Catherine Ashton issued a statement on 10 May 2011 on behalf of the European Union welcoming the report, calling it "an important development". The statement went on to say, "that an independent process to address these extremely serious allegations should contribute to strengthening the process of reconciliation and ensuring lasting peace and security in Sri Lanka". The statement urged the Sri

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58 Rice, Susan E. (25 April 2011). "Statement by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, on the Release of the UN Panel of Experts' Report on Sri Lanka". United States Mission to the United Nations.

Lankan government to "recognize the constructive objectives of the report, and engage with the UNSG on its contents".<sup>59</sup>

## **European Parliament**

The European Parliament on the 12<sup>th</sup> of May 2011 passed resolution P7TA (2011)0242 in which it expressed "concern at the serious nature of the allegations in the UN report" and acknowledged the panel's findings. The resolution took the view that "the allegations contained in the UN panel of experts' report warrant a full, impartial and transparent investigation". The resolution urged the Sri Lankan government to implement the panel's recommendations and "to commence genuine investigations into the violations of international humanitarian and human rights law allegedly committed by both sides".<sup>60</sup>

## **United Kingdom.**

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<sup>59</sup> "Sri Lanka: follow-up of the UN Report". European Parliament. 12 May 2011

<sup>60</sup> "Foreign Office welcomes UN Panel of Experts report on Sri Lanka". Foreign and Commonwealth Office. 27 April 2011

On the 27<sup>th</sup> of April 2011, the Foreign and Commonwealth Office issued a statement supporting the establishment of the panel of experts and welcoming the report. The statement went on to say "The serious nature of the allegations in the report...and the issue of accountability for them must be resolved before lasting reconciliation can be achieved in Sri Lanka".<sup>61</sup>

## **Human rights groups**

**Amnesty International** noted that the LLRC report "acknowledges serious human rights problems in Sri Lanka but falls short of fully addressing the war crimes and crimes against humanity committed during the final phases of the conflict".<sup>62, 63</sup> According to Amnesty the report ignores the "serious evidence of war crimes, crimes against humanity and other violations of the laws of war by government forces".<sup>64</sup> Amnesty urged the Sri Lankan authorities to take the report's recommendations seriously but concluded that, based on previous experience, "effective investigation and prosecution of

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61ibid

62"Sri Lanka Report Falls Short". Amnesty International. 16 December 2011.

63Rutnam, Easwaran ,December 18, 2011. "UN Studying LLRC Report". The Sunday Leader. Retrieved January 31st, 2012

64ibid61

all wrongdoers...is very unlikely without the active support of the international community".<sup>65</sup>

**Human Rights Watch** has condemned the LLRC report for disregarding the worst abuses by government forces, rehashing long-standing recommendations and failing to advance accountability for victims of Sri Lanka's civil armed conflict.<sup>66</sup> HRW has stated that the "serious shortcomings" of the report highlighted "the need for an international investigative mechanism into the conflict as recommended by the United Nations Secretary-General's Panel of Experts".<sup>67</sup>

**The International Crisis Group** welcomed the public release of the LLRC report but noted that it failed in a crucial task - "providing the thorough and independent investigation of alleged violations of international humanitarian and human rights law that the UN and other partners of Sri Lanka have been asking for".<sup>68</sup> The

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<sup>65</sup>ibid

<sup>66</sup>"Sri Lanka: Report Fails to Advance Accountability". Human Rights Watch. 16 December 2011

<sup>67</sup>ibid

<sup>68</sup>"Statement on the Report of Sri Lanka's Lessons Learnt and Reconciliation Commission". International Crisis Group. 22nd December 2011

ICG urged the international community to establish an independent international investigation in 2012.<sup>69</sup>

## CONCLUSION

Continuous and callous disrespect and disregard of the democratic verdicts of the Tamil people in the last couple of elections, would only demonstrate that the Tamil people continue to be governed without their consent, and against their free will, and without being granted any access to powers of governance, in an authoritarian and dictatorial manner. Such authoritarian rule, in violation of the democratic, political, fundamental, and the human rights of the Tamil people, must necessarily come to an end, and we do think that the time has arrived for this end to be brought about<sup>70</sup>.

The war may be over but the rhetoric's of people in power continues and it is manifested by the remarks of Mr. Gotabaya Rajapakse who told Headlines Today "The existing constitution is more than enough for us to live together. I don't think there is any issue on this more than that. I mean this was given as a solution for the whole thing with the discussion of these people. I mean now the LTTE is gone, I don't think there is any

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<sup>69</sup>ibid

<sup>70</sup> <http://www.wsws.org/articles/2010/jun2010/sril-j22.shtml>

requirement’<sup>71</sup>. The Tamils remain secluded, hunted for their past deeds and are made to feel not just insecure but also isolated by the International community.

The Sri Lankan government has steadily safe guarded the interest of the Sinhalese and Buddhists at the expense of the Tamils. The economic recovery of the Tamils has not been reaped by the Tamils but by businessmen from the south. The construction of Buddhist places of worship in a land where Buddhism is non-existent is a reminder to every Tamil that he is subjugated to ruling Sinhala elite. No amount of economic package or recovery can substitute the legitimate claim for political and civil rights for the Tamils.

We hold the view that if the Government of Sri Lanka is permitted to adopt the view as proposed by the LLRC that whatever happened in the final stages of war were isolated incidents, then it would be tantamount to providing the Government of Sri Lanka with an escape channel from the serious charges of international crimes leveled in the Secretary-General’s Expert Panel Report.

Only an independent International Inquiry can satisfy the urge of the Tamils to live as human beings with dignity and it is the duty of the International community to

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<sup>71</sup> ‘Headlines Today’ is a news channel from India and the interview aired on August 8th.

respect the Human Rights of the Tamils and press for International Investigations.

**ADDENDUM:  
NGO's Call for an Independent,  
International Commission**



THE  
CARTER CENTER



Citizens for  
Global Solutions





DEMOCRACY  
COALITION  
PROJECT



OPEN SOCIETY  
FOUNDATIONS



FEMINIST  
MAJORITY  
FOUNDATION

UNITED TO **END**  
**GENOCIDE**



enough

The project to end genocide and crimes against humanity

**JBI**

The Jacob Blaustein Institute  
for the Advancement of Human Rights



*February 17, 2012*

# **NGOs Call on U.S. to Establish International Accountability Mechanism on Sri Lanka at UN Human Rights Council**

We are pleased to hear that the United States has decided to press for action at the March session of the Human Rights Council on accountability for wartime abuses in Sri Lanka. This issue has long been a high priority for us due to the massive scale of abuses committed in the final months of the war and the Sri Lankan government's resistance to any serious domestic inquiry.

In September, UN Secretary-General Ban Ki-moon referred to the President of the HRC and the High Commissioner the report of his Panel of Experts, which finds considerable evidence of war crimes and other abuses committed by both sides during the Sri Lankan civil war. According to the report, up to 40,000 civilians were killed in the final five months of the war, mainly due to indiscriminate shelling of civilian-populated areas, including hospitals and food distribution centers. The rebel group LTTE used civilians as human shields. A documentary by UK's Channel 4, *Sri Lanka's Killing Fields*, released in June 2011, records some of the abuses through graphic video of executions allegedly by the Sri Lankan security forces.

The UN Panel and international organizations have rejected a domestic mechanism, the Lessons Learnt and Reconciliation Commission (LLRC), as inadequate and lacking the independence necessary to conduct an impartial and effective investigation of these abuses. The LLRC report issued in December made some helpful recommendations, but was dismissive of serious abuses by government forces and the need for accountability. Now is the time for the HRC to demonstrate its commitment to justice for victims and their families by taking effective action toward establishing an independent international accountability mechanism.

This statement is endorsed by the following:

Suzanne Nossel, Executive Director, Amnesty  
International USA

Karin D. Ryan, Director, Human Rights Program, The  
Carter Center

Don Kraus, Chief Executive Officer, Citizens for Global  
Solutions

Allison Garland, Project Coordinator, Democracy  
Coalition Project

John C. Bradshaw, Executive Director, Enough Project

Norma R. Gattsek, Government Relations Director,  
Feminist Majority Foundation

Paula Schriefer, Vice President for Global Programs,  
Freedom House

Tom Malinowski, Washington Director, Human Rights  
Watch

E. Robert Goodkind, Chair, Jacob Blaustein Institute for  
the Advancement of Human Rights

Kathryn Cameron Porter, Founder and President,  
Leadership Council for Human Rights

Jerry Fowler, Senior Policy Analyst, Open Society  
Foundations

Hans Hogrefe, Washington Director, Physicians for  
Human Rights

Bama Athreya, Executive Director, United to End  
Genocide

Aung Din, Executive Director, U.S. Campaign for  
Burma



**This publication was prepared by the TGTE's Ministry for Prosecution and Prevention of Genocide, Crimes Against Humanity, and War Crimes**

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Against Humanity and War Crimes