Lesson Learnt and Reconciliation Commission Report and Worldwide Reactions

Structural Genocide Occurring in North East Sri Lanka (Tamil Eelam)

Should International Community Act Now?

Analysis Submitted to Mr Nick Champion MP
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1. Introduction

The focus is to analyse and examine the content of two reports publicly released; the first one by the United Nation Secretary General on **31 March 2011** and the second one by the President of Sri Lanka on **16 December 2011**; both reports examined the military conflict which took place between the armed forces of Government of Sri Lanka (GSL) and the Liberation Tigers of Tamil Eelam (LTTE), which ended on **18 May 2009**. In addition the publications and relevant materials of other International organizations, with respect to the conflict in Sri Lanka are also considered to emphasize the necessity to find the truth about alleged war crimes and crimes against humanity; this possibly will lead to a peaceful resolution of this prolonging conflict in Sri Lanka of over six decades with the support of the International community. Beside what happened up to the end of conflict, current situations are discussed as reported by elected representatives of Tamil Eelam in Sri Lanka and Human rights organizations, which puts the onus on the International Community to act urgently to prevent the structural genocide of Tamil Eelam occurring in Sri Lanka.

President of Sri Lanka and United Nation Secretary General (UNSG) at the conclusion of UNSG's visit to Sri Lanka on **23 March 2009** issued a Joint Statement which **"underlined the importance of an accountability process"** and the Government of Sri Lanka agreed that it **"will take measures to address those grievances"**. Following that declaration, two bodies were set up to report back as to what happened during the last stages of the military conflict to promote reconciliation between the two communities.

President of Sri Lanka Mahinda Rajapaksa after procrastinating for about a year and due to mounting pressure from world leaders for an independent investigation, **Lesson Learnt and Reconciliation Commission** (LLRC) was set-up on **May 2010** with eight members; most of them are former senior government representatives contrary to expectation from International community to have more independent civil society members in the commission.

1.1 Terms of Reference of LLRC

"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 operationalized 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 or 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."

The LLRC's tenure was extended twice each time by six months; during this time LLRC handed over an Interim Recommendation for implementation on **13 September 2010**, which has neither been released nor implemented. The final LLRC report[1] was released after nearly **Thirty Months** since the end of the conflict and **eighteen months** after the setting up of LLRC.

[1] http://groundviews.org/2011/12/16/the-official-report-of-the-llrc/

1.2 Terms of Reference of UNSG's Panel of Experts (PoE)

United Nation Secretary General (UNSG) Mr Ban Ki Moon appointed **UNSG's Panel of Experts** on **22 June 2010**. The Panel was Mr Marzuki Darusman (Indonesia) as Chair; Mr Steven Ratner (United States) and Ms Yasmin Sooka (South Africa), as members. The Panel formally commenced its work on 16 September 2010 and was assisted throughout by a secretariat. The Panel's mandate is to advise the Secretary- General regarding the modalities, applicable international standards and comparative experience relevant to an accountability process, having regard to the nature and scope of alleged violations of international humanitarian and human rights law during the final stages of the armed conflict in Sri Lanka.

PoE was not granted permission by GSL to visit Sri Lanka and gather information, against many odds the report was completed and handed over to UNSG on **31 March 2011**. UNSG immediately sent a copy of the report to GSL requesting GSL's views and made the report public.

2. UNSG's Panel of Experts Report (PoER)[2]

The Panel report was prepared based on data and information gathered from victims who escaped from the conflict zone, provided by International organizations which independently collated data during the conflict and the panel using its own resources. Channel 4 "Sri Lanka's Killing Fields" [3] which was shown worldwide after the Expert panel report was released, which further reinforced the conclusions drawn by PoE. Most of the countries welcomed the report and called upon GSL to respond and endorsed there is a greater need for **Independent International Inquiry** to find the truth. President Rajapaksa anointed LLRC, as the body that will answer to the alleged war crimes and crimes against humanity. GSL refused to consider or investigate the content of the PoE report and refused to accept the report as that of UN, but referred to it as "Darusman" report (named after UNSG's Expert panel chairman). GSL and the Sri Lanka media conducted a hostile propaganda in the local media against the report led by the Defence Secretary and closely followed by Foreign Minister of Sri Lanka; at the same time branded Channel 4 presentation as a "total fabrication".

The PoE determination reveals a very different version of the final stages of the war than what was maintained to be and portrayed by GSL to this day. In stark contrast, the PoE 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 GSL and LTTE, some of which would amount to war crimes and crimes against humanity. Indeed the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace. The report claimed up to 40,000 people have been killed in the last stages of the war which ended on 18 May 2009. The executive summary of the report has four main recommendations and each recommendation having a few parts, a summary is as follows:

2.1 Investigations

A. GSL comply with International obligations, initiate accountability process and commence genuine investigation.
B. UNSG should establish independent international mechanism: to monitor GSL's domestic accountability process, Investigate independently into alleged violations, collect and safeguard all information for future use.

2.2 Other immediate measures to advance accountability

A. Implement following short term measures: end violence and by other groups, recovery and return of remains, issue death certificates without compromising future investigations, psychosocial support for all survivors, return all displaced persons to former homes and provide regular relief.

[2] UNSG's Expert Panel Report: http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf
[3] Channel 4 "Sri Lanka's Killing Fields" http://srilanka.channel4.com/index.shtml

B. GSL should account for displaced people, and allow Working Group on Enforced and Involuntary Disappearances to visit Sri Lanka.
C. In light of political situation, GSL repeal Emergency Regulations and modify all those provisions of the Prevention of Terrorism Act that are inconsistent with international obligations, publish names of all detainees, regular access to family of detainees, grant legal rights to challenge the detention and
D. GoSL should end state of violence by the state and other practices which prevent freedom of movement, assembly and expression.

2.3 Longer term accountability measures

While the current climate is not conducive to an honest examination of the past, in the longer term, as political spaces are allowed to open, the following measures are needed to move towards full accountability for actions taken during the war:

A. Sri Lanka should initiate a process, with strong civil society participation, to examine in a critical manner: the root causes of the conflict, including ethno-nationalist extremism on both sides; the conduct of the war and patterns of violations: and the corresponding institutional responsibilities.
B. GSL should issue a public, formal acknowledgment of its role in and responsibility for extensive civilian casualties in the final stages of the war.
C. The Government of Sri Lanka should institute a reparations programme, in accordance with international standards for all victims of serious violations committed during the final stages of the war, with special attention to women, children and particularly vulnerable groups.

2.4 United Nation:

A. The Human Rights Council should be invited to reconsider its May 2009 Special Session Resolution (A|HRC/S-III|L.I|Rev. 2) regarding Sri Lanka in light of this report.
B. UN Secretary-General should conduct a comprehensive review of actions by United Nations system during the war in Sri Lanka and the aftermath regarding the implementation of its humanitarian and protection mandates.

3. LLRC Report vis-à-vis Accountability Process in Sri Lanka

The release of LLRC report by GSL was welcomed by World leaders, but the past records of successive GSL do not augur favourably for implementation of LLRC report and follow up action to address accountability, as agreed between President of Sri Lanka and UN Secretary General. A review of number of Commissions of Inquiry (CoI) set-up in Sri Lanka over the past three decades, starting with Sansoni Commission in 1977 to Udalagama commission in 2007, established to respond to repeated pogroms against Tamils, allegations of gross human rights violations in the form of enforced disappearances and extra-judicial, arbitrary or summary executions, have illustrated the failure of all three branches of the state – **the executive, legislature, and judiciary** in guaranteeing remedies and reparations for victims of human rights violations, as reported in **International Commission of Jurists publication**[4]. In almost every case neither legal remedy nor financial compensation was given to the victims of crimes.

It is pertinent to look at working of CoI set-up by President Rajapaksa after he came to power in November 2005 with a slimmest of a majority in a Presidential election with tacit support of LTTE, because alleged war crimes and crimes against humanity happened under his regime, as commander – in- chief of armed forces. Following the election, serious violations of human rights took place in the year 2006; amidst mounting local and international pressure, an eight member CoI headed by Justice Udalagama was appointed in November 2007 to investigate 16 most serious violations of human rights. The CoI was subjected to the scrutiny of 'International Independent Group of Eminent Persons' (IIGEP) selected from democratic countries to observe the proceedings of the public inquiry

[4] ICJ - Post War Justice in Sri Lanka – Rule of Law, the criminal system and commissions of Inquiry: http://www.icj.org/IMG/Sri_Lanka_COI_18.01.09-2.pdf

because International community did not have much faith in the accountability process in Sri Lanka. After attending for a period, IIGEP was dissatisfied with CoI on number of key issues: including witness and victims' protection, involvement of Attorney General's office (conflict of interest – current Chairman of LLRC), lack of transparency and timeliness of proceedings and withdrew as a monitoring body. The CoI appointed by President Mahinda Rajapaksa expired on June 14, 2009 as its term of office was not extended; CoI completed investigations into seven cases and reports were finalized on five cases and the Commission recommended compensation to be paid by the state to the next of kin of the victims of human rights violations[5]. All the recommendations by Justice Udalagama remain unfulfilled; fate of this CoI is not different to what happened to all other CoI in Sri Lanka, in the past. GSL due to pressure from other governments and human right organizations introduced a Witness Protection Bill to the Sri Lanka Parliament, after the Second Reading had taken place but for some mysterious reason that Witness Protection Bill was abandoned. LLRC has to conduct the investigation being handicapped by the absence of this protection for witnesses, which would have put off many with different understanding

3.1 Investigative Process of LLRC

LLRC conducted open and public hearing and considered both written and oral presentations. It is said more than 950 testified in person before the commission, while nearly 5,000 submitted written statements. Unfortunately, the failure of the GSL to put the **Witness Protection Bill**[6] in the statute made it difficult to get more balanced input of evidence which led to conclusions by LLRC about LTTE and GSL Armed Forces, which were contradictory to that made by PoE. LLRC conducted its work with primary source of information from the general public of Sri Lanka, organizations, civil society groups who came forward to give evidence and other materials selectively. As far as military operations are concerned, LLRC mostly made their conclusions solely based on armed forces evidence, which is a major participant in this conflict. Some journalists called Sri Lanka's final battle with the Tigers a "war without witnesses" because UN and other NGO were asked to withdraw from the conflict zone months before the government defeated the Tigers. Only handpicked reporters, mostly from state media, were allowed to embed with troops and most of the videos available about the conflict did not form neither part of the evaluation process nor in the final conclusions made by LLRC.

Reaction of GSL to PoER and the stand taken by President Rajapaksa at the CHOGM held at Perth in October 2011, made the International community to expect that the LLRC report will respond to the conclusions drawn by PoE, as given above in sections 2.1 to 2.4. International Human rights organizations were unanimous in rejecting the LLRC report and LLRC findings as failing to meet the international standards; media was forthright in pointing out the shortcomings as a response to PoER. Considering that this is the first time that the GoSL has released a document publicly, some of the governments welcomed the publication of the report and called for implementation of recommendations of LLRC, also stressed the importance of establishing an internationally acceptable accountability process which was the main thrust of the PoER.

3.2 Conclusions and Recommendations of LLRC

Unfortunately, the LLRC failed to follow and address areas identified in the PoE Report which would have been welcomed and countered alleged charges of war crimes and crimes against humanity, but considering the terms of references of both UNSG Panel of Experts and LLRC are different such outcome was not expected. Some of the key points relevant to the final stages of the conflict are given below directly quoting, as given in the LLRC report.

3.2.1 Cease Fire Agreement (CFA) (February 2002 to January 2008)

[5] Permanent Commission recommended for serious rights violations in SL
http://southasiaspeaks.wordpress.com/2009/06/23/permanent-commission-recommended-for-serious-rights-violations-in-sl/

[6] Without Witness and Victim Protection, No Hope for Justice in Sri Lanka
http://www.huffingtonpost.com/rebecca-buckwalterpoza/without-witness-and-victi_b_811446.html

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

3.2.2 Overview of Security Forces Operations

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

3.2.3 Security Forces Casualties and LTTE Casualties

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

3.2.4 International Humanitarian Law (IHL)

LLRC devoted more than quarter of the report to look into the IHL and concurred with PoER views on LTTE, but dismissed any conclusions drawn about GSL armed forces. LLRC said: "In evaluating the Sri Lanka experience in the context of allegations of violations of IHL, the Commission is satisfied that the military strategy that was adopted to secure the operation LTTE held areas was one that was carefully conceived, in which the protection of the civilian population was given the highest priority". This is in complete contrast to PoE Report that 40,000 civilians may have been killed.

3.2.5 Comments on the Channel 4 Sri Lanka's Killing Fields

LLRC recommends that the "Government initiate an independent investigation into this matter to establish the truth or otherwise of the allegations arising from the video footage. The Commission considers this course of action as necessary and urgent for two reasons" commission said "the footage reflects evidence of real incident of summary execution of persons in captivity and of possible rape victims, it would be necessary to investigate and prosecute offenders as these are clearly illegal acts; if on the other hand footage is artificially constructed or the incidents are staged as contended by several experts, the issue becomes even more serious and the need to establish facts of this case, equally compelling."

3.2.6 Abduction, Disappearances and Arbitrary Detention

During the public sittings and its field visits, including to the conflict-affected areas, the Commission was alarmed by a large number of representations made alleging abductions, enforced or involuntary disappearances, and arbitrary detention. In many instances, it was revealed that formal complaints have been made to police stations, the Human Rights Commission of Sri Lanka and the ICRC. In some cases, submissions had also been made to the previous Commissions of investigation. Yet, the next of kin continue to complain that the whereabouts of many of those missing persons are still unknown. The Government therefore is duty bound to direct the law enforcement authorities to take immediate steps to ensure that these allegations are properly investigated into and perpetrators brought to justice.

3.2.7 Key Statement by Commissioners

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

3.3 White flag incident and Independence of Judiciary

What has come to be known as the **'white flag incident'**, in which all unarmed civilian leaders of LTTE were gunned down in what observers say would be tantamount to a war crime. Sri Lankan opposition presidential candidate and victorious chief of the Sri Lankan Army against the LTTE, Sarath Fonseka was charged in the Supreme Court; claiming in an interview that "there was a direct order from Defence secretary, Gotabhaya Rajapaksa, to shoot dead the entire leadership of the Tamil Tigers". In a split decision of three member court, Sarath Fonseka was sentenced to three years rigorous imprisonment against independent evidence provided by others. This casts doubts about the Independence of the judicial process in Sri Lanka, which was raised earlier too.

3.3.1 Pawns of Peace: Evaluation of Norwegian peace efforts in Sri Lanka, 1997-2009[7]

Recently released a report [page 68] gives an insight into what happened in **'white flag incident'** which took place in the penultimate days of the conflict in Sri Lanka, "In the night between 17 and 18 May, Nadesan (head of the LTTE Political Wing) and Pulidevan (head of the LTTE Peace Secretariat) contacted the Norwegians as well as the UK and US embassy, the ICRC, and Chandra Nehru (a Tamil politician in Colombo) indicating their last-minute willingness to surrender. Following hasty negotiations with presidential advisor and his brother Basil Rajapaksa, they are told to walk across the frontline with a white flag. The last phone conversation is held shortly before their departure. Hours later they are reported shot."

3.3.2 War without witnesses Report[8]

According to the above report Sri Lanka President Mahinda Rajapaksa, in May 2009, told Vijay Nambiar, Chief of Staff of UNSG and surrendering Tamil Tigers that they would be safe to cross no-man land if they hoisted a white flag. "Just walk across to the troops, slowly! With a white flag and comply with instructions carefully. The soldiers are nervous about suicide bombers," said a text from foreign secretary Palitha Kohona (former DFAT official) sent via the Red Cross.

None of the satellite photographic evidence of damages to hospitals in "No Fire Zones" defined by GSL, artillery firing positions and directions of firing given in given in PoE Report (pages 187 -196), resulting death of civilians and damages to infrastructures have been examined by LLRC. It is surprising that deaths among Armed forces and LTTE personnel have been accounted for, but not of any civilians by the LLRC. Death of civilian runs into tens of thousands as reported by others.

Taking note that the LLRC Chairman played an adverse role, as attorney general, in the Udalagama commission inquiry casts more doubts about the Independence of the process pursued by LLRC to meet international standards as pointed by others. The available video evidence confirmed that LLTE civilian leaders were killed, similarly many unarmed civilians too were mercilessly gunned down and the judgement in the **'white flag incident'** court case expose the inadequacy of Sri Lanka judiciary.

Above conclusions show that important events which occurred during the conflict have been omitted by LLRC and failed to meet the expectation of the International community contrary to a number of promises made by the GSL and President Rajapaksa. The failure could be attributed to terms of reference given to LLRC, but LLRC failed to investigate very critical conclusions pointed out in PoE Report and by other International Human rights Organizations. The incomplete outcomes of LLRC give an impression that the exercise has been conducted to white wash alleged war crimes and crimes against humanity.

4. LLRC Report Falls Short on Justice to Victims

[7] Pawns of Peace: Evaluation of Norwegian peace efforts in Sri Lanka, 1997-2009
http://www.norad.no/en/tools-and publications/publications/evaluations/publication?key=386346

[8] Vijay Nambiar facing calls for ICC investigation, War Without Witnesses in Sri Lanka
http://warwithoutwitness.com/index.php?option=com_content&view=article&id=313:nambiar-facing-calls-for-icc-investigation&catid=1:latest-news

After LLRC was established, invitations were sent to Amnesty International (AI), Human Rights watch (HRW) and International Crisis Group (ICG) to appear before the commission; on 14 October 2010 they wrote a joint letter in which they said that they would welcome an opportunity to appear before a genuine, credible effort to pursue political reconciliation and accountability in Sri Lanka, but that the Commission does not meet minimum international standards for commissions of inquiry[9].

4.1 Human Rights Organizations

They pointed out that LLRC lacks credibility in four main areas: Inadequate mandate, Lack of independence, Lack of witness protection and past commissions' failures. Joint letter says "Nothing in the LLRC's mandate requires it to investigate the many credible allegations that both the government security forces and the Liberation Tigers of Tamil Eelam (LTTE) committed serious violations of international humanitarian and human rights law during the civil war, especially in the final months, including summary executions, torture, attacks on civilians and civilian objects, and other war crimes. The need to investigate them thoroughly and impartially is especially urgent given the government's efforts to promote its methods of warfare abroad as being protective of the civilian population, when the facts demonstrate otherwise". Also, serious allegations have been made against the members of the LLRC in the letter by Amnesty International (AI), Human Rights Watch (HRW) and International Crisis Group (ICG); it is hard to believe that the expectation of the International community can be met by the anticipated LLRC report. The following quotations from the letter are further prove that GoSL will not undertake any serious investigation regarding the allegation given in the UNSG's Expert panel report or into the Sri Lanka's Killing Fields.

The letter pointed out "both the chairman C.R. de Silva and a member H.M.G.S. Palihakkara were senior government representatives during the final year of the war. They publicly defended the conduct of the government and military against allegations of war crimes. Indeed during two widely reported incidents – the shelling of the first "no-fire zone" declared by the government in late January and the shelling of Puthukkudiyiruppu (PTK) hospital in February – H.M.G.S. Palihakkara, then Sri Lanka's representative to the UN, told CNN that government forces had confirmed that even though the LTTE was firing out from the "no-fire zone", the government was not returning fire; and that the military had confirmed they knew the coordinates of PTK hospital and they had not fired on it." PoE report satellite photographic evidence tells a different story.

The first CoI appointed by President Rajapaksa under Justice Udalagama and the role played by C.R. de Silva as Attorney general was well known, the joint letter points to "evidence that as Attorney general, C.R. de Silva actively undermined the independence of the Udalagama Presidential Commission of Inquiry (that was tasked with investigating allegations of serious human rights violations by the security forces. Mr. de Silva's conflicts of interest were repeatedly criticized by the International Independent Group of Eminent Persons (IIGEP), which had been invited by the President to scrutinize the Commission's work. The members of the IIGEP resigned in April 2008 and cited Mr. de Silva's conflicts of interest as a major reason for doing so. Most other members of the LLRC have some history of working for the Sri Lankan government. None is known for taking independent political positions, and many have publicly declared their allegiance to the President and government.

Having observed the functioning of the commission over two years AI released a report[10] saying GSL's inquiry into the country's civil war is fundamentally flawed and provides no accountability for atrocities committed during the conflict. The report, ***When will they get justice?*** Expose the

[9] Joint letter to LLRC outlining the decision not to testify before the flawed commission by Amnesty International, Human Rights Watch and International Crisis Group http://www.hrw.org/en/news/2010/10/13/joint-letter-llrc

[10] Amnesty International – Sri Lanka: Inquiry into armed conflict fundamentally flawed http://www.amnesty.org/en/news-and-updates/report/sri-lanka-inquiry-armed-conflict-fundamentally-flawed-2011-09-07

shortcomings of the inquiry conducted by LLRC. These include its failure to properly pursue allegations of war crimes and crimes against humanity levelled against both government forces and the Liberation Tigers of Tamil Eelam (LTTE). GSL for almost two years used the LLRC as its trump card in lobbying against an independent international investigation. Officials described it as a credible accountability mechanism, able to deliver justice and promote reconciliation. In reality it's flawed at every level: in mandate, composition and practice," said Amnesty International's Asia Pacific Director, Sam Zarifi.

4.2 UNSG's Panel of Experts Comment

It made an observation in their report published on 31 March 2011: "In sum, 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".

4.3 AI, HRW and ICG Comments after LLRC Report was Released

There are many International organizations who expressed their views, as the three premiere organizations which were invited by the LLRC to appear before them to give a submission because they have continuously presented reports during the conflict as well as after the conflict; their views about the LLRC report are given here.

4.3.1 Amnesty International - Sri Lanka Falls Short[11]

"A preliminary review of the report suggests that it acknowledges the very serious human rights problems in Sri Lanka. But where it appears to really falter is in ignoring the serious evidence of war crimes, crimes against humanity and other violations of the laws of war by government forces, even though the report highlights the serious and systematic violations committed by the LTTE," said Sam Zarifi, Amnesty International's Asia-Pacific director.

"There is a clear sign of the bias we had feared and already detected in the LLRC's composition and conduct. It does however offer some interesting recommendations about how to improve the overall human rights situation in Sri Lanka that the government needs to take seriously," said Sam Zarifi, "The Sri Lankan government must now address the findings included in this report. It should report to the UN Human Rights Council at its next session in March 2012 on its measures to implement the report's recommendations, including the need for further investigation of alleged violations of the laws of war, taking account of the findings and recommendations of the report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka."

4.3.2 HRW – Sri Lanka's Report Fails to Advance Accountability[12]

HRW commenting on the LLRC report says that LLRC "disregards the worst abuses by government forces, rehashes longstanding recommendations, and fails to advance accountability for victims of Sri Lanka's civil armed conflict, Human Rights Watch said today. The serious shortcomings of the 388-page report, which was posted on a government website on December 16, 2011, highlight the need for an international investigative mechanism into the conflict as recommended by the United Nations Secretary-General's Panel of Experts in April".

"Governments and UN bodies have held back for the past 18 months to allow the Sri Lankan commission to make progress on accountability," said Brad Adams, Asia director at Human Rights Watch. "The commission's failure to provide a road map for investigating and prosecuting wartime perpetrators shows the dire need for an independent, international commission."

4.3.3 ICG - Statement on Sri Lanka's LLRC Report[13]

[11] Sri Lanka's Report Falls Short http://www.amnesty.org.au/news/comments/27467/
[12] http://www.hrw.org/news/2011/12/16/sri-lanka-report-fails-advance-accountability
[13] http://www.crisisgroup.org/en/publication-type/media-releases/2011/asia/statement-on-the-report-of-sri-lanka-s-lessons-learnt-and-reconciliation-commission.aspx

The report acknowledges important events and grievances that have contributed to decades of political violence and civil war in Sri Lanka and makes sensible recommendations on governance, land issues and the need for a political solution. But it fails 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. It is now incumbent on the international community, through the UN Human Rights Council, to establish an independent international investigation in 2012. Without such an investigation, accountability for the crimes committed at the end of the civil war is highly unlikely; without accountability, and a full understanding of the nature of the violations which took place on all sides, the seeds of future conflict will grow.

4.4 Report Submitted to US Congress[14]

This is the result of Congress directing the Secretary of State to submit a report "detailing incidents during the recent conflict in Sri Lanka that may constitute violations of international humanitarian law or crimes against humanity, and, to the extent practicable, identifying the parties responsible", which occurred during the final stages of the conflict between GSL armed forces and LTTE. The major topics covered are: children in armed conflict, harm to civilians and civilian objects, killing of captives or combatants seeking to surrender, disappearances and humanitarian conditions.

GSL repeatedly denied shelling of civilians and hospitals, the report alleges that the majority of shelling of No Fire Zone (NFZ) was by the GSL forces; also armed forces shelled the NFZ before the end of 48 hours cease fire and LTTE prevented the IDPs escaping. The comparison of allegations in this report with that in the PoER and others from International Humanitarian Organizations show everyone except LLRC reached the same conclusions, as to the topics identified in this report.

5. Situation in North East Sri Lanka (Tamil Eelam)

One of the terms of reference given to LLRC is to report on possible "methodology whereby restitution to any person affected by those events or their dependants or their heirs, can be affected"; to carry out this successfully, knowing the prevailing conditions under which most victims of the conflict are living in North East Sri Lanka is critical. The military victory over LTTE resulted in incarceration of about 282,380 in camps as updated by UN and death of about 40,000 people as given in the UNSG's Expert Panel report. Most of the people have moved out of these camps, but have not resumed their normal livelihood which existed prior to the conflict which ended on 18 May 2009. **Bishop of Mannar in his submission to LLRC**[15] raised the question 146,679 people missing, 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. Having these facts in mind, it is important to look at the current situation in the conflict zone and how the people are living, two and a half years since the end of conflict.

5.1 International Crisis Group (ICG)

ICG under the title **"Sri Lanka: Post-War Progress Report"**[16] updated on 13 September 2011 gives a detailed analysis and put it as "claim" what is said by GoSL and ICG assessment as "reality". Most of what GoSL "claim" is position already known to everyone and ICG observations are given in more detail and are summarized under different subtitles as follows:

5.1.1 State of Emergency and Anti Terrorism Laws

[14] http://www.state.gov/documents/organization/131025.pdf - Report to Congress on Incidents During the Recent Conflict in Sri Lanka 2009

[15] LLRC: Submission by the Catholic Diocese of Mannar, Rt. Rev. Dr. Rayappu Joseph, Rev. Fr. Victor Sosai, Rev. Fr. Xavier Croos http://www.srilankaguardian.org/2011/01/llrc-submission-by-catholic-diocese-of.html

[16] Sri Lanka: Post-War Progress Report - International Crisis Group http://www.crisisgroup.org/en/key-issues/sri-lanka-post-war-progress-report.aspx

Claim: Emergency regulations (ER) promulgated under Public Security Ordinance No.25 of 1947 (as amended) lapsed on 31 August 2011.
Reality: Instead of reverting to ordinary law all the repressive clauses in ER are being incorporated into Prevention of Terrorism Act (PTA) no. 48 of 1970, which includes retention of high security zones, indefinite detention without charges or legal counsel, etc.

5.1.2 Militarization and Insecurity

Claim: a "comprehensive program of socio economic development in the former theatre of conflict". **Reality**: "The actual security situation for the minority is much more precarious. There is deep distrust of the police and army".

5.1.3 Resettlement of Internally Displaced Persons

Claim: At the end of conflict nearly 300,000 Tamil IDPs held in camps, President Rajapaksa told parliament on 25 August 2011 that "we have now resettled all but 8,000 in their former places of living".
Reality: This is not true. As of 31 July over 60,000 of those "resettled" IDPs were still in temporary settings, living with host communities or in transit situations. Returnees to their home, many still rely on food assistance from international donors and most are living in makeshift shelters. GoSL and the military control all humanitarian and development activities in the formerly LTTE-held areas and continue to restrict the activities of local and international humanitarian groups.

5.1.4 Rehabilitation and reintegration of ex-combatants

Claim: "For well over a year, the government has been promoting as a "success" its "rehabilitation" and "reintegration" of the thousands of suspected LTTE cadres detained at the end of the war in 2009. As of 7 September 2011, it claimed that nearly 8,000 had been released while another 3,000 were still in "rehabilitation centres"
Reality: "There is plenty of reason to doubt that these efforts have effectively "neutralised" former combatants, promoted reconciliation or reduced the risk of a new outbreak of violence". (a) Individuals detained for rehabilitation without access to counsel or basic rights such as habeas corpus, and many for longer than allowed under ER. (b) No independent procedure is in place to determine whether those detained and later "reintegrated" have any history of perpetrating human rights abuses or are in fact ex-combatants. (c) Released many former detainees are regularly re-arrested, harassed or forced to act as informants by the military; no system of independent monitoring of their treatment or protection. (d) Thousands of individuals have been missing since the war's end, with many last seen in military custody – as numerous eyewitnesses have testified to the Lessons Learnt and Reconciliation Commission (LLRC). Additional independent information can be found on treatment of ex-combatant elsewhere [17]

5.1.5 Political settlement on devolution and minority rights

Claim: The president and other senior government officials have frequently expressed their commitment to finding a political solution to the ethnic conflict through negotiations with Tamil and other minority political representatives.
Reality: Numerous statements and actions cast doubt on the Sri Lankan government's commitment to serious negotiations designed to devolve power to the North East Sri Lanka. (a) Defence secretary, president's brother, who has de-facto veto power over any government policies relating to security issues, announced that "The existing constitution is more than enough for us to live together…. I mean now the LTTE is gone, I don't think there is any requirement". (b) All Party Representative Conference (APRC) established by President Rajapaksa in 2006 with the mandate to agree on constitutional reforms for "maximum devolution" within a united Sri Lanka. Despite nearly three years of negotiations that reportedly produced a draft set of constitutional reforms that had the broad agreement of government and minority parties, the APRC's report to

[17] Threats, harassments and restrictions on former detainees and their families in Vanni, http://transcurrents.com/news-views/archives/424

the president has never been made public and its valuable work has been shelved. (c) President proposal to set-up a Parliamentary Select Committee (PSC) has not received support from opposition parties, but president is going ahead. (d) Widespread scepticism within Sri Lanka about the government's willingness to devolve power is also based on the highly authoritarian, centralised and militarised way in which the Rajapaksa regime governs the whole country. Since the end of the war in May 2009, power has been further centralised in the hands of the president, his brothers and the military, both through the eighteenth amendment to the constitution in September 2010 and other administrative changes.

5.2 Submission made at Sri Lanka Parliament

The following highlights are based on the North East Sri Lanka situation report submitted by **MA Sumanthiran MP to Sri Lanka Parliament on 21 October 2011**[18], who visited Australian Parliament last year. The situation has been summarized under various sub-titles:

5.2.1 Militarization

The high level of militarization in the North is directly linked to problems prevalent in the area: **breakdown in the social fabric**, **sexual assault**, land grabs and occupation, **economic encroachment of livelihoods** of the people in the area, **intrusion into private and social lives**, **illegal intrusion** into the role of government including administration and dispute settlement.

5.2.2 State Brutality

People faced **threats to their safety by unidentified individuals** who have injured and murdered civilians, and who have commonly come to be known as 'Grease Yakas' (Grease Devils). These attacks resulted in mass paranoia, fear and outrage in the North and East Sri Lanka. Frequent assault in court premises, **violent suppression of dissent by attacks** carried out with impunity in the North by several 'unidentified' groups cause serious concern to the people.

5.2.2 Loss of Livelihood

Tamil returnees to their homes and attempting to rebuild their lives after the war now find themselves being prevented from pursuing their **traditional means of livelihood**, beside that **unemployment and resource allocation**, **job creation and income generation** have received minimal attention from GoSL, despite its being central importance to the restoration and sustainability of family and community life. **Restrictions imposed on Tamil fishing** communities' causes drastic impact on livelihood and returning to normalcy which existed before the end of military conflict.

5.2.3 Resettlement

Progress in the resettlement has been extremely slow, according to the government's own figures as at 1st July 2011, 258,446 had been 'returned' or 'resettled' from welfare camps not necessarily to their own villages, leaving 12,661 in camps. The returnees have **no access to proper health and education**; they find themselves **without basic facilities such as housing, sanitation, healthcare and education,** in particular, **deprived of secondary education** which is inconsistent with national standards.

5.2.4 Systematic Evictions, Land Grabs and Occupation

Members of armed forces are forcibly and often without any explanation **taking over public or private property and land**, in areas to which Tamil people are returning after being displaced due to the war. Several **schools are currently under army occupation** and access to irrigation of lands belonging to Tamils has been denied. Land and coastal areas are being **allocated for commercial development without public notification** and not considering the environmental impact.

[18] North East Sri Lanka – Situation Report submitted to Sri Lanka Parliament by Tamil National Alliance (TNA) on 21 October 2011 http://transcurrents.com/news-views/archives/5396

5.2.5 Creation of Sinhala Settlements

The demography of the North of Sri Lanka is undergoing forcible change: **Systematic removal of Tamils from the civil service** by transfer/sending compulsory leave and replace them with **Sinhala civil servants**, **Bringing in Sinhala labour force to work on** government programs, forced eviction of Tamils take place and **land**, **houses and school are given to Sinhala communities** and followed by building of a number of **Buddhist statues, viharas and stupas** in places inhabited by Tamils.

5.2.6 Social Issues

Following social issues prevent return to normalcy: **Psychological trauma,** caused by heavy military control and presence in the North, **Harassment and molestation of women and girls** mainly by Sinhala workers employed government contractors in the Tamil areas, **Hunger and malnutrition** caused by soaring levels of unemployment, **School drop outs** reported in one area in the East, **Breakdown of social fabric** there are reports of young Tamil girls becoming pregnant by Sinhalese soldiers, **Institutionalization of children** due to incidents of infanticide and child abandonment in the North and East were reported throughout 2011 and causes **Fear psychosis.**

5.2.7 Legal Issues

Normalcy has not returned to Tamil areas, but government is imposing more and more new regulations causing anxiety among the people: **Registration of Persons** against the direction by the Supreme Court in February 2011 to suspend immediately; **The land circular issued** by Land Commissioner General on 22nd July 2011, which exclusively deals with land in the Northern and Eastern provinces temporarily suspending all distribution of land in the North and East except for national security and special development projects; **Prevention of Terrorism Act** (changes given in ICG report); **Reduction of parliamentary seats** in Jaffna Electoral District under the proportional representation system at the last General Election from nine to six is being considered; **NGO secretariat comes under Ministry of Defense** moving it away from Social Services Ministry, since mid 2010; a matter of grave concern is the **non-issuance of death certificates** to many IDPs who have lost relatives and family members in the war. This results in difficulties in relation to title to land and property, and other administrative services.

5.3 Tamil National Alliance (TNA) Leader

"Tamils Not Treated as Equal Citizens" says **R Sampanthan TNA Leader**[19] in an interview to the media and he has similar concerns as above. In respect to colonization of Tamil homeland more details are given his interview: "Deliberate efforts are being made by the Government to further change the linguistic and cultural identity of the Northern and Eastern provinces". There is no doubt whatever that the Government is aggressively pursuing a sinister program to change the demographic composition of the Northern and Eastern provinces in such a manner as to weaken the Tamil presence and increase the majority Sinhala presence. We do not make this complaint against the Sinhala people as such but we certainly make this complaint against the Government.

This is in violation of policies pursued by stalwart leaders such as the late Mr. S. W. R. D. Bandaranaike, the founder of the SLFP, and Mr. Dudley Senanayake, the founder of the UNP, who accepted that the Tamil speaking people had a legitimate interest in the preservation of the linguistic and cultural identity of the Northern and Eastern provinces. Such deliberate actions on the part of the Government have a very negative impact on the prospect of reconciliation."

5.4 Freedom from Torture – Medical Foundation[20]

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[19] Tamils Not Treated As Equal Citizens, Interview with R Sampanthan TNA Leader, http://www.thesundayleader.lk/2011/11/20/tamils-not-treated-as-equal-citizens-sampanthan/

[20] Out of the Silence of ongoing Torture in Sri Lanka 2009 -2011 http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf

In the detailed analysis and examination of evidence of torture which took place between May 2009 and early 2011, as documented in the case sample of 35 completed medico-legal reports prepared by Freedom from Torture, following conclusions have been made:

- Torture perpetrated by state actors within both the military and police has continued in Sri Lanka after the conflict ended in May 2009 and is still occurring in 2011;
- Those at particular risk of torture include Tamils who have an actual or perceived association with the Liberation Tigers of Tamil Eelam (LTTE);
- A variety of different types of torture have been perpetrated in a significant number of locations around Sri Lanka during the post-conflict period;
- A wide range of different forms of torture have been used, often in combination, to inflict severe suffering on victims of torture with devastating psychological and physical consequences;
- Many Sri Lankan torture victims are left with visible scarring attributable to both blunt force trauma and burns which suggests impunity for perpetrators of torture in Sri Lanka.

In another article by **"Freedom from Torture"**[21] says that Sri Lanka's LLRC ignores torture and evade accountability. It concludes "unconvincing efforts to demonstrate that it is ready to deal with atrocities committed by both sides during the end of the brutal civil war reached the end of the line" with the publication of the final report by LLRC. This report and other earlier observation made by International Humanitarian Organizations and video evidence broadcast Channel 4 and other available videos and photographic evidence show that there are plenty of publicly available information that need to be scrutinized to know the truth as to what happened and currently happening in Sri Lanka.

5.5 Is Genocide Taking Place in Sri Lanka?

Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948[22] in Article II says genocide is 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;
b) Causing serious bodily or mental harm to members of the group;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) Imposing measures intended to prevent births within the group;
e) Forcibly transferring children of the group to another group.

No one is discounting the criminal acts of LTTE, a non state player; what is being considered is a state which has the responsibility to defend their citizens. Furthermore, it is important to note that most of LTTE leaders are killed as claimed by GSL, but few of the surviving LTTE leaders, who can be charged for war crimes, are with GSL. Anyone who takes an unbiased look at what has happened and what is happening presently in Sri Lanka, it can be concluded that the first three offences tantamount to genocide are continuing to happen against Tamils in North East Sri Lanka **The Tamil Genocide by Sri Lanka**[23] by Francis A Boyle points out the global failure to protect Tamil Rights under International Law. **Further evidence**[24] has emerged, implicating GSL senior leaders with war crime charges. Unless, the International community acts immediately, it may be too late to prevent a Nation being eliminated; almost one million has left voluntarily and involuntarily Sri Lanka,

[21] Sri Lanka's Truth Commission Ignores Torture and Evades Accountability
http://www.freedomfromtorture.org/news-events/news/5939
[22] Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948
http://untreaty.un.org/cod/avl/ha/cppcg/cppcg.html, http://www.preventgenocide.org/law/convention/text.htm
[23] The Tamil Genocide by Sri Lanka, Francis A Boyle, Clarity Press, Inc. 201
http://www.claritypress.com/Boyle-Tamil.html
[24] EXCLUSIVE: Sri Lankan government gave orders to commit war crimes, new evidence shows
http://www.theinternational.org/articles/184-exclusive-sri-lankan-government-gave-ord

definitely the current GoSL has committed and continuing to commit war crimes and crimes against humanity that need investigation by an independent international group.

6. International Criminal Court

The International Criminal Court (ICC)[25] is currently pursuing action for war crimes and crimes against humanity against: Ivory Coast's former President Laurent Gbagbo; Jean-Pierre Bemba, the former vice-president of the Democratic Republic of Congo; Thomas Lubanga, the leader of a militia group in DR Congo; Congolese militia leaders Germain Katanga and Mathieu Ngudjolo Chu; outstanding arrest warrant against Sudanese President Omar al-Bashir - the first against a serving head of state which includes charges of genocide.

The charges laid against the above by the ICC are very much less in magnitude than what has allegedly taken place at the end of conflict on 18 May 2009 and continuing to take place currently in Sri Lanka under the commander in chief President Rajapaksa and his subordinate military commanders and surviving LLTE commanders with GSL. Should an Independent International Inquiry be set up to determine the truth? So that justice will be done to people of Sri Lanka the same way it is being done to people in Africa.

7. Concluding Remarks

As part of the agreement signed between President Rajapaksa of Sri Lanka and the United Nation Secretary General, LLRC and UNSG's Expert Panel were set-up to investigate military operations between Sri Lanka army and LTTE until the end of conflict on 18 May 2009. UNSG's Expert Panel report has received universal approval from organizations and a number of countries Worldwide. Furthermore, additional evidence to substantiate Expert Panel findings has been provided by Chanel 4 video and International human rights organizations. LLRC report was finally released by President Rajapaksa, after 30 months from the end of conflict in 18 May 2009. The LLRC report neither meets the intended accountability process nor recommends measures to meet the grievances of the victims, as earlier agreed by President Rajapaksa and UNSG Mr Ban Ki Moon; also fails to answers many of the alleged war crimes and crimes against humanity as pointed out in the UNSG's PoE report. The International Human rights Organizations and many others have outright condemnation for the process and conclusions drawn by LLRC, which failed to meet the International standards. World leaders have highlighted a few of the positive recommendations in the LLRC report and called upon the GSL to implement them without delay.

UNSG's Expert Panel report claimed up to 40,000 civilians were killed in the last stages of the war which ended on 18 May 2009. Catholic Diocese of Mannar, Sri Lanka, in its submission to LLRC raised the question of 146,679 people missing, which is the discrepancy between the 258,446 people who came to government controlled areas between October 2008 – May 2009 and the population reported to be in Vanni in early October 2008, according to government census. LLRC failed to account for missing civilians nor number of civilians killed during the conflict; but readily reported the exact number of Army personnel killed and injured, and number of LTTE militants killed for three year period ending on 18 May 2009. This is understandable because LLRC depended entirely on Security and Military personnel for assessment of the military conflict. Will GSL account for the number of civilians killed and missing during the conflict to bring an end to this saga? There are a number of women as refugees in Australia without knowing whether their spouse is living or dead?

Examination of the past acts of the current regime of President Rajapaksa of Sri Lanka, do not give any assurance that much can be expected on its own accord without persuasion from International community. Previous bodies appointed by President Rajapaksa of Sri Lanka handed their reports to him: Justice Udalagama commission which looked into 16 charges, subjected to scrutiny of International Independent Group of Eminent Persons, had a premature end and All Party Representatives Conference (APRC) submission with recommendations to settle the long standing

[25] Q&A: International Criminal Court, http://www.bbc.co.uk/news/world-11809908

political conflict in Sri Lanka; both have neither been released nor been implemented and not much can be expected out of the LLRC report. Independent International Group of Eminent Persons (IIGEP) withdrawal letter from monitoring the judicial process of Justice Udalagama commission and adverse observations made in **International Commission of Jurists publication** about the independence of **the executive, legislature, and judiciary** do not give much hopes in guaranteeing remedies and reparations for victims of human rights violations in Sri Lanka.

Earlier, situation in Tamil Eelam attracted little attention from countries, International organizations and media, but since events leading up to and end of conflict on 18 May 2009, receiving more attention because of alleged war crimes and crimes against humanity which took place during the last stages of the conflict. Reports from International Crisis Group, Tamil National Alliance members of parliament and from others give a very bleak picture in Tamil Eelam. Plans that are being implemented in North East Sri Lanka by the current regime of President Rajapaksa and his brothers - emphasizing that Sri Lanka is a Buddhist Sinhala country while ignoring Sri Lanka is a multi-lingual, multi-religious, multi-ethnic country as recognized at the time of Independence in 1948 from the UK - falls within Article II of **"Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948"**

It is important for the International community to take note that successive governments in Sri Lanka have failed to implement any of the previous reports from Commission of Inquiries or agreements signed between GoSL and the parties representing Tamils. Therefore not much can be expected from the publication of LLRC report which has been shown to fail the international standards and at the same time there is sufficient evidence beyond any reasonable doubt that structural genocide of Tamil Eelam is taking place. Tamil Community is at the mercy of International community for survival as a Nation in Sri Lanka, we call upon for immediate following actions:

A. Consider all measures to implement call by UNSG's PoE to GSL: to comply with International obligations, initiate accountability process and commence genuine investigation and UNSG should explore avenues to establish independent international mechanism to monitor GoSL's domestic accountability process, Investigate independently into alleged violations, collect and safeguard all information for future use;
B. Though LLRC failed to address all issues raised by UNSG's PoE, GSL should be persuaded to implement recommendations of LLRC as World leaders have called for. At the same time it is very important and critical to prevent Sri Lanka pursuing activities that are tantamount to genocide of Tamil Nation in Sri Lanka. International community should consider possible political and economic action against the current regime, if it failed to stop such activities.
C. UNHRC should consider all available materials leading up to end of conflict on 18 May 2009 and what is happening currently in Tamil Eelam to take appropriate action in the forth coming meeting on March 2012; and
D. To promote steps that will assist ICC to take actions against leaders of current regime in Sri Lanka, if allegations are proven, similar to that is being pursued against African leaders. The alleged war crimes, crimes against humanity and genocide charges against Sri Lankan leaders are far more serious than that committed by the African leaders who have been charged by the ICC.
E. International community and UNHRC should take immediate action to proceed with the above four that would prevent structural genocide of Tamil Eelam proceeding any further. When justice is done to the victims, then reconciliation between people will follow.