REPORT OF THE SECRETARY-GENERAL'S PANEL OF EXPERTS ON ACCOUNTABILITY IN SRI LANKA

31 March 2011

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Executive Summary

On 22 June 2010, the Secretary-General announced the appointment of a Panel of Experts to advise him on the implementation of the joint commitment included in the statement issued by the President of Sri Lanka and the Secretary-General at the conclusion of the Secretary-General's visit to Sri Lanka on 23 March 2009. In the Joint Statement, the Secretary-General "underlined the importance of an accountability process", and the Government of Sri Lanka agreed that it "will take measures to address those grievances". 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. The Secretary-General appointed as members of the Panel Marzuki Darusman (Indonesia), Chair; Steven Ratner (United States); and Yasmin Sooka (South Africa). The Panel formally commenced its work on 16 September 2010 and was assisted throughout by a secretariat.

Framework for the Panel's work

In order to understand the accountability obligations arising from the last stages of the war, the Panel undertook an assessment of the "nature and scope of alleged violations" as required by its Terms of Reference. The Panel's mandate however does not extend to fact-finding or investigation. The Panel analysed information from a variety of sources in order to characterize the extent of the allegations, assess which of the allegations are credible, based on the information at hand, and appraise them legally. The Panel determined an allegation to be credible if there was a reasonable basis to believe that the underlying act or event occurred. This standard gives rise to a legal responsibility for the State or other actors to respond. Allegations are considered as credible in this report only when based on primary sources that the Panel deemed relevant and trustworthy. In its legal assessment, the Panel proceeded from the long-settled premise of international law that during an armed conflict such as that in Sri Lanka, both international humanitarian law and international human rights law are applicable. The Panel applied the rules of international humanitarian and human rights law to the credible allegations involving both of the primary actors in the war, that is, the Liberation Tigers of Tamil Eelam (LTTE) and the Government of Sri Lanka. Neither the publicly expressed aims of each side (combating terrorism, in the case of the Government, and fighting for a separate homeland, in the case of the LTTE), nor the asymmetrical nature of the tactics employed affects the applicability of international humanitarian and human rights law.

Sri Lanka is a party to several human rights treaties which require it to investigate alleged violations of international humanitarian and human rights law and prosecute those responsible; customary international law applicable to the armed conflict also includes such obligations. In addition to underscoring these legal obligations, in providing its advice to the Secretary-General, the Panel has drawn heavily on the international standards expressed in various United Nations documents and views of treaty bodies. These sources express the core understanding that

achieving accountability for crimes under international law involves the right to the truth, the right to justice and the right to reparations, including through institutional guarantees of non-recurrence. The Panel has also drawn on the diverse practical approaches, consistent with these standards, which have been developed in numerous other countries that have faced similar challenges for ensuring accountability. The Panel has used this framework as the basis both for assessing the domestic policy, measures and institutions, which are relevant to the approach to accountability taken by the Government of Sri Lanka to date, and for developing its recommendations to the Secretary-General. Finally, in formulating its advice, the Panel has given priority to the rights and needs of the victims who suffered tragic consequences from the actions of both parties in the protracted armed conflict in Sri Lanka; women, children and the elderly usually bear the brunt of suffering and loss in wars, and the Sri Lankan case is no exception.

Allegations found credible by the Panel

The Panel's determination of credible allegations reveals a very different version of the final stages of the war than that maintained to this day by the Government of Sri Lanka. The Government says it pursued a "humanitarian rescue operation" with a policy of "zero civilian casualties." In stark contrast, 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 was committed both by the Government of Sri Lanka and the 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.

Specifically the Panel found credible allegations associated with the final stages of the war. Between September 2008 and 19 May 2009, the Sri Lanka Army advanced its military campaign into the Vanni using large-scale and widespread shelling, causing large numbers of civilian deaths. This campaign constituted persecution of the population of the Vanni. Around 330,000 civilians were trapped into an ever decreasing area, fleeing the shelling but kept hostage by the LTTE. The Government sought to intimidate and silence the media and other critics of the war through a variety of threats and actions, including the use of white vans to abduct and to make people disappear.

The Government shelled on a large scale in three consecutive No Fire Zones, where it had encouraged the civilian population to concentrate, even after indicating that it would cease the use of heavy weapons. It shelled the United Nations hub, food distribution lines and near the International Committee of the Red Cross (ICRC) ships that were coming to pick up the wounded and their relatives from the beaches. It shelled in spite of its knowledge of the impact, provided by its own intelligence systems and through notification by the United Nations, the ICRC and others. Most civilian casualties in the final phases of the war were caused by Government shelling.

The Government systematically shelled hospitals on the frontlines. All hospitals in the Vanni were hit by mortars and artillery, some of them were hit repeatedly, despite the fact that their locations were well-known to the Government. The Government also systematically

deprived people in the conflict zone of humanitarian aid, in the form of food and medical supplies, particularly surgical supplies, adding to their suffering. To this end, it purposefully underestimated the number of civilians who remained in the conflict zone. Tens of thousands lost their lives from January to May 2009, many of whom died anonymously in the carnage of the final few days.

The Government subjected victims and survivors of the conflict to further deprivation and suffering after they left the conflict zone. Screening for suspected LTTE took place without any transparency or external scrutiny. Some of those who were separated were summarily executed, and some of the women may have been raped. Others disappeared, as recounted by their wives and relatives during the LLRC hearings. All IDPs were detained in closed camps. Massive overcrowding led to terrible conditions, breaching the basic social and economic rights of the detainees, and many lives were lost unnecessarily. Some persons in the camps were interrogated and subjected to torture. Suspected LTTE were removed to other facilities, with no contact with the outside world, under conditions that made them vulnerable to further abuses.

Despite grave danger in the conflict zone, the LTTE refused civilians permission to leave, using them as hostages, at times even using their presence as a strategic human buffer between themselves and the advancing Sri Lanka Army. It implemented a policy of forced recruitment throughout the war, but in the final stages greatly intensified its recruitment of people of all ages, including children as young as fourteen. The LTTE forced civilians to dig trenches and other emplacements for its own defences, thereby contributing to blurring the distinction between combatants and civilians and exposing civilians to additional harm. All of this was done in a quest to pursue a war that was clearly lost; many civilians were sacrificed on the altar of the LTTE cause and its efforts to preserve its senior leadership.

From February 2009 onwards, the LTTE started point-blank shooting of civilians who attempted to escape the conflict zone, significantly adding to the death toll in the final stages of the war. It also fired artillery in proximity to large groups of internally displaced persons (IDPs) and fired from, or stored military equipment near, IDPs or civilian installations such as hospitals. Throughout the final stages of the war, the LTTE continued its policy of suicide attacks outside the conflict zone. Even though its ability to perpetrate such attacks was diminished compared to previous phases of the conflict, it perpetrated a number of attacks against civilians outside the conflict zone.

Thus, in conclusion, the Panel found credible allegations that comprise five core categories of potential serious violations committed by the Government of Sri Lanka: (i) killing of civilians through widespread shelling; (ii) shelling of hospitals and humanitarian objects; (iii) denial of humanitarian assistance; (iv) human rights violations suffered by victims and survivors of the conflict, including both IDPs and suspected LTTE cadre; and (v) human rights violations outside the conflict zone, including against the media and other critics of the Government.

The Panel's determination of credible allegations against the LTTE associated with the final stages of the war reveal six core categories of potential serious violations:

(i) using civilians as a human buffer; (ii) killing civilians attempting to flee LTTE control; (iii) using military equipment in the proximity of civilians; (iv) forced recruitment of children; (v) forced labour; and (vi) killing of civilians through suicide attacks.

Accountability

Accountability for serious violations of international humanitarian or human rights law is not a matter of choice or policy; it is a duty under domestic and international law. These credibly alleged violations demand a serious investigation and the prosecution of those responsible. If proven, those most responsible, including Sri Lanka Army commanders and senior Government officials, as well as military and civilian LTTE leaders, would bear criminal liability for international crimes.

At the same time, accountability goes beyond the investigation and prosecution of serious crimes that have been committed; rather it is a broad process that addresses the political, legal and moral responsibility of individuals and institutions for past violations of human rights and dignity. Consistent with the international standards mentioned above, accountability necessarily includes the achievement of truth, justice and reparations for victims. Accountability also requires an official acknowledgment by the State of its role and responsibility in violating the rights of its citizens, when that has occurred. In keeping with United Nations policy, the Panel does not advocate a "one-size-fits-all" formula or the importation of foreign models for accountability; rather it recognizes the need for accountability processes to be defined based on national assessments, involving broad citizen participation, needs and aspirations. Nonetheless, any national process must still meet international standards. Sri Lanka's approach to accountability should, thus, be assessed against those standards and comparative experiences to discern how effectively it allows victims of the final stages of the war to realize their rights to truth, justice and reparations.

The Government has stated that it is seeking to balance reconciliation and accountability, with an emphasis on restorative justice. The assertion of a choice between restorative and retributive justice presents a false dichotomy. Both are required. Moreover, in the Panel's view, the Government's notion of restorative justice is flawed because it substitutes a vague notion of the political responsibility of past Government policies and their failure to protect citizens from terrorism for genuine, victim-centred accountability focused on truth, justice and reparations. A further emphasis is clearly on the culpability of certain LTTE cadre; the Government's plan, in this regard, contemplates rehabilitation for the majority and lenient sentences for the "hard core" among surviving LTTE cadre. The Government's two-pronged notion of accountability, as explained to the Panel, focusing on the responsibility of past Governments and of the LTTE, does not envisage a serious examination of the Government's decisions and conduct in prosecuting the final stages of the war or the aftermath, nor of the violations of law that may have occurred as a result.

The Panel has concluded that the Government's notion of accountability is not in accordance with international standards. Unless the Government genuinely addresses the allegations of violations committed by both sides and places the rights and dignity of the victims

of the conflict at the centre of its approach to accountability, its measures will fall dramatically short of international expectations.

The Lessons Learnt and Reconciliation Commission

The Government has established the Lessons Learnt and Reconciliation Commission as the cornerstone of its policy to address the past, from the ceasefire agreement in 2002 to the end of the conflict in May 2009. The LLRC represents a potentially useful opportunity to begin a national dialogue on Sri Lanka's conflict; the need for such a dialogue is illustrated by the large numbers of people, particularly victims, who have come forward on their own initiative and sought to speak with the Commission.

Nonetheless, the LLRC fails to satisfy key international standards of independence and impartiality, as it is compromised by its composition and deep-seated conflicts of interests of some of its members. The mandate of the LLRC, as well as its work and methodology to date, are not tailored to investigating allegations of serious violations of international humanitarian and human rights law, or to examining the root causes of the decades-long ethnic conflict; instead these focus strongly on the wider notion of political responsibility mentioned above, which forms part of the flawed and partial concept of accountability put forth by the Government. The work to date demonstrates that the LLRC has: not conducted genuine truth-seeking about what happened in the final stages of the armed conflict; not sought to investigate systematically and impartially the allegations of serious violations on both sides of the war; not employed an approach that treats victims with full respect for their dignity and their suffering; and not provided the necessary protection for witnesses, even in circumstances of actual personal risk.

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.

Other domestic mechanisms

The justice system should play a leading role in the pursuit of accountability, irrespective of the functioning or outcomes of the LLRC. However, based on a review of the system's 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 lack of capacity. In particular, the independence of the Attorney-General has been weakened in recent years, as power has been more concentrated in the Presidency. Moreover, the continuing imposition of Emergency Regulations, combined with the Prevention of Terrorism Act in its current form, present a significant obstacle for the judicial system to be able to address official wrongdoing while upholding human rights guarantees. Equally, the Panel has seen no evidence that the military courts system has operated as an effective accountability mechanism in respect of the credible allegations it has identified or other crimes committed in the final stages of the war.

Other domestic institutions that could play a role in achieving accountability also demonstrate serious weaknesses. Over three decades, commissions of inquiry have been established to examine a number of serious human rights issues. While some have served important fact-finding goals, overwhelmingly these commissions have failed to result in comprehensive accountability for the violations identified. Many commissions have failed to produce a public report, and recommendations have rarely been implemented. The Human Rights Commission of Sri Lanka could also potentially contribute to advancing certain aspects of accountability, but the Panel still has serious reservations and believes that the Commission will need to demonstrate political will and resourcefulness in following up on cases of missing persons and in monitoring the welfare of detained persons.

Other obstacles to accountability

During the course of its work, the Panel observed that there are several other contemporary issues in Sri Lanka, which if left unaddressed, will deter efforts towards genuine accountability and may undermine prospects for durable peace in consequence. Most notably, these include: (i) triumphalism on the part of the Government, expressed through its discourse on having developed the means and will to defeat "terrorism", thus ending Tamil aspirations for political autonomy and recognition, and its denial regarding the human cost of its military strategy; (ii) on-going exclusionary policies, which are particularly deleterious as political, social and economic exclusion based on ethnicity, perceived or real, have been at the heart of the conflict; (iii) the continuation of wartime measures, including not only the Emergency Regulations and the Prevention of Terrorism Act, mentioned above, but also the continued militarization of the former conflict zone and the use of paramilitary proxies, all of which perpetuate a climate of fear, intimidation and violence; (iv) restrictions on the media, which are contrary to democratic governance and limit basic citizens' rights; and (v) the role of the Tamil diaspora, which provided vital moral and material support to the LTTE over decades, and some of whom refuse to acknowledge the LTTE's role in the humanitarian disaster in the Vanni, creating a further obstacle to accountability and sustainable peace.

An environment conducive to accountability, which would permit a candid appraisal of the broad patterns of the past, including the root causes of the long-running ethno-nationalist conflict, does not exist at present. It would require concrete steps towards building an open society in which human rights are respected, as well as a fundamental shift away from triumphalism and denial towards a genuine commitment to a political solution that recognizes Sri Lanka's ethnic diversity and the full and inclusive citizenship of all of its people, including Tamils, as the foundation for the country's future.

International role in the protection of civilians

During the final stages of the war, the United Nations political organs and bodies failed to take actions that might have protected civilians. Moreover, although senior international officials advocated in public and in private with the Government that it protect civilians and stop the shelling of hospitals and United Nations or ICRC locations, in the Panel's view, the public use of casualty figures would have strengthened the call for the protection of civilians while those events in the Vanni were unfolding. In addition, following the end of the war, the Human Rights

Council may have been acting on incomplete information when it passed its May 2009 resolution on Sri Lanka.

Recommendations

In this context, the Panel recommends the following measures, which it hopes, as a whole, will serve as the framework for an ongoing and constructive engagement between the Secretary-General and the Government of Sri Lanka on accountability. They address the various dimensions of accountability that the Panel considers essential and which will require complementary action by the Government of Sri Lanka, the United Nations and other parties.

Recommendation 1: Investigations

A. In light of the allegations found credible by the Panel, the Government of Sri Lanka, in compliance with its international obligations and with a view to initiating an effective domestic accountability process, should immediately 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.
B. The Secretary-General should immediately proceed to establish an independent international mechanism, whose mandate should include the following concurrent functions:
   (i) Monitor and assess the extent to which the Government of Sri Lanka is carrying out an effective domestic accountability process, including genuine investigations of the alleged violations, and periodically advise the Secretary-General on its findings;
   (ii) Conduct investigations independently into the alleged violations, having regard to genuine and effective domestic investigations; and
   (iii) Collect and safeguard for appropriate future use information provided to it, which is relevant to accountability for the final stages of the war, including the information gathered by the Panel and other bodies in the United Nations system.

Recommendation 2: Other immediate measures to advance accountability

A. The Government of Sri Lanka should implement the following short-term measures, with a focus on acknowledging the rights and dignity of all of the victims and survivors in the Vanni:
   (i) End all violence by the State, its organs and all paramilitary and other groups acting as surrogates of, or tolerated by, the State;
   (ii) Facilitate the recovery and return of human remains to their families and allow for the performance of cultural rites for the dead;
   (iii) Provide death certificates for the dead and missing, expeditiously and respectfully, without charge, when requested by family members, without compromising the right to further investigation and civil claims;
   (iv) Provide or facilitate psychosocial support for all survivors, respecting their cultural values and traditional practices;
   (v) Release all displaced persons and facilitate their return to their former homes or provide for resettlement, according to their wishes; and
   (vi) Continue to provide interim relief to assist the return of all survivors to normal life.

B. The Government of Sri Lanka should investigate and disclose the fate and location of persons reported to have been forcibly disappeared. In this regard, the Government of Sri Lanka should invite the Working Group on Enforced and Involuntary Disappearances to visit Sri Lanka.
C. In light of the political situation in the country, the Government of Sri Lanka should undertake an immediate repeal of the Emergency Regulations and modify all those provisions of the Prevention of Terrorism Act that are inconsistent with Sri Lanka's international obligations, and take the following measures regarding suspected LTTE members and all other persons held under these and other provisions:
   (i) Publish the names of all of those currently detained, whatever the location of their detention, and notify them of the legal basis of their detention;
   (ii) Allow all detainees regular access to family members and to legal counsel;
   (iii) Allow all detainees to contest the substantive justification of their detention in court;
   (iv) Charge those for whom there is sufficient evidence of serious crimes and release all others, allowing them to reintegrate into society without further hindrance.
D. The Government of Sri Lanka should end state violence and other practices that limit freedoms of movement, assembly and expression, or otherwise contribute to a climate of fear.

Recommendation 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. Taking into account, but distinct from, the work of the LLRC, 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. The Government of Sri Lanka 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.

Recommendation 4: United Nations

Considering the response of the United Nations to the plight of civilians in the Vanni during the final stages of the war in Sri Lanka and the aftermath:

A. The Human Rights Council should be invited to reconsider its May 2009 Special Session Resolution (A/HRC/S-11/L.1/Rev. 2) regarding Sri Lanka, in light of this report.
B. The Secretary-General should conduct a comprehensive review of actions by the United Nations system during the war in Sri Lanka and the aftermath, regarding the implementation of its humanitarian and protection mandates.

The Panel's report and its advice to the Secretary-General, as encapsulated in these recommendations, are inspired by the courage and resilience of victims of the war and civil society in Sri Lanka. If followed, the recommendations would comprise a genuine process of accountability that would satisfy the joint commitment and would set Sri Lanka on the course of justice, dignity and peace.

Abbreviations and Acronyms

AGA	Additional Government Agent
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFA	Ceasefire agreement
CID	Criminal Investigation Department
CRC	Convention on the Rights the Child
EMPPR 2005	Emergency (Miscellaneous Provisions and Powers) Regulation, No. 1 of 2005 as amended
EPPTSTAR 2006	Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation, No. 7 of 2006 as amended
GA	Government Agent
GPS	global positioning system
HRCSL	Human Rights Commission of Sri Lanka
IAAC	Inter-Agency Advisory Committee
ICC	International Criminal Court
ICC-NHRI	International Coordinating Committee of National Human Rights Institutions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDPs	internally displaced persons
IIGEP	International Independent Group of Eminent Persons
INGO	international non-governmental organization
IOM	International Organization for Migration
JVP	Janatha Vimukthi Peramuna or People's Liberation Front
LLRC	Lessons Learnt and Reconciliation Commission
LST	Law & Society Trust
LTTE	Liberation Tigers of Tamil Eelam
MBRL	Multi-Barrel Rocket Launchers
MSF	Médecins Sans Frontières
NFZ	No Fire Zone
NGO	non-governmental organization
NHRI	national human rights institution
OHCHR	Office of the United Nations High Commissioner for Human Rights
OLA	Office of Legal Affairs
PARC	Protective Accommodation and Rehabilitation Centre
PLOTE	People's Liberation Organization of Tamil Eelam
PSO	Public Security Ordinance, No. 25 of 1947
PTA	Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979
PTK	Puthukkudiyiruppu

RCT	Rehabilitation and Research Centre for Torture Victims
RDHS	Regional Directors of Health Services
REPPIA	Rehabilitation of Persons, Properties and Industries Authority
RPG	rocket-propelled grenade
SIOTs	Special Infantry Operations Teams
SLA	Sri Lanka Army
SLAF	Sri Lanka Air Force
SLMM	Sri Lanka Monitoring Mission
STF	Special Task Force
TID	Terrorist Investigation Department
TMVP	Tamil Makkal Viduthalai Palikal
TRC	Truth and Reconciliation Commission
TRO	Tamils Rehabilitation Organization
UAV	unmanned aerial vehicle
UNDSS	United Nations Department of Safety and Security
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNITAR	United Nations Institute for Training and Research
UNOPS	United Nations Office for Project Services
UNOSAT	UNITAR's Operational Satellite Applications Programme
UPFA	United People's Freedom Alliance
USD	United States Dollar
WFP	World Food Programme

SRI LANKA
National capital
Provincial capital
Town, village
Provincial boundary
Main road
Secondary road
Railroad
Airport
INDIA
Palk Strait
Palk Bay
Gulf of Mannar
Bay of Bengal
Laccadive Sea
INDIAN OCEAN
Kankesanturai
Point Pedro
Jaffna Peninsula
Karaitivu I.
Kayts
Jaffna
Punkudutivu I.
Delft I.
Elephant Pass
Devipattinam
Kilinochchi
Puthukkudiyiruppu
Mullaittivu
Rameswaram
Pamban I.
Iranaitivu Is.
Vellankulam
Manjulam
Dhanushkodi
Talaimannar
Adam's Bridge
Mannar I.
Mannar
NORTHERN PROVINCE
Nedunkeni
Puliyankulam
Pulmoddai
Madhu Road
Vavuniya
Silavatturai
Nilaveli
Pankulam
Kebithigollewa
Trincomalee
Medawachchiya
Horuwupotana
Hamillewa
Mutur
Pomparippu
Anuradhapura
Kantalai
NORTH CENTRAL PROVINCE
Kalpitiya
Maraganewa
Kathiraveli
Puttalam
Kekirawa
Habarane
Galgamuwa
Polonnaruwa
Anamaduwa
Dambula
Valachchenai
NORTH WESTERN PROVINCE
Maho
Chenkaladi
Batticaloa
Naula
EASTERN PROVINCE
Ganewatta
Chilaw
Maha Oya
Kurunegala
Matale
Paddiruppu
Kuliyapitiya
CENTRAL PROVINCE
Kehelula
Kalmunai
Pannala
Kandy
Maniyangana
Unana
Amparai
Negombo
Kegalla
Tirrukkovil
Gampaha
Bibile
Ja-Ela
Nuwara Eliya
Badulla
Colombo
Avissawella
Sri Jayewardenepura Kotte
UVA PROVINCE
Pottuvil
Moratuwa
Mount Lavinia
Monaragala
WESTERN PROVINCE
Haputale
Buttala
Panadura
Horana
Ratnapura
Balangoda
Okanda
Kalutara
SABARAGAMUWA PROVINCE
Pelmadulla
Telulla
Kumana
Beruwala
Matugama
Rakwana
Kataragama
Embilipitiya
Deniyaya
Tissamaharama
Kirinda
Ambalangoda
Udugama
SOUTHERN PROVINCE
Hambontota
Akuressa
Tangalla
Galle
Matara
Dondra Head
The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.
0 20 40 60 80 km
0 10 20 30 40 50 mi
Map No. 3787 United Nations
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Introduction

1. The war in Sri Lanka ended tragically, amidst controversy. Many Sri Lankans and others around the world were relieved that the Liberation Tigers of Tamil Eelam (LTTE), renowned for its brutality, was defeated and that 27 years of armed conflict had come to an end. However, many people in Sri Lanka and elsewhere were deeply disturbed about the means used to achieve the victory by the country's armed forces. They had watched for months, with increasing alarm, as hundreds of thousands of Tamil civilians became trapped between two highly determined warring factions, unable to flee, as the LTTE was forced into a small corner of the Vanni, on the north-east coast of the country. The toll of civilian casualties, both killed and wounded, rose dramatically. Civilians were caught by shelling from the Government side; when they attempted to escape the area, many, including women and children, were shot by the LTTE. As the need for humanitarian assistance rose, it was increasingly restricted by the Government. Attempts to broker a political settlement – or even a sufficient respite in the fighting to enable the civilians to reach safety – foundered.

2. Due to the scarcity of objective reporting from the conflict zone, it was difficult to determine precisely what happened during the final military assault that culminated in a declaration of victory by the President of Sri Lanka on 19 May 2009. However, it is clear that some 290,000 persons displaced from the battle zone – several times higher than the Government's earlier estimates of the population there – were interned in closed camps. Approximately 14,000 people were evacuated by sea in the care of the International Committee of the Red Cross, many of them seriously wounded. By all indications, the death toll was extremely high, although even today no figure has been accurately determined. Nevertheless, the Government has consistently contended that it conducted a "humanitarian rescue operation" with a "zero civilian casualties" policy.

3. Only three days after the end of the war, the Secretary-General visited Sri Lanka and saw first-hand some of the areas in the conflict zone as well as a camp for persons displaced from the conflict area. At the conclusion of his visit, the Secretary-General issued a joint statement with the President of Sri Lanka. In it the Secretary-General underlined the importance of an accountability process to address violations of international humanitarian and human rights law committed during the military operations, and the President agreed to take measures to address those grievances. The establishment of the Panel of Experts is in follow-up by the Secretary-General to that joint commitment.

4. The Panel's mandate is to advise the Secretary-General on the implementation of the joint commitment with respect to the final stages of the war. In this report, the Panel assesses the nature and scope of the alleged violations of international law and the Sri Lankan Government's response. In particular, the Lessons Learnt and Reconciliation Commission is assessed in light of international standards and comparative experiences. The Panel also reviews the Sri Lankan legal system and domestic institutions responsible for accountability. Throughout its work, the Panel has taken into account Sri Lanka's historical and political context as well as the current environment for accountability in Sri Lanka. This report is the result of the Panel's work and includes advice for the Secretary-General encapsulated in a set of recommendations.

I. Mandate, Composition and Programme of Work

A. Formation of the Panel

5. On 22 June 2010, the Secretary-General announced the appointment of this Panel of Experts to advise him on the issue of accountability with regard to alleged violations of international humanitarian and human rights law during the final stages of the armed conflict in Sri Lanka. The Panel's Terms of Reference were established as follows:

> In the Joint Statement of the Secretary-General and the President of Sri Lanka issued at the conclusion of the Secretary-General's visit in the country on 23 May 2009, the Secretary-General underlined the importance of an accountability process to address violations of international humanitarian and human rights law committed during military operations between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE). The President of Sri Lanka undertook to take measures to address these grievances. At this time and against this background:
>
> 1. The Secretary-General has decided to establish a panel of experts to advise him on the implementation of the said commitment with respect to the final stages of the war.
>
> 2. The purpose of the Panel shall be to advise the Secretary-General on the modalities, applicable international standards and comparative experience relevant to the fulfilment of the joint commitment to an accountability process, having regard to the nature and scope of alleged violations.
>
> 3. It shall be composed of three members having appropriate and relevant experience. The Panel shall develop its own working modalities and be assisted by a Secretariat with the support of OHCHR.
>
> 4. The Panel shall submit its report to the Secretary-General within four months of the commencement of its work.
>
> 5. The Panel shall be funded from the Secretary-General's unforeseen budget.

6. The Secretary-General appointed as members of the Panel Marzuki Darusman (Indonesia), Chair; Steven Ratner (United States); and Yasmin Sooka (South Africa). The Panel formally commenced its work on 16 September 2010.[1]

B. The mandate of the Panel

1. The overall task of the Panel

7. The role of the Panel is to provide advice to the Secretary-General on the measures that Sri Lanka has thus far taken and should, in the future take, to give effect to the joint statement of 23 May 2009 between the Secretary-General and the President of Sri Lanka, with specific regard to accountability, in light of the actual nature and scope of all

[1] In light of intervening developments, the timeframe for the Panel's report was subsequently extended to the end of March 2011.

allegations.[2] Thus, the Panel has focused extensively on the modalities, standards and comparative experiences regarding accountability for violations of international humanitarian and human rights law, including for distinct violations against groups with particular vulnerabilities, such as women and children. It has sought to provide as complete a picture as possible of the current approach of States and international organizations to this issue. It has also examined Sri Lanka's domestic mechanisms relevant or potentially relevant to accountability to determine whether they fulfil Sri Lanka's domestic and international obligations and the extent to which they reflect best international practices. Finally, the Panel has considered current policies of the Government related to accountability for final stages of the war. These policies include the creation of the Lessons Learnt and Reconciliation Commission (LLRC).

8. The Panel views accountability as a broad process for ascertaining the political, legal and moral responsibility of institutions and individuals for past violations of human rights and dignity; accountability necessarily includes the achievement of truth, justice, and reparations for victims and is integral to a larger dynamic aimed at achieving sustainable peace in a State after conflict. Later in this report, the Panel elaborates on the components of accountability, as well as the views of the Government of Sri Lanka concerning accountability.

9. Accountability standards and mechanisms cannot be examined in a vacuum, and the Panel's Terms of Reference state that its advice to the Secretary-General should "hav[e] regard to the nature and scope of alleged violations". The "nature and scope" refers to both the extent and the legal qualifications of the allegations. This provision thus required the Panel to gather information from a variety of sources in order to characterize the extent of the allegations, appraise them legally and provide the best possible advice to the Secretary-General regarding the implementation of the joint statement with regard to accountability. The Panel has not conducted fact-finding as that term is understood in United Nations practice, as it does not reach factual conclusions regarding disputed facts, nor did it carry out a formal investigation that draws conclusions regarding legal liability or culpability of States, non-state actors, or individuals.[3]

10. Based on the Panel's assessment of the allegations and the various modalities for accountability, the Panel has offered a set of recommendations for use by the Secretary-General in pursuit of accountability in Sri Lanka. The report is based on information and materials available to the Panel during the timeframe of its work.

11. From the inception of its work, the Secretary-General and United Nations senior officials made clear to the Panel that, although it reported to, and would ultimately provide advice to, the Secretary-General, it had the authority to work independently in the implementation of its mandate. Moreover, officials of the United Nations made clear the Panel's independence to the Government of Sri Lanka on subsequent occasions.

[2] The full text of the Joint Statement may be found in Annex 1.
[3] See Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, General Assembly Resolution, A/RES/46/59 (1991); United Nations Office of Legal Affairs, *Handbook on the Peaceful Settlement of Disputes between States* (1992), pp. 24-33.

2. The temporal mandate of the Panel

12. The Terms of Reference require the Panel to advise the Secretary-General about the implementation of the joint statement regarding the "final stages of the war". The Panel focused on the period from September 2008 through May 2009, which encompasses the most intense and violent phase of the war during which many of the most serious violations of international law are alleged to have taken place. September 2008 corresponds to the beginning of the Government's final military offensive on the LTTE *de facto* capital of Kilinochchi. It also coincides with the end of international observation of the war due to the Government's declaration that it could no longer ensure the security of international staff working for international organizations in the Vanni. May 2009 corresponds to the end of the fighting and the military defeat of the LTTE.

13. In order to provide context, the Panel at times discusses issues that predate the final stages as defined above. In addition, the Panel is aware of allegations of violations of humanitarian and human rights law that began before the end of, or are closely connected with, the final stages of the war and which have continued – in some cases up to the present day – past the cessation of actual hostilities. The Panel does not address allegations of ongoing violations that lack a close nexus to the armed conflict, in particular those in other parts of Sri Lanka.

3. The subject matter of the alleged violations

14. The Terms of Reference refer to allegations of violations of international humanitarian and human rights law. Regarding humanitarian law, the Panel addresses the applicable conventional norms set out in the Geneva Conventions and the corresponding norms of customary international law, concerning treatment of persons not or no longer taking part in hostilities and the means and methods of warfare. As for human rights law, the Panel considers both political and civil rights and economic, social and cultural rights, with a focus on the international human rights treaties ratified by Sri Lanka. In doing so, the Panel recalls the mutually reinforcing Security Council Resolutions relating to the effects of armed conflict on women and children and recognizing the consequent impact these have on durable peace and reconciliation.[4] Insofar as Sri Lanka's domestic law incorporates international humanitarian and human rights law as well as other laws related to accountability, Sri Lankan law and relevant institutions are discussed as well. Finally, the Panel addresses allegations of violations by the primary actors in the war, that is, the Government and the LTTE.

C. Programme of work

15. The Terms of Reference states that the Panel will develop its own modalities and will be supported by a secretariat. In the two months prior to the formal commencement of its work in mid-September 2010, a secretariat was assembled from professionals working within the United Nations system. In addition, the Panel drew on a small number of external consultants to provide it with advice not otherwise available. The Panel was also aided by a pre-existing Reference Group consisting of representatives of relevant departments within the United Nations Secretariat.

[4] See Security Council Resolutions 1325 (2000), 1612 (2005), 1674 (2006), 1820 (2008), 1882 (2009) and 1888 (2009).

16. The Panel's programme of work was organized in two phases. In the first phase, the Panel gathered a variety of information regarding the armed conflict in Sri Lanka from individuals and institutions with expertise or experience related to its mandate. Some of this information came in written form, consisting of both public documents – e.g., governmental, United Nations or reports of non-governmental organizations (NGOs) – and material conveyed confidentially to the Panel. Other information was gathered through numerous meetings of the Panel and its secretariat. The Panel met with officials of the United Nations and international organizations as well as representatives of Governments and NGOs and individuals directly affected by the events of the final stages of the war. In the second phase of its work, the Panel drafted this report. The report was written in a manner that makes it suitable for publication.

17. In terms of outreach to the broader public, the Panel made a general invitation for written submissions from interested organizations and individuals. On 21 October 2010, the Panel's Chief of Staff wrote to the Permanent Representative of Sri Lanka to advise him of this decision, enclosing a copy of the notice and noting that it would be posted on the United Nations website. The English notice was posted on 27 October 2010, and Sinhala and Tamil versions were subsequently posted. The initial deadline of 15 December 2010 set for these submissions was subsequently extended to 31 December 2010. As of 31 December 2010, the Panel had received over 4,000 submissions from more than 2,300 senders.

18. A significant number of the submissions contained allegations relating to particular kinds of violations or to particular time periods during the final stages, and individual complaints of specific violations of human rights or humanitarian law. Documentary information, comprised of lists of incidents or victims, photographs and videos, was also received. A limited number of unbiased analytical submissions provided analyses of general information, trends or specific aspects of the situation. General information, including media reports, web links and historical accounts, forwarded to the Panel from publicly available sources, also accounted for a portion of submissions. Lastly, appeals urging the Panel to act or to make specific recommendations, but containing neither fact-based information nor analysis, accounted for a large number of submissions received.

19. Submissions could not be individually verified by the Panel and, therefore, were not used as a direct source to meet the Panel's threshold of credibility for the allegations (see chapter III.A). In some cases, however, submissions helped to corroborate other sources of information. The large number of submissions received, including about incidents predating the Panel's temporal mandate, underscores the urgent need to address the past, not only in terms of the final stages of the war, but also, more broadly.

D. Interaction with the Government of Sri Lanka

20. Since its inception, the Panel wished to engage with the Government of Sri Lanka to discuss the implementation of its mandate and to learn more about the Government's perspectives on how it is addressing the accountability issues. Indeed, the Secretary-General stated to both the Panel and the Government his hope that the Panel could serve as a resource for the Government. The Panel consistently maintained the position that, in particular, it would be valuable to engage with the LLRC, as the Government has referred to it publicly as a home grown accountability mechanism. At the same time, the Panel considered that other domestic institutions have an important role vis-à-vis accountability and sought to engage with these as well, through the Government. The Panel's efforts to engage with the

Government of the Sri Lanka and the LLRC are described in detail in Annex 2.

21. As that account demonstrates, the Panel made repeated efforts, orally and in writing, from early September 2010 until near the completion of its mandate, to engage with the Government of Sri Lanka. The Panel and United Nations officials repeatedly made clear to the Government the scope of its mandate as an advisory panel to the Secretary-General, including that it was not engaged in any investigation. After several months of lack of communication with the Panel, the Government invited the Panel to Sri Lanka, only to reverse its position effectively, when it did not discuss with the Panel the modalities of such a visit. The Panel notes that it reiterated its willingness to visit the country even after the Government insisted in a letter in December 2010 that the Panel could only make "representations" to the LLRC. Yet the Government rejected this overture in a note in early January 2011 and never pursued the visit thereafter. Instead, it responded in writing to the Panel's questions, which were transmitted at the end of January, regarding the LLRC and other domestic mechanisms, and sent a small delegation to New York that did not include any members of the LLRC.

22. The Panel regrets that the Government of Sri Lanka did not permit the Panel to visit the country and meet with the LLRC and the range of Government officials involved in accountability questions. While a visit to Sri Lanka was not essential to its work, it would have provided an opportunity for the Panel to meet both the LLRC and Government officials, hear their perspectives more directly and share its expertise with them (although the Panel was able to ascertain official views in other ways). While the Panel welcomes the written responses and appreciates the opportunity to have a face-to-face dialogue with Sri Lankan officials, it was not the type of engagement that the Panel had sought.

E. Confidentiality of the Panel's records

23. In some instances, the Panel received written and oral material on the condition of an assurance of absolute confidentiality in the subsequent use of the information. The Office of Legal Affairs (OLA) confirmed through formal legal advice that the provisions set out in the Secretary-General's Bulletin on "Information sensitivity, classification and handling" (ST/SGB/2007/6) could be applied to its records. This Bulletin provides for classification of a document as "strictly confidential" with correspondingly strict limits on any access for a period of 20 years, following which a declassification review may be undertaken that weighs the equities involved in retention or release. Moreover, OLA confirmed that, where necessary and appropriate for the Panel's work, the Panel could give an undertaking of absolute confidentiality in the subsequent use. As a result, nearly all of the Panel's substantive records will be classified as "strictly confidential" with, in some cases, additional protections regarding future use.

II. Historical and Political Background to the Conflict

24. After almost three decades of brutal armed conflict, on 19 May 2009, the Government of Sri Lanka declared its victory over the Liberation Tigers of Tamil Eelam (LTTE). The final stages of the war gave rise to numerous allegations of violations of international humanitarian law and international human rights law, about which the Panel has been tasked to advise the Secretary-General. It is not the role of the Panel to dissect the complex and contested political history of Sri Lanka. Nonetheless, in order to place the final stages of the war in its relevant political and social context, the Panel found it necessary to consider some elements of the history of the conflict.

25. The Democratic Socialist Republic of Sri Lanka is an island State situated in the Indian Ocean, 18 miles off the south-eastern coast of India. Sri Lanka is an ethnically, linguistically and religiously diverse country of 21 million people, of which 74 per cent are Sinhalese, speak Sinhala and are overwhelmingly Buddhist; 18 per cent are Tamil, speak Tamil and are mostly Hindu (comprised of Sri Lankan Tamils and Indian Tamils, 13 per cent and 5 per cent respectively); 7 per cent are Muslim, comprised of Moors and Malays who practice Islam and are largely Tamil-speaking; and 1 per cent belong to small ethnic communities including the Burghers and Veddahs, among others.[5] Christians account for a small percentage of some communities.

26. Sri Lanka gained independence from the British in 1948, after four centuries of colonization, first by the Portuguese, then the Dutch and finally the British.[6] Sri Lanka has been governed, since independence, by an elite group comprised of members of different ethnic communities, within a majoritarian Sinhala State, in which Sinhalese dominate. Strong indicators of democracy, including universal franchise, a multi-party system and a vibrant electoral process, combined with important human development achievements, such as high literacy rates both for men and women and low infant mortality, contrast sharply with Sri Lanka's long history of war.

A. Ethnicity and politics

27. The armed conflict in Sri Lanka was the violent reflection of deepening divides along political and ethnic lines. It played out as a struggle for the existence of the Sinhalese and Tamil peoples.

1. The rise of ethno-nationalism

28. After independence, political elites tended to prioritize short-term political gains, appealing to communal and ethnic sentiments, over long-term policies, which could have built an inclusive state that adequately represented the multicultural nature of the citizenry. Because of these dynamics and divisions, the formation of a unifying national identity has been greatly hampered. Meanwhile, Sinhala-Buddhist nationalism gained traction, asserting a

[5] The Indian Tamils, also known as Hill Country Tamils, Up-Country Tamils or Plantation Tamils, descended from labourers brought by the British from south India in the 19th and early 20th centuries to work on plantations in Sri Lanka. Rendered stateless for decades, they are one of Sri Lanka's poorest and most marginalized communities. Muslims are considered a distinct ethnic group in Sri Lanka. Populations figures are from: http://www.statistics.gov.lk/page.asp?page=Population

[6] Until the name was changed under the 1972 Constitution, Sri Lanka was formerly called the Republic of Ceylon.

privileged place for the Sinhalese as the protectors of Sri Lanka, as the sacred home of Buddhism. These factors resulted in devastating and enduring consequences for the nature of the state, governance and inter-ethnic relations in Sri Lanka.

29. By the 1970's, young Sinhalese from the south, disillusioned by exclusion on class grounds, on the one hand, and young Tamils from the north, disillusioned by exclusion on ethnic grounds, on the other, reacted separately to the emerging State, turning to militancy and launching armed revolts against the State.[7] The State treated these movements primarily as a threat to national security, rather than addressing the underlying political issues, meeting challenges to state power with repression, including disappearances, unlawful killings and torture.[8]

30. In the wake of discriminatory state policies and anti-Tamil violence in the 1950s, the Tamil struggle for rights, which began as Gandhian-style non-violent protests, increasingly gave rise to Tamil militancy and armed revolt, with a central demand for a separate State. A number of Tamil politico-militant groups, including the LTTE, emerged in the 1970's, as the discourse shifted from accommodation to separatism. Violent repression of Tamils by Sinhala nationalists increased in intensity, alongside increasing attacks by Tamil armed groups against the security forces. Elements in the Government encouraged, or in some cases sponsored, episodes of anti-Tamil violence in 1977, 1979, 1981 and 1983. This violence culminated in the 1983 anti-Tamil attacks, which were the most extensive. Sinhalese mobs were transported in Government buses and used official voter registration lists to identify and target Tamils. Thousands of deaths resulted, together with large-scale displacement, destruction of Tamil property and migration of Tamils abroad. The Government asserted that the attacks occurred in response to the LTTE's killing of 13 Sri Lankan soldiers in the northern district of Jaffna. Thus, 1983 is commonly regarded as the start of the war between the Government and the LTTE, although violence by both sides predates that year.

2. The Liberation Tigers of Tamil Eelam (LTTE)

31. As repression of Tamils intensified after the 1983 communal riots, the Tamil community became increasingly militarized and the number and ranks of militant groups swelled, taking advantage of the conducive environment for training and organizing in Tamil Nadu. The LTTE began as a Tamil liberation movement and eventually became the most disciplined and most nationalist of the Tamil militant groups, emerging as the dominant force espousing a separatist agenda in the mid-1980s. During this period, the LTTE adopted increasingly violent tactics, using violence to silence other Tamil groups, while asserting itself as the self-appointed, sole representative of the Tamil people. Its elusive leader,

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[7] In the South, the leftist Janatha Vimuthki Peramuna (JVP or People's Liberation Front), comprised of mostly poor, educated Sinhalese youth from rural areas, launched its first armed uprising in 1971 and a second in 1987. In parallel, a number of militant Tamil youth movements emerged as a response to the State's exclusionary politics and as a challenge to the power of traditional Tamil political leadership.

[8] Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island), 2001; Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, 1997; Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces, 1997; and Interim Report of the Commission of Disappearances in Western Zone, (www.disappearances.org/news/mainfile.php/reports_srilanka); and Amnesty International, "Sri Lanka: 'Disappearances and murder as techniques of counter-insurgency*"* in *Disappearances and Political Killings* (Amsterdam, 1994), p. 26.

Velupillai Prabhakaran, demanded absolute loyalty and sacrifice and cultivated a cult-like following. Internal dissent was not tolerated; those suspected of working or cooperating with the Government were labelled traitors and often killed. LTTE violence directed against Tamils caused deep fear and suspicion within the Tamil community.

32. The LTTE pioneered modern suicide bombing, which it used against military, political and civilian targets. LTTE suicide bombers, both men and women, were responsible for the deaths of Indian Prime Minister Rajiv Gandhi (1991) and Sri Lankan President Ranasinghe Premadasa (1993) as well as numerous Sri Lankan ministers and members of parliament, and moderate Tamil political leaders. It also carried out suicide attacks, often with large numbers of civilian casualties, on economic and religious targets. The LTTE pursued exclusionary politics, expelling Muslims from their homes in the north in 1990 and massacring Sinhalese and Muslims living in villages bordering areas it controlled. Violence, threats and fear were increasingly used by the LTTE to control the Tamil population. The LTTE was also known for its forced recruitment and use of child soldiers, including boys and girls. Its tactics led to the organization's proscription in numerous countries, including Canada, the European Union, India, the United Kingdom and the United States; its proscription intensified after 11 September 2001.

33. From the 1990s until May 2009, the LTTE controlled large parts of northern and eastern Sri Lanka, the exact contours of which shifted over time as Government forces and the LTTE vied for territorial control. It operated and sought to project itself as a *de facto* State. To this end, the LTTE developed a well-structured international strategy and, in the territory it controlled, established its own police, jails, courts, immigration department, banks and some social services.[9] It also developed a sophisticated military, with ground, air and naval capacities, and used both guerrilla and conventional tactics, supported by an extensive intelligence apparatus.

34. The Sri Lanka Tamil diaspora, with a population of close to one million scattered across the globe, has grown since the 1980's, as large numbers of Tamils sought refuge abroad from violence and repression by the State, while others sought better economic opportunities. The diaspora has played a crucial role throughout the war, with segments providing uncritical support to the LTTE, through crucial funding and advocacy, consistently denying any wrongdoing by the LTTE throughout the conflict. Not all support has been voluntary, however. The LTTE extended its tactics, including extortion, beyond the shores of Sri Lanka, into countries with large numbers of Sri Lankan Tamil refugees, using these to impose its narrative of the Tamil aspiration for a homeland and the means for achieving it. It was also intolerant of any criticism and allowed no space for the voices of victims of LTTE violence.

B. Erosion of the rule of law and human rights

35. Sri Lanka's 1978 Constitution asserts the unitary nature of the State and vests extensive, centralized powers in an executive president, who serves as Head of State, Head of Government and Commander-in-Chief of the Armed Forces; in addition the President may head any ministry at his or her discretion. Currently, President Mahinda Rajapaksa heads five ministries: Defence, Finance and Planning, Ports and Aviation, Transport, and Highways.

[9] At the same time, the Government continued to deploy Government Agencies in these areas and to provide some social services, such as health and education.

The Constitution also establishes presidential powers to appoint the heads and judges of the Supreme Court and Court of Appeals. Further, there are no restrictions on presidential appointments of close family members, and in drawing on such options, the current Government has faced criticism of nepotism.[10]

36. Extended periods under emergency rule, using constitutionally-permitted emergency regulations, further strengthened presidential powers, as have the increased politicization of state institutions, including the judiciary, and the weakening of independent checks and balances. Emergency rule has been in place from 1983 until 2001, with a brief hiatus in 1989, and again from 2005 to the present. Among other things, the Emergency Regulations currently in force,[11] along with the 1979 Prevention of Terrorism Act, provide extraordinary powers to the State and limit jurisdiction of the courts to check abuses of power and rights violations. Other laws also greatly weakened the State's duty to pursue serious violations of rights, in particular the Indemnity Act, No. 20 of 1982 (applicable between August 1977 and 16 December 1988). This measure barred legal proceedings against any minister, civilian or military official, or person acting under their direction in respect of any act, whether legal or illegal, undertaken in good faith to enforce the law or otherwise serve the public interest. By formalizing impunity, the Indemnity Act set a dangerous precedent.

37. These measures helped to create an enabling environment for human rights violations to occur, including disappearances, unlawful killings and torture, which have gone largely unpunished, despite formal legal and constitutional protections against such abuses.[12] Gender-based violence, including rape, sexual harassment and sexual exploitation, has also occurred despite legal protection. A number of presidential commissions of inquiry into the persistent pattern of enforced disappearances and other grave violations of human rights have, in some cases, served important fact-finding functions. None, however, has led to justice for victims or addressed the systematic nature of violations. In this sense, then, commissions of inquiry have not been an effective tool for combating impunity, establishing the truth or achieving justice.

38. Efforts to strengthen state institutions and ensure their independence led to the passage of the 17th Amendment in 2001. Aimed at providing a constitutional check on presidential power, it created an independent constitutional council to oversee appointments to commissions on police, elections, human rights, bribery, finance and public service. In addition, the Council was to approve appointments of high judicial officials, the Judicial

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[10] In the current Government, three of the President's brothers hold key positions. One brother, Gotabaya Rajapaksa, served as the Secretary of Defence throughout the final years of the war, a position he continues to hold. Another brother, Basil Rajapaksa, serves as Senior Advisor to the President and heads the Ministry of Economic Development and the Presidential Taskforce on Resettlement, Development and Security in the Northern Province. A third brother, Chamal Rajapaksa, serves as Speaker of the House. A number of other relatives also hold important posts in the Government.

[11] See the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 as contained in Gazette No. 1405/14 (EMPPR 2005, as amended particularly by Gazette No 1651/24, May 2nd 2010), the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation No. 7 of 2006 as contained in Gazette No. 1474/5 of 6 December 2006 (EPPTSTAR 2006, as amended) promulgated under the Public Security Ordinance.

[12] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston – Mission to Sri Lanka (E/CN.4/2006/53/Add.5); Report of the Working Group on Enforced or Involuntary Disappearances (E.CN.4/2000/64/Add.1); Conclusions and recommendations of the Committee against Torture: Sri Lanka (CAT/C/LKA/CO/2). With the exception of disappearances, for which there is no specific criminal law, both the penal law and the fundamental rights chapter of the Constitution provide avenues for accountability.

Service Commission and the Attorney-General, among others. The amendment proved to be relatively ineffective, however, as recent presidents were able to disregard it without serious consequence. In September 2010, Parliament approved the 18th Amendment, which nullified the 17th Amendment, eliminating its measures for independent checks and balances, and abolished presidential term limits.

39. The human rights of all citizens have suffered as a result of almost three decades of war, the degradation of independent institutions and the weakening of the rule of law. As the Government prepared for its final offensive against the LTTE, there was a further erosion of human rights, and several measures led to greater limitations on the space for independent news coverage, dissent and even humanitarian action.[13] Beginning in 2006, the Defence Secretary issued increasingly restrictive guidelines for journalists reporting on military operations, making it an offence to depict operations in negative terms. Further pressures on the media, including a number of high profile assaults, disappearances and killings, led to greater self-censorship. Threats directed at local activists and journalists emanated from unidentified sources, causing some to leave the country. An increase in visa denials and revocations kept international staff and NGOs insecure and, in some cases, may have compromised their positions.[14]

C. Towards the final stages of the war

40. At least three additional factors were significant in setting the scene for what would become the final stages of the war.

41. The first was a short-lived peace process, which commenced in 2000, when the Government of Sri Lanka and the LTTE requested Norway to serve as facilitator. The Parties agreed to a Ceasefire Agreement (CFA) in February 2002 and undertook a number of confidence building measures, including through the creation of a Sub-Committee on Gender to engage women from the LTTE and women from the South appointed in the process, before beginning face-to-face talks. The process was supported by the international community through the Tokyo Conference on Reconstruction and Development (2003), which monitored political progress through the Tokyo Co-Chairs (European Union, Japan, Norway and the United States).[15] The Sri Lanka Monitoring Mission (SLMM), an autonomous international organization created by the Parties to the CFA, monitored on-the-ground violations until January 2008, when the Government disbanded it and formally abrogated the CFA. The LTTE had unilaterally abrogated the CFA in April 2003. After that, and with renewed hostilities in 2006, the CFA largely existed in name only, but its continued formal existence ensured the on-going international presence of the SLMM.

42. Thus, this peace process soon joined the list of earlier peace-making efforts that failed to resolve the protracted conflict due to extremism on both sides, which remained the driving force for continued ethnic polarization and intolerance.[16] Ultra Sinhalese nationalists

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[13] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston – Mission to Sri Lanka (E/CN.4/2006/53/Add.5); Report of the Working Group on Enforced or Involuntary Disappearances (E.CN.4/2000/64/Add.1); Conclusions and recommendations of the Committee against Torture: Sri Lanka (CAT/C/LKA/CO/2).

[14] http://ipsnews.net/news.asp?idnews=43509

[15] Throughout the final stages, the Co-Chairs held a series of consultations on the humanitarian situation in Sri Lanka and issued a number of statements expressing concern and calling for the protection of civilians.

[16] Prior to the process that led to the 2002 CFA, there had been several attempts to find a peaceful solution to the war, including: the Thimphu Talks of 1985 between the Government and the LTTE, facilitated by the Indian

protested from the beginning against the signing of the CFA; in addition, the LTTE decision to abrogate the agreement in April 2003 and its unilateral proposal to establish an Interim Self-Governing Authority in the north-east further intensified Sinhala-nationalist protests and galvanized a deeply nationalist coalition of political parties – the United People's Freedom Alliance (UPFA). The UPFA narrowly won the 2005 elections, led by current President Rajapaksa, and provided the political support for the prosecution of the final war.

43. Secondly, in March 2004, the LTTE's Eastern Commander, Vinayagamoorthy Muralitharan, commonly known as Colonel Karuna, broke away from the LTTE, taking with him some 5,000 combatants. He later established the Tamil Makkal Viduthalai Palikal (TMVP), a registered political party, which maintains a paramilitary section and became a member of the ruling UPFA. The breakaway had a devastating impact on the LTTE. Given Karuna's place in the LTTE leadership, he had deep knowledge of the highly secretive organization, which the Government used effectively in preparing for the final offensive. In addition, the TMVP paramilitary forces, as well as members of other former Tamil militant groups, who were disaffected from the LTTE, were deployed by the Government in the military campaigns against the LTTE and used in intelligence operations among Tamil civilians.

44. Thirdly, international factors were also important. Initiatives by the United States and other Western Governments to collaborate with frontline States fighting terrorist organizations and their trans-national networks, as part of the "global war on terror", had serious implications for the LTTE. Already listed by many countries as a terrorist organization, the LTTE was increasingly isolated, both domestically and internationally. Its assassination in 2005 of Sri Lanka's Foreign Minister, who was Tamil, may have dealt a final blow to the organization's international image.[17] The Government of Sri Lanka worked within this environment to forge partnerships with other States in its final offensive against the LTTE.

45. After the 2005 elections, both the Government and the LTTE had promised to honour the terms of the CFA; nonetheless, both Parties continued their military provocations until a full-scale armed confrontation began again in August 2006. When the LTTE closed the sluice gates to the Mavil Oya reservoir, which provided irrigation water for thousands of farmers in the Government-controlled area of the Eastern Province, the Government deployed thousands of troops in an offensive to wrest the Eastern Province from the LTTE. Aided by the Karuna faction, the Government took full control of the Eastern Province in July 2007, for the first time in nearly two decades.

46. The military victory by Government forces in the Eastern Province and, by January 2008, in some parts of the Northern Province, left the LTTE only in control of large parts of the Vanni region. Specifically, of the four districts in the Vanni region, the LTTE was in full control of Kilinochchi, which was its *de facto* capital, and Mullaittivu. It also controlled the northern part of Vavuniya, north-western Mannar, and small strips in the Jaffna peninsula.

Government; the Indo-Lankan Peace Accord of 1987, signed by the Indian and the Sri Lankan Governments, and introducing devolution of powers and equal status of the Tamil language; and a ceasefire followed by direct negotiations in 1995 between the Government and the LTTE, which broke down within a few months.

[17] By 2006 32 countries had listed the LTTE as a terrorist organization; most, including Canada and the European Union, announced their decision in 2006, after the assassination of the Foreign Minister. LTTE fundraising and arms procurement abilities were severely constrained thereafter.

47. Encouraged by the military victory in the Eastern Province, and after nearly two years of strategic preparations, the Government declared a full military operation on 16 January 2008. The United Nations Secretary-General, the Tokyo Co-Chairs and other Member States warned that the Government's decision to abrogate the CFA and pursue a military solution would have devastating consequences, while at the same time recognizing the Government's right to undertake counter-terrorism operations on its territory. By mid-February 2008, as the LTTE accelerated suicide attacks across the island, the impact of the war on civilians outside the embattled areas had reached alarming proportions. Aerial bombardment and deep penetration operations of Government forces were also increasingly affecting civilians within the embattled areas. In September 2008, the Government began its final military offensive, moving against Kilinochchi.

III. Nature and Scope of Alleged Violations

48. The Panel now turns to the allegations of violations of international humanitarian and human rights law committed during the final stages of the war (September 2008 – May 2009) and its immediate aftermath, pursuant to its mandate to provide advice to the Secretary-General "having regard to the nature and scope of alleged violations". It is the nature and scope of the allegations that determine the nature of the advice that the Panel provides on accountability. In chapter IV, the Panel appraises those allegations from a legal perspective to determine whether the alleged acts, if proven, would amount to violations of international law.

A. Methodology for evaluating allegations

49. The Panel's assessment is based on a careful examination and weighing of the allegations of fact that have been made regarding the final stages of the war. The Panel's examination included both written sources of information as well as interviews with various individuals. The written sources included reports, documents and other written accounts by the various agencies, departments, funds, offices and programmes of the United Nations, other inter-governmental organizations, NGOs and individuals, such as journalists and experts on Sri Lanka. It included satellite imagery, photographs and video materials of the final phases of the war. It also included submissions received by the Panel during the course of its work in response to its notifications posted on the United Nations website. While these could not be individually verified, at times they served to corroborate other sources. Some relevant media sources, referring, for example, to statements of the Government of Sri Lanka or other public statements, are cited in this chapter, but serve only to corroborate the information gathered by the Panel. A number of NGO reports exist on events in the Vanni. While the Panel reviewed some of these reports, it did not rely on them to compile these allegations, but rather carried out its own assessment of the nature and scope of allegations.

50. The Panel consulted a number of individuals with expertise or experience related to the armed conflict, including officials of international organizations, NGOs, journalists, diplomats, academics and other individuals, some of whom were in Sri Lanka or in the Vanni during the relevant period.

51. While the Panel's mandate precludes fact-finding or investigation, the Panel believed it essential to assess whether the allegations that are in the public domain are sufficiently credible to warrant further investigations. Determining the scope and nature of these allegations allows the Panel to properly frame the accountability issues, which arise from them. The Panel has determined an allegation to be credible if there is a reasonable basis to believe that the underlying act or event occurred. This standard used by the Panel – that of a reasonable basis to believe that the underlying act or event occurred – gives rise to a responsibility under domestic and international law for the State or other actors to respond.

52. To determine whether an allegation is credible, the Panel considered the totality of the information in its possession, with careful regard to the relevance, weight and reliability of each of the sources as well as its relationship to the body of information, as a whole. Allegations are only included as credible when based on primary sources that the Panel deemed relevant and trustworthy. These primary sources were corroborated by other kinds of information, both direct and indirect. The allegations laid out below are based on credible and

consistent sources of information. In fact, many of the allegations would appear to meet a higher standard of proof.

53. The Panel has chosen to present the allegations it finds credible in a narrative account rather than listing the various allegations under their legal classification, so as to provide a greater sense of context and perspective. This account should not be taken as proven facts, and any effort to determine specific liabilities would require a higher threshold.

B. Background on military strategies and operations

54. In order to have the necessary context for understanding the credible allegations, which are laid out in sections C to F of this chapter, the Panel examined the political and military strategies and capacities of both the Government of Sri Lanka and the LTTE during the final phases of the war. For its analysis of the general strategy, the Panel relied on a range of sources such as publicly available political and military analyses, the Sri Lankan Defence Ministry website and international military experts from the United Nations Office of Military Affairs. Where the Panel examined specific allegations, it did so based on primary sources.

1. Government of Sri Lanka

55. In the aftermath of the failed peace process in 2006, the Government of Sri Lanka devised a comprehensive multi-pronged strategy to defeat the LTTE. This strategy included diplomatic and political components, measures to control information about and access to the combat zones, as well as more strictly military components.

56. In its diplomatic efforts, the Government drew on the favourable global environment for support from a number of States, in the context of the "war on terror" and, in the region, gained increased collaboration from the Indian Government due to the LTTE's assassination of Rajiv Gandhi. In one significant example, the Indian Navy directly assisted Sri Lankan forces in intercepting the floating warehouses used by the LTTE to maintain its supplies by sea.

57. Internally the Government ensured cohesive political and military leadership. The President appointed himself to be Minister of Defence and his brother, Gotabaya Rajapaksa, as Secretary of Defence. He then appointed Lieutenant General Sarath Fonseka as Army Commander. Both the Secretary of Defence and Lieutenant General Fonseka had extensive combat experience against the LTTE and each survived assassination attempts by the LTTE in 2006. The President then obtained parliamentary approval for major increases in the military budget, which grew to USD1.8 billion in 2008, representing almost 20 per cent of the national budget.

58. With regard to the military, Lieutenant General Fonseka greatly bolstered and revitalized the Sri Lanka Army (SLA). The size of the Armed Forces was almost tripled to 300,000, and regular rotation ensured a steady supply of fresh troops to the battlefront. The army procured new equipment and weapons, strengthening its arsenal of Multi-Barrel Rocket Launchers (MBRLs), mortars and howitzers, MIG-29, Kfirs and helicopter gunships. The Sri Lanka Air Force (SLAF) acquired and used several models of unmanned aerial vehicles (UAVs) for surveillance, target acquisition and subsequent battle damage assessments.[18]

[18] The SLAF currently has RQ-2 Pioneers, Israeli Aircraft Industry Scouts, Israeli Aircraft Searcher II and the Israeli EMIT Blue Horizon II (BHII).

59. The SLA generally relied on its vastly superior firepower and troop numbers as well as its air supremacy to maintain a relentless offensive, on many simultaneous fronts, from which the LTTE could not recover. All attempts to negotiate were declined, and no ceasefires were given, as the Government argued that the LTTE would use any ceasefires to regroup.

60. The SLA also employed flexible, intelligence-driven and guerrilla-like tactics to advance its infantry and inflict maximum damage on the enemy. To this end, the Army Commander reorganized and retrained his forces, including the formation of self-reliant Special Infantry Operations Teams (SIOTs), trained in commando techniques and able to coordinate surveillance, artillery and air strikes. The SLA also used clandestine operations behind enemy lines, carried out by Deep Penetration Units, also known as Long Range Reconnaissance Patrols, composed in part of Tamil militants formerly associated with LTTE commander Mahattaya, to gather human intelligence.[19] In order to reduce military casualties as it advanced, some SLA operations were designed to "soften up the ground" and pierce LTTE defensive lines with heavy artillery. While the Government spoke of its efforts to liberate civilians from the area in a humanitarian operation and to incur zero civilian casualties in the process,[20] in practice, ground forces appear to have been given significant discretion to use a barrage of artillery as they advanced.

61. Prior to shelling, UAVs were often used to identify potential targets. A live stream of footage from UAVs was directly delivered to ground operations, which enabled commanders to make decisions, using that information with virtually no delay. In some areas the physical conditions such as jungle and foliage would have hindered visibility, but generally the UAVs transmit high resolution images.[21] The UAVs used by the SLAF have the capacity to identify single targets, such as individuals and their movements or positions, and to depict terrain features, thereby providing ground troops with validated, near real-time information. Through the use of UAVs, the SLAF had the ability to detect enemy formations both day and night, in various topographic areas. The use of UAVs also enabled the SLAF to identify individuals and civilian installations, such as hospitals.

62. Lieutenant General Fonseka himself commanded the war effort from the Joint Operations Headquarters in Colombo and handpicked seasoned commanders to lead the campaign. The Vanni Security Forces were headed by Major General Jagath Jayasuriya,

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[19] Mahattaya was a former senior LTTE commander in the Vanni who was executed at the orders of Prabakharan in 1994.

[20] Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives", "Ultimate victory certain-Defense Secretary", 11 Nov. 2008: "The 'Zero Casualties to Civilians' concept, introduced during the humanitarian mission to liberate the East, "has now evolved to become the first line in all military/operational briefs. This is an example to other armies in the world fighting a similar war", the Defence Secretary told the Business Today."

[21] Some of the latest electronic camera systems such as SAFIRE II allow for views at the proximity of 3-5 meters resolution, day and night, 29x zoom ratio and have lasers which could be used to find and designate ranges to target missiles. The use of SAFFIRE II electronic camera systems would allow for precise analysis or precision-guided attacks against identified, single targets, but it is not clear whether the Government owned these cameras. Even poorer cameras attached to the EMIT Blue Horizon II still have close range vision as can be seen in http://www.youtube.com/watch?v=KCJ17qKotMs. In his testimony to the LLRC on 8 Sept. 2010, LLRC/PS/08-09-10/05, Major General Shavendra Silva said about the UAVs: "The Officers of the Air Force who are here, one officer, the UAV officer in charge was actually located in my headquarters, so I had the pictures most of the time, everything, every incident was seen and planned through the UAV at that time because at the last stages of the operation we just did not go blind everything was planned through UAV pictures and where we exactly knew where the civilians and the LTTE were …"

headquartered in Vavuniya. In addition, six major battalions were active in the final stages of the war, including the 53rd Division (commanded by Major General Karmal Guneratne) and the 55th Division (commanded by Brigadier Prasanna Silva), which progressed south from the Jaffna peninsula; the 56th Division (commanded by Major General H.C.P. Gunalithaka), the 57th Division (commanded by Major General Jagath Dias), the 58th Division (commanded by Brigadier Shavendra Silva) and the 59th Division (commanded by Major General Nandana Udawatta), which all progressed from the south and south-west. Special Forces and commandoes also played a crucial role. Strong leadership, new training and a strong sense of purpose bolstered by numerous victories decreased desertion rates and improved morale among SLA troops.

63. In addition to its regular military operations, the Government employed clandestine operations to uncover LTTE safe houses, dismantle the LTTE networks in the South and eliminate persons believed to be associated with the LTTE. A potent symbol of these operations was the "white van". White vans were used to abduct and often disappear critics of the Government or those suspected of links with the LTTE, and, more generally, to instil fear in the population. An elite unit within the Special Task Force (STF) of the police is implicated in running these white van operations. Those abducted were removed to secret locations, interrogated and tortured in a variety of ways, including through beatings, forced nudity, suffocation with plastic bags, partial drowning, extraction of finger or toe nails, or administering electric shocks. Many were killed and their bodies disposed of secretly. Human rights workers, journalists, newspaper editors and humanitarian workers accused of being "Tiger sympathizers" were also caught in the net. In the period between 2006 and the end of the war, 66 humanitarian workers were either disappeared or killed.

64. The strategy also involved stricter controls on the media and the flow of information, imposing a media blackout and stifling critical views of the war effort. From 2006, independent journalists were not allowed to travel to LTTE-controlled areas and certain journalists were named as "Tiger sympathizers" on the Ministry of Defence website. More detailed guidelines on reporting on the war were established in 2008. Journalists who disobeyed these rules or who were otherwise critical of the Government were subject to arrest and/or severe levels of threat. In June 2008, the Defence Secretary directly threatened two prominent journalists of the Associated Newspapers of Ceylon Ltd (Lake House).[22] One of them, Poddala Jayantha, was subsequently picked up in a white van and severely beaten in June 2009. On 8 January 2009, a prominent newspaper editor, Lasantha Wickrematunge, was killed by unidentified assailants in Colombo. He had collected information alleging corruption in military procurements made by the Defence Secretary, which he was about to publicize as part of a lawsuit. Two days earlier, the independent Maharajah Television / Broadcasting Network was attacked by armed gunmen, who destroyed equipment while holding security guards at gunpoint. None of these events was investigated. At least 10 journalists were killed between 2006 and early 2009.[23] The combined effect of these censorship measures and the fear of being killed or beaten had a deleterious effect on the independent oversight role played by the media. The Defence Secretary was quoted as saying: "I have only two groups - the people who fight terrorism and the terrorists".[24]

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[22] Lakbima News, Sunday 1 June 2008, "Gota lays down his law to journos". The Sunday Leader, 1 June 2008, "Gotabaya's verbal assault on the media."
[23] Committee for the Protection of Journalists, http://www.cpj.org/killed/asia/sri-lanka/.
[24] Chris Morris, "Sri Lanka Journalists 'Risk Death'" http://news.bbc.co.uk/2/hi/south_asia/7866253.stm, BBC News, 3 February 2009.

65. The international community was also subject to continuous public criticism by the Government for having been too tolerant of the LTTE and "supporting terrorists". It was eventually excluded from the conflict zone altogether as part of the strategy, and international diplomatic efforts to put a halt to the fighting or to call for ceasefires were rebuffed or ignored.

2. The LTTE

66. By September 2008, the LTTE's military capabilities were severely diminished compared to its past strength. Although its exact size at the time is not known, at its peak it was not larger than 20,000; its core fighters consisted of only a fraction of that in the final stages of the war, perhaps up to 5,000. In the south, its networks and sleeper cells in Colombo and elsewhere had been weakened and its ability to carry out suicide actions, although still existent and active, was reduced by the Government's counterinsurgency operations. The LTTE bid to hold territory as the State of "Eelam" required a departure from guerrilla tactics and a switch to fighting a conventional war with frontlines and fixed-site battles. In the final stages of the war, its efforts were largely defensive, and its surprise counterattacks, which had success in the past, did not materialize. As a result, the LTTE was increasingly cornered into an ever-contracting territory and sought to defend itself behind barriers of earth bunds, fortifications, minefields and ditches, using ambush techniques, booby traps and improvised explosive devices.

67. Its status as a proscribed terrorist organization in some 32 countries limited its international operations and support. The LTTE was a fraction of the size of the SLA, and many of its cadre were inexperienced, but its basic command structure remained intact, with a military wing and, under it, a political wing. Both were headed by a central governing committee led by Velupillai Prabhakaran, overseeing the Sea Tigers (headed by Soosai), the Air Tigers (headed by Charles Anthony, Prabhakaran's son and Rathnam Master), an elite fighting unit known as the Charles Anthony Regiment, the Black Tigers, an intelligence unit headed by Pottu Amman and a political office headed by Nadesan. Most of these leaders were killed in the final stages of the war.

68. The LTTE mainly relied on forced recruitment in an attempt to maintain its forces. While previously the LTTE took one child per family for its forces, as the war progressed, the policy intensified and was enforced with brutality, often recruiting several children from the same family, including boys and girls as young as 14.[25] Civilians were also enlisted by the LTTE into their war effort in other ways, using them, for example, to dig trenches and build fortifications, often exposing them to additional harm.

69. Although the LTTE's supply chains had been disrupted, especially after the loss of its floating warehouses, it still had access to some stockpiles of weapons, including some artillery and mortars and a few MBRLs. It used these to offer stiff resistance from behind its fortifications and earth bunds and also launched waves of suicide attacks. Its Black Tigers continued to operate and increasingly engaged in suicide missions against the attacking SLA as well as perpetrating some attacks outside the conflict zone, with numerous civilian

[25] United Nations Statement, Colombo, 16 February 2009 (www.un.lk/media_centre/archived .php): "There are indications that children as young as 14 are being recruited into the ranks of the LTTE." UNICEF Colombo Statement 17 Feb. 2009, "More children victims of the conflict" (www.reliefweb.int/rw/rwb.nsf): "We have clear indications that the LTTE has intensified forcible recruitment of children and that children as young as 14 years old are now being targeted," said Philippe Duamelle, UNICEF's Representative in Sri Lanka."

casualties.[26] The Sea Tigers still had some of their naval equipment and boats, but the LTTE's remaining operational Zlin 143 aircraft were shot down during a suicide mission over Colombo in February 2009.

70. Retaining the civilian population in the area that it controlled was crucial to the LTTE strategy. The presence of civilians both lent legitimacy to the LTTE's claim for a separate homeland and provided a buffer against the SLA offensive. To this end, the LTTE forcibly prevented those living in the Vanni from leaving.[27] Even when civilian casualties rose significantly, the LTTE refused to let people leave, hoping that the worsening situation would provoke an international intervention and a halt to the fighting. It used new and badly trained recruits as well as civilians essentially as "cannon fodder" in an attempt to protect its leadership until the final moments.

3. Civilians in the conflict area

71. In September 2008, the SLA was advancing into the Vanni from multiple directions, trapping increasingly large numbers of civilians who were not able to leave the area. The Government regularly dropped leaflets urging civilians to leave the area (but providing no specific information on how to do so); however, most remained.[28] Apart from the LTTE pass system, numerous other factors contributed to civilians becoming trapped in LTTE-controlled areas. For most of these people, the Vanni was their home. Many had experienced the military occupation of Jaffna and had moved with the LTTE since 1995. From experience, they feared what would happen to them if they crossed into Government-controlled areas, knowing that they would be subject to internment. They also feared the white vans and feared being raped or tortured by the army. In addition, the LTTE forced recruitment practices meant that many families had relatives in the LTTE. In any case, crossing into Government-held areas would have, in many instances, required heading into, rather than away from, incoming artillery fire, active combat and minefields.

72. As the SLA shelled its way further into the Vanni, internally displaced persons (IDPs) moved deeper and deeper into LTTE-controlled territory, until they had nowhere left to go. Some IDPs had moved repeatedly, some for as long as two years, all the way from Mannar in the west. Each time they moved, the IDPs loaded tractors, bicycles or carts with all their belongings, taking their domestic animals if they had them. Increasingly they had to abandon belongings or, in extreme cases, even relatives. The living conditions for displaced civilians were poor and deteriorated with repeated displacements; basic necessities, including food, were increasingly scarce. The population became increasingly vulnerable and had to rely on humanitarian assistance for food and shelter. A large part of the displaced population was

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[26] Attacks that were attributed to the LTTE (but not proven in all cases) included an assassination of the opposition leader of the North-Central provincial council in a bombing that killed over 20 people in Anuradhapura on 6 October 2008; a suicide bombing at a screening centre in Mullaittivu on 9 February 2009, killing around thirty people; an air raid on Colombo on 20 February 2009; and a suicide attack on Minister Mahinda Wijesekera at Akuressa on 10 March 2009, which killed around 15 people.

[27] A pass system was strictly applied to anyone who originally came from the Vanni. The few Vanni-born persons granted permission to leave could do so only by providing bond in the form of a relative. This relative could be forcibly incorporated into the LTTE if the person did not return.

[28] A pamphlet dropped in August 2008 and shared with the Panel read: "Dear Vanni Citizen: We are conducting a final war in order to liberate the people who have been suffering by the LTTE's ruthless terrorist acts in Vanni. In this war, the LTTE is being defeated in many places. We the Government of Sri Lanka are doing our best to avoid the human casualties in the war … Therefore, we are requesting you - the beloved Tamils- to come immediately to the government liberated areas to protect yourself before this disaster." Leaflet dropped from helicopter on 28 August 2008 by SLA.

especially vulnerable, including women travelling alone, widowed or pregnant women, children and the elderly. The simple shelters, in which the IDPs lived, constructed of cloth or old tarpaulin, provided insufficient security. There were no adequate sanitation facilities, which imposed particular hardships for women and increased the risk of sexual violence; many people became ill. Displaced children were particularly affected by the hardships and instability caused by displacement, and were unable to continue their schooling.[29]

C. Credible allegations relating to the conduct of the armed conflict

1. Prelude: Exclusion of the international presence from the Vanni

73. In September 2008, the Government's military campaign reached an advanced stage when the 57th and 58th Divisions advanced on Kilinochchi, the main LTTE stronghold and its *de facto* capital. The United Nations still maintained a humanitarian hub in LTTE territory in Kilinochchi, with its offices and those of other international organizations situated mainly in an area within the town known as the "Kilinochchi box".

1. Frontlines, September 2008
Source: Government of Sri Lanka Ministry of Defence website

74. By late summer 2008, the Kilinochchi box was subject to several artillery and aerial attacks, in spite of its designation as a safe area, whose parameters were well-known to the Sri Lankan Government. Then, on 8 September 2008, the Government announced that it could no longer ensure the safety of humanitarian workers in the Vanni. It requested that the

[29] While some efforts were made to continue education in makeshift schools, it became increasingly difficult and then impossible. UNICEF, "Hundreds of children reported killed, more injured, in Sri Lanka violence", 18 March 2009 (www.reliefweb.int/rw/rwb.nsf): "Even temporary displacement can have a massive impact on children's health and development."

international staff of the United Nations and international non-governmental organizations (INGO) leave Kilinochchi by the end of that month. The threat to the United Nations at the time, however, was mainly posed by the SLA offensive, thus undermining the credibility of the Government in maintaining that it was not able to guarantee security. Instead, it was unwilling to do so.

75. The United Nations decided to suspend operations in the Vanni and move its offices from Kilinochchi to Vavuniya. Other international organizations withdrew their international staff as well. Nonetheless, the LTTE refused to grant permission to allow United Nations national staff to leave.[30] A large number of the national staff from several INGOs, around 320 in total, and their dependents also remained in the Vanni. As the United Nations international staff prepared to leave Kilinochchi, aerial attacks were staged in close proximity to the United Nations premises. On the day of their departure, on or about 15 September 2009, a large crowd of civilians gathered around them, begging them not to leave, afraid of what their absence would mean.

76. The withdrawal of international staff of the United Nations and INGOs from Kilinochchi represented a pivotal point in the final stages of the war. From that moment on, there were virtually no international observers able to report to the wider world what was happening in the Vanni.[31] The only journalists who continued to report were those embedded with the SLA or those working with the LTTE. There were reports emerging via text-messages, e-mails, phone calls and other sources originated from national staff of international organizations, religious leaders, local government employees, doctors or Tamil Net, a pro-LTTE website. But all of these sources were Tamil and were regularly contested or dismissed by the Government.

77. In January 2009, the Government scored a number of highly significant victories. In November 2008 the SLA had captured the strategically important Pooneryn and the bulk of the west coast, reopening the A32. Then on 2 January 2009, the 57th and 58th Divisions of the SLA captured Kilinochchi.[32] Both the President and the international community urged the LTTE to lay down its arms.[33] On 9 January 2009, the SLA 53rd and 55th Divisions captured the Elephant Pass and freed the A9, bringing the entire highway under Government control for the first time in 23 years. Later that month, on 25 January, the 59th Division captured Mullaittivu, another important LTTE base. These events marked a new stage in the acceleration and intensification of the armed conflict, one in which the ultimate defeat of the LTTE was imminent.

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[30] The Government, in turn, refused to recognize the continued United Nations presence in the area and wanted the United Nations to agree that its national staff members were "on leave;" the United Nations objected and maintained the position that they were staff members.

[31] The International Committee of the Red Cross (ICRC) had international representatives in the Vanni until they were evacuated on the first ICRC ship on 10 February. After that, its international staff still visited the Vanni occasionally, for short periods, when accompanying the ICRC ships.

[32] In a speech delivered that day, the President said that the fall of Kilinochchi "should not be interpreted as a defeat of the North by the South" but "a victory for our entire nation and country." Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives", "Kilinochchi is captured - President tells the nation", 2 January 2009.

[33] The President also said that he was satisfied that a "zero civilian casualty policy" had been "implemented perfectly" and that it would continue to be implemented. Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives:" "We give highest priority to civilian safety: President Rajapaksa", 5 January 2009.

2. Frontlines, January 2009
Source: Government of Sri Lanka Ministry of Defence website

2. Government restrictions on humanitarian access

78. After the United Nations international staff left Kilinochchi, the United Nations Resident / Humanitarian Coordinator and the head of the World Food Programme (WFP) in Sri Lanka secured an agreement with the Government, which allowed the United Nations to continue its humanitarian assistance with weekly convoys into the Vanni to deliver food, shelter and medicine. Nonetheless, the Ministry of Defence imposed extensive restrictions on convoy participants as well as on non-food items, such as tarpaulins, which they argued could be used for military purposes.[34] They also put limitations on food and medical supplies, as discussed in further detail below. The first convoy entered the Vanni on 3 October 2008. In total 11 convoys went into the Vanni over a period of almost 5 months, delivering a total of 7,435 metric tons of food, which was not enough to sustain the civilian population.[35]

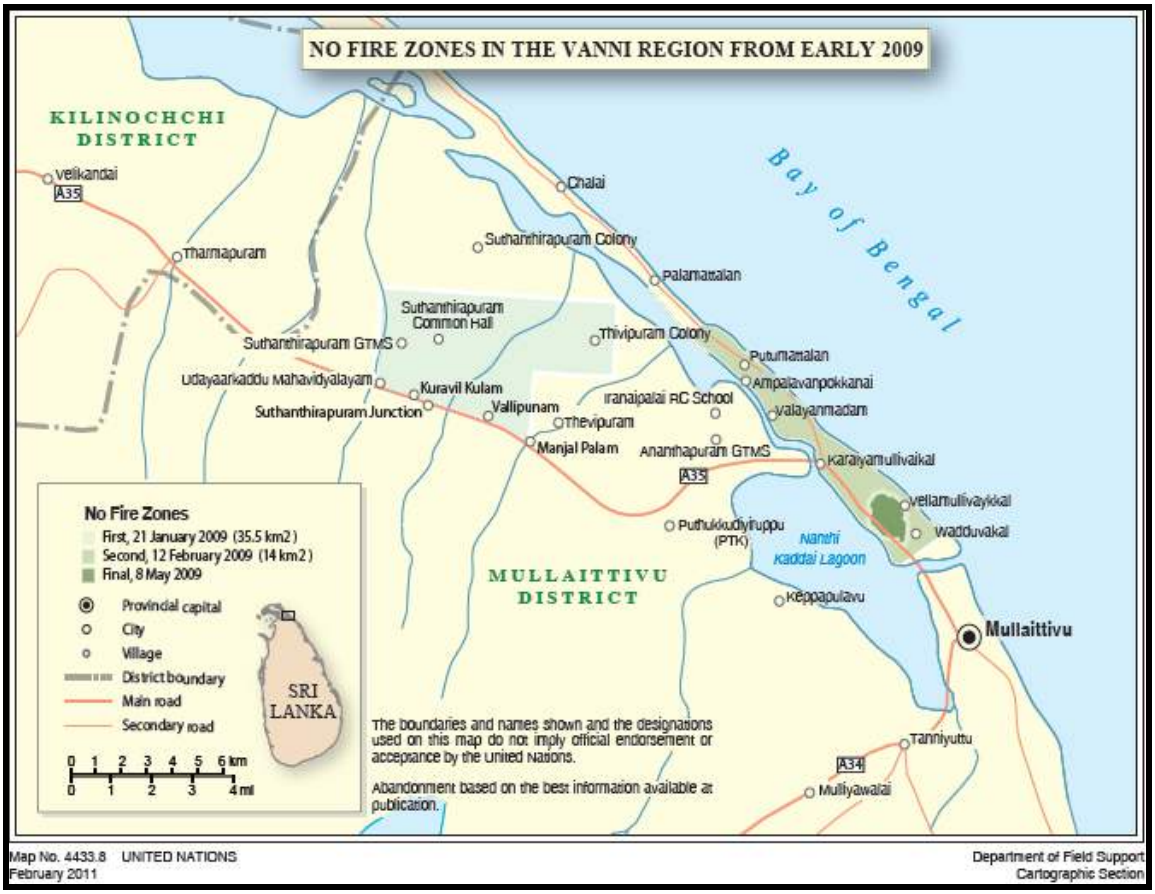
79. The circumstances surrounding the convoys' travel were increasingly hazardous. During the ninth and tenth convoys, shells fell 200 metres from the road, and both the SLA and LTTE were using the cover of the convoys to advance their military positions. On 16 January 2009, the United Nations deployed its eleventh food convoy to Puthukkudiyiruppu

[34] The Ministry of Defence even opposed the provision of a high nutrition biscuit for children, which UNICEF wanted to send in, arguing that it would be used by the LTTE.
[35] At this time, some food was still available commercially. The Government Agent also sent a convoy with food in January, but only carried 153 metric tons. An additional 781 metric tons could be purchased in the Vanni, for a total of 8,369 metric tons of food available to the Vanni population between 3 October and 18 February. An estimated 4,500 metric tons of food are needed to feed 300,000 displaced persons per month.

(PTK) from Vavuniya via Omanthai. Apart from delivering humanitarian aid, some on the convoy hoped to negotiate the release of United Nations national staff and dependents by the LTTE. Convoy 11 included 7 international staff and was comprised of approximately 50 lorries, carrying essential goods such as rice, sugar, oil and wheat.[36] The convoy off-loaded the supplies, but was not given permission to leave due to heavy fighting along the road to Vavuniya, which continued for four days.

3. SLA shelling of civilians in the first No Fire Zone

80. On 20 January 2009, the Government unilaterally declared a No Fire Zone (NFZ); Commander for the Vanni, Major General Jayasuriya announced by notice that "the Army Headquarters has demarcated this safe zone, as the Security Forces are fully committed to provide maximum safety for civilians trapped or forcibly kept by the LTTE in the un-cleared areas of Mullaittivu."[37] Maps of the NFZ and its coordinates were disseminated by the Government Agents (GAs). The LTTE did not accept the NFZ as binding. The rationale for the location of the NFZ, which encompassed the LTTE's western and southern defensive lines, and the boundary of which along the A35 was only 800 metres north of the advancing SLA frontline, was not clear.



3. No Fire Zones in the Final Stages of the War

81. On or around 19 to 21 January, SLA shells hit Vallipunam hospital, located in the first NFZ, killing patients. Throughout the final stages of the war, virtually every hospital in the

[36] The seven international staff members were from UNDSS, UNOPS, UNICEF and WFP.
[37] Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives", "New safe zone for trapped civilians in Mullaittivu", 22 Jan. 2009.

Vanni, whether permanent or makeshift, was hit by artillery. Particularly those which contained wounded LTTE were hit repeatedly.

82. On 21 January 2009, Convoy 11 attempted to leave PTK for Vavuniya with national staff and their dependants on board. However, the LTTE refused the convoy permission to proceed to Vavuniya due to the presence of national staff. Most of the international staff then returned to Vavuniya, leaving behind two international United Nations staff who chose to remain with the national staff.

83. On 23 January 2009, the United Nations staff relocated to the first NFZ, as a large SLA offensive on PTK seemed imminent. They set up a hub near Suthanthirapuram Junction along the A35 and relayed their coordinates to the Vanni commander. A large number of civilians also relocated to the NFZ and set up their shelters around the United Nations hub. Most civilians settled in just north of the A35, since other parts of the NFZ were not suitable for erecting shelters. The Additional Government Agent (AGA) established a food distribution centre nearby. During the day, shells fired from Government-controlled areas in the south started landing occasionally in the NFZ. In the evening, shells fell on the food distribution centre, killing and wounding a large number of civilians.

84. In the early morning hours of 24 January, hundreds of shells rained down in the NFZ. Those with access to the United Nations bunker dove into it for protection, but most IDPs did not have bunkers and had nowhere to seek cover. People were screaming and crying out for help. The United Nations security officer, a highly experienced military officer, and others present discerned that the shelling was coming from the south, from SLA positions. He made frantic calls to the head of United Nations Security in Colombo and the Vanni Force Commander at his headquarters in Vavuniya as well as the Joint Operations Headquarters in Colombo, demanding that the shelling stop, which sometimes resulted in a temporary adjustment of the shelling before it started again.[38] Heavy shelling continued over night, and shells continued to hit the United Nations hub and the distribution centre, killing numerous civilians.

85. When United Nations staff emerged from the bunker in the first morning light at the first opportunity, mangled bodies and body parts were strewn all around them, including those of many women and children. Remains of babies had been blasted upwards into the trees. Among the dead were the people who had helped to dig the bunker the previous day.

86. Although LTTE cadre were present in the NFZ, there was no LTTE presence inside the United Nations hub. The LTTE did fire artillery from approximately 500 metres away as well as from further back in the NFZ, but the area where the United Nations was based was very clearly civilian. The Government never gave an explanation for its shelling of the United Nations hub, which was the only international presence in the NFZ.

87. Heavy shelling continued unabated. On 24 January, the Udayaarkaddu Hospital, also located in the NFZ and clearly marked with emblems, was hit by several shells. During the night of 25 January, the first NFZ and area around the United Nations hub continued to be pounded with shells. During the two days of shelling in the first NFZ, hundreds of civilians were killed and many more injured. To escape the intense shelling, civilians started to flee the

[38] Publicly, military spokesperson Brigadier Udaya Nanayakkara repeatedly denied that the Government was shelling inside the NFZ.

NFZ, away from the SLA, heading north to Iranapalai or back to PTK. The United Nations contingent, too, decided to leave the NFZ to return to PTK, along with the International Committee of the Red Cross (ICRC) and the AGA. After they left, hundreds of desperate civilians ran to seek shelter in the deserted bunker.

88. The scene inside the NFZ along the road to PTK, the A35, was one of great destruction, and even the vegetation was shredded. Dead or severely injured civilians lay along the roadsides, amidst shattered shelters, strewn belongings and dead animals. Hundreds of damaged vehicles also lay along the road; ambulances parked by Vallipunam Hospital were seriously damaged.

89. This was in stark contrast to the situation outside the NFZ, across the Yellow Bridge (Manjal Palam), further along the A35, where there were few signs of shelling. Paradoxically, while PTK was outside the Government-designated NFZ, that area did not seem to have been shelled, in spite of the presence of a large number of LTTE and far fewer civilians.[39]

4. SLA shelling of PTK Hospital

90. Fighting in the area intensified as part of the expressed efforts by the 55th and 58th Divisions to capture PTK by 4 February, the day commemorating Sri Lanka's independence. PTK hospital was the only permanent hospital left in the Vanni, and its neutrality was recognized by the Government and the LTTE. The medical staff, including five doctors, was stretched beyond its capacity, and medical supplies were very limited. The shelling in the first NFZ had marked a turning point in the conflict, and civilian casualties were rising. PTK hospital was packed with hundreds of injured civilians from the NFZ. More than 100 new patients were arriving each day, many from the NFZ. Many had severe or life-threatening injuries caused by artillery fire or burns.[40] The casualties, many of them babies, young children and the elderly, were packed in every conceivable space – on beds, under tables, in hallways and outside in the driveway.[41]

91. On 29 January 2009, the two remaining United Nations international staff left for Vavuniya, without the national staff members, who were still not allowed to leave by the LTTE. The ICRC dispatched a separate convoy, which evacuated about 200 wounded patients. Immediately thereafter, in the week between 29 January and 4 February, PTK hospital was hit every day by MBRLs and other artillery, taking at least nine direct hits.[42] A number of patients inside the hospital, most of them already injured, were killed, as were several staff members. Even the operating theatre was hit.[43] Two ICRC international

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[39] In a statement on the 26 January, the Secretary-General expressed deep concern about the safety and well-being of civilians caught in intensified fighting in the Vanni region and called on both parties to respect "no fire zones", "safe areas" and civilian infrastructure: http://www.un.lk/media_center/archived php.

[40] ICRC News Release No. 09/02, http://www.icrc.org/eng/resources/result/index.jsp, 28 January 2009 "Sri Lanka: Major humanitarian crisis unfolding": "Hundreds of people have been killed and scores of wounded are overwhelming understaffed and ill-equipped medical facilities in Sri Lanka's northern Vanni region, following intensified fighting between the Sri Lankan Security Forces and the Liberation Tigers of Tamil Eelam (LTTE)."

[41] The United Nations international staff visited the hospital and took many photographs which were relayed to United Nations Headquarters in Colombo and to the Government.

[42] Previously, PTK hospital had been shelled on 12 Jan. 2009.

[43] The hospital sustained two direct hits on 1 February, which killed two people and injured five others: ICRC Press Release No. 09/26, http://www.icrc.org/eng/resources/result/index.jsp, 1 Feb. 2009, "Sri Lanka: Vanni hospital shelled". ICRC News Release No. 09/29, 4 February 2009, "Sri Lanka: Vanni hospital evacuated-parties must do utmost to protect medical services and the wounded and sick" which states that "We are shocked that a medical facility has again sustained direct hits."

delegates were in the hospital when it was shelled on 4 February 2009.[44] The shelling was coming from SLA positions.

92. The GPS coordinates of PTK hospital were well known to the SLA, and the hospital was clearly marked with emblems easily visible to UAVs.[45] On 1 February 2009, the ICRC issued a public statement emphasizing that "[w]ounded and sick people, medical personnel and medical facilities are all protected by international humanitarian law. Under no circumstance may they be directly attacked."[46]

93. The Ministry of Human Rights and Disaster Management responded by accusing the ICRC of "either wilful ignorance or naiveté".[47] Initially, the Government denied shelling the hospital, but on 2 February 2009, the Defence Secretary gave the following statement in an interview on Skynews:

> If they [reports] are referring to the [PTK] hospital, now there shouldn't be a hospital or anything because we withdrew that. We got all the patients to Vavuniya, out of there. So nothing should exist beyond the No Fire Zone … No hospital should operate in the area, nothing should operate. That is why we clearly gave these No Fire Zones… For the LTTE …to crush the terrorists, there is nothing called un-proportionate.[48]

94. After the fall of Kilinochchi, PTK was a strategic stronghold in the LTTE's fight against the SLA. As a result, the LTTE had a sizable presence in the PTK area and maintained a separate ward for wounded cadres in PTK hospital, but they were not armed. The frontline was nearby, and as the fighting in the PTK area increased, more LTTE wounded started to come into the hospital. The LTTE also fired mobile artillery from the vicinity of the hospital, but did not use the hospital for military purposes until after it was evacuated. Yet, in its eagerness to capture the area, the SLA repeatedly shelled the hospital and surrounding areas. Due to the incessant shelling, the Regional Directors of Health Services (RDHS), the United Nations, the AGA and the ICRC decided to evacuate some 300 patients in PTK hospital to Putumattalan, around 6 to 8 kilometres away, on the coastal strip next to the Nanthikadal lagoon. Ponnambalam Hospital, a private hospital used in part by the LTTE, was shelled on 6 February 2009, causing part of it to collapse.

95. The SLA suffered significant setbacks and many casualties at PTK, in battles with LTTE forces, who put up a fierce resistance. The 58th and 53rd Division did not capture PTK

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[44] Skynews interview, 2 February 2009 with Gotabaya Rajapaksa, http://wn.com/Gotabaya_Rajapaksa. Skynews interview with Alex Crawford. See also "Packed Sri Lanka hospital shelled," Skynews, 2 Feb. 2009 http://news.sky.com/skynews/Home/World-News/Sri-Lanka-War-Hospital-In-Puthukkudiyiruppu-Shelled-Killing-Adults-And-Children/Article/200902115214899.

[45] In fact on 5 February the Government showed a video of PTK hospital to the press corps in Colombo, claiming it to be intact (although the video itself showed some damage to the hospital). Satellite imagery from the same dates shows clear damage to the hospital.

[46] ICRC News Release No. 09/26, http://www.icrc.org/eng/resources/result/index.jsp, "Sri Lanka: Vanni Hospital shelled." 1 February 2009.

[47] Somini Sengupta, "UN Leads Evacuation from Sri Lanka", http://www.nytimes.com/2009/01/30/world/asia/30lanka.html , New York Times, 29 January 2009.

[48] Skynews interview, 2 February 2009 with Gotabaya Rajapaksa, at http://wn.com/Gotabaya_Rajapaksa.

until 5 April 2009.[49] The important Sea Tiger stronghold of Chalai was captured by the 55th Division on 5 February.

96. At that time, large numbers of civilians, trying to escape fierce fighting in Anandapuram, Iranapalai and Thevipuram, fled towards the coast, since it was the last remaining haven. On 12 February 2009, the Government declared a second No Fire Zone (also referred to as a Civilian Safety Zone), covering a 12 km-long strip along the coast, including the villages of Ampelavanpokkanai, Karayamullivaikkal, Putumattalan, Valayanmadam, and Vellamullivaikkal.[50]

4. IDP settlement near Putumattalan Hospital in second No Fire Zone, March 2009
Source: submission to the Panel by the photographer

5. LTTE forced recruitment and forced labour in the second No Fire Zone

97. Increasingly, LTTE forces, mounting their last defence, moved onto the coastal strip in the second NFZ, particularly in the Mullivaikkal area, where the LTTE leadership had a complex network of bunkers and fortifications and where it ultimately made its final stand. The LTTE was no longer mobile and established a series of defensive earth bunds throughout the zone. Its positioning of mortars and other artillery among IDPs often led to retaliatory fire

[49] Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives", "Troops capture Puthukkudiyiruppu Hospital", 12 March 2009.
[50] Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives", "Security Forces declare new Safety Zone", 12 February 2009. But on the same day, shells landed inside the NFZ just beside the United Nations hub, on the tent used by the hospital cook, killing several people including children. 17 February 2009 UNICEF Colombo, "More children victims of the conflict", (www.un.lk/mecia_centre/archived.php): "The main injuries to children have been burns, fractures, shrapnel and bullet wounds."

by the Government, often resulting in civilian casualties. LTTE cadre were not always in uniform at this stage. Since the loss of the Jaffna and Kilinochchi fronts, the LTTE's supply lines and logistical systems began to fail, as it was almost impossible for them to shift supplies and maintenance installations to the Mullaittivu district. As a result, the LTTE lost access to fuel, ammunition and some of its food supplies. While the LTTE had some weapons caches left, they had only limited heavy artillery, including a small number of MBRLs. The SLAF had complete air superiority, and the LTTE had to camouflage its installations to make them more difficult to identify from the air.

98. In spite of the futility of their military situation, the LTTE not only refused to surrender, but also continued to prevent civilians from leaving the area, ensuring their continued presence as a human buffer. It forced civilians to help build military installations and fortifications or undertake other forced labour. It also intensified its practice of forced recruitment, including of children, to swell their dwindling ranks.[51] As LTTE recruitment increased, parents actively resisted, and families took increasingly desperate measures to protect their children from recruitment. They hid their children in secret locations or forced them into early arranged marriages.[52] LTTE cadre would beat relatives or parents, sometimes severely, if they tried to resist the recruitment. All these approaches, many of them aimed at defending the LTTE and its leadership, portrayed callousness to the desperate plight of civilians and a willingness to sacrifice their lives.

99. Nonetheless, as the situation in the second NFZ worsened, growing numbers of civilians sought to escape LTTE-controlled areas. Civilians waded long distances through the lagoons or across mine-ridden territory, often in the dead of night. Inevitably people stepped on landmines and lost their limbs or were fatally injured.[53] Beginning in February, the LTTE commenced a policy of shooting civilians who attempted to escape, and, to this end, cadre took up positions where they could spot civilians who might try to break out.

6. SLA shelling in the second No Fire Zone

100. From as early as 6 February 2009, the SLA continuously shelled within the area that became the second NFZ, from all directions, including land, air and sea. It is estimated that there were between 300,000 and 330,000 civilians in that small area.[54] The SLA assault employed aerial bombardment, long-range artillery, howitzers and MBRLs as well as small mortars, RPGs and small arms fire, some of it fired from a close range. MBRLs are unguided missile systems designed to shell large areas, but if used in densely populated areas, are indiscriminate in their effect and likely to cause large numbers of casualties.

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[51] Report of the Secretary-General on Children and Armed Conflict, 13 April 2010, A/64/742-S/2010/181 at para. 148. Some United Nations national staff members and dependents were forcibly recruited, including a 16 year-old girl. UNICEF verified and documented 397 cases of child recruitment, including 147 girls, by the LTTE, between 1 January and 19 May 2009, but the actual number of forced recruitments going on during that period is presumed to be much higher.

[52] Early marriage was perceived to protect girls and boys from LTTE recruitment, as the LTTE preferred to recruit unmarried youth. Early marriage is a threat to the health and development of young women. Later, in the IDP camps, parents also hoped that marriage would protect girls who had reached puberty from sexual violence by Government forces.

[53] United Nations Statement, Colombo, www.un.lk.media_centre/archived.php, 16 February 2009: "The LTTE continues to actively prevent people from leaving, and reports indicate that a growing number of people trying to leave have been shot and sometimes killed."

[54] United Nations Documents generally reference a number of 300,000 whereas the Additional Government Agent estimated that there were 330,000 civilians left in the area.

5. IDP shelter destroyed by shelling in second No Fire Zone, April 2009
Source: submission to the Panel by the photographer

101. At the time, the Defence Secretary stated: "We are taking casualties to prevent civilians getting hurt. This is a factor we are very concerned about. Otherwise we could have used so much artillery and just moved on."[55] The Government announced on 25 February, and again on 27 April, that the SLA was no longer using heavy weapons in the second and third No Fire Zones. [56] But what was happening on the ground indicated the opposite. Intensive artillery fire had been a core tactic in the SLA's military campaign from the outset. As victory neared, this tactic was not abandoned, but rather its use was intensified, even though the LTTE was now immobilized and surrounded in an area of high civilian density. The intensive shelling also caused many civilians to attempt to flee the area, meeting another of the Government's objectives, to put pressure on civilians to get out of the way. Despite Government pronouncements, satellite images in Annex 3 show that SLA artillery batteries were constantly adjusted to increasingly target the NFZs. The LTTE had fewer heavy weapons left and less space to fire them from.

102. The coastal strip became increasingly crowded, and liveable spaces were in short supply. Much of the land where IDPs set up shelters was beach territory, with sandy, waterlogged land unsuitable for human habitation, and it was difficult for IDPs to construct makeshift bunkers to protect themselves. Daily life for the IDPs at that time took place mostly inside the bunker, although some IDPs hoisted white flags over their shelters in an attempt to protect themselves. Fresh water was scarce and food was in such short supply that

[55] Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives", "Civilian safety is the top priority- Defense Secretary", 17 February 2009.
[56] Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives:" "President reiterates Govt's cautious approach to avoid civilian casualties", 27 February 2009; and "Combat Operations reach conclusion-Government," 27 April 2009: "Our security forces have been instructed to end the use of heavy caliber guns, combat aircraft and aerial weapons which could cause civilian causalities."

a few people died of starvation.[57] When the seasonal rains came, many bunkers were flooded, adding to the general misery of the people.

6. Frontlines, March 2009
Source: Government of Sri Lanka Ministry of Defence website

7. Shelling of Putumattalan Hospital

103. When the PTK hospital relocated to Putumattalan, the Government stated that "there are now no hospitals functioning in uncleared areas in the Vanni".[58] Nonetheless, the second NFZ had three makeshift hospitals, including Putumattalan, a small clinic at Valayanmadam and a hospital in Mullivaikkal. All of their coordinates were known to the Government, and they were clearly marked with emblems. Government doctors continued providing their services there. Putumattalan hospital was severely overcrowded with hundreds of newly injured civilians. As the Government did not allow basic medical supplies into the Vanni, conditions in Putumattalan hospital were so poor that a large number of amputations were performed without anaesthetic, using butcher knives rather than scalpels. Sanitary pads and cotton cloths were used as bandages, and intravenous drips were hung from the trees, with the severely-injured patients lying on the ground under them. In spite of the significant efforts of the few available doctors, many patients died due to lack of access to proper medical care, and scores of bodies were deposited in front of the hospital each day.

[57] The Tamils Rehabilitation Organization (TRO), an entity associated with the LTTE, helped displaced persons to move, transported the injured to the hospital, buried bodies and distributed food, mainly Kanchi (rice and salt boiled with lots of water).
[58] Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives", "All patients transferred to safer locations", 5 February 2009.

104. On 9 February 2009, shells fell on Putumattalan hospital, killing at least16 patients.[59] The shells came from SLA bases in Chalai, but subsequently shells were also fired from SLA positions across the lagoon (even though the hospital was clearly visible to the SLA based there). While some wounded LTTE cadre were treated at Putumattalan hospital, they were few in number and were kept in a separate ward. Putumattalan hospital was shelled on several occasions after that, in February and March. RPGs were fired at the hospital around 27 March killing several civilians. In addition to civilian casualties, the operating theatre, makeshift ward and roof all sustained damage.

7. Putumattalan Hospital, March 2009
Source: submission to the Panel by the photographer

105. While individual incidents of shelling and shooting took place on a daily basis, destroying the lives of many individuals or families, the SLA also shelled large gatherings of civilians capable of being identified by UAVs. On 25 March, an MBRL attack on Ambalavanpokkanai killed around 140 people, including many children. On 8 April 2009, a large group of women and children, who were queued up at a milk powder distribution line organized by the RDHS, were shelled at Ambalavanpokkanai. Some of the dead mothers still clutched cards which entitled them to milk powder for their children.

[59] ICRC News Release 09/06, http://www.icrc.org/eng/resources/result/index.jsp, 10 Feb. 2009, "Sri Lanka: ICRC evacuates over 240 wounded and sick from Vanni by sea", which states that "On Monday, Putumattalan [Hospital] was hit by shelling that killed at least 16 patients. "We are shocked that patients are not afforded the protection they are entitled to," said Paul Castella, head of the ICRC delegation in Colombo."

8. Hindrance of humanitarian assistance via the ICRC ships

106. The ICRC continued to play a leading role in alleviating the plight of the civilian population in the Vanni, by evacuating wounded civilians from the coastal strip by ship, starting on 10 February 2009.[60] In total, 16 ICRC ships came to the conflict zone in the final months. The international ICRC staff that had remained in Putumattalan left on the first ship, but they returned and stayed onshore for a few hours each time the ships came back. The Government did not allow United Nations staff on the ships.[61]

107. The LTTE issued passes for injured civilians and some of their dependents to leave the area on ICRC ships, but the wounded had to be ferried on small boats, as the ship was not allowed to come closer than a kilometre offshore. The wounded were lined up on the beach, but several times came under fire. Shells fired by the SLA sometimes fell in the sea near the ICRC ships. Around 22 April, shelling near a ship forced the captain to return to deeper waters.

108. The ICRC's ships were also the only means for delivering food, but the supplies they were allowed to bring by the Government were inadequate. As conditions in the NFZ became more desperate, on 17 March, a large crowd of IDPs surrounded an international ICRC staff member who came ashore, begging him to save their lives by taking them out of the Vanni. The LTTE forcibly dispersed the crowd. The final ICRC ship came to the Vanni on 9 May 2009.[62] On 15 May 2009, a ship approached, but had to turn back due to the intensity of the fighting. In all, ICRC evacuated 14,000 wounded persons and their relatives from the second and third NFZs and delivered around 2,350 metric tons of food to Mullivaikkal. Those evacuated were all civilians, as the LTTE did not permit its cadre to leave the conflict area for treatment.

[60] ICRC News Release No. 09/06, http://www.icrc.org/eng/resources/result/index.jsp, 10 Feb. 2009: "Sri Lanka: ICRC evacuates over 240 wounded and sick from the Vanni by sea." The ICRC ships were called the *Green Ocean*, *Oriental Princess, Seruvila 2, Binh Tan* and *City of Dublin.*

[61] Three of the ICRC staff were killed: ICRC News Release 09/12, 5 March 2009, "Sri Lanka: ICRC staff member killed in the conflict area." ICRC News Release 09/73, 8 April 2009, "Sri Lanka: ICRC staff member killed in conflict area." ICRC News Release 09/100, 13 May 2009, "Sri Lanka: Third ICRC staff member killed in the conflict area." All at: http://www.icrc.org/eng/resources/result/index.jsp.

[62] ICRC News Release No. 09/13, http://www.icrc.org/eng/resources/result/index.jsp, 12 May 2009, "Sri Lanka: fighting hinders further ICRC evacuations of severely wounded people."

8. Infant amputee in second No Fire Zone, March 2009
Source: submission to the Panel by the photographer

9. SLA shelling including Mullivaikkal Hospital

109. By early April 2009, after their defeat at Anandapuram, the LTTE's remaining forces had almost entirely retreated onto the coastal strip. The Government shelling intensified inside the NFZ. Although it relied mainly on mortars, throughout the conflict, until the final moments, the Government continued to use heavy weapons such as MBRLs and aerial bombardment, although it said that it was conducting a "humanitarian rescue" of the hostage civilian population at that stage. On 19 April 2009, the area between Putumattalan and Amparanpokkanai was shelled intensively, and the SLA 58th Division came onto the coastal strip for the first time, breaking through LTTE defences, dividing the NFZ into two, but inflicting heavy civilian casualties at the same time.[63] The division of the NFZ into two parts enabled a group of around 100,000 civilians to escape to Government-controlled territory, in addition to the 70,000 or so who had already come out. At least another 130,000 civilians remained trapped further south.[64]

110. After the SLA captured the north of the NFZ, Mullivaikkal Hospital was the only remaining hospital in the conflict zone. There were no LTTE cadre in uniform in the hospital,

[63] Putumatallan hospital was shelled again by SLA on the morning of 20 April.
[64] UNICEF statement – Kathmandu, 20 April 2009: "UNICEF fears for thousands of children trapped in Sri Lanka's conflict" http://www.unicef.org/media/media_49405.html. On 21 April 2009, the ICRC said that it was concerned about the use of artillery by the government in what it called a "very densely populated area" where "extreme precautions" were necessary. ICRC News Release No. 09/81, http://www.icrc.org/eng/resources/result/index.jsp, 21 April 2009, "Sri Lanka: ICRC calls for exceptional precautionary measures to minimize further bloodshed in "no fire zone": "The situation is nothing short of catastrophic. Ongoing fighting has killed or wounded hundreds of civilians who have only minimal access to medical care."

nor did anyone bring weapons inside. Conditions were extremely poor. The hospital had four doctors and ran two improvised operating theatres. Some of the patients, including those with serious head injuries and other obvious fatal injuries, were merely made comfortable, but no attempt could be made to save them. With few beds available, wounded patients often remained in front of the hospital, some on mats and others lying on dust and gravel, under sheets set up for shelter, cradled by their loved ones or alone. With a severe shortage of gauze or other sterile bandages, old clothes or saris were used as bandages. No gloves were available, and the conditions were grossly unhygienic, giving rise to a high risk of infections. In this hospital, amputations were also performed with butcher knives, due to the lack of surgical equipment, and amputated limbs were collected in piles. On many occasions amputations were performed to save the life of the patient, as there was simply no other way to treat wounds. Due to the severe shortage of anaesthetics, the little that remained was mixed with distilled water, but many amputations were performed without anaesthesia. In spite of widespread malnutrition, some people continued to donate blood, but a general shortage of blood meant that a patient's own blood was often used, caught in a plastic bag, to be filtered through a cloth and re-transfused back into the same patient.

111. Due to the heavy shelling that hit the hospital on numerous occasions, the RDHS moved to a second location at Vellamullivaikkal. On 11 or 12 May, the second hospital was also hit by SLA shells, killing many people, although it, too, was prominently marked. The conditions in the second hospital were as poor as the first, and some of the hospital staff members were killed by SLA shelling.

10. LTTE killing of civilians and forced recruitment

112. As the situation in the second NFZ worsened, large numbers of civilians tried to escape LTTE-controlled areas, but the LTTE sought to prevent this with increasing brutality. Some LTTE cadre would let fleeing civilians through, but others opened fire on them with AK47s, killing men, women and children, alike. The IDPs, who attempted escape, desperately tried to run away and to reach SLA lines, carrying their children or luggage or dropping them in their panic. Some were killed on the spot; others flailed in the shallow water or incurred terrible injuries from stepping on landmines. Small children and others drowned in the lagoon. While it is not known precisely how many people died this way, the number was significant and rose as the armed conflict progressed.

113. Desperate for new troops, the LTTE again stepped up its policy of forced recruitment, dragging away more and more youngsters, including the under-aged, to be used in the first lines of defence. On one occasion in mid-April, LTTE cadre, led by the former Trincomalee Political Wing leader known as Ezhilan, forcibly recruited hundreds of young people from Valayanmadam Church and put them on buses to Mullivaikkal. Parents begged and cried for them not to be taken away to fight and to an almost certain death, but to no avail.

114. On 26 April the LTTE declared a unilateral ceasefire, but it was not accepted by the Government, which referred to it as a "joke".[65] On 27 April 2009, the Government announced for the second time that combat operations against the LTTE had concluded and that it was ceasing the use of heavy weapons. On or about 8 May 2009 the Government declared a third and final NFZ, which was very small section in the south of the second NFZ.

[65] Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives," "LTTE must surrender – Defense Sec: What ceasefire when running away?", 26 April 2009.

11. SLA shelling during the final days (13-18 May)

115. On May 13, the 58th Division was pushing its way forward from the east towards the coastline with the aim of advancing south from there, with the 53rd Division marching east along the A35 road towards the lagoon. Troops from the 55th Division pushed further south from Putumattalan. At that point, the United Nations estimated that 100,000 civilians remained trapped within three square kilometres, whereas the Government claimed there were only 10,000.

116. The final days of the armed conflict saw a steep rise in the number of civilian casualties. At the hospital at Vellamullivaikkal, hundreds of patients were lying on the ground, bleeding from terrible wounds. The dead lay intermingled with the gravely injured. The relatives caring for the wounded were themselves malnourished and weak.

9. Civilian deaths in second No Fire Zone, May 2009
Source: submission to the Panel by the photographer

117. The shelling within the third NFZ was such that it was impossible for the ICRC to conduct any more maritime rescues. As the SLA neared the hiding places of the senior LTTE leadership, its offensive assumed a new level of intensity, in spite of the thousands of civilians who remained trapped in the area. The LTTE leadership, in turn, sent many cadre to die in their defence, including through suicide missions.

118. Due to the lack of space in the third NFZ, civilians had nowhere to hide from the shelling, which was coming in from all sides. Shells rained down everywhere and bullets whizzed through the air. Many died and were buried under their bunkers or shelters, without their deaths being recorded. Black smoke and the stench of dead bodies filled the air. Some

people begged for food for their starving children or for help for the wounded or dying. The scene was described as reminiscent of hell.

119. In spite of many desperate telephone calls by the AGA and doctors to stop the shelling to allow them to attend to the wounded and dead, no reprieve was forthcoming from the SLA. After 14 May 2009, the doctors could no longer go to the hospital due to the intensity of the shelling, and it had to be closed. Dozens of patients who could not be moved were left behind. All survivors huddled together in rudimentary shelters. Cooking was impossible and leaving the shelter even for sanitary purposes meant risking one's life. Some civilians tried to stage a mass breakout, but were shot at and shelled by the LTTE. Those who managed to escape were helped across by individual SLA soldiers.

120. On 15 May, the LTTE began destroying their communications equipment. On 16 May, a large explosion rocked the LTTE-area, and a fire destroyed hundreds of IDP shelters. That same day, the 58th and 59th Divisions of the SLA linked on the coastline, and Army Commander Lieutenant General Fonseka declared victory against the LTTE. The 53rd Division continued to make its way south, along the Nanthikadal lagoon. The remaining LTTE, including many of the top leaders and around 250 hard-core fighters, were locked into a small area of around 3 square kilometres at Vellamullivaikkal. The end was near; the circumstances surrounding the deaths of many of those leaders are the subject of controversy.

121. On 18 May 2009, Defence Ministry sources said that Prabhakaran, Soosai and Pottu Amman were killed while trying to break out of the NFZ. Charles Anthony, Nadesan and Pulidevan were also among the dead.[66] On 19 May, the Government of Sri Lanka officially announced that Prabhakaran and his key aides had been killed and showed their bodies on television. Many photographs of the corpses emerged later. The same day the President gave a speech in Sri Lanka's Parliament declaring victory over the LTTE.

122. Between 16 and 19 May, the remaining civilians trapped in the zone made their way south, out of the coastal strip, crossing the Vadduvahal Bridge into the Government-controlled area. The shelling continued and large fires were burning (including destroyed arms caches or weaponry from the LTTE). The dead were strewn everywhere; the wounded lay along the roadsides, begging for help from those still able to walk, but often not receiving it. Some had to be torn away from the bodies of their loved ones left behind. The smell of the dead and dying was overwhelming.

123. 18 May 2009 marked the end of the armed conflict in the Vanni. In the words of the ICRC, the final days had culminated in "unimaginable humanitarian catastrophe".[67]

D. Disputing IDP figures as a basis to deny humanitarian assistance

124. Throughout the final stages of the armed conflict, particularly from January to May 2009, the Government downplayed the number of civilians present in the LTTE-controlled area, using the low estimates to restrict the amount of humanitarian assistance that could be provided, especially food and medicine.

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[66] Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives", "Prabhakaran believed killed in bid to flee troops", 18 May 2009.
67 ICRC News Release No. 09/103, http://www.icrc.org/eng/resources/result/index.jsp, 15 May 2009, "Sri Lanka: Humanitarian assistance can no longer reach civilians."

125. At the outset of the final phase, on 13 January 2009, the Government website reported that, according to independent verifications, the number of civilians in the Vanni was between 150,000 and 250,000. The United Nations estimate at the time was 250,000 (although its subsequent estimates were higher).[68] Later in January 2009, the Ministry of Defence said that the number of civilians present in the Vanni was between 75,000 and 100,000, "on a high estimate".[69] However, the Government had more than sufficient information at its disposal during the final stages of the armed conflict to accurately estimate the actual number of civilians in the Vanni. Each month the GAs continued to collate data on IDPs in order to make requests for dry rations from WFP. Prior to September 2008, numbers compiled by the GAs of Mullaittivu and Kilinochchi indicated that there were around 420,000 people in the LTTE-controlled area at that time.[70] While these numbers may have been inflated, the United Nations Children's Fund (UNICEF) estimates of school children registered in the Vanni were 70,000, which was approximately the same as to the Government's estimate for the total IDP population.

126. The subsequent numbers given by the Ministry of Defence varied, but in general they were deliberately kept low, and some Government employees working in the zone were reprimanded, when they provided other figures or different calculations of need. For instance, on 2 February 2009, the AGA based in the second NFZ sent a situation report to the Ministry of Public Administration and Home Affairs stating that there were about 81,000 families present in Mullaittivu District at that time, totalling some 330,000 persons.[71] However, on 18 March, the AGA received a response from the Secretary of the Ministry of National Building and Estate Infrastructure Development, stating that the figure of 330,000 was "arbitrary and baseless" and that the Government would be "reluctantly compelled" to take disciplinary action against him for providing "wrong information to any source especially in regard to IDP figures".[72]

127. At the end of February 2009, the United Nations Country Team informed the Government that, in its view, there were 267,618 civilians present in the LTTE-controlled area, basing the estimate, in part, on UNOSAT Quickbird and Worldview satellite images, used to count the number of IDP shelters. At the end of April, United Nations estimates were that 127,177 civilians still remained trapped, whereas the Government said there were only 10,000 persons left at the time.[73] The number of IDPs who eventually emerged from the area and were housed at Menik Farm and in other camps was approximately 290,000. The discrepancy in these figures has not been adequately explained by the Government.

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[68] Statement by the Secretary-General, New York, http://www.un.lk?mecia_centre/archived.php, 26 January 2009.

69 Defence Ministry website, "LTTE clamps on civilian outflow: Mounts artillery batteries inside No-fire zones - Mullaittivu, http://www.defence.lk/new.asp?fname=20090130_F01. On 26 February 2009, the Defence Secretary said that the advance of the army was being slowed by the presence of civilians in the conflict zone, which were estimated at 70,000. Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives", "Civilians slowing Sri Lanka's advance: Defense Secretary", 26 Feb. 2009.

[70] In addition, in early 2008, the GAs for Mullaittivu District prepared a Contingency Plan for Disaster Management that reflected those population numbers. (This booklet also included hospital locations).

[71] The report, entitled "Situation Report / Mullaitivu District", was provided to the United Nations, the ICRC and a few Sri Lanka media outlets. It was re-circulated on 5 March 2009. It also discussed a number of issues other than food, to do with the general situation in the Vanni at the time.

[72] Letter 18 March 2008, "Issue of Dry Ration under WFP-Mullaithivu District", signed W.K.K. Kumarasiri.

[73] Sri Lanka Government website, http://www.priu.gov.lk/, "We want to catch Prabhakaran alive" President", 29 April 2009: President Rajapaksa said in an interview: "There are 5,000 people even as many as 10,000 still trapped."

128. As a result of the Government's low estimates, the food delivered by WFP to the Vanni was a fraction of what was actually needed,[74] resulting in widespread malnutrition, including cases of starvation. Similarly, the medical supplies allowed into the Vanni were grossly inadequate to treat the number of injuries incurred by the shelling. Given the types of injuries sustained in the second NFZ, the doctors requested medical supplies such as anaesthetics, blood bags for transfusion, antibiotics, surgical items, gloves and disinfectant. Only a small quantity of these items was allowed into the Vanni. Instead, they received items such as Panadol, allergy tablets and vitamins. As the casualty figures rose in March 2010, the absence of the needed medical supplies imposed enormous suffering and unnecessarily cost many lives. The RDHS doctors repeatedly spoke out about the inadequacy of medical supplies, in letters and televised interviews.[75] They also compiled and communicated photographs and lists of the names of the injured and dead. They were warned by the Ministry of Health to stop speaking to the media and stop complaining, or be punished.[76] Drs. Sathyamoothy and Varatharajah forwarded a report, "Undue Deaths due to Non-Availability of Essential Drugs at Mullaittivu", to the Government on 16 March, stating:

> Most of the hospital deaths could have been prevented if basic infrastructure facilities and essential medicines were made available … We have been supplied with no antibiotics, no anaesthetics and not even a single bottle of IV fluid, leaving us in a desperate situation of not being able to provide even lifesaving emergency surgery.

129. On 19 March 2009, the Secretary of the Ministry of Healthcare and Nutrition replied that only strong painkillers and intravenous fluids could be dispatched, since Mullivaikkal Hospital did not have trained anaesthesiologists. The letter also warned the doctors not to violate protocols, by addressing copies of their letters to the Indian High Commission or the Chief Minister of Tamil Nadu, or else disciplinary action would be taken "for violating procedure and embarrassing the Government".

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74 The Government generally denied that the food and medicine it was supplying was inadequate. On 12 February 2009, Foreign Secretary Dr. Palitha Kohona stated that 80 to 90 per cent of all food and essentials, health services and medicine and relief had been provided by the Government of Sri Lanka throughout the conflict and that it would continue. Sri Lanka Government website, http://www.priu.gov.lk/, under "Archives" "See LTTE for cold blooded murderers they are"- Human Rights Minister, 12 February 2009.

75 Dr. Sathyamoothy, a government doctor, compiled a "Situation Report Health Sector Vanni" on 5 March 2009, which was also forwarded to a wide variety of actors including the United Nations.

76 In February the provincial health authorities had actually directed all government doctors to leave the Vanni, but they had stayed to help the civilian population.

10. Child in hospital in second No Fire Zone, April 2009
Source: submission to the Panel by the photographer

130. When the doctors exited the conflict zone on 16 May, they were detained and interrogated for several months. In early July 2009, the doctors gave a press conference, in which they said that there were, in fact, very few civilian deaths and injuries during the war and that they had been forced to lie about it by the LTTE. This retraction contradicts what they had said in interviews, e-mails and public statements while they were still in the Vanni. The Panel believes they were put under pressure by the Government, and that these retractions do not affect the veracity of their earlier statements.

131. Despite its access to first-hand information regarding the size of the civilian population and its needs, the Government of Sri Lanka deliberately used greatly reduced estimates, as part of a strategy to limit the supplies going into the Vanni, thereby putting ever-greater pressure on the civilian population. A senior Government official subsequently admitted that the estimates were reduced to this end. The low numbers also indicate that the Government conflated civilians with LTTE in the final stages of the war.[77]

E. The number of civilian deaths

132. There is no authoritative figure for civilian deaths or injuries in the Vanni in the final phases of the war. Several factors make it very difficult to calculate a reliable casualty figure: (a) the number of persons in the conflict area remains uncertain, although it was likely to have been as many as 330,000; (b) the lack of an accurate count of the number of persons who emerged from the Vanni, due to the lack of transparency in the screening process; (c) lack of certainty on the numbers of LTTE combatants, complicated further by the increase in

[77] The Government increasingly used the Tamil word "Maavirar" to refer to those who remained in the Vanni. This word was commonly used by the LTTE to describe those who were associated with it and sacrificed someone for the cause, but in 2008 the Government started to use it with increasing frequency.

forced recruitment in the final phase; and (d) the fact that many civilians were buried where they fell, without their deaths being registered, in some cases, unobserved.

133. Some have developed estimates based on the statistics of the injured and dead collected by the doctors, which were collated by the hospitals and the District Disaster Management Unit. One estimate is that there were approximately 40,000 surgical procedures and 5,000 amputations performed during the final phase. Depending on the ratio of injuries to deaths, estimated at various times to be 1:2 or 1:3, this could point to a much higher casualty figure. Others have put the estimate at 75,000, a figure obtained by subtracting the number of people who emerged from the conflict zone (approximately 290,000) from the estimate of the number thought to have been in the conflict zone (approximately 330,000 in the NFZ from January, plus approximately the 35,000, who emerged from the LTTE-held areas before that time).

134. The United Nations Country Team is one source of information; in a document that was never released publicly, it estimated a total figure of 7,721 killed and 18,479 injured from August 2008 up to 13 May 2009, after which it became too difficult to count. In early February 2009, the United Nations started a process of compiling casualty figures, although efforts were hindered by lack of access. An internal "Crisis Operation Group" was formed to collect reliable information regarding civilian casualties and other humanitarian concerns. In order to calculate a total casualty figure, the Group took figures from RDHS as the baseline, using reports from national staff of the United Nations and NGOs, inside the Vanni, the ICRC, religious authorities and other sources to cross-check and verify the baseline. The methodology was quite conservative: if an incident could not be verified by three sources or could have been double-counted, it was dismissed. Figures emanating from sources that could be perceived as biased, such as Tamil Net, were dismissed, as were Government sources outside the Vanni.

135. The number calculated by the United Nations Country Team provides a starting point, but is likely to be too low, for several reasons. First, it only accounts for the casualties that were actually observed by the networks of observers who were operational in LTTE-controlled areas. Many casualties may not have been observed at all. Second, after the United Nations stopped counting on 13 May, the number of civilian casualties likely grew rapidly. Due to the intensity of the shelling, many civilians were left where they died and were never registered, brought to a hospital or even buried. This means that, in reality, the total number could easily be several times that of the United Nations figure.

136. It is worth noting that the United Nations raised casualty figures in private entreaties with the Government, but never publicized its specific estimates. Government officials strongly refuted the figures provided by the United Nations, stating that the numbers were fabricated and that this was not the business of the United Nations. Publicly the United Nations referred to the "heavy toll" of the fighting on civilians, or that the casualty figures were "unacceptably high", but that the actual figures were not verifiable.[78] The decision not

[78] On 15 February 2010, the United Nations Country Team in Sri Lanka released a statement "for the record", "UN Statement on former Spokesman views", www/un.lk/media_centre/for_the_record.php, stating: "The UN repeatedly and publicly said that there were unacceptably high civilian casualties from the fighting in the last months of the war, as a result of the LTTE forcibly preventing people leaving and the Government's use of heavy weapons in areas close to thousands of civilians. While we maintained internal estimates of casualties, circumstances did not permit us to independently verify them on the ground, and therefore we do not have verifiable figures of how many casualties there were."

to provide specific figures made the issue of civilian casualties less newsworthy. However, this position was maintained by senior United Nations officials until 13 March 2009, when the High Commissioner for Human Rights publicly stated that 2,800 civilians may have been killed and more than 7,000 injured since 20 January, many of them inside the NFZs.[79] Pressure from the Government of Sri Lanka and fears of losing access may have resulted in a general under-reporting of violations by United Nations agencies.[80] Some have criticized the failure of the United Nations to present figures publicly as events were unfolding, citing it as excessively cautious in comparison with other conflict situations.

137. In the limited surveys that have been carried out in the aftermath of the conflict, the percentage of people reporting dead relatives is high. A number of credible sources have estimated that there could have been as many as 40,000 civilian deaths. Two years after the end of the war, there is still no reliable figure for civilian deaths, but multiple sources of information indicate that a range of up to 40,000 civilian deaths cannot be ruled out at this stage. Only a proper investigation can lead to the identification of all of the victims and to the formulation of an accurate figure for the total number of civilian deaths.

F. Credible allegations relating to events outside the conflict zone and in the aftermath

138. The plight of civilians who had survived the conflict in the Vanni did not end when they entered Government-controlled areas.[81] In spite of Government pronouncements that it was ready to receive a mass exodus of civilians from the Vanni as early as January 2009, the Government failed to prepare adequately for the time when large numbers did emerge and then had trouble coping.[82] In general, the Government gave priority to security considerations over the humanitarian needs and well-being of the IDPs.

139. When they emerged from the conflict zone, many civilians were fearful of the reception they would receive. They were severely traumatized and exhausted as a consequence of their recent experience. Many of them were newly widowed, orphaned or disabled. Tens of thousands of IDPs had conflict-related injuries, with at least 2,000 amputees among them. The situation, as large numbers exited, was chaotic, and many family members were separated from each other. In the process, many families were divided and placed in separate camps; provision for family tracing and reunification was inadequate, and the ICRC was not authorized to play a role in this regard.

140. Family separation left many women on their own and vulnerable to sexual violence. Pregnant or lactating women had suffered from lack of adequate nutrition, medical care, and enormous psychological strain while in the conflict zone. Forced recruitment of children also took a heavy toll on mothers.

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[79] The Government responded that it was "very disappointed and dismayed at the unprofessional nature of the press release" and that it "categorically" rejected the allegations which were "unsubstantiated, unverified and vague" and reflected LTTE propaganda. Sri Lanka Government website, http://www.priu.gov.lk, "Archives", "Government rejects OHCHR statement that supports LTTE propaganda", 15 March 2009. The United Nations Country Team spokesperson in a public statement on or after 20 April 2009, referred to a "bloodbath" but this was similarly disputed by the Government.

[80] After the war the Government expelled the spokesperson for UNICEF who had been vocal about violations against children.

[81] The section below on credible allegations relating to events outside the conflict zone and in its aftermath will be dealt with thematically rather than chronologically.

[82] Throughout the final phase from January until May 2009, IDPs fled the area, although until 20 April the numbers were still relatively low (at around 50,000).

141. The conflict took a particular toll on the young. Children as young as 14 had been the target of forced recruitment by the LTTE. Measures to avoid recruitment, including early marriages, had a detrimental impact on the health of young girls. In addition, thousands of children suffered violations such as killing and maiming, due to the shelling.[83] Some were killed because they had ventured out of the bunker to play. Children were particularly vulnerable to horrific injuries as shrapnel ripped at their small limbs. A Rapid Nutrition Assessment showed that around 25 per cent of children suffered from acute malnutrition.

142. Many children suffered from the adverse psychological impact of multiple displacements. Many had lost their parents, emerging unaccompanied and were not registered.[84] Most children were malnourished, and many babies suffered from dehydration or diarrhoea.

143. Likewise, the elderly were particularly affected by the conflict. In the multiple displacements, the elderly and others who could no longer walk, were often left behind. Some were abandoned when their relatives fled. Others had nobody to care for them in the IDP camps and died of neglect, exhaustion and preventable diseases.

1. Violations during the screening process

144. On leaving the Vanni and arriving in the Government-controlled areas at Vadduvahal Bridge and other locations, survivors of the armed conflict surrendered to the SLA. Incoming civilians were separated into different groups. First, the SLA generally strip-searched and checked them for weapons and explosives. Laptops and cameras (for the few that had them) were confiscated by security forces, leading to the loss of valuable information. People were then transferred, often by foot, to initial screening sites set up in places such as Kilinochchi, Pulmoddai and Padaviya. At these sites, the SLA called those who had been associated with the LTTE, even for a day, to identify themselves and surrender, and promised vocational training and employment abroad for those who did. Instead, those identified as LTTE were taken to separate camps. A significant number of suspected LTTE were women and children.

145. In addition, the Government used former LTTE cadre from the Karuna faction or People's Liberation Organization of Tamil Eelam (PLOTE) to identify suspected LTTE cadre, who were separated and taken to other locations.[85] The Government purposefully prevented international humanitarian agencies from accessing the initial screening sites.

146. After this initial screening, surviving civilians were transported to a further screening site at Omanthai. Although men and women were screened separately, as part of the screening process, people were generally forced to strip naked, causing humiliation and increased vulnerability, particularly among women and girls. Médecins Sans Frontières (MSF), Office of the United Nations High Commissioner for Refugees (UNHCR) and ICRC

[83] Violations reported under SC Resolution 1612 indicated that 199 children were killed and 146 maimed from 1 January 2009 to 19 May 2009, although the "actual number of casualties is likely to be higher." Report of the Secretary-General on Children and Armed Conflict, 13 April 2010, A/64/742-S/2010/181 at para. 150.
[84] Report of the Secretary-General on Children and Armed Conflict, 13 April 2010, A/64/742-S/2010/181 at para. 156.
[85] Those who had been forcibly recruited or spent very little time with the LTTE, even in non-combat roles were also removed.

had some access to Omanthai, but were not allowed to interview people in private.[86] After July 2009, the ICRC was excluded altogether.

147. Civilians in need of medical attention were transferred to hospitals in Vavuniya or the clinic staffed by Indian doctors at Pulmoddai. Vavuniya Hospital was overflowing with patients, leading to early discharges, and all patients were closely guarded by the SLA and subject to interrogation by police investigators (Criminal Investigation Department, CID, or Terrorist Investigation Department, TID). Some patients disappeared from the hospitals.

148. In particular, the screening process resulted in cases of executions, disappearances, and rape and sexual violence.

(a) Executions

149. Authenticated footage and numerous photographs indicate that certain LTTE cadre were executed after being taken into custody by the SLA. Photographs available to the Panel show many dead bodies of cadre (or possibly civilians), some with their hands tied behind their back. On 25 August 2009, the UK-based Channel 4 News released video footage, which showed the summary execution by Sri Lankan soldiers of several prisoners with their hands tied behind their backs. The prisoners in the footage are naked and blindfolded. They are kicked and forced to cower in the mud before being shot in the head at close range. The film shows several other prisoners who appear to have been killed earlier.[87] A second film of the same scene, also released by Channel 4, on 2 December 2010, pans out over the landscape, showing the bodies of a number of other naked and executed prisoners, male and female.[88] Among them are a young boy and a woman; the woman has been identified as a well-known LTTE media anchor known as "Isaipriya". Notably, Isaipriya is listed on the Defence Ministry website as killed on 18 May 2009 in a "hostile operation" by the 53rd Division. The extended video shows the faces of some of the soldiers and shows persons filming the scene with cell phones.

150. Photographs that appear to be taken before the executions show what appears to be the boy, sitting in a group of prisoners, who were alive, with their hands tied behind their back. The persons in the photograph are clearly terrified. When first detained by the SLA, some suspected LTTE cadre were also tortured. Photographs show bodies with signs of torture; a video shows a young man who has been tied to a tree and is covered in blood. He later appears dead, lying in a grave covered by a Tiger flag.

(b) Disappearances

151. The Government has not provided a public registration of persons at screening sites or Omanthai, neither did it allow international organizations to monitor the process. This makes it difficult to trace persons. During hearings by the Lessons Learnt and Reconciliation Commission (LLRC), a number of women gave accounts of how their husbands or relatives were taken from them when they first entered the Government-controlled area and that they have not been seen since and to date, the Government has not confirmed their whereabouts.

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[86] United Nations Country Team Statement Colombo/ NY, www.un.lk/media_centre/archived.php, 26 April 2009: "UN humanitarian chief arrives in Sri Lanka seeking increased humanitarian access."

[87] The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, concluded after consulting a video and audio expert as well as a forensic pathologist and an expert on ballistics, that "while there are some unexplained elements in the video, there are strong indications of its authenticity."

[88] See http://www.channel4.com/news/sri-lanka-civil-war.

At least 32 submissions made to the Panel alleged disappearances in May 2009, some of them dealing with groups of persons rather than individuals. Many of these were persons who had surrendered to the SLA.

(c) Rape and sexual violence

152. Rape and sexual violence against Tamil women during the final stages of the armed conflict and, in its aftermath, are greatly under-reported. Cultural sensitivities and associated stigma often prevented victims from reporting such crimes, even to their relatives. Nonetheless, there are many indirect accounts reported by women of sexual violence and rape by members of Government forces and their Tamil-surrogate forces, during and in the aftermath of the final phases of the armed conflict.

153. Many photos and video footage, in particular the footage provided by Channel 4, depict dead female cadre. In these, women are repeatedly shown naked or with underwear withdrawn to expose breasts and genitalia. The Channel 4 images, with accompanying commentary in Sinhala by SLA soldiers, raise a strong inference that rape or sexual violence may have occurred, either prior to or after execution. One video shows SLA soldiers loading the naked bodies of dead (or nearly dead) women onto a truck in a highly disrespectful manner, in one case, stomping on the leg of a woman who appears to be moving. Rapes of suspected LTTE cadre are also reported to have occurred, when they were in the custody of the Sri Lankan police (CID and TID) or the SLA. International agencies also recorded instances of rape in the IDP camps, but the military warned IDPs not to report cases of rape to the police or to humanitarian actors.

2. Violations in the IDP camps

(a) Arbitrary detention of IDPs in closed camps

154. Civilians emerging from the conflict zone were initially housed in a network of 21 IDP sites spread across Jaffna, Mannar, Trincomalee and Vavuniya districts. Most were eventually sent to Menik Farm near Vavuniya, which, at its peak, housed around 250,000 IDPs, making it one of the largest IDP sites in the world and one of the largest population centres in Sri Lanka.

155. Menik Farm and other IDP sites were closed camps, guarded by the military and surrounded by barbed wire. Essentially, the entire Vanni IDP population was detained and not allowed to leave.[89] The Government held that the detention of the entire IDP population was necessary until the screening could be completed and the Vanni sufficiently cleared of landmines.[90] Screening continued inside Menik Farm. Paramilitaries from former Tamil militant groups, often wearing balaclavas, roamed around, often at night, outside the scrutiny of humanitarian organizations, to select and remove people they claimed had links to the LTTE.

156. At Menik Farm, severe restrictions prevented international organizations from doing protection work or speaking to the IDPs in private. ICRC initially had access to Menik Farm for a short period, but was soon excluded. The restrictions suggest an attempt by the Government to prevent those who came out of the conflict zone from relaying their

[89] In the chaos of the early days, some zones were established before the barbed wire was erected, allowing some people to leave the camp.

[90] Landmines were removed by the SLA outside of the public eye, in a process that may have resulted in the destruction of evidence.

experiences to international agencies and NGOs. The absence of external and independent monitoring also increased the vulnerability of IDPs to violations in the camp, including exposure of women without male relatives and unaccompanied children to sexual and other forms of violence.

157. Prior to the establishment of Menik Farm, international agencies, including the International Organization for Migration (IOM), UNHCR, UNICEF and others, debated amongst themselves about conditioning their provision of humanitarian assistance on the Government's meeting international standards with regard to the camps. Several communications on the applicable standards were sent to the Sri Lankan Government by agencies, such as UNHCR, and by NGOs. However, when IDPs came out in larger numbers, the international agencies failed to take a common position on the pre-conditions. Many international agencies continued to provide assistance, in spite of the dramatically sub-standard conditions that prevailed at Menik Farm.

158. The detention of the IDP population lasted for months or in some cases, years. By December 2009, around 149,000 IDPs had been released, with another 135,000 remaining in the camps. By September 2010, the Government said it had released 242,741 IDPs, with 25,795 still waiting to be released.

(b) Inhumane camp conditions

159. While the Government referred to Menik Farm as a "welfare village" for IDPs, it was located in the middle of the jungle, without its own water source. After the large influx of IDPs in April and May 2009, conditions in Menik Farm were far below international standards. These conditions imposed additional unnecessary suffering and humiliation on civilians. New arrivals often had not eaten for days. While many persons suffered from depression, psychological support was not allowed by the Ministry of Social Services, and some IDPs committed suicide. Some died while awaiting passes to get basic medical treatment or died from preventable diseases.

160. Extreme overcrowding in the camps forced some people into unsafe living conditions. Provision for food, water, shelter and sanitation at Menik Farm was highly inadequate to cope with the large numbers of people who arrived in April and May.[91] The shelters consisted of tarpaulins, which became very hot under the blazing sun. People had to wait many hours or sometimes an entire day for food and water. Food was of very poor quality and sometimes was served into bare hands, without plates.

161. Families were often grouped into tents with other families, to whom they were not related. In cases of families headed by women whose husbands were missing or dead, such practice made them vulnerable to abuse by unrelated men living in the same tent. The poor conditions provoked violence by IDPs against other IDPs, including sexual violence and exploitation, particularly considering the high number of women without male relatives and unaccompanied children. Women were not given sufficient privacy, and soldiers infringed on their privacy and dignity by watching them while they used the toilet or bathed. Some women were forced to perform sexual acts in exchange for food, shelter or assistance in camps.[92]

[91] UNHCR tents of 5 x 3 metres were set up next to each other, holding up to 14 persons each, leaving not much more than a square metre per person.

[92] Report of the Secretary-General on Children and Armed Conflict, 13 April 2010, A/64/742-S/2010/181, para. 148. The report also states that "Within the internally displaced person sites, exploitation of women and girls

162. While basic conditions at Menik Farm were inhumane, a Western Union (money transfer facility) soon opened, and thousands of people, many of them LTTE with connections among the diaspora, were able to buy their way out of the camps by bribing the military.[93] Conditions in Menik Farm did improve over time after much protest from the international community and threats from donors to cut off funding.

(c) Torture in detention

163. The CID and TID maintained units inside the camps in Menik Farm and conducted regular interrogations. Other individuals were also detained and interrogated for potential links to the LTTE, including the doctors, the AGA and two United Nations staff members.[94] Some of them were tortured as well. The sounds of beating and screams could be heard from the interrogation tents. The UNHCR recorded at least nine cases of torture in detention. Some detainees were taken away and not returned.

3. Arbitrary detention of suspected LTTE

164. During the screening process, the SLA removed those suspected of being LTTE members to separate detention facilities at Boossa and Omanthai, generally under the Prevention of Terrorism Act or the Emergency Regulations. In many cases the SLA did not provide family members with notification for the detention of their relatives; neither did it identify the criteria by which it was identifying suspected LTTE. According to Government figures provided to the Panel, as of September 2010, a total of 11,696 persons who "initially surrendered … are accounted for and are being processed", although this number cannot be independently verified, as the Government has refused to allow independent oversight by the United Nations, ICRC or the Sri Lankan Human Rights Commission.[95] The tally includes people who did not take part in fighting or who were only recruited in the final weeks or days. Among them, according to the Government's figures, were 594 children. Initially children were housed with the adults, but were registered by UNICEF; later they were moved to separate child rehabilitation centres. However, many of these were in the south of Sri Lanka, which made family visits difficult.

165. Detainees would be questioned in detail about their links with the LTTE. Some would then be transferred to "Protective Accommodation and Rehabilitation Centres" (PARCs), under the authority of the Commissioner-General for Rehabilitation. This office, established in 2006 under Emergency Regulations, exercises power to detain a "surrendee" upon order of the Defence Secretary for up to two years, for the purpose of "rehabilitation".[96] The Commissioner-General decides the nature of the rehabilitation in individual cases, and the programme does not comply with international frameworks for Disarmament, Demobilization

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appeared to be perpetrated by various actors through promises of favours, money or marriage and through threats." Report of the Secretary-General on Children and Armed Conflict, 13 April 2010, A/64/742-S/2010/181, para. 151.

[93] Different "packages" were available offering a combination of "services", depending on what those buying could afford, including release from the camp, the obtaining of a false passport or an airline ticket or all three. But these were not options for those too poor or with few connections.

[94] United Nations Country Team Statement "For the record", http://www.un.lk/media_centre/for_the_record.php, on arrested United Nations staff members. Before that, 13 United Nations staff members had been detained in the IDP camp.

[95] Ministry of External Affairs, Sri Lanka Post-Conflict Progress, September 2010

[96] Under these Regulations, such detainees may meet parents, relations or guardians every two weeks, although it is unclear to what extent this has been allowed in practice.

and Reintegration. While it is known to include vocational training (as selected by the Government), official rehabilitation also includes a psychological component where "surrendees" are "reformed". According to the September 2010 figures provided to the Panel by the Government, "approximately 6,500" alleged ex-combatants were undergoing "short term" rehabilitation, "around 3,500" were undergoing "longer term rehabilitation", and "less than 1,500" were identified as "hard core" LTTE and designated for prosecution.

166. The Government submitted documents to the Panel which stated that 5,809 "rehabilitees" had been "reintegrated", that is, released, as of 8 February 2011, with a further 4,581 undergoing "rehabilitation" under the authority of the Commissioner-General for Rehabilitation in nine different PARC detention facilities. This suggests 1,306 alleged LTTE suspects are still retained in closed detention facilities for criminal investigation and prosecution.

167. There is virtually no information about the conditions at these separate LTTE "surrendee" sites, due to a deliberate lack of transparency by the Government. The fact that interrogations and investigations as well as "rehabilitation" activities have been ongoing, without any external scrutiny for almost two years, rendered alleged LTTE cadre highly vulnerable to violations such as rape, torture or disappearances, which could be committed with impunity.

G. Other allegations

168. In addition to the credible allegations discussed above, the Panel has been presented with a number of other allegations, about which it was unable to reach a conclusion regarding their credibility. Due to their potentially serious nature, these allegations should also be investigated.

1. Allegations of the use of cluster munitions or white phosphorus

169. There are allegations that the SLA used cluster bomb munitions or white phosphorus or other chemical substances against civilians, particularly around PTK and in the second NFZ. Accounts refer to large explosions, followed by numerous smaller explosions consistent with the sound of a cluster bomb. Some wounds in the various hospitals are alleged to have been caused by cluster munitions or white phosphorus. The Government of Sri Lanka denies the use of these weapons and, instead, accuses the LTTE of using white phosphorus.[97]

2. The "White Flag" incident

170. Various reports have alleged that the political leadership of the LTTE and their dependants were executed when they surrendered to the SLA.[98] In the very final days of the war, the head of the LTTE political wing, Nadesan, and the head of the Tiger Peace Secretariat, Pulidevan, were in regular communication with various interlocutors to negotiate a surrender. They were reportedly with a group of around 300 civilians. The LTTE political

[97] Sri Lanka Government website, http://www.priu.gov.lk, "Archives ", "Lankan Army does not use lethal weapons against civilians", 5 Feb. 2009; "LTTE's shocking use of banned weaponry – White phosphorus targeting fleeing hostages", 14 May 2009.

[98] See for instance D.B.S. Jeyaraj, "Who killed the Cock Robin? LTTE leaders who were surrendered were killed by Army Special Forces", 29 Dec. 2009 at http://www.globalpeacesupport.com/post/2009/12/29/LTTE. See also University Teachers for Human Rights (Jaffna), Special Report No. 32, "A Marred Victory and a Defeat Pregnant with Foreboding", 10 June 2009 at http://www.uthr.org/SpecialReports/spreports32.htm.

leadership was initially reluctant to agree to an unconditional surrender, but as the SLA closed in on the group in their final hideout, Nadesan and Pulidevan, and possibly Colonel Ramesh, were prepared to surrender unconditionally. This intention was communicated to officials of the United Nations and of the Governments of Norway, the United Kingdom and the United States, as well as to representatives of the ICRC and others. It was also conveyed through intermediaries to Mahinda, Gotabaya and Basil Rajapaksa, former Foreign Secretary Palitha Kohona and senior officers in the SLA.

171. Both President Rajapaksa and Defence Secretary Basil Rajapaksa provided assurances that their surrender would be accepted. These were conveyed by intermediaries to the LTTE leaders, who were advised to raise a white flag and walk slowly towards the army, following a particular route indicated by Basil Rajapaksa. Requests by the LTTE for a third party to be present at the point of surrender were not granted. Around 6.30 a.m. on 18 May 2009, Nadesan and Pulidevan left their hide-out to walk towards the area held by the 58th Division, accompanied by a large group, including their families. Colonel Ramesh followed behind them, with another group. Shortly afterwards, the BBC and other television stations reported that Nadesan and Pulidevan had been shot dead. Subsequently, the Government gave several different accounts of the incident. While there is little information on the circumstances of their death, the Panel believes that the LTTE leadership intended to surrender.

H. The Government's version of events

172. The credible allegations above reveal a version of the final stages of the war very different from that of the Government of Sri Lanka. The Government says it pursued a "humanitarian rescue operation" with a policy of "zero civilian casualties". In a speech on 7 May 2010, the Defence Secretary said that it was the first time in the world that a zero casualty principle was included in military operational orders in a battle. On 18 June 2010, President Mahinda Rajapaksa said in a speech that "we left no room for even one bullet to be fired against ordinary citizens".[99] On 18 May 2010, the first anniversary of the end of the war, the Defence Secretary recalled:

> We declared 'no fire zones.' We also adopted a self-imposed ban on air bombing, artillery and mortar fire whenever we were confronted with battle zones which were home to civilians. Our field commanders were very mindful of this and restrained themselves often. … Also, at every stage of the battle we made certain that food and medical supplies reached trapped civilians through the World Food Programme, the Red Cross and the United Nations.[100]

173. On 2 March 2009, the Minister for Disaster Management and Human Rights, Mahinda Samarasinghe told the BBC's Hardtalk: "There is absolutely no justification to use heavy weapons, and, in fact, about ten days ago, the Armed Forces took a conscious decision not to use any heavy weapons. As you know, the LTTE is restricted in fact to a very small area of about 48 sq. kilometres, and we cannot use heavy weapons." However, other

[99] President Mahinda Rajapaksa's speech, "Sri Lanka has Lessons to World on Defeating Terrorism", 18 June 2010, available at http://www.slmfa.gov.lk/index.php.
[100] Defence Secretary Gotabaya Rajapaksa's speech, "My Destiny with Victory", Sunday Times (Guest Column), 18 May 2010.

Government officials said that up to 81 mm mortars had been used until the end of the conflict but argued that these are not heavy weapons.[101]

174. On 6 April 2009, in Sri Lanka's Observer newspaper, Lieutenant General Sarath Fonseka said that the SLA was involved in "the world's largest hostage rescue" operation. On 18 May 2009, Minister for Human Rights Samarasinghe said that warnings over an "imminent bloodbath" had proved wrong.[102] The Government also maintained that IDPs coming out of the conflict zone were received in "welfare centres", whereas the former LTTE were subject to a "restorative" process, focusing on their "rehabilitation".

175. After a rigorous review and assessment of all of the available information, the Panel is unable to accept the version of events held by the Government of Sri Lanka.

I. Conclusions

176. The Panel's account of the allegations associated with the final stages of the war thus reveal five core categories of potential serious violations committed by the Government of Sri Lanka:

(a) *Killing of civilians through widespread shelling*. The Sri Lanka Army (SLA) advanced its military campaign in the Vanni, using large-scale and widespread shelling, at times with heavy weapons, such as Multi-Barrel Rocket Launchers (MBRLs) and other large artillery, causing large numbers of civilian casualties. It shelled in three consecutive No Fire Zones, where it had encouraged the civilian population to concentrate, and after it had indicated that it would stop using heavy weapons. It shelled in spite of its knowledge of the impact, provided through SLA intelligence systems, including UAVs, and through notification by various external actors, including the United Nations and the ICRC. The majority of civilian casualties in the final phases of the war were caused by Government shelling. The Government sought to limit external pressure and observation by excluding international organizations from the conflict zone.

(b) *Shelling of hospitals and other humanitarian objects*. The Government systematically shelled hospitals on the frontlines, some of them repeatedly. Some civilians who had been injured in shelling and who had come to the hospital were re-injured or killed due to this shelling. All hospitals in the Vanni were hit by shells and had to be evacuated. This was despite the fact that their locations were well-known to the Government.

(c) *Denial of humanitarian assistance*. The Government systematically deprived persons in the conflict zone of humanitarian assistance, in the form of food and basic medical supplies, particularly supplies needed to treat injuries. To this end, it purposefully underestimated the number of civilians that remained in the conflict zone. Particularly the denial of surgical supplies greatly increased the suffering of the civilians and added to the large death toll.

[101] Julian Borger, "Sri Lanka says up to 5000 civilians died in Tiger battle," The Guardian, 4 June 2009, quoting Rajiva Wijesinha, permanent secretary in Sri Lanka's Ministry of Disaster Management and Human Rights. Wijesinha says that all casualties were caused by the LTTE holding people hostage.
[102] Sri Lanka Government website, http://www.priu.gov.lk, "Archives", "Bodies of Charles Anthony and three top LTTE leaders found", 18 May 2009.

(d) *Human rights violations suffered by victims and survivors of the conflict*. Despite referring to its actions as a "humanitarian rescue operation", the Government subjected victims and survivors of the conflict to further deprivation and suffering after they left the conflict zone. Massive overcrowding led to terrible conditions, breaching the basic social and economic rights of detainees, and lives were lost unnecessarily. All IDPs were detained in closed camps and were not allowed to speak privately with humanitarian organizations. Women were subject to further harassment and exploitation in the camps and in detention. Screening for suspected LTTE took place without any transparency or external scrutiny. Some suspected LTTE cadres were executed and others disappeared. Photos and footage of naked female cadre indicate that they may have been raped or sexually assaulted. Torture during interrogation continued. Suspected LTTE were removed to separate camps where they were held for years, outside the scrutiny of the ICRC, the Sri Lankan Human Rights Commission or other agencies.

(e) *Human rights violations outside the conflict zone*. The Government sought to intimidate and silence the media and other critics through a variety of threats, including the use of white vans to abduct and make people disappear.

177. The Panel's account of the allegations associated with the final stages of the war also reveals six core categories of potential serious violations committed by the LTTE:

(a) *Using civilians as a human buffer*. Despite the grave dangers and terrible conditions in the conflict zone, the LTTE refused civilians permission to leave, using them as hostages and at times using their presence as a strategic human buffer between themselves and the advancing SLA. Civilians were increasingly sacrificed as dispensable "cannon fodder" while the LTTE fought to protect its senior leadership. The LTTE's refusal to allow civilians to leave the area added significantly to the total death toll in the conflict.

(b) *Killing civilians attempting to flee LTTE control*. From February 2009 onwards, the LTTE instituted a policy of shooting civilians who attempted to escape the conflict zone, significantly adding to the death toll in the final stages of the war. It positioned cadre along points where civilians were trying to escape and shot at groups of men, women and children whom in their desperation were prepared to wade through the lagoon or cross minefields to try to reach Government-controlled areas. Some drowned in the panic as they tried to escape the shooting.

(c) *Using military equipment in the proximity of civilians*. The LTTE fired artillery from the NFZs, in proximity to IDP populations, and fired from or stored military equipment near IDPs or civilian installations such as hospitals. They did this even though they knew that it would provoke a response from the SLA and that any retaliating artillery would cause harm to civilians. Sometimes they fired from among civilians before quickly moving away, leaving the civilians on the receiving end of the return fire.

(d) *Forced recruitment of children*. The LTTE operated a policy of forced recruitment throughout the war, but in the final stages greatly intensified its recruitment of people of all ages, including children as young as fourteen. It recruited more than one child per family and beat relatives who tried to resist, in a desperate attempt to prevent their children from being carried away from them to an almost certain death. This policy was enforced with great cruelty and regardless of the hopeless military situation of the LTTE.

(e) *Forced labour*. The LTTE forced civilians to bolster their defence lines through digging trenches and other emplacements used for its own defences, thereby contributing to blurring the distinction between combatants and civilians. It thereby exposed civilians to additional harm from shelling.

(f) *Killing of civilians through suicide attacks*. During the final stages of the war, the LTTE continued its policy of suicide attacks outside the conflict zone. Even though its ability to perpetrate such attacks was diminished compared to previous phases of the conflict, it perpetrated a number of attacks outside the conflict zone, including a suicide bombing at a screening centre in Mullaittivu on 9 February 2009, in which around 30 people died, and a suicide attack killing Minister Mahinda Wijesekera at Akuressa on 10 March 2009, killing around 15 people.

IV. Legal Evaluation of Allegations

178. In light of the Panel's conclusion that the allegations described in chapter III are credible, it will now examine the legal qualification of those allegations. This assessment is required by its mandate, which provides that the Panel will "hav[e] regard to the nature and scope of the alleged violations". The Panel thus turns to the question of whether the events alleged above amount to alleged violations of the law and whether, if they are later proved to have in fact occurred, they would amount to actual violations. Moreover, the focus of the current evaluation is limited to the legal characterization of the allegations; the Panel's view that a certain allegation would not violate international law should in no way be interpreted as an endorsement of the underlying activity. The Panel evaluates the allegations according to the categories identified at the end of chapter III.

A. Applicable law

179. The Panel's mandate requires it to consider alleged violations of both international humanitarian law and international human rights law. The Panel proceeds from the basic and long-settled premise of international law that during an armed conflict such as that in Sri Lanka, both international humanitarian law and international human rights law are applicable.

180. For the Panel's purposes, it suffices to discuss the key norms of international humanitarian and human rights law that apply, rather than all of them. Moreover, the norms of humanitarian and human rights law implicated have been the subject of significant interpretation by States, international organizations, courts, quasi-judicial monitoring bodies and other entities.

1. International humanitarian law

181. International humanitarian law applies because the hostilities clearly met the threshold for an internal armed conflict, i.e., one involving protracted armed violence between the Government and organized armed groups. According to the International Criminal Tribunal for the former Yugoslavia (ICTY), an armed conflict exists "whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within the State."[103] There is no doubt that an internal armed conflict was being waged in Sri Lanka with the requisite intensity during the period that the Panel examined. As a result, international humanitarian law is the law against which to measure the conduct in the conflict of both the Government and the LTTE.

182. Sri Lanka is a party to the four Geneva Conventions of 1949; it is not a party to the 1977 Protocol Additional to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). As a result, the obligations of the parties to the conflict are those set out in Common Article 3 of the four Geneva Conventions – the only article in them directed to conflicts not of an international character – and the part of

[103] *Prosecutor v. Tadić,* Case No. IT-94-1 (ICTY Appeals Chamber), Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, at para. 70; *Prosecutor v. Kunarac et al.*, Case No.IT-96-23 and IT-96-23/1 (ICTY Appeals Chamber), Judgment, 12 June 2002, at para 56. That definition was later adopted by other bodies and judicial authorities as representing customary international law.

customary international humanitarian law governing non-international, or internal, armed conflicts. It is worth quoting the key provisions of Common Article 3:

> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
> (b) taking of hostages;
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment . . .
>
> (2) The wounded and sick shall be collected and cared for.

183. In order to determine the content and meaning of customary international law, the Panel relies upon various sources, including the ICRC's study, *Customary International Humanitarian Law* (2005), which comprehensively analyses state practice and attitudes as well as international and national judicial decisions, and the statute and jurisprudence of international criminal tribunals. While the Panel recognizes some disagreement among States over the customary law status and the scope of some restrictions on the conduct of parties involved in non-international armed conflicts, the rules on which the Panel relies below are all, in its view, beyond dispute as rules of customary international humanitarian law.

2. International human rights law

184. Human rights law also applies in situations of armed conflict, as accepted by most States and confirmed by the International Court of Justice (ICJ) in its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.[104] This reasoning was also applied in its 2005 judgment in, *Armed Activities on the Territory of the Congo*, where it held that Uganda had violated provisions of the International Covenant on Civil and Political Rights (ICCPR) during an armed conflict.[105]

185. The Panel applies the rules of international humanitarian law to the credible allegations linked to the armed conflict, recognizing that many of these will also constitute violations of human rights. Since the conclusion of the war on 19 May 2009, international human rights law became the sole body of applicable law. Thus, the Panel addresses only human rights violations that are materially or temporally outside the conduct of the war.

186. Sri Lanka is a party to the core international human rights treaties dealing with civil, cultural, economic, political and social rights, as well as treaties covering the ban on torture,

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[104] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p.136, at* paras. 104-106.
[105] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 168.*

and the rights of women and children.[106] Sri Lanka has not entered reservations to any of these treaties. On 20 May 2000, the Sri Lanka notified the Secretary-General, of a series of derogations under article 4 of the ICCPR, which permits derogations from certain provisions of that treaty.[107] On 4 June 2010, Sri Lanka notified the Secretary-General that it terminated all of these derogations with the exception of article 9(3), dealing with due process on arrest and detention, and expeditious trial.

187. The breadth and duration of Sri Lanka's derogations are a matter of concern, given that article 4 of the ICCPR limits derogations to the context of a "public emergency which threatens the life of the nation" and that are necessary "to the extent strictly required by the exigencies of the situation". The remaining derogations would likely not pass muster under the tests for reservations proposed by the International Law Commission and the Human Rights Committee.[108] Given the uncertainties surrounding the validity of these derogations, the Panel discusses all the relevant provisions of the ICCPR below.

188. With respect to the LTTE, although non-state actors cannot formally become party to a human rights treaty, it is now increasingly accepted that non-state groups exercising *de facto* control over a part of a State's territory must respect fundamental human rights of persons in that territory. Various organs of the United Nations, including the Security Council, have repeatedly demanded that such actors respect human rights law. Although the Panel recognizes that there remains some difference of views on the subject among international actors, it proceeds on the assumption that, at a minimum, the LTTE was bound to respect the most basic human rights of persons within its power, including the rights to life and physical security and integrity of the person, and freedom from torture and cruel, inhuman or degrading treatment and punishment.

B. Asymmetric warfare and international humanitarian law

189. Neither the publicly expressed aims of each side of this armed conflict (combating terrorism in the case of the Government, and fighting for a separate homeland in the case of the LTTE), nor the asymmetrical nature of the tactics employed by the two sides affects the applicability of international humanitarian law to the parties. The State has a right under international law to ensure its national security and to defend itself against armed attacks, including those of insurgents who may engage in acts of terrorism. Those ends do not, however, justify all means to achieve them; all action for those legitimate purposes must

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[106] These are the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights (State party to both since 1980), the International Convention on the Elimination of All Forms of Racial Discrimination (since 1982), the Convention on the Elimination of All Forms of Discrimination against Women (since 1981), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (since 1994), the Convention on the Rights of the Child (since 1991) and its optional protocols on the involvement of children in armed conflict (since 2000) and on sale of children, child prostitution and child pornography (since 2006).

[107] The articles specifically derogated from were articles 9(3), 12(1), 12(2), 14(3), 17(1), 19(2), 21 and 22. Sri Lanka had also previously entered derogations with respect to the earlier phases of the conflict.

[108] Note, in particular, the Human Rights Committee's General Comment No. 29 on States of Emergency (Art.4), CCPR/C/21/Rev.1/Add.11, 31 August 2001. Sri Lanka's June 2010 notice of termination of derogations was linked to amendments made in May 2010 that repealed significant parts of the Emergency (Miscellaneous Provisions and Powers) Regulations of 2005. However, Regulation 21 of the 2010 amendments provides that the 2005 regulations remain in force in respect of all persons subject to detention orders under the 2005 Regulations. As the now-lifted derogations were intended to save the past application of these Regulations from breaching the Covenant, the continued application of the full set of the Emergency Regulations with respect to this group of persons appears to be in breach of the Covenant.

comply with the requirements of international law. As the International Court of Justice has found, the rules of Common Article 3 "constitute a minimum yardstick [and] reflect … 'elementary considerations of humanity'".[109]

190. International humanitarian law thus respects the legitimate interests of a state like Sri Lanka facing a threat like the LTTE. Statements by both sides in the Sri Lankan civil war over the years suggesting that, for various reasons, the conflict was beyond the reach of international humanitarian law are thus incorrect as a matter of international law. Moreover, it is a well- accepted and fundamental premise underlying international humanitarian law that violations committed by one party do not, as a general rule, permit the other party to suspend its obligations under that law.

C. Forms of legal responsibility

191. In examining the legal nature of the allegations, the Panel must take account of the different entities on whom international humanitarian and human rights law impose obligations and thus who is responsible for alleged violations. The Panel considers three forms of responsibility. State responsibility concerns whether the State of Sri Lanka would be responsible for violations were the alleged acts found to be true. Under international law, state responsibility applies only to the acts of the State of Sri Lanka. Actions by non-state actors, such as paramilitary groups or private citizens who act under the instructions of, or are directed or controlled by, the State are imputable to the State.[110] Organizational responsibility is a concept that recognizes that international humanitarian law also places duties on non-state armed groups, including in this case the LTTE. Individual responsibility generally concerns whether particular individuals regardless of their affiliation in an armed conflict would be criminally responsible for violations. Criminal responsibility attaches to certain acts, regardless of whether the individual was acting on behalf of the Government or the LTTE (or neither). In addition, the Panel briefly considers some aspects of the application of Sri Lankan domestic law.

D. Alleged violations by the Government of Sri Lanka

192. Chapter III identified five categories of credible allegations concerning conduct by the Sri Lankan Government. This section lays out the Panel's assessment of each category of allegation for the underlying legal violation.

1. Killing of civilians through widespread shelling

(a) Common Article 3 of the Geneva Conventions

193. In terms of paragraph (1)(a) of Common Article 3, i.e. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, credible allegations point to the murder of civilians in widespread shelling of an indiscriminate nature by the SLA. These include attacks in the three No Fire Zones. In terms of whether indiscriminate shelling may amount to murder, international jurisprudence accepts that "where a civilian population is subject to an attack such as an artillery attack, which results in civilian deaths,

[109] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports, 1986*, p.14, at para. 218.
[110] International Law Commission's "Articles on responsibility of States for internationally wrongful acts," annexed to General Assembly Resolution A/RES/56/83 (28 January 2002), at art. 8.

such deaths may appropriately be characterized as murder, when the perpetrators had knowledge of the probability that the attack would cause death."[111] The credible allegations also point to murder insofar as information, such as the Channel 4 videos, indicates that the SLA executed unarmed LTTE cadre who were taken into custody, particularly during the final days of the war.

(b) Requirement of distinction between combatants and civilians

194. International humanitarian law provides that "the parties to the conflict must at all times distinguish between civilians and combatants. Attacks may be directed only against combatants and must not be directed against civilians" (Rule 1, ICRC Study). Civilians are defined as "anyone who is not a member of the armed forces or of an organized military group belonging to a party to the conflict".[112] In cases of doubt as to the status of a person, that person shall be considered a civilian.

195. The credible allegations indicate that the Government of Sri Lanka did not respect the fundamental principle of distinction. The Government stated that its military operations in the Vanni yielded zero civilian casualties, when credible estimates of civilian casualties are in the tens of thousands; it also provided vastly low estimates of civilians trapped in the conflict zone. Together these indicate that it associated many or most people inside the conflict zone with the LTTE and thereby failed to take account of this bedrock principle.

(c) Ban on attacks on civilians or civilian objects

196. International humanitarian law prohibits attacks on civilians and civilian objects. Attacks may be directed only against military objects and combatants (Rule 7, ICRC Study). There is an "unconditional and absolute prohibition on the targeting of civilians in customary international law".[113] This norm is the most fundamental of those flowing from the principle of distinction. In addition, parties may not direct an attack against a zone established to shelter the wounded, the sick and civilians from the effects of hostilities (Rule 35, ICRC Study). In regard to the presence of the LTTE in the proximity of civilians in the NFZs, international tribunals, including the ICTY, have clarified that the ban on attacks against civilians protects a population that is "*predominantly* civilian",[114] and "the presence within the civilian population of individuals who do not come within the definition of civilians [i.e. combatants] does not deprive the population of its civilian character."[115]

197. In the case of Sri Lanka, it is important to consider the mental element of this prohibition from the context of the law on individual responsibility. Most significantly, the law does not prohibit only attacks in which the attacking party's sole intent is to kill civilians

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[111] *Prosecutor v. Strugar*, Case No. IT-01-42-T (ICTY Trial Chamber), Judgment, 31 January 2005, at paras. 240.

[112] *Prosecutor v. Galić*, Case No. IT-98-29-T (ICTY Trial Chamber), Judgment, 5 December 2003, at para. 47.

[113] *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T (ICTY Trial Chamber), Judgment, 12 December 2007, at para. 944, citing *Prosecutor v. Blaškić*, Case No. IT-95-14-A (ICTY Appeals Chamber), Judgment, 29 July 2004, at para. 109, and *Prosecutor v. Kordić et al.*, Case No. IT-95-14/2-A (ICTY Appeals Chamber), 17 December 2004, at para. 54.

[114] *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A (ICTY Appeals Chamber), Judgment, 12 November 2009, at paras. 50-51 (emphasis original), citing *Prosecutor vs. Galić,* (ICTY Appeals Chamber), Judgment, 20 November 2006, at para. 144, and *Prosecutor v. Kordić et al.*, (ICTY Appeals Chamber), op. cit., at para 50

[115] *Prosecutor v. Kordić et al.*, (ICTY Appeals Chamber), op. cit., at para 50. *Prosecutor v. Galić,* (ICTY Trial Chamber), op. cit., at para. 50.

deliberately. Reasoning by analogy from the First Additional Protocol, which defines the war crime of making civilians the object of attack in international armed conflict, requires that such a prohibited attack on civilians must be undertaken "wilfully".[116] According to the ICRC's official commentary on the Protocol, "the accused must have acted consciously and with intent, i.e., with his mind on the act and its consequences, and willing them (criminal intent' or malice aforethought')."[117] The ICTY's authoritative jurisprudence has interpreted a "wilful" attack to also encompass an attack that is recklessness regarding the impact on civilians.[118]

198. With respect to the determination of such intent to attack civilians, whether deliberately or recklessly, the ICTY has stated that: "the intent to target civilians can be proved . . . from direct or circumstantial evidence. There is no requirement of the intent to attack *particular* victims; rather it is prohibited to make the civilian population as such, as well as individual civilians, the object of an attack."[119] Whether the attack was directed against civilians can be inferred on a case-by-case basis from numerous factors, including the methods used in the attack, the distance between the victims and the source of fire and the number and appearance of the victims.[120] Moreover, the ICTY has held that "indiscriminate attacks, that is to say, attacks that strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks against civilians."[121] In the same way, "certain apparently disproportionate attacks may give rise to the inference that civilians were actually the object of attack".[122]

199. As for any argument that the SLA did not intend to make the civilian population the object of attack, but that its attacks were aimed at the LTTE, an attack remains unlawful if it is conducted simultaneously at a lawful military object and an unlawfully-targeted civilian population.[123] The SLA possessed and operated weapons and intelligence systems, in particular UAVs, that enabled lawful targeting, and the Vanni Commander and other Government officials received numerous communications to notify them when the SLA was striking civilian targets. In addition, with respect to hospitals, the law is clear that the possible presence of wounded LTTE in some hospitals does not transform those hospitals into legitimate military targets – they remain protected civilian objects.

200. It is thus clear to the Panel that credible allegations point to a violation of the ban on attacks directed against civilians insofar as the SLA, whether deliberately or recklessly, attacked civilians situated in the NFZs, as well as other civilian objects, such as hospitals and

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[116] Protocol I, Article 85(3).

[117] ICRC Commentary to Protocol I, Article 85. It also notes, "The notion of 'wilfulness' encompasses the concepts of 'wrongful intent' or 'recklessness,' viz. the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening; on the other hand, ordinary negligence or lack of foresight is not covered . . ."

[118] *Prosecutor v. Galić*, (ICTY Trial Chamber), op. cit., at para 54 ("the perpetrator who recklessly attacks civilians acts 'wilfully'"); confirmed in ICTY Appeals Chamber, Judgment, Nov. 30, 2006, at para. 140. See also *Prosecutor v. Strugar*, Case No. IT-01-41-A (ICTY Appeals Chamber), Judgment, 17 July 2008, at para. 270.

[119] *Prosecutor v. Strugar*, (ICTY Appeals Chamber), op. cit., at para. 271 (footnotes omitted, emphasis original).

[120] *Prosecutor v. Galić,* (ICTY Appeals Chamber), op. cit., at paras.132-133, adopting *Prosecutor v. Kunarac et al.*, (ICTY Appeals Chamber), op. cit., at para 91. See also *Prosecutor v. Strugar*, (ICTY Appeals Chamber), op. cit., at para. 271.

[121] *Prosecutor v. Galić*, (ICTY Trial Chamber), op. cit., at para. 57.

[122] *Prosecutor v. Galić,* (ICTY Appeals Chamber), op. cit., at para.133 (emphasis omitted).

[123] *Prosecutor v. Katanga*, ICC-01/04-01/07 (ICC Pre-Trial Chamber I), Decision on the confirmation of charges, 30 September 2008, at para. 273.

other humanitarian objects, including food distribution lines. In addition, the widespread shelling that is credibly alleged, notably across the succession of NFZs where the civilian population went at the Government's urging, also points to a violation of the customary law rule that prohibits attacks, the primary purpose of which is to spread terror among civilians (Rule 2, ICRC Study).

(d) Ban on indiscriminate or disproportionate attacks against civilians

201. International humanitarian law prohibits indiscriminate attacks, generally considered to be those:

> …which are not directed at a specific military objective; (b) which employ a method or means of combat which cannot be directed at a specific military objective; or (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction (Rules 11-13, ICRC Study).

202. Credible allegations point to a violation insofar as the SLA employed artillery in a manner that did not target specific military objectives but struck civilians without distinction, including within the self-declared NFZs and civilian objects such as hospitals and food distribution lines. The alleged use of heavy weapons in respect of target areas heavily populated by civilians, or the widespread use of artillery in those areas, might itself be indiscriminate.

203. The law also prohibits "launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated" (Rule 14, ICRC Study). This norm prohibits the disproportionate use of force defined in terms of anticipated excessive civilian casualties. While the Panel does not have information on all incidents, credible allegations suggest numerous violations of this provision insofar as the attacks on the NFZs were broadly disproportionate to the military advantage anticipated from such attacks.[124] The Government's repeated declaration that it had ceased using heavy weapons in these NFZs points to awareness that such usage could be considered disproportionate. Broadly speaking, once both the civilian population and the LTTE were confined to the very limited spaces of the second and third NFZs, the LTTE was no longer mobile as an armed force, and more precise means to defeat the LTTE than barrages of widely-spread artillery and mortar attacks could and should have been employed in order to ensure respect for international humanitarian law.

(e) Requirement of precautions before and during attacks

204. International humanitarian law requires parties to take all feasible precautions to avoid or minimize civilian casualties, including through verification that targets are military objectives, choice of means and methods of warfare to minimize civilian casualties, and if circumstances permit, through effective advance warning (Rules 15-20, ICRC Study).

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[124]The intent requirement for individual responsibility for a disproportionate attack is to launch such an attack "wilfully and in knowledge of circumstances giving rise to the expectation of excessive civilian casualties." *Prosecutor v. Galić,* (ICTY Trial Chamber), op. cit., at para. 59.

205. Credible allegations point to a violation of this provision insofar as they indicate that the Armed Forces did not provide any or sufficient advance warning of attacks to the civilian population, including attacks on military targets that would have an impact on civilians. The leaflets that were periodically distributed in the Vanni did not constitute sufficient precautions for specific attacks. In addition, the Government's instructions for civilians to move into the NFZs, only to be subsequently shelled by the SLA, disregarded this rule and in fact amounted to a cynical manipulation of it.

2. Shelling of hospitals and humanitarian objects

(a) Common Article 3 of the Geneva Conventions

206. The credible allegations of attacks on hospitals and humanitarian objects discussed above, in spite of their distinctive emblems and locations known by the Government, would give rise to a violation of the duty to "provide care for the sick and the wounded", as enunciated in Common Article 3. They also point to murder in breach of Common Article 3, in that the targeting – whether direct or reckless – of known, populated hospital sites and humanitarian objects suggests that the perpetrators had the requisite knowledge of the probability that the attack would cause death.

(b) Requirement of special protection to medical and humanitarian personnel and objects

207. International humanitarian law requires parties to respect and protect all medical personnel, medical units, medical transports, humanitarian relief personnel and humanitarian relief objects (Rules 25, 28, 31 and 32, ICRC Study). Parties may not attack medical personnel and objectives displaying the distinctive emblem of the Geneva Conventions, which, in the case of Sri Lanka, was the Red Cross or the ICRC flag (Rule 30, ICRC Study). Credible allegations of the shelling of numerous hospitals and humanitarian objects with visible emblems or whose coordinates had been clearly communicated well in advance to the Government of Sri Lanka would point to a violation of this rule. Likewise, attacks on United Nations premises, such as in the first NFZ, where the United Nations flag was clearly hoisted, points to the same conclusion.

(c) Ban on attacks on civilians or civilian objects

208. The attacks on hospitals and humanitarian objects also constitute unlawful attack on civilian objects. The fact that certain hospitals (PTK, Putumattalan and Mullivaikkal) may have had a wing to treat wounded LTTE cadres does not change the civilian nature of the object. Nonetheless, these hospitals were shelled repeatedly, raising the inference that they were targeted.

3. Denial of humanitarian assistance

(a) Common Article 3 of the Geneva Conventions

209. With respect to the obligation to "provide care for the sick and the wounded", in the final stages of the war, the Government increasingly placed restrictions on basic medical supplies, in particular surgical materials, entering the conflict zone through humanitarian convoys organized by the United Nations, or ICRC ships. It did not heed calls from the Regional District Health Secretary in various communications for medical supplies needed for life-saving surgery. Despite its internationally recognized role as an independent,

impartial provider of humanitarian assistance, the ICRC was seriously impeded in its ability to aid wounded civilians, through limitations on the medical supplies it was allowed to deliver on ships, as well as firing or shelling near ships sent to evacuate the wounded.

(b) Requirements of special protection to medical and humanitarian personnel and objects

210. In addition to the shelling of hospitals discussed under 2 above, credible allegations point to a violation of this provision insofar as several humanitarian relief objects experienced SLA shelling, in particular Convoy 11, the United Nations presence near Putumattalan, food distribution lines in the first NFZ and Ampalavanpokkanai, and shelling near the ICRC ships.

(c) Ban on starvation of the civilian population and denial of humanitarian relief

211. International humanitarian law prohibits starvation as a method of warfare. It also requires the parties to "allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control" (Rules 53 and 55, ICRC Study).

212. Credible allegations point to a violation of this provision insofar in that the Government (i) deliberately and publicly underestimated the number of civilians in the Vanni, in order to justify a reduced amount of food relief; (ii) impeded humanitarian convoys and ships from entering the conflict zone; and (iii) knowingly shelled in the vicinity of humanitarian actors. As a result, the civilian population was deprived of essential food and medicine, in particular in the second NFZ. The Government's knowledge of these consequences is imputable from reports it received, notably from its AGA.

4. Human rights violations suffered by victims and survivors of the conflict

213. Because the Government's actions in this category took place both during and after the armed conflict, the Panel addresses them under both international humanitarian law and international human rights law.

(a) Common Article 3 of the Geneva Conventions

214. With respect to the ban on "outrages upon personal dignity, in particular humiliating and degrading treatment", credible allegations point to a possible violation of this provision insofar as members of the SLA may have raped or committed acts of sexual violence against women and girls, in particular suspected LTTE, in military custody prior to execution or in detention facilities. The Panel notes in particular the Channel 4 video and photographs of what appear to be dead female cadre, including video footage in which the naked bodies of women are deliberately exposed, accompanied by lurid comments by SLA soldiers, raising a strong inference that rape or sexual violence may have occurred prior to or after execution. Credible allegations also point to degrading treatment of female IDPs in the screening process.

(b) Ban on enforced disappearances

215. International humanitarian law prohibits enforced disappearances (Rule 98, ICRC Study). Credible allegations point to a violation of this provision insofar as they indicate that SLA and paramilitary groups removed individuals at various locations, through the screening

process and at points of surrender, who have not been seen or heard from since that time. This issue has also been raised during the LLRC hearings.

(c) Requirements of minimal level of treatment for those deprived of liberty

216. International humanitarian law requires parties to provide those detained with adequate food, water, clothing, shelter and medical attention (Rule 118, ICRC Study). Credible allegations point to a violation of these provisions during the armed conflict insofar as they indicate that the Government of Sri Lanka detained IDPs at facilities where minimal conditions were not met.

(d) Requirements regarding the dead and the missing

217. International humanitarian law requires parties to search for the dead, treat them with respect, record the location of graves and take all feasible measures to notify families of the missing of their fate (Rules 112, 113, 115, 116 and 117, ICRC Study).

218. Credible allegations point to a violation of these provisions insofar as they indicate that the Government has not undertaken all practicable efforts to search for dead civilians or combatants. Many of these people were buried in unmarked graves in the Vanni; some may have gone missing during the process of screening surrendering persons, as also alleged before the LLRC. It also kept significant numbers of former combatants and civilians interned in closed camps without notifying family members of their fate or setting up a timely tracing system for family reunification. The Panel further recalls the international humanitarian law rule that "the dead must be disposed of in a respectful manner, and their graves respected and properly maintained" (Rule 115, ICRC Study). It has seen video footage and photographs of persons who appear to be SLA soldiers treating bodies in a highly disrespectful manner, including the bodies of naked women.

(e) Rights to life and physical security and integrity of the person

219. International human rights law protects against arbitrary deprivation of the right to life and guarantees the right to physical security of the person (ICCPR, articles 6 and 9). Closely connected is the protection afforded against torture and other cruel, inhuman or degrading treatment or punishment (ICCPR, article 7, and the Convention against Torture). These rights include protection against sexual and gender-based violence and abuse.

220. Credible allegations point to a violation of this provision insofar as they indicate preventable deaths in Menik Farm of individuals within the power and control of the Government, as a result of its failure to provide adequate food, water and health care in the initial phases of reception and detention. The Government did not guarantee the physical security of IDPs in camps insofar as it gave paramilitary groups access to the camps, with a broad writ to continue the removal of people. Abuses such as cruel, inhuman and degrading treatment, rape or torture may have taken place during interrogations by the CID or TID.

(f) Ban on arbitrary detention

221. International human rights law guarantees to all persons freedom from arbitrary and unlawful detention (see ICCPR, article 9). Arbitrariness and lawfulness are measured with respect to both domestic law and international law values of proportionality and necessity. Anyone arrested shall be informed of the reasons for his arrest and of any charges; anyone

arrested or detained on a criminal charge shall be brought promptly before a judicial officer and is entitled to trial within a reasonable time or to release. Persons awaiting trial should generally not be kept in custody.

222. Credible allegations point to a systematic practice of arbitrary detention, often for protracted periods, on a vast scale, and without access to counsel or the courts. This included, in particular, mass internment of IDPs in closed camps such as Menik Farm. There, the internment of up to 290,000 persons lasted and encompassed restrictions far beyond that possibly necessary to address reasonable security concerns; from April to September, essentially the entire IDP population was arbitrarily detained. In addition, almost 12,000 alleged former LTTE have been held in separate facilities in arbitrary detention, without procedural safeguards and access by the ICRC. The great majority of persons detained in these facilities have not been charged with any crime; for those charged with crimes, detention pending trial has been the near-universal rule.

(g) Rights to food and water, clothing and shelter, and to health

223. International human rights law guarantees the right of all persons to adequate food, clothing and housing (International Covenant on Economic Social and Cultural Rights, ICESCR, article 11). States have committed to "take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent." In addition, all persons have the right to enjoy the highest attainable standard of physical and mental health (ICESCR, article 12). The State must undertake measures necessary for the improvement of hygienic conditions, the prevention and treatment of disease and provision of adequate medical attention.

224. Credible allegations point to a violation of these provision insofar as the Government knew, or should have known, the true numbers of civilians who would emerge from the conflict zone – and for whom it would need to provide adequate care – were much higher than the number it was publicly citing; it failed to provide in advance for them or to remedy the situation once their needs became evident. By keeping Menik Farm and other camps closed, and failing to release the IDPs, it did not allow IDPs to seek shelter with relatives. The allegations point to violations insofar as there were a number of preventable deaths, as well as disease and inhumane conditions, in Menik Farm immediately after the war.

(h) Freedoms of assembly and association

225. International human rights law also guarantees freedom of assembly and association (ICCPR, articles 21 and 22). These rights may be limited when prescribed by law and necessary for national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. Any limitations must satisfy a test of proportionality.

226. Credible allegations point to a violation of this provision insofar as emergency powers and military necessity have been invoked repeatedly to suppress assemblies and association of groups, including the ability of IDPs to meet with international organizations or NGOs at screening points or in Menik Farm. These limitations are disproportionate to any legitimate assessment of public security and seem in part intended to prevent external contact with survivors of the conflict.

(i) Rights of women

227. Under international human rights law, States have an obligation to ensure equal rights to women to enjoy all civil, political, economic, social and cultural rights, without distinction of any kind (ICCPR article 2(1), article 3; ICESCR, Article 2(1), article 3; Convention on the Elimination of All Forms of Discrimination against Women). This obligation includes a duty to take all measures to eliminate discrimination against women (Convention on the Elimination of All Forms of Discrimination against Women, CEDAW, article 2(e)). Gender-based violence, defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately… [and] includes acts that inflict physical, mental or sexual harm or suffering" represents discrimination against women (CEDAW General Recommendation 19). States have a duty to prevent violations, to investigate and punish acts of violence and to provide compensation, whether such violations are committed by a public or private actor.

228. Credible allegations point to violations of these rights insofar as women have been subjected to gender-based violence in camps and during the resettlement process, including most seriously rapes at Menik Farm, which have not been investigated. The Government failed to take measures to alter camp conditions that created an enabling environment for gender-based violence. Absent were any special measures to address the needs of vulnerable, war-affected women, including widows, single women-headed households, young mothers, wives and mothers of the detained and disappeared, survivors of sexual and gender-based violence, suspected LTTE and female former combatants.

(j) Special protection of families

229. International human rights law grants the family unit a particular importance, and the State is under an obligation to protect and promote it (ICCPR, articles 17 and 23; ICESCR, article 10). Credible allegations point to a violation of these duties in that during the escape from the conflict zone, the screening process and the transfer to hospitals and camps, family members in the custody of the State were separated with little regard to preservation of the family unit, permitting contact with separated family members or providing information as to their whereabouts. Few, if any, special measures were taken to provide protection for particularly vulnerable families, especially female-headed households. Moreover, the State inexplicably excluded the ICRC, with its highly skilled family tracing services, without setting up an adequate alternative.

(k) Special protection of children

230. International human rights law requires the State to take special measures to protect children, taking into account their particular vulnerability (ICCPR, article 24; ICESCR, article 10; Convention on the Rights of the Child (CRC)). This obligation is heightened in respect of unaccompanied children, as a result of their even greater vulnerability in the absence of parents or guardians. Credible allegations point to a violation insofar as no such special measures were taken at screening points or in the early phases of the detention at Menik Farm. Further, children surrendees were placed in Government detention without trial under the pretext of rehabilitation. They were moved between rehabilitation centres, which made it difficult to track their whereabouts or have family visits.

(l) Right to an effective remedy, including access to the courts

231. Under international law, the State is required to provide for an effective remedy for allegations of human rights violations that make arguable claims of a breach (ICCPR, article 2). For the most serious allegations of violations of the right to life and to physical security, this remedy includes an investigation and prosecution of responsible individuals. Access to fair and independent courts, to test the lawfulness of detention and to provide a remedy for violations, is the cornerstone of the protection regime (ICCPR, articles 2, 9, 14 and 26). This obligation is discussed further in chapter V.

232. Credible allegations point to a violation of these provisions insofar as very few of the alleged violations during the last stages of the war have been investigated, and those that have been undertaken are unlikely to satisfy international standards of effectiveness and independence. Access to the courts by victims has been dramatically curtailed or eliminated by law and restricted in practice. Individuals have almost no resort to the courts in respect of state officers exercising their official powers under the emergency legislation and regulations. Regarding detainees held under these powers, the courts have scant power to review the substantive justification of detention.

5. Human rights violations outside the conflict zone

(a) Ban on disappearances

233. International human rights law prohibits disappearances carried out anywhere in a State-party. An act of disappearance constitutes a violation of the right to liberty and security of person (ICCPR, article 9); the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (ICCPR, article 7); and the right of detainees to be treated with humanity and respect (ICCPR, article 10); it can also constitute a grave threat to the right to life (ICCPR, article 6). It represents a continuing violation of human rights until it is satisfactorily resolved.

234. Credible allegations point to a widespread practice in Sri Lanka, prior to, during and after the final stages of the war, of disappearances carried out by agents on behalf of the State, the victims of which were frequently suspected LTTE cadre, community activists, journalists or human rights defenders. Some were disappeared during the screening process. Credible allegations detail a common practice whereby such individuals were abducted and removed in white vans and never seen again.

(b) Freedom of opinion and expression

235. International human rights law protects the freedom to impart and receive information and to hold and express opinions (ICCPR, article 19). These rights may be limited only pursuant to law and where necessary to protect the rights or reputations of others, or for the protection of national security or of public order, public health or morals. Any limitations must satisfy a test of proportionality.

236. Credible allegations point to a violation of this provision insofar as the complete closure of the conflict area to independent journalists was disproportional to any public safety objective. The imposition of media guidelines in 2008 tightly limited reporting on the war and impeded media freedom. Journalists and media outlets seeking to present views divergent from those of the Government are credibly alleged to have faced a range of threats and some

have been killed, disappeared or severely beaten.

E. Alleged violations by the Liberation Tigers of Tamil Eelam

1. Using civilians as a human buffer

237. *Common Article 3 of the Geneva Conventions*: Credible allegations point to a violation of Common Article 3's ban on the taking of hostages insofar as they forced thousands of civilians, often under threat of death, to remain in areas under their control during the last stages of the war and enforced this control by killing persons who attempted to leave that area. (With respect to the credible allegations of the LTTE's refusal to allow civilians to leave the combat zone, the Panel believes that these actions did not, in law, amount to the use of human shields insofar as it did not find credible evidence of the LTTE deliberately moving civilians towards military targets to protect the latter from attacks as is required by the customary definition of that war crime (Rule 97, ICRC Study)).

2. Killing civilians attempting to flee LTTE control

238. *Common Article 3 of the Geneva Conventions*: Credible allegations point to a violation of Common Article 3 (murder) in that the LTTE deliberately shot at and killed civilians, including women and children, trying to leave the conflict zone, notably in the second and third NFZs, in an attempt to maintain the civilian population forcibly on the LTTE's side of the frontlines.

3. Using military equipment in the proximity of civilians

239. *Ban on locating military objectives near densely populated areas:* International humanitarian law prohibits the location of military objectives near densely populated civilian areas, where feasible (Rules 23-24, ICRC Study). Credible allegations point to a violation of this provision insofar as they indicate patterns of conduct whereby that the LTTE deliberately located or used mortar pieces, other light artillery, military vehicles, mortar pits, bunkers, and trenches in proximity to civilian areas. These locations included hospitals and concentrations of IDPs, including in each of the NFZs. This illegal practice does not relieve the SLA of its duties to comply with various precautions noted above to ensure respect for the rules of distinction and proportionality.

4. Forced recruitment of children

240. *Ban on Forcible Recruitment of Children*: International humanitarian law prohibits the forced recruitment of children. Although there is disagreement as to the exact age limit, States agree that it is at least 15 (Rule 136, ICRC Study). Credible allegations point to a violation of this provision insofar as they indicate that the LTTE forcibly recruited boy and girl children as young as 14, particularly in the late stages of the war. This forced recruitment, as well as the separation of young people from their families, when recruits had a high likelihood of dying in the final battles, could also amount to cruel treatment as a violation of Common Article 3.[125]

[125] *Prosecutor v. Blaškić*, (ICTY Appeals Chamber), op. cit., at para. 597 (treatment is cruel when it "causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.")

5. Forced labour

241. *Ban on Forced Labour*: International humanitarian law prohibits uncompensated or abusive forced labour (Rule 95, ICRC Study). Credible allegations point to a violation insofar as the LTTE forcibly required many civilians to assist them in building fortifications and making other contributions to the war effort, sometimes in dangerous circumstances and frequently when separated from their families. In circumstances where the exposure to manifest risk of loss of life or physical harm was high, such as in the late stages of the war, this practice could also constitute cruel treatment in breach of Common Article 3.

6. Killing of civilians through suicide attacks

242. *Common Article 3 of the Geneva Conventions*: Credible allegations point to a violation of Common Article 3 (murder) insofar as the LTTE are credibly alleged to have perpetrated a number of suicide attacks, both in and outside of the conflict zone, against civilians. Outside the conflict zone, the LTTE perpetrated a number of suicide attacks during the final stages of the war, including attacks that killed large numbers of civilians, such as at a screening centre in Mullaittivu on 9 February 2009, or as part of the attack on Minister Mahinda Wijesekera on 10 March 2009. The Panel notes that these attacks constitute a clear violation of the ban on intentional or indiscriminate attacks on civilians discussed above. Suicide attacks were a common practice of the LTTE throughout its existence and the fear of suicide attacks may have contributed to – though did not and could not justify – violations perpetrated by the Government.

243. Finally, in light of the Panel's views regarding the human rights obligations of non-state actors (see A.2 above), the Panel has not addressed human rights violations beyond those that it has characterized as violations of international humanitarian law. The Panel has not considered LTTE abuses outside the conflict zone under international human rights law because of the uncertainty surrounding whether non-state actors have human rights obligations beyond the territories they control.

F. Individual criminal responsibility under international law

244. A number of the alleged violations of international humanitarian and human rights law discussed above incur individual criminal responsibility under international law. The Panel's mandate is not to discuss the potential liability of particular individuals on either side of the armed conflict. The conclusions below are limited to stating whether the credible allegations, if proved, could potentially constitute crimes under international law; further investigation would be required to identify the individuals responsible for the criminal acts in question and to assess their state of mind (*mens rea*) at that time.

245. The Panel has limited its consideration to crimes defined under treaties to which Sri Lanka is a party or crimes under customary international law, focusing its analysis on whether the credible allegations point to the commission of a crime. As earlier, the Panel discusses only the most serious crimes. Later in the report, the Panel addresses the consequences of such alleged criminal acts in terms of the duties they create on Sri Lanka and the role for other States and the United Nations.

1. War crimes

246. International law provides for individual criminal responsibility for certain, but not all, violations of international humanitarian law. Although the Geneva Conventions do not list or define those violations during internal armed conflicts that constitute war crimes, other authoritative sources of international law have elaborated these crimes, and their criminality is now beyond doubt. Notable in this regard is the Rome Statute of the International Criminal Court (ICC), in particular Articles 8(2)(c) and (3). While Sri Lanka is not a party to that statute, the list and definitions of war crimes in non-international conflicts is broadly illustrative, if not precisely reflective, of customary international law. The Panel also relies on the ICRC in its comprehensive study of customary law.

247. The Panel believes that the credible allegations and violations point to the commission of the following war crimes by persons acting on behalf of the Government of Sri Lanka:[126]

(a) Serious violations of Common Article 3, including violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, including rape; outrages upon personal dignity, in particular humiliating and degrading treatment; and failure to collect and care for the wounded and sick;

(b) Intentional attacks on civilians;

(c) Indiscriminate or disproportionate attacks on civilians;

(d) Attacks on medical and humanitarian objects, including humanitarian convoys and Red Cross-designated facilities;

(e) Starvation of the population and denial of humanitarian relief; and

(f) Enforced disappearances.

248. The Panel believes that the credible allegations and violations point to the commission of the following war crimes by persons on behalf of the LTTE:

(a) Serious violations of Common Article 3, including violence to life and person, in particular murder of all kinds, mutilation, cruel treatment (including forced labour) and torture; and taking of hostages; and

(b) Forcible recruitment of children.

2. Crimes against humanity

249. International law also establishes that certain abuses that form part of a widespread or systematic attack on a civilian population can constitute international crimes. Crimes against humanity have been defined in a number of international instruments, including the ICTY, International Criminal Tribunal for Rwanda (ICTR), and ICC Statutes. If the requisite elements are met, these acts are crimes regardless of any nexus to an armed conflict. The

[126] The credible allegations that form the basis for these war crimes are addressed in the discussion of the international humanitarian law violations in sections D and E above.

particular list of crimes varies across instruments, although, as with the list of war crimes, the list in the ICC Statute is broadly illustrative of customary international law.

250. The threshold requirement for crimes against humanity is the existence of a widespread or systematic attack directed against a civilian population.[127] With respect to the meaning of a civilian population, the inclusion in a civilian population of military elements or combatants does not affect its status as civilian.[128] As for an attack, it encompasses any mistreatment of that population and is not limited to armed conflict.[129] In determining the widespread or systematic nature of an attack, the ICTY, for instance, has considered the number, pattern and concentration of criminal acts; the consequences upon the targeted population; the participation of officials or authorities in the attack; the logistics and financial resources involved; the number of victims; the existence of a plan or policy (which is required under the ICC Statute); the methods used in the attack; the adoption of various discriminatory measures against the population; and other factors. The ICC Statute requires that a perpetrator have knowledge of the attack; this state of mind need not, however, include awareness of all the details of the attack.

251. With respect to the Government of Sri Lanka, the credible allegations above point to a widespread or systematic attack on the civilian population of the Vanni during and subsequent to, as well as perhaps preceding, the final stages of the war. This attack included the widespread shelling of a large IDP population; extrajudicial killings and disappearances in the aftermath of the armed conflict; deprivation of food and medicine; large-scale imprisonment; and other violations, including on discriminatory grounds. As for the particular acts constituting crimes against humanity, the Panel concludes that credible allegations and violations point to the commission by the Government of the following crimes against humanity:

(a) *Murder.* The ICTY has held that "[t]he constituent elements of murder … comprise the death of a victim as a result of the acts or omissions of the accused, where the conduct of the accused was a substantial cause of the death of the victim."[130] The mental element or *mens rea* required for murder as a crime against humanity is not limited to premeditation, but encompasses reckless disregard for human life.[131] The credible allegations support a finding of the crime against humanity of murder insofar as the SLA killed civilians through widespread shelling.

(b) *Extermination.* Under the ICC Statute, extermination includes "intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population" (Art. 7(2)(b)). The part of the population subject to extermination has to be "numerically significant".[132] The credible allegations support a finding of the crime against humanity of extermination insofar as the

[127]The ICC Statute states that "for the purposes of this statute" crimes against humanity be committed "pursuant to or in furtherance of a State or organizational policy to commit such attack." The element of a state policy is generally not required in customary international law, although, in the case of Sri Lanka, the allegations are of such a nature to be able to infer a State or organizational policy.
[128]*Prosecutor v Blaškić*, (ICTY Appeals Chamber), op. cit., at para 115.
[129]*Prosecutor v Kunarac et al.,* (ICTY Appeals Chamber), op. cit., at para. 86.
[130]*Prosecutor v. Kupreškić et al.*, Case No. IT-95-16 (ICTY Trial Chamber), Judgment, 14 January 2000, at para. 560, citing *Prosecutor v. Akayesu*, ICTR-96-4-T (ICTR Trial Chamber), Judgment, 2 September 1998, at para. 589.
[131]*Prosecutor v. Akayesu*, (ICTR Trial Chamber), at paras. 589-590.
[132]*Prosecutor v. Krstić,* Case No. IT-98-33 (ICTY Trial Chamber), Judgment, 2 August 2001, at paras. 502.

conditions imposed on civilians in the final months in the NFZs were calculated to bring about the destruction of a significant part of the civilian population.

(c) *Imprisonment*. Imprisonment is a crime against humanity where civilians have been detained without reasonable grounds, arbitrarily or without legal basis.[133] The credible allegations support a finding of the crime against humanity of imprisonment insofar as the detention of hundreds of thousands of IDPs at Menik Farm was without reasonable grounds.

(d) *Persecution*. Persecution is a discriminatory act or omission founded on race, religion or politics that is intended to infringe an individual's enjoyment of a basic or fundamental right, and of the same level of gravity as other acts considered as crimes against humanity.[134] The credible allegations support a finding of the crime against humanity of persecution insofar as the other acts listed here appear to have been committed on racial or political grounds against the Tamil population of the Vanni, which was perceived by the Government as supporting the LTTE.

(e) *Disappearances.* The ICC Statute defines disappearances as "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time" (Art. 7(2)(i)). The credible allegations support a finding of the crime against humanity of disappearances insofar as numerous persons, perceived by the Government to be critical of its approach or sympathetic to the LTTE, have been disappeared during and after the final stages of the war.

252. With respect to the LTTE, the credible allegations and violations above point to a widespread or systematic attack on the civilian population of the Vanni during the final stages of the war, insofar as there was a consistent and widespread practice of holding civilians against their will and killing some of those who tried to leave. As for the particular acts constituting crimes against humanity, the Panel concludes that credible allegations point to the commission by the LTTE of the crime against humanity of murder, according to the definition above, based on the LTTE's killing of those seeking to flee as well as its use of suicide bombers against civilians during the war.

3. Scope of individual responsibility

253. International law recognizes criminal responsibility both for individuals who commit the acts as well as military commanders and civilian superiors. As to individuals committing the acts, the statutes and jurisprudence of international and domestic tribunals have recognized that commission of crimes can encompass (i) direct execution of the acts constituting the crime; (ii) aiding and abetting the direct perpetrators; (iii) planning or instigating the crime; (iv) ordering the crime; and (v) participating in a joint or collective enterprise, or conspiracy, to commit them.

254. As to military and civilian commanders and superiors, international law also imposes criminal liability where (i) there is a superior / subordinate relationship with the

[133] *Prosecutor v. Kordić et al.*, Case No. IT-98-33 (ICTY Trial Chamber), op. cit., 17 December 2004, at para. 303.
[134] *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1 (ICTY Appeals Chamber), Judgment, 28 February 2005, at paras. 319-320.

perpetrator(s), over whom effective control is exercised; (ii) the commander or superior has actual or constructive knowledge of the crimes committed or about to be committed; and (iii) the commander or superior fails to take necessary and reasonable measures to prevent, repress, or punish their commission.

255. Credible allegations presented to the Panel suggest that SLA commanders and senior Government officials, as well as military and civilian LTTE leaders, bear criminal responsibility for international crimes under these forms of liability.

G. Individual criminal responsibility under Sri Lankan law

256. The Panel wishes to summarize briefly the range of individual criminal responsibility under Sri Lankan Law, recognizing that independent domestic courts are in the best position to interpret that law. The major source of relevant criminal law is the Penal Code of Sri Lanka. Other laws contain criminal provisions complementing the Penal Code, for example, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 (CAT Act), providing for a crime of torture,[135] and the International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007, criminalizing the propagation of war or advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence (art. 3).[136] The Penal Code also sets out liability for abetting and conspiracy (Chs. V-V.A), as well as defences, excuses and justifications (Ch. IV). The Army Act, No. 17 of 1949, sets out a series of military offences and provides for the concurrent application of military and civilian jurisdiction to offences by military personnel, namely regular, reserve and volunteer force personnel.

257. The credible allegations would point to the following crimes under the Penal Code committed by either or both parties to the armed conflict: waging war against the State (s.114); collection of men and arms with intent to wage war (s.116); excitement of disaffection (s.120); offences of unlawful assembly and rioting (s.138-155); murder and culpable homicide (ss.293-295); death by negligence (s.298); voluntarily causing hurt or grievous hurt (ss.310-326); endangering human life or safety of others (s.327); causing hurt or grievous hurt by rashly endangering human life or safety of others (ss.328-329); wrongful restraint and confinement (ss. 330-333); wrongful confinement in special categories (ss. 334-339); abduction and kidnapping (ss. 353-359); rape (ss.363-364); assault and use of criminal force (ss. 340-349); forced labour, slavery and use of children in armed conflict (s.358A), grave sexual abuse (s.365B); and extortion (s.372-378). There are likewise credible allegations that would point to crimes of torture (s.2 of CAT Act) and propagation of war and advocacy of national, racial or religious hatred (s.3 of ICCPR Act). Moreover, credible allegations point to commission by military personnel of military offences under the Army Act, including: disgraceful conduct (s.107); commission of an act of a cruel, indecent or

[135] The statutory definition of the crime is however at variance with the international definition set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a position which has been criticized by the United Nations Committee against Torture (CAT/C/LKA/2 (2005), at para. 5)

[136] For completeness, the Panel notes that the emergency regime defined in the Prevention of Terrorism Act and the Emergency Regulations also sets out a series of offences that on their face may also be applicable to, essentially, acts of alleged LTTE cadres. However, the constitutionality of application of many of these provisions has not been tested in court; moreover, they raise serious doubts regarding compliance with international human rights norms, notably standards of reasonable accessibility, foreseeability, clarity and fair notice, equality before the law and the proportionality of the associated sentences. Due to these uncertainties, the Panel declines to further discuss potential application of these emergency offences.

unnatural kind (s.109(e)); unnecessary detention (s.112(a)); and conduct prejudicial to good order and discipline (s.129(1)). This list represents only the most serious crimes.

H. Conclusions

258. The final stages and aftermath of the war in Sri Lanka were characterized by a wide range of violations by both the Government of Sri Lanka and the LTTE of international humanitarian law and international human rights law, some even amounting to war crimes and crimes against humanity. More than 300,000 people became the victims of the reckless disregard for international norms by the warring parties. Indeed, the conduct of the war by them represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace. The victory of one side has emboldened some to believe that these rules may now be disregarded in the cause of fighting terrorism.

259. To summarize the Panel's legal assessment:

(a) With respect to the Government, the credible allegations point to these violations of international humanitarian law: violations of Common Article 3 of the Geneva Conventions; the requirement of distinction between combatants and civilians; the ban on attacks on civilians or civilian objects; the ban on indiscriminate or disproportionate attacks against civilians; the requirement of precautions before and during attacks; the requirement of special protection to medical and humanitarian personnel and objects; the ban on starvation of the civilian population and denial of humanitarian relief; the ban on enforced disappearances; requirements of minimal level of treatment for those deprived of liberty; and requirements regarding the dead and missing. With respect to human rights law, the credible allegations point to violations by the Government of the rights to life and physical security and integrity of the person; the ban on arbitrary detention; the rights to food, water, clothing, shelter and health; freedoms of assembly and association; the rights of women; special protection of families; special protection of children; the right to an effective remedy; the ban on disappearances; and freedom of opinion and expression.

(b) With respect to the LTTE, credible allegations point to violations of Common Article 3 of the Geneva Conventions, the ban on locating military objectives near densely populated areas, the ban on forcible recruitment of children and the ban on forced labour.

(c) The credible allegations also point to the commission of the following war crimes by individuals acting on behalf of the Government: serious violations of Common Article 3 of the Geneva Conventions; intentional attacks on civilians; indiscriminate or disproportionate attacks on civilians; attacks on medical and humanitarian objects, including humanitarian convoys and Red Cross-designated facilities; starvation of the population and denial of humanitarian relief; and enforced disappearances.

(d) The credible allegations point to the commission of the following war crimes by the LTTE personnel: serious violations of Common Article 3 and forcible recruitment of children.

(e) The credible allegations point to the commission of the following crimes against humanity by the Government: murder, extermination, imprisonment, persecution and disappearances.

(f) The credible allegations point to the commission by the LTTE of the crime against humanity of murder.

(g) In the case of both war crimes and crimes against humanity, credible evidence points to the responsibility of superiors for their subordinates' actions.

260. These credibly alleged violations demand a serious investigation and prosecution of those responsible.

V. Sri Lanka's Approach to Accountability

261. In this chapter, the Panel assesses Sri Lanka's approach to accountability in light of applicable international standards and comparative experiences, having regard to the scope and nature of the alleged violations analysed in chapters III and IV.

A. Applicable international standards and comparative experiences

262. Many States emerging from conflict have experienced violations that are similar to those in Sri Lanka, which potentially amount to war crimes and crimes against humanity. Those experiences, from a highly differentiated group of States, have resulted in both a set of *global expectations* that have found their expression in international standards regarding necessary responses to such allegations and, at the same time, a range of *diverse practical approaches* for addressing such crimes, which are consistent with those standards.

263. Several human rights treaties, to which Sri Lanka is a party, contain obligations regarding investigation. Article 2(3) of the ICCPR requires the State to provide an effective remedy to victims of human rights violations. That treaty provision has been interpreted by the United Nations Human Rights Committee to require States to investigate all violations of the Covenant and, in the case of gross violations or those constituting international crimes, to bring the alleged perpetrator to justice.[137] In addition, Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Sri Lanka is a party, requires States to investigate and prosecute (or extradite to another State seeking to prosecute) all persons alleged to have committed the international crime of torture.

264. A recent report of independent experts presented to the Human Rights Council contains a useful list of legal standards for investigations based on decisions of the regional human rights courts under regional human rights treaties and the United Nations Human Rights Committee interpreting the ICCPR.[138] These standards include *independence, impartiality, thoroughness, effectiveness* and *promptness*.[139]

265. Apart from the obligations arising from these treaties, the duty to investigate derives from several other international bodies and resolutions. The General Assembly has also interpreted human rights law as including an obligation to investigate in its 2006 Resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human*

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[137] Human Rights Committee, General Comment 31(2004), paras 15, 18; Umetaliev *et al. v. Kyrgyzstan*, communication No. 1275/2004, views of 30 Oct. 2008, paras. 9.4-9.6; *Amirov v. Russian Federation*, communication No. 1447/2006, views of 2 April 2009, paras. 11.2-11.4. The Government of Sri Lanka has received repeated confirmation of its duties to investigate and prosecute as well as provide an effective remedy for human rights abuses taking place on its territory. *See, e.g.*, Sundara Arachchige Lalith Rajapakse v. Sri Lanka, CCPR/C/87/D/1250/2004 (5 September 2006); S. Jegatheeswara Sarma v. Sri Lanka, CCPR/C/78/D/950/2000 (31 July 2003). In eleven individual communications under the Optional Protocol concerning Sri Lanka, the Committee has found that Sri Lanka violated provisions of the ICCPR.

[138] Report of the Committee of independent experts on international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly Resolution 64/25, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards, A/HRC/15/50 (2010), para. 21. The report was subsequently formally welcomed and its conclusions endorsed by resolution of the United Nations Human Rights Council.

[139] Ibid, para. 22.

Rights and Humanitarian Law. [140] The Security Council too has frequently reiterated the importance of eliminating impunity for serious abuses of human dignity, including through prosecutions of war crimes and crimes against humanity, including in Resolution 1674 (2006) concerning the protection of civilians in armed conflict. It has taken the same approach regarding protection of civilians and ending impunity in country situations involving internal armed conflict.[141] Additionally, Resolution 60/1 of the World Summit Outcome, adopted in 2005 by the unanimous consensus of participating Heads of State and Government, including Sri Lanka, reaffirms the responsibility of States to protect their populations from war, genocide, war crimes, ethnic cleansing and crimes against humanity.

266. In addition, various United Nations processes have formulated important standards and frameworks regarding accountability. Of particular significance is the 2005 *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*. Formulated by experts mandated by the United Nations Commission on Human Rights, this document lays out the core understanding that victims of crimes under international law have three basic rights: the right to the truth, the right to justice and the right to reparations, including through institutional guarantees of non-recurrence.[142]

267. Beyond these actions by organs of the United Nations, States have increasingly refrained from amnesties for genocide, war crimes and crimes against humanity, or have used judicial or legislative measures to overturn earlier amnesties; international courts have similarly ruled that amnesties for such crimes are impermissible.[143] This is also the policy position of the United Nations. The Government of Sri Lanka has also said that "it is our considered view that amnesties intrinsically encourage a culture of impunity and are therefore inappropriate".[144]

268. With respect to violations of international humanitarian law in internal armed conflict, there is now strong support in international practice and judicial precedent for a legal duty upon States to investigate and, if the evidence warrants, prosecute serious violations. In particular, an interpretation that accepts a duty to investigate such violations in international armed conflicts but not in an internal armed conflict is no longer sustainable. In the words of the ICTY: "Principles and rules of humanitarian law reflect elementary considerations of humanity widely recognized as the mandatory minimum for conduct in armed conflicts of

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[140] In addition, in 2001, the General Assembly adopted by consensus its Resolution 55/89, *Set of Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which reiterate the State's duty to investigate and "severely punish" acts of torture or other cruel, inhuman, or degrading treatment or punishment, and provide a remedy and rehabilitation to the victim. These Principles also reiterate the duty on States to conduct a thorough and impartial investigation of allegations of torture and related abuses, in particular. Investigators must be independent of suspected perpetrators and must have both substantial legal powers to conduct their inquiry as well as the resources needed to make it effective. General Assembly Resolution 55/89 (1989), paras. 2-3.

[141] See, e.g., Security Council Resolution 1746 (2007), para. 13.

[142] E/CN.4/2005/102/Add.1 (2005); United Nations Commission on Human Rights Resolution 2005/66 ("taking note with appreciation of this document").

[143] See, e.g., Ley de Reconciliación Nacional, Decreto No. 145-96, 18 Dec 1996 (Guatemala); Simón, Julio Héctor y otros s/ privación ilegítima de la libertad, No. S.1767 (XXXVIII), 14 June 2005 (Argentina Supreme Court); Chumbipuma Aguirre et al v. Peru, Inter-American Court of Human Rights (Ser. C), No. 75 (2001), para. 41; *Prosecutor v. Kallon and Kamara*, Special Court for Sierra Leone, SCSL-2004-15-AR72(E) and SCSL-2004-15-AR72(E) (2004), para. 67-69.

[144] Government of Sri Lanka written submissions to the Panel in Annex 2.15.2.

any kind. No one can doubt the gravity of the acts at issue, nor the interest of the international community in their prohibition."[145] The duty to investigate serious violations in internal armed conflict has also been endorsed unanimously by the General Assembly in Resolution 60/147. In addition, the ICRC, which occupies a special role in the interpretation of international humanitarian law, has found a duty upon States under customary international law to investigate and prosecute war crimes in internal armed conflict, based on an extensive review of state practice.[146]

269. The legal duties and standards elaborated above are now buttressed by a generation of state practice of instituting particular mechanisms to promote accountability for serious violations of international humanitarian or human rights law. Such practice indicates that a state emerging from a period of large-scale violations, and seeking to build sustainable peace and a better future, cannot turn its back to the past but must confront it. In post-conflict or transitional settings, States have engaged a "full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."[147] These processes and mechanisms are collectively known as transitional justice. In the words of the Secretary-General:

> The challenges of post-conflict environments necessitate an approach that balances a variety of goals, including the pursuit of accountability, truth and reparation, the preservation of peace and the building of democracy and the rule of law… Where transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof.[148]

270. The concept of transitional justice as an inter-related set of measures required to address legacies of violations has gained global acceptance.[149] Transitional justice examines individual violations, but also goes beyond them to analyse patterns and legacies of violence, which result from complex structural injustices. Again, in the words of the Secretary-General: "By striving to address the spectrum of violations in an integrated and independent manner, transitional justice can contribute to achieving the broader objectives of prevention of further conflict, peace-building and reconciliation."[150]

271. The rationale for transitional justice is not to dwell on the past or to seek retribution. Instead, transitional justice seeks to break cycles of violence, combat impunity and denial, and acknowledge the suffering of victims by ensuring accountability for past crimes. It also seeks to address, more broadly, systemic or structural factors and injustices that predate or

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[145] *Prosecutor vs. Tadić,* ICTY Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Oct. 2, 1995 para. 129.
[146] International Committee of the Red Cross, *Customary International Humanitarian Law* (2005), rule 158.
[147] Report of the Secretary-General on "The rule of law and transitional justice in conflict and post-conflict societies", 23 August 2004 (S/2004/616) (hereafter Secretary-General's 2004 Report), para. 8.
[148] Secretary-General's 2004 Report, para. 26.
[149] For instance, organizations such as the African Union recognize that reconciliation cannot proceed without justice and accountability: "Justice and Reconciliation are inextricably linked and should be approached and implemented in an integrated manner ... It is, therefore, especially important that reconciliation should be seen as relevant and compatible with criminal justice processes." African Union High Level Panel on Darfur, November 2009.
[150] Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice, March 2010 Summary (hereafter: Secretary-General's Guidance Note).

exist outside the conflict, but which influenced the nature of violations and experiences of conflict, including discrimination against women. It seeks to rebuild trust between citizens and the State and strengthen the rule of law, thereby contributing to the prevention of conflict in the future. In this sense, transitional justice is essentially forward-looking, like it was in South Africa, where the process supported a transformation from a deeply racist State to a society "based on democratic values, social justice and fundamental human rights", as established in its Constitutional Preamble.

272. Transitional justice is a useful lens through which Sri Lanka can focus its approach to accountability. It is applicable in any post-conflict setting, including where the Government has defeated an insurgency, as was the case in Peru. In particular, Sri Lanka should seek to guarantee the rights of victims to *truth, justice* and *reparations*, all of which are based on international standards and should form an essential part of a transitional justice approach.

273. The *right to truth* initially evolved from the decisions of the United Nations Human Rights Committee and the jurisprudence of the Inter-American Commission and Court on Human Rights, in relation to victims of enforced disappearances and the rights of relatives to know their fate. Actions to ensure and exercise the right to truth are particularly important in situations where the truth is not fully known, where there is controversy about events as they unfolded, where denial by the State or historic revisionism have predominated or where there has been a systematic silencing of victims.

274. One means through which the right to truth has been advanced is through the establishment of truth commissions, which have been defined by the Secretary-General as "official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years."[151] Truth commissions can uncover patterns of violations, identify the underlying divisions and inequalities that perpetuate conflict and indicate institutional responsibilities. Truth commissions generally give emphasis to both process and product, in that they seek not only to establish these aspects of the truth, but also to give voice to victims and their experiences, including those groups who may face particular marginalization, such as women or children. A recent book documents forty truth commissions from 1974-2009, including 21 in the last 10 years.[152] Eight of these were in the Americas, one in Europe, seven in Africa, and five in Asia (many of them recently).

275. The *right to justice* is encapsulated in many international treaties, but radical changes in the enforcement of the right to justice occurred with the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and its sister tribunal for Rwanda (ICTR) in 1994. This was strengthened by the Rome Statute of the International Criminal Court (ICC), which came into force in 2002 and currently has 114 States Parties (Sri Lanka is not yet one of them). The Rome Statute constitutes an important evolution in the international legal landscape, in prohibiting some of the worst crimes known to humankind. The principle of complementarity, under which the ICC only investigates or prosecutes where States are unwilling or unable to do so genuinely, recognizes the continued primacy of national courts in investigating and trying these crimes. Many States Parties have implemented domestic legislation giving rise to a duty to prosecute genocide, war crimes and crimes against humanity in national courts. Increasingly, domestic criminal proceedings of a

[151] Secretary-General's 2004 Report para. 50.
[152] Hayner, P. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, Routledge 2nd ed. (2010).

State's own citizens for serious violations, which could amount to war crimes during an internal armed conflict, are being conducted in States as varied as Argentina, Bangladesh, Bosnia, Chile, Colombia, the Democratic Republic of Congo, Guatemala, Peru, Serbia, Rwanda and Uganda.[153] Other States created hybrid tribunals of mixed national-international composition to try war crimes and crimes against humanity, including in Kosovo (1999), Timor-Leste (2000), Sierra Leone (2002), Cambodia (2003) and Bosnia (2004).

276. The *right to reparations* is well-recognized in the wake of serious violations and has been implemented in a wide variety of situations, through both judicial and administrative means. Many truth commissions have recommended reparations, including commissions in Argentina, Chile, South Africa, Guatemala, Peru, Sierra Leone, Timor-Leste, Morocco and Liberia.[154] Some courts also have the power to award reparations. Reparations serve at least three important goals: (i) to acknowledge the wrong done to victims; (ii) to recognize the loss and suffering of the victims, and in doing so, affirm their identity as rights-holders entitled to redress; and (iii) to provide actual benefits to victims, whether in symbolic or material forms, even if the harm they suffered is, as such, irreparable.

277. Reparations can be provided to either individuals or communities and can take a wide variety of forms, including restitution of rights, monetary compensation, medical and psychological services, health care, educational support, return of property or compensation for loss thereof, as well as official public apologies, building museums and memorials and establishing official days of commemoration.[155] Reparative measures of a collective nature are distinguished from general development efforts in that they must be accompanied by official recognition of rights violations. Finally, and importantly, there is an increasing awareness of the gendered aspects of reparations and the need to examine the implications of particular measures and means of implementation for both women and men.

B. The Government of Sri Lanka's position on accountability

278. In respect of accountability, the United Nations does not support "one-size-fits-all formulas and the importation of foreign models" and bases its support on "national assessments, national participation and national needs and aspirations".[156] This does not, however, diminish the importance of international standards, which should be incorporated into any national model. Sri Lanka's approach to accountability should, thus, be assessed against international standards and comparative experiences to discern how effectively it enables victims of the war to realize their rights to truth, justice and reparations.

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[153] Comprehensive domestic prosecutions were also carried out in Rwanda, alongside the ICTR. Bangladesh recently established an International Crimes Tribunal for those involved in atrocities in its war for independence in 1971.

[154] For instance, Morocco instituted an "Equity and Reconciliation Commission" from 2004-2006, which had a mandate to investigate instances of imprisonment in secret detention centres, torture, disappearances and other such abuses which took place under the reign of King Hassan II, during the "years of lead" from 1946 to 1999. The Commission both recommended a wide range of security and justice sector reforms and also recommended reparations. Up to $85 million was distributed to 9,000 victims or their relatives in the 18 months following the Commission's work, and a unique programme for community-based reparations is currently being implemented. In some of the other countries mentioned, reparations programmes are still underway; in others, truth commission recommendations on reparations have only been partially implemented.

[155] Guidance Note of the Secretary-General United Nations Approach to Transitional Justice March 2010 Available at http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf (accessed March 28, 2011)

[156] Secretary-General's 2004 Report, Executive Summary.

279. The Government of Sri Lanka provided an explanation of the philosophy that frames its approach to accountability, both in written responses to questions from the Panel and in a meeting on 22 February 2011 in New York between the United Nations and a high-level delegation of the Government of Sri Lanka, headed by the Attorney-General, Mohan Peiris, at which the Panel was present.[157] Sri Lanka is seeking to balance accountability and reconciliation through what amounts to a two-pronged conception of accountability, described by the Attorney-General as (1) judicial proceedings against some members of the LTTE, and (2) political responsibility of successive Governments for their failure to discharge their constitutional obligation to protect Sri Lanka's people and territory against the LTTE. Furthermore, in its written response, the Government offered these additional views:

> … it is important to appreciate that the whole LLRC [Lessons Learnt and Reconciliation Commission] process is structured on the philosophy of restorative justice. It is this philosophy which would govern the consideration of civil or criminal liability. The entire endeavour requires that what happened in the past must be relegated to history, by all communities inclusive of the majority community. This must be accompanied by a manifestation of contrition on part of the wrong doer as a recognition of the supremacy of the rule of law within a democratic process.[158]

280. The Government of Sri Lanka told the Panel that the LLRC, which is central to its approach, is not focused on individual accountability, but on a wider notion of political responsibility, by which the State has responsibility to protect its citizens. The Attorney-General explained that this aspect of the LLRC was inspired by the Iraq Inquiry (the Chilcot Inquiry) in the United Kingdom, which has a similar mandate.[159]

281. Missing from the Government's two-pronged conception is any notion of accountability for its own conduct in the prosecution of the war, especially during the final stages. The Government of Sri Lanka also stated that if the LLRC process gives rise to "a particular culpability" that should be further investigated, this will be referred to a "separate unit" of the Attorney-General's office. However, the Government indicated that, to date, none of the representations made to the LLRC identified individuals or groups to whom such responsibility could be attributed. The Government said that it is "alive and sensitive to the excesses that can take place in the hands of military personnel" and that there are a few cases pending against police and military personnel.[160] Nonetheless, this formulation does not appear to contemplate the possibility that violations were committed on a large-scale or systematic basis; if this were to be the case, then it might be inferred that the violations were based in policy, ordered or condoned at the highest levels, politically and militarily.

282. The restorative part of its approach, which the Government explains is modelled on the South African Truth and Reconciliation Commission (TRC) and examples of commissions elsewhere, refers to its decision to bring criminal charges only against some 1,500 of the "hard core LTTE", while preferring "rehabilitation" for the remainder. In all cases "the least restrictive sentencing policies have been adopted, with a generous resort to

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[157] The members of the delegation included Mr. M. Peiris, the Attorney-General of Sri Lanka; Mr. C. R. Jayasinghe, the Secretary of Foreign Affairs; Mr. P. Kohona, Permanent Representative at the Mission of Sri Lanka to the United Nations; Mr. S. Silva, Deputy Permanent Representative; and Ms. S. Jayasuriya, Adviser to the Ministry of External Affairs

[158] Government of Sri Lanka written responses.

[159] Attorney-General's oral remarks, 22 February 2011.

[160] Attorney-General's oral remarks, 22 February 2011.

mechanisms of non-custodial sentences."[161] According to the Attorney-General, a four member special committee chaired by a senior officer of the Attorney-General's Department is reviewing cases against suspected LTTE cadre, to this end.[162]

283. The LLRC also has power to grant restitution, although the grounds on which it would do so are not clear. The Government has repeatedly emphasized that "there are no victors and no vanquished", that the whole nation has suffered from the conflict and that "everyone has lost and no-one has won".[163] It says the victims of the conflict will benefit from overall development of the conflict-affected areas and that the overall reconstruction of the North (and East) will contribute to the restoration of peace. The Sri Lankan Government points out that, in the performance of its functions, it is "showing contrition" by touching the "hearts and minds" of its people. It is spending and investing in the North and East for infrastructure, facilities and housing programmes, among other measures, "to some extent at the expense of the rest of the country".[164]

284. The Panel is obliged to comment on the Government's affirmation that it has chosen a restorative rather than retributive approach and on its explanation that, in doing so, it has drawn on the experiences of South Africa as well as other countries that implemented truth commissions, but did not proceed with prosecutions. Reliance on these experiences would, in fact, lead to a different model. The South African TRC conducted a full investigation into both institutional and individual responsibilities, highlighting many of the underlying causes that allowed the continuation of apartheid for many years. It required perpetrators to come forward to provide full information on their actions and apply for individualized amnesties if their crimes were politically motivated. Also, the process was inherently victim-centred, facilitating and supporting participation by victims to report violations to the TRC and to claim reparations. This is not the case with the LLRC in Sri Lanka, as will be discussed below. In addition, in most countries where there have been truth commissions, these have not precluded criminal prosecutions; rather prosecutions have followed them, including in Argentina, Chile, Guatemala, Peru, Sierra Leone, Timor-Leste and others.

285. As an initial matter, a *de facto* decision not to hold accountable those who committed serious crimes on behalf of the State during the final stages of the war is a clear violation of Sri Lanka's international obligations and is not a permissible transitional justice option. While there is some flexibility on the forms of punishment under international law, investigations and trials are not optional, and the creation of a commission such as the LLRC does not in itself fulfil the State's duty in this case.

286. In relation to the argument on "restorative justice", since the establishment and work of the South African TRC, the global legal landscape has changed, and there is wide recognition that amnesties for certain crimes are no longer permissible. Sri Lanka recognizes the non-applicability of amnesties, but it is not taking action on the accountability of its military and political leaders, and argues that it can opt for non-custodial measures for the LTTE cadre and that it can assign the LLRC to examine other issues of accountability. In this regard, the approach in Sri Lanka vis-à-vis the LTTE resembles some aspects of the initial draft of the Justice and Peace Law (2005) in Colombia. Reviewed by its Constitutional Court in 2006, key sections of the draft law were found to be unacceptable. In particular, non-

[161] Government of Sri Lanka written responses.
[162] Attorney-General's oral remarks, 22 February 2011.
[163] Attorney-General's oral remarks, 22 February 2011.
[164] Attorney-General's oral remarks, 22 February 2011.

custodial sentencing options were found incommensurate with the gravity of the crimes under consideration. In addition, the Constitutional Court required that the law be strengthened on guarantees of truth and reparations for victims.

287. Further, the suggestion that there is a choice between "restorative" and "retributive" justice is based upon a false dichotomy, since international standards require that States both ensure justice, by investigating violations and prosecuting crimes, and implement other measures for victims, including truth and reparations. Equating criminal justice with retributive justice is simply not accurate, as criminal justice has many goals beyond retribution; most importantly, it seeks to strengthen accountability by reaffirming norms and demonstrating their applicability to all citizens within a society, thereby preventing similar crimes in the future.

288. It is also necessary to emphasize that development programmes and humanitarian assistance are not to be equated with reparations. Reparations must represent an acknowledgement on behalf of the State and must be provided to people because their rights were violated, not out of humanitarian concerns, albeit the importance of the latter. The credible allegations analysed in this report suggest that the actions involved go beyond a failure to protect citizens from terrorism, as argued by the Government and could entail the direct violation by the Government of the rights of its people, on a large scale, including allegations of war crimes and crimes against humanity. The Sri Lankan Government should use reparations as a demonstration of genuine acknowledgement of violations and as redress for victims, not as a cover-up for accountability. Programmes that promote development as well as being reparative, such as community level reparations, may form part of reparations, but acknowledgement must be at the centre of the approach.[165]

289. Finally, in many other societies, ranging from Argentina to South Africa, to Morocco and Timor-Leste, accountability, within a transitional justice framework, was promoted by an active civil society, in the context of increasing space for dialogue, consultation and activism by victims groups and human rights organizations. Currently, the climate in Sri Lanka is not favourable for such initiatives, with even simple commemoration ceremonies or other forms of memorialization prohibited. Unless the Government of Sri Lanka takes significant steps to open greater political spaces, allow for free debate and permit independent efforts to document the truth of what happened during the final stages of the war, not even the best-conceived transitional justice approach will be able to make an effective contribution to accountability and respect for the rights of victims.

C. Lessons Learnt and Reconciliation Commission

290. Almost exactly a year after the conclusion of hostilities in May 2009, the President of Sri Lanka appointed a Commission on Lessons Learned and Reconciliation (LLRC), under the Commissions of Inquiry Act 1948, to examine events from the operationalization of the ceasefire agreement in 2002 through to the end of the conflict in May 2009. The establishment of the LLRC followed sustained pressure from the United Nations and the wider international community for the Sri Lankan Government to give effect to its

[165] There are several recent examples of community-level reparations. For instance, in Morocco, areas that suffered many cases of torture and disappearances received priority in the provision of economic opportunities and social services because these had been explicitly denied to them during the reign of King Mohammed IV. Similarly in Peru, communities that suffered most of the violations during the conflict were given priority for collective reparations, which included social services and community projects.

commitment made to the Secretary-General on 23 May 2009, following his visit to the country, to take measures to address accountability issues resulting from the armed conflict.

291. The eight-member commission headed by a former Attorney-General, Mr. Chittan Ranjan de Silva, is in its own words "expected to focus on the causes of conflict, its effect on the people and promote national unity and reconciliation, so that all citizens of Sri Lanka, irrespective of ethnicity or religion, could live in dignity and a sense of freedom."[166] It is also "expected to identify mechanisms for restitution to the individuals whose lives have been significantly impacted by the conflict".[167] The LLRC, based in Colombo, began its hearings on 11 August 2010 and was originally mandated to report to the President in November 2009. It soon encountered what it described as "continuing public demand to give evidence before the Commission and the need to visit more districts and places", and therefore the Commission requested an extension of its warrant. As a result, in November 2010 the President of Sri Lanka extended its warrant by a further six months, through 15 May 2011. There are indications that the LLRC may be extended beyond May.[168]

292. The Government of Sri Lanka has repeatedly referred to the LLRC as the essential mechanism of its domestic response to issues arising from the armed conflict.[169] Applying the framework provided by international standards, the Panel has assessed the extent to which the LLRC, in its form and practice to date, represents an effective accountability mechanism. In particular, it considers the LLRC's effectiveness in addressing the fundamental issues of truth, justice and reparations.

293. From the outset, the Panel sought to engage with the LLRC, in order to better understand its process, raise issues and questions directly with the Commission and share international best practices and comparative experiences. Despite repeated attempts and protracted negotiations with the Government, it did not prove possible for the Panel to visit Sri Lanka and engage with the LLRC. Instead, therefore, on 28 January 2011, the Panel submitted a series of questions to the LLRC through diplomatic channels (Annex 2.14). By Note Verbale to the Secretary-General, dated 16 February 2010, the Permanent Mission of Sri Lanka conveyed a communication by the Presidential Secretariat, responding to a number of those questions (Annex 2.15).[170]

294. While the Panel was not able to visit Sri Lanka and observe the LLRC's work first-hand, it did have, in addition to the Government's response, access to material placed in the public domain by the LLRC, notably the transcripts of hearings posted on its website, as well as material from other Government sources. It has also analysed national and international

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[166] http://www.llrc.lk/index.php?option=com_content&view=article&id=18&Itemid=2
[167] Ibid.
[168] Attorney-General's remarks, 22 February 2011.
[169] According to the Government's written submissions to the Panel, "[i]t is understood that the Group of Eminent Persons [earlier appointed following the publication of the 2009 Report to Congress on Incidents During the Recent Conflict in Sri Lanka, compiled by the U.S. State Department's Office of War Crimes Issues on alleged violations of international humanitarian law or crimes against humanity] has transmitted to the LLRC the work conducted by them in relation to the Report to the US Congress."
[170] The Panel must note that although it addressed questions to the LLRC via diplomatic channels, the response was compiled by the Presidential Secretariat, on the tasking of the President "in an endeavor to share with [the Panel] the Government's understanding of the work of the LLRC". This raises both uncertainty as to the extent to which the LLRC shares these views of its work and could reflect difficulties in the practical independence of the LLRC from the executive branch, discussed below.

media reports as well as submissions from national and international civil society groups and accounts of persons having had direct contact with the LLRC.

295. The LLRC is not the first commission established in Sri Lanka to deal with similar issues. These commissions, including the LLRC, were created under the Commissions of Inquiry Act (1948), which was designed to provide a framework for oversight of the administration of public services and the conduct of public officials, not as a mechanism to address human rights violations, as such. Nonetheless, the Act's general public safety and welfare clause proved to be sufficiently broad to serve as the legal basis for the creation of commissions of inquiry into human rights violations. The Act vests the president with broad powers, which have been used in the past to control commissions and seriously undermine their independence and impact.

296. Indeed, there is a troublingly consistent experience with previous commissions of inquiry created in response to calls for accountability for serious and systematic abuses of human rights. Spanning three decades and beginning with the 1977 Sansoni Commission, these commissions have almost invariably been beset by a combination of flaws that have profoundly hampered their work.[171] Despite severe limitations, however, certain commissions have produced a measure of fact-finding and made important recommendations for accountability. Nonetheless, on the information before the Panel, in no instance over the full span of 33 years since the initial mechanism in 1977 has the follow-up from a commission's findings and recommendations resulted in more than marginal accountability, at either individual or systemic levels. The striking lesson that can be derived from these previous processes is the lack of political will displayed by successive Governments to address the issue of accountability in a manner consistent with international standards.[172] This past experience is relevant for assessing the extent to which the LLRC can potentially contribute to genuine accountability.

1. Mandate of the LLRC

297. The mandate provides key elements for the assessment of the LLRC's potential to be an effective accountability mechanism. As set out in the Presidential Warrant of 15 May 2010, the LLRC is "to inquire and report on the following matters that may have taken place during the period between 21 February 2002 and 19 May 2009, namely:

> (i) the facts and circumstances which led to the failure of the ceasefire agreement operationalized on 27th February 2002 and the sequence of events that followed thereafter up to the 19th of May 2009;
> (ii) whether any person, group or institution directly or indirectly bear [sic] responsibility in this regard;

[171] Typical flaws have included insufficient protection for victims and witnesses, political manipulation of commissions' work, lack of transparency and inadequate human and financial resourcing.

[172] This same assessment of the profoundly inadequate outcomes of previous commissions has also been put to the LLRC publicly, by respected members of civil society. Cf. Submissions by the Catholic Diocese of Mannar to the LLRC on 8 January 2011 (Catholic Bishop of Mannar, Vicar General of Diocese of Mannar and the Representative of the Priests Forum of Mannar): "[w]e must express our disappointment that previous Commissions of Inquiry have failed to establish the truth into human rights violations and extrajudicial killings they were inquiring and bring justice and relief to victims and their families. … It is also disturbing that reports of these Commissions have not been made available to those who came before the Commission, victims, their families and general public."

(iii) the lessons we would learn from those events and their attendant concerns, in order to ensure that there will be no recurrence;
(iv) the methodology whereby restitution to any person affected by those events or their dependants or their heirs, can be effected;
(v) the institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future, and to promote further national unity and reconciliation among all communities, and to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant."

298. The LLRC has not clearly indicated how it interprets its mandate, nor has it issued any guidelines on this matter to those who wish to appear before it. While the LLRC is explicitly tasked to examine "the sequence of events that followed" the failure of the ceasefire agreement, the terms of its mandate do not explicitly address either accountability, in general terms, or alleged violations of international humanitarian or human rights law, specifically. Thus, it is not clear if the mandate includes investigations of violations of human rights or international humanitarian law, although these are not ruled out.

299. Because the Panel was unable to meet with the LLRC, it relied instead on the Government's written responses, prepared by the Presidential Secretariat, to the Panel's questions on the LLRC, as well as the views expressed to the United Nations by the Attorney-General on these matters at the 22 February meeting. The Attorney-General explained that the LLRC was, indeed, mandated to examine issues of accountability in respect of the final stages of the war, maintaining that the notion of accountability was co-equal with responsibility and permitted the Commission to fully ventilate any such issues. Based on international standards and practice, however, the two concepts are clearly distinct, as accountability goes further by attaching consequences to individuals or institutions deemed responsible for a particular violation. Assignment of responsibility is important as a potential pre-condition for accountability, but it does not release a State from its obligations with regard to accountability for serious violations of human rights or international humanitarian law.[173]

300. The Attorney-General stated that the Government drew on the experiences of the South African TRC and the Iraq Inquiry (the Chilcot Inquiry) in the United Kingdom, and that it should consider the LLRC as equivalent to these bodies. There are crucial differences, however, in both cases. As mentioned above, the South African TRC, in contrast to the LLRC, had an explicit mandate to investigate gross human rights violations, including the identity of individuals and institutions involved.[174] It is important to note that best practices developed in other countries in similar situations included explicit mandates for their

[173] For the same distinction between accountability and responsibility, see the Resolutions of the United Nations Security Council (S/RES/1970 (2011) of 26 February 2011) and the Human Rights Council (A/HRC/S-15/2 of 25 February 2011), at preambular paragraph 11 and operative paragraph 11 respectively.
[174] See section 4(a) of the Promotion of National Unity and Reconciliation Act, mandating the TRC to inquire into "(i) gross violations of human rights, including violations which were part of a systematic pattern of abuse; (ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations; (iii) the identity of all persons, authorities, institutions and organisations involved in such violations; (iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and (v) accountability, political or otherwise, for any such violation".

commissions to investigate violations of human rights or humanitarian law, including other examples mentioned by the Government of Sri Lanka, such as Chile and Kenya.

301. The Iraq Inquiry, on the other hand, examines the eight-year span from 2001 to 2009 of "the United Kingdom's involvement in Iraq, including the way decisions were made and actions taken, to establish as accurately and reliably as possible what happened, and to identify lessons that can be learned."[175] Its mandate, which is closely paralleled by that of the LLRC, is clearly not designed to ensure individual or institutional accountability, but rather to examine political responsibilities for decisions taken during the mandated period and draw lessons for the future. The Attorney-General confirmed this understanding in his explanation that, through the LLRC, the State was taking responsibility for the failures of successive Governments over a long period to appropriately protect persons within the State's territory. While this is an important undertaking, it is not, and cannot be understood to be, the same as fulfilling obligations of accountability for serious violations of international humanitarian and human rights law, nor does it amount to respect for victims' rights to truth, justice and reparations.

302. Publicly the Government has been inconsistent regarding the LLRC's mandate on matters of accountability. On the one hand, senior Sri Lankan officials have often emphasized that the LLRC is a forward-looking process aimed at reconciliation, rather than instrument of retributive accountability addressing past violations. [176] At the same time, other statements made by Government officials suggest that the Commission is empowered to investigate certain specific incidents of alleged human rights violations.[177] The Minister of External Affairs, G. L. Peiris, has stated publicly that the LLRC's mandate is "wide enough" to enable it to examine individual allegations of violations of international law.[178] On a later occasion, in a televised interview, he strongly suggested that the LLRC was the appropriate place for investigation of specific alleged war crimes.[179]

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[175] http://www.iraqinquiry.org.uk/faq.aspx#I01 (accessed 28 February 2011).

[176] See, for example, the statement of the President to the LLRC on 4 June 2010: "The Commission has therefore, the President said, the responsibility of acting in a forward looking manner, through focus on restorative justice designed to further strengthen national amity." (http://www.priu.gov.lk/news_update/Current_Affairs/ca201006/20100604lessons_learnt_commission.htm)

[177] See evidence reportedly given by Sri Lanka's Permanent Representative to the United Nations in Geneva, Ms. Kshenuka Seneviratne, in the Colombo High Court regarding an incident of alleged arbitrary killing of surrendering LTTE personnel. The Permanent Representative reportedly testified that the LLRC constituted the investigation being carried out by the Government into this alleged incident, and further that she and her colleagues believed that the Commission "will go through this report and give its response" to the alleged war crimes detailed by the International Crisis Group. (http://sundaytimes.lk/101128/News/nws_16.html)

[178] See colloquy between G.L. Peiris and Asia Society Executive Vice President Jamie Metzl, 27 September 2010, Asia Society, New York (available at http://asiasociety.org/video/policy-politics/sustainable-peace-sri-lanka-complete, from 50th minute, accessed 30 December 2010):

Metzl: "… Could you describe with as much precision as possible what you see as the mandate of the LLRC and, specifically, is the LLRC empowered to investigate allegations of wrongdoing, perhaps even war crimes, by both sides, particularly at the end of the conflict in 2009?

Peiris: "Yes, I will answer those questions directly. [A United States Congressional aide in a meeting the Minister had recently had] said, 'This Commission does not have the authority to probe allegations against particular individuals for violations of human rights or international humanitarian law.' I contested that. I said, 'No, the mandate is wide enough to enable the Commission to do this.' …"

[179] Channel 4 journalist Jonathan Miller: "Why has the Government … not allowed an independent, impartial international inquiry into these allegations [of extra-judicial killings of prisoners]?" G.L. Peiris: "Because we have put in place what we consider to be the best and the most effective and the most pragmatic mechanism". (See video footage in http://www.channel4.com/news/sri-lanka-war-crimes-video-who-are-these-men (accessed 13 December 2010)).

303. Lastly, the LLRC's temporal mandate explicitly ends on 19 May 2009, an end-point that necessarily precludes consideration by the LLRC of credible violations that occurred in the aftermath of the armed conflict, after that date.

304. In any event, the LLRC's mandate does not satisfy international standards for clarity in the mandate of an accountability mechanism, which should explicitly refer to the power to investigate violations of international humanitarian or human rights law, committed by any party in a conflict, including the State or its agents.

2. Independence and impartiality of the Commission

305. International law requires a body investigating alleged violations of humanitarian and human rights law to be independent, impartial and competent. Independence comprises both actual independence and the public perception thereof.

306. In the case of the LLRC, at least three of its members have serious conflicts of interest that both directly compromise their ability to function with independence and impartiality, and undermine public perception of them as independent. The Chair of the Commission was Attorney-General from April 2007 to December 2008 and, accordingly, exercised the functions of chief law officer for the Government in respect of many issues directly before the LLRC. In addition, his influence over a previous commission of inquiry (Commission of Inquiry Appointed to Investigate and Inquire into Serious Violations of Human Rights which are Alleged to have Arisen in Sri Lanka since 1st August 2005), which demonstrated a serious conflict of interest, constituted a major point of public criticism by the International Independent Group of Eminent Persons (IIGEP), set up to oversee the work of that commission.[180] A second member was Sri Lanka's Permanent Representative to the United Nations during the final stages of the armed conflict, representing and defending the Government's views on the evolving military and humanitarian situation. A third member was first the legal advisor of the Ministry of Foreign Affairs and then advisor on international legal affairs to the Ministry, during the period under examination by the Commission.

307. Whatever their other qualifications may be, individuals subject to such conflicts of interest are entirely inappropriate as members of a body expected to investigate impartially and contribute to accountability for alleged violations of international humanitarian and human rights law during a period in which they served as high-level officials of the Government. From any perspective, it would be virtually impossible to expect them to be capable of independently assessing the performance of the Government, in which they held pivotal positions, or of the President, who personally appointed them. Concerns in this respect are reinforced by public statements by at least one Commission member, made outside the LLRC, but during its term of operations.[181]

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[180] See Public Statement of the IIGEP on its final report, IIGEP-PS-006-2006, 15 April 2008.

[181] See, for example, the Prof. J. E. Jayasuriya Memorial Lecture "Post-Conflict Foreign Policy Challenges for Sri Lanka". Speaking as a "practitioner", LLRC commissioner Mr. Palihakkara asserted that "precautionary humanitarian measures [were] taken by the security forces and [there was] exercise of maximum restraint to minimize civilian casualties and other collateral damage." Noting that "our soldiers and the political leadership provided by our President enabled the country to free itself from this manifest threat to its sovereignty and integrity", he referred to sovereignty "rescued by our soldiers" and "so valiantly re-established by our soldiers". He further hailed "successful preventive diplomacy at the United Nations Security Council without alienating any country to deter intervention in Sri Lanka during the anti-LTTE operation in 2009".

308. In addition, best international practice holds that commissions of inquiry, or comparable bodies, such as truth commissions, with a role in ensuring accountability, should be constituted through a consultative stakeholder process:

> [I]n accordance with criteria making clear to the public the competence and impartiality of their members, including expertise within their membership in the field of human rights and, if relevant, of humanitarian law and that they should "ensure adequate representation of women as well as of other appropriate groups whose members have been especially vulnerable to human rights violations.[182]

309. In its written responses to the Panel's questions of the LLRC, the Government asserted that "[t]he composition of the LLRC is representative of the multi-ethnic and pluralistic polity of Sri Lanka and it comprises persons of eminence from various communities who have excelled in their chosen vocations."[183] In the Panel's view, however, the membership of the LLRC does not adequately reflect the diversity of Sri Lankan society and perspectives on the conflict, nor are the backgrounds and expertise of all commissioners clearly relevant to the mandate. Only one of the eight commissioners is female, despite the disproportionately high representation of women amongst the victims of the conflict and the attention that should be given to the ways in which they have been affected. Of equal concern, only one of the commissioners – who is also the sole female commissioner – is Tamil, and only one commissioner is of Muslim background.

310. Most crucially, however, the LLRC is weighted heavily in favour of former officials with close ties to the Government. In addition to the issues of independence and impartiality already addressed, this factor can be expected to affect public perception of the LLRC and condition people's decision to interact with it or lend credibility to its results.

311. Thus, the LLRC is seriously deficient with regard to its composition when held against international standards to ensure the independence and impartiality of accountability mechanisms. Its composition calls into question its independence and impartiality, especially regarding conduct that could implicate the Government and the security forces in the final phases of the war, and weakens its legitimacy as a body to advance accountability.

3. Other structural aspects of the LLRC

(a) Public reporting

312. Best international practice holds that the work of a commission, such as the LLRC, should culminate in the production of a report, containing both its findings and its recommendations, which may address a range of issues such as further investigations or prosecutions, exhumation of mass graves, reparations, various institutional reforms and guarantees of non-repetition. Best practice also holds that these should be made public, subject only to withholding or redaction of identifying particulars of individuals whose life or physical security may be at risk as a result of disclosure.[184] Neither the LLRC's warrant nor

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[182] Updated Impunity Principles, Principles 7(a and c).

[183] In addition to the Chairperson, Mr. Chittan Ranjan de Silva, the other members of the Commission are Dr. Amrith Rohan Perera Esquire, Dr. Karunaratne Hangawatte, Mr. Chandirapal Chanmugam, Hewa Matara Gamage Siripala Palihakkara, Mrs. Manohari Ramanathan, Mr. Maxwell Parakrama Paranagama and Mr. M.T.M. Bafiq (replacing a deceased member).

[184] Updated Principles to Combat Impunity, Principle 13: "For security reasons or to avoid pressure on witnesses and commission members, the commission's terms of reference may stipulate that relevant portions of its inquiry

the Commissions of Inquiry Act requires publication of a final report. The history of previous commissions of inquiry in Sri Lanka shows a pattern of non-disclosure of findings and recommendations, undermining public confidence in the process, dramatically reducing the practical impact of the work undertaken and possibilities for follow-up, and making it impossible to assess whether the work of that commission responded to its mandate. While indications have been given that a copy of the LLRC's final report is to be shared with the United Nations, most important is that it be shared with the people of Sri Lanka. Best practices would require that the LLRC give wide public distribution to all of its findings and recommendations.

(b) Absence of sufficient measures for victim and witness protection

313. International human rights law requires the State to protect both the physical security and privacy of any individual from reasonable, foreseeable risks from third parties. This standard is given explicit formulation in the context of human rights-focussed commissions of inquiry: "[e]ffective measures shall be taken to ensure the security, physical and psychological well-being, and, where requested, the privacy of victims and witnesses who provide information to the commission."[185] The LLRC should have a clear legal basis for its power and authority in this regard, in order to ensure certainty, predictability and confidence to those considering whether or not to testify. Accountability mechanisms exist, in large measure, to serve victims and should put them at the centre of the process. To this end, international standards provide that victims and witnesses should generally only be called upon to testify on a "strictly voluntary" basis; social work and mental health practitioners should be permitted to help victims both before and after testimony; and "expenses incurred by those giving testimony shall be borne by the State".[186] Commissions in other countries have offered a range of protective measures and support to victims and witnesses, ranging from guarantees of confidentiality in Guatemala and Sierra Leone, for example, to psychological support in Peru and South Africa, to a full witness protection programme, as in South Africa.

314. Neither the warrant of the LLRC, nor the Commissions of Inquiry Act, set out any particular protection measures for persons appearing; rather section 13 of the Commissions of Inquiry Act states that anyone giving testimony "shall be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him before such a court." [187] It has been reported that the Chairman of the LLRC has undertaken that "[a]ll facilities will be provided for anyone who is willing to give evidence before the Commission".[188] The Panel has been unable to confirm this assertion, and did not receive any response to its written questions on the LLRC's practice of witness protection.

315. On the basis of the information before it, the Panel cannot conclude that international standards and best practices are being met on measures to afford specific protection and support for witnesses. This is of particular concern, given the climate of fear that has prevailed in Sri Lanka and the experience of previous commissions of inquiry, whose work

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shall be kept confidential. The commission's final report, on the other hand, shall be made public in full and shall be disseminated as widely as possible."

[185] Updated Principles to Combat Impunity, Principle 10.

[186] Ibid.

[187] http://www.priu.gov.lk/news_update/Current_Affairs/ca201011/20101102llrc_nearing_in_jaffna.htm (accessed Nov 4, 2010).

[188] Ibid.

was hampered by the absence of effective witness protection measures. Of particular relevance in this regard is the view of the IIGEP in 2008, which was highly critical of the failure to ensure adequate witness protection in respect of the Serious Violations Commission. The IIGEP noted that:

> Perhaps more than any other factor, this impediment [of absence of a comprehensive system of witness protection and Governmental willingness and ability to implement it] inhibits any effective future pursuit of the filing of indictments, convictions, and appropriate accountability for the alleged grave human rights violations under review.[189]

316. Given the failure to enact a bill proposed in 2008 to provide greater witness protection, there is scant legislative basis for Sri Lanka to provide the necessary protection in an appropriate case.

4. The practice of the LLRC

(a) Positive steps

317. In discharging its mandate, the LLRC has travelled outside Colombo, notably to regions most affected by the final stages of the armed conflict. It has held hearings, among other places, in Vavuniya (including Menik Farm), Kilinochchi, Mullaittivu, Omanthai (including the detention facility), Batticaloa, Trincomalee and Jaffna. The LLRC has also heard a significant number of witnesses providing direct testimony of their experiences, many of whom were victims, predominantly in its hearings outside of Colombo. The spontaneous appearance of so many people who came forward in hearings in the North and East, particularly women, points to the urgent need for a genuine process of truth-seeking and accountability in Sri Lanka.

318. While other such commissions often make recommendations when they finalize their work, the LLRC has already made interim recommendations to the Government on matters it deems to require urgent attention, including general issues regarding detention, law and order, public administration and language, land and other socio-economic and livelihood questions. The Government has established a Cabinet-approved mechanism, the Inter-Agency Advisory Committee (IAAC), headed by the Attorney-General, to facilitate what has been described as structured, inter-ministerial follow-up implementation of these recommendations.[190]

(b) Absence of a clear approach to truth-seeking or investigation

319. A core component of accountability is seeking the truth. In principle, the LLRC's mandate, while not explicit on the matter, does not prevent it from contributing to truth-seeking on the final stages of the war, including with regard to violations of human rights and international humanitarian law and the experiences of victims. Beyond the issues already discussed, the potential contribution of the LLRC to truth-seeking is shaped by its methodology and its day-to-day practice. The credibility of its findings will also hinge, in part, on the transparency of that methodology.

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[189] IIGEP-PS-005-2008, 6 March 2008, at page 3.
[190] http://news.lk/press-releases/cabinet-decisions/16529-press-release.

320. Having reviewed the information available to it, the Panel has been unable to discern fully the overall methodology employed by the LLRC for seeking the truth or investigating violations. Truth-seeking commissions in other countries have generally combined statement taking with other forms of investigation, including the requirement and review of official military campaign records, police files and court records relevant to specific allegations as well as patterns of abuse; conducting specific investigations into matters such as illegal detention centres or the consequences of the conflict for the victims; and implementing methodologies to establish credible casualty figures. They have employed up to hundreds of staff, including statement-takers, researchers, investigators, communications professionals, gender experts, and psychologists. In the case of the LLRC, it would seem that their evidentiary work consists chiefly of receiving written submissions and assessing them for threshold relevance, on the basis of which the Commission decides whether to receive oral testimony. The Attorney-General at his meeting with the United Nations advised that the LLRC has a total of 20 staff with 4 researchers, 4 police, 4 translators and some support staff, falling far short of the resources necessary to seek the truth in respect of the exceptionally complex final stages of the war. In addition, in its practice, the LLRC appears to work comfortably with the less controversial and sensitive aspects of historical analysis of the conflict and reconciliation, yet reflects ambivalence and uncertainty regarding its role on violations committed during the final stages of the war.

321. As mentioned, the LLRC has been receiving submissions both in the form of direct testimony and written submissions. Its methodology for inviting submissions and selecting witnesses is not clear, however, and gives the impression that it may be unsystematic. With regard to victims, it is in line with international standards that testimony be voluntary in truth-seeking efforts, although those who may have relevant information or were in positions of responsibility are sometimes compelled to come forward.

322. According to the LLRC's website, as of the end of January 2011, some 148 individuals and/or organizations had given testimony over the course of public hearings in Colombo. These individuals encompassed a wide range of prominent personalities in the public sector as well as current and retired eminent persons from business, community and civic leadership, professional organizations, higher education and civil society. Typically in the Colombo hearings, a witness would deliver a lengthy prepared statement, followed by extensive, mutually-respectful dialogue with the commissioners, lasting several hours. The dominant themes of these sessions encompassed questions of future reconciliation and historical issues, notably argument as to why the ceasefire broke down. While important for understanding the broader issues, these sessions, and the high proportion of the LLRC's time they represent, have provided only marginal insights into the final stages of the armed conflict, in particular regarding violations that may have been committed by the Government or the LTTE.

323. When dealing directly with alleged violations of international law, including the conduct of the security forces, the approach has been non-confrontational. The Secretary of Defence and five of the most senior military officials have each appeared for a brief session at the outset of the Commission's work, despite their critically important functions and knowledge of the events of the final stages of the armed conflict. When these senior officials appeared before the Commission, only generalized allegations of violations or questions on the overall strategic approach to the final phases of the armed conflict were put to them and

no specific questions were asked.[191] Only rarely have commissioners broached specific issues, generally regarding violations that have been reported in the international press.[192] Testimony has been accepted even when it is flatly inconsistent with the allegations as compiled by the Panel, such as the assertion that there was "zero tolerance of civilian casualties". This suggests both a weakness in the investigative methodology as well as undue deference to senior officials, which could greatly limit the Commission's ability to establish the truth behind serious allegations. For the Panel, the uncritical, deferential approach to the testimonies of senior military and civilian officials also raises deep questions as to the will of the LLRC to establish the facts regarding this key phase of the conflict and to raise politically sensitive issues with broad implications for the civilian and military leadership of Sri Lanka. Instead, often the LLRC seems to have served as a platform for presentation of the Government's version of events.

324. In the LLRC's field visits to the North and East, where the overwhelming majority of witnesses have been victims of the conflict, the approach has been quite different. Despite the importance of testimony in the conflict areas for uncovering evidence of violations and revealing the truth of victims' experience, at the end of January 2011, the LLRC's website records only 14 days of field visits since the beginning of the Commission's mandate in May 2010. The time allocated for hearing witnesses with relevant testimony in the North and East has been dramatically insufficient, as large numbers of victims who wish to provide testimony have not been able to do so. The majority of these victims have been women. Despite these large numbers and that the matter has been drawn to the Commission's attention by civil society representatives,[193] it does not appear that the LLRC has reoriented its hearing schedules to accommodate this volume of witnesses.

325. Although the direct evidence that victims and witnesses in the North and East can and has provided on key events in the final stages of the war is central to truth-seeking, only a small fraction of the LLRC's time has been devoted to hearing this testimony.[194] In addition, witnesses with highly relevant testimony on violations have often been confined to short sessions of 15 to 20 minutes, and sometimes less. This is insufficient to explore fully a witness' knowledge of the facts and issues and is not respectful of his or her dignity.

326. While in these hearings in the North and East, victims reported particular violations, such as disappearances or missing relatives,[195] the Commission has displayed seemingly little interest in pursuing these issues. Indeed, a survey of public transcripts of testimony given by individuals having suffered personal harm reveals that, as of mid-January 2011, over 80 per cent of such victims raised issues of disappeared or missing relatives, or detention in known facilities. In most of these cases, the Commission has sought to assuage humanitarian concerns rather than address allegations of human rights violations. Often, the Commission would request witnesses to put their issues in writing, telling them the matter would be

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[191] See, for example, the questioning of Commissioner Palihakkara to the Commander of the Army, Jagath Jayasuriya, on 8 September 2007 in respect of civilian casualties generally and the use of heavy weapons and air power as elements of strategy (transcript at page 8).

[192] See, for example, the questioning of Chairman de Silva to Major-General Guneratne, Commmander of the 53rd Division, raising a report of the international press that "persons who were surrendering were assassinated" (transcript at page 3).

[193] Statement of Catholic Diocese of Mannar to the LLRC, 8 January 2010: "we are disappointed that the time allocated to listen to our people is very small."

[194] August 2010: 2 days; September 2010: 3 days; October 2010: 5 days; November 2010: 3 days; December 2010: 1 day, according to the LLRC's website accessed 31 January 2010.

[195] E.g. http://www.bbc.co.uk/news/world-south-asia-11686861

referred onwards to the authorities. When witnesses were requested to make written statements, the LLRC's forms provided for this purpose have on occasion been provided in Sinhalese and English only.[196]

327. On many levels, these practices are in stark contrast with best practices of truth-seeking efforts elsewhere. In circumstances similar to those of Sri Lanka, even when truth commission have included an analysis of historical causes and the political failings that led to the conflict, the majority of the effort was directed toward carefully documenting and investigating the violations of international humanitarian and human rights law that had been alleged. This involved not only the use of an adequate investigative methodology, but also an allocation of time and other resources towards this priority. In places where there have been allegations of large-scale violations, truth commissions have generally had large numbers of staff to conduct investigations in support of the commission. They have usually created facilitating conditions to allow victims to give their testimony to statement-takers in private settings over the course of hours, when necessary. In Guatemala, staff were dispatched to remote areas for months to take statements from victims and other witnesses, investigate allegations and ensure that victims there could be heard. The working methodologies of the LLRC do not allow for serious truth-seeking and are not resulting in an effective investigation into violations.

(c) Lack of a victim-centred approach

328. The hearings in the North and East also indicated that the LLRC does not have a victim-centred approach. In contrast to the respectful approach at the Colombo hearings, the commissioners have frequently taken a curt and dismissive approach to victims who raise issues of disappearances and missing or detained persons. Often, questioning in such instances has been desultory; in other instances, when allegations are made against the conduct of security forces, commissioners seem at pains to refute any possibility that the allegations may be true, pointing to inconsistencies in the victim's account in order to discredit it.[197] On other occasions, the commissioners misdirect themselves in law on questions of human rights.[198] The treatment of victims by the LLRC is not adequately respectful of their dignity and fails to provide them a fair opportunity to place before the LLRC their evidence of violations and accounts of their extraordinary suffering.

329. A very high proportion of the evidence provided to the LLRC during its field visits has come from women, who have recounted disappearances or detention of husbands, brothers and sons and who have pleaded with the LLRC for assistance. The high number of men killed, including in the final phases of the armed conflict, both combatants and civilians, has left a large number of women deprived of means of support and living in desperate circumstances, in situations of extreme poverty. The LLRC, which is almost entirely male itself, does not appear to have taken any steps to create a supportive environment for these women when they give testimony. Nor has the Commission otherwise sought to provide support to those travelling great distances and bearing other costs in their decision to appear.

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[196] http://www.nation.lk/2010/12/05/news16.htm (accessed 6 December 2010).

[197] See, for example, the prolonged exchange between one or more unidentified commissioners and an unidentified witness at the Commission's 20 September 2010 hearing in Mullaittivu, where the witness claimed that Sri Lankan naval forces had fired upon a vessel of civilians at night.

[198] See, for example, Commissioner Palihakkara to an unidentified witness: "Since the [disappeared] child was taken by the LTTE the government finds it difficult because its [sic] not the governments [sic] responsibility ….". (Nedunkerny transcript, at page 7). As a matter of law, the State is required to undertaken an investigation as to the circumstances of such an alleged violation regardless of the identity of the perpetrators

330. Reports that the LLRC has not provided all those seeking to testify with the opportunity to do so, in particular in the North and East, suggests that the body has failed to appreciate the significance of the process for all victims and, in particular, for women victims. It is significant that large numbers of women spontaneously sought to speak publicly before the LLRC about violations of their rights and the rights of family members, in a climate in which few victims have been willing to speak due to perceived risks. The refusal by the LLRC to allow many women to testify publicly reinforces general patterns of discrimination against women, and against war-affected women, which have been exacerbated by war and must be redressed through any accountability mechanism. Best practices ensure that gender-based violations are an integral part of the inquiry and that the voices and experiences of women victims are heard, whether the mandate expressly incorporates gender, as did commission mandates in Haiti, Sierra Leone and Timor-Leste, or whether the mandates were gender neutral, as were commission mandates for commissions in Guatemala, Peru and South Africa.

331. In other contexts, special methodologies were put in place which respected the centrality of victims. Many victims were able to give statements in private, one-on-one settings, in comfortable environments. Truth commissions generally provide psychological support to victims. Public hearings in general would be carefully planned and could take hours. In Peru, Sierra Leone and South Africa, public hearings kept pace with the needs of the victims, including their emotional needs, and the environment was respectful and supportive. In Sierra Leone, where children were particularly victimized, a version of the report was produced especially for them. The process of the truth commission in these contexts was used to give prominence and show respect to the plight of victims and their experiences.

332. Finally, the failure to engage victims on the harm and injury they suffered also leaves deep doubts as to the extent to which the LLRC intends to contribute to reparations. While its mandate includes the ability to grant restitution, the Commission has neither made clear what damages are covered by its mandate nor the burden and standard of proof that victims need to demonstrate as potential beneficiaries. The result is, at this point, serious doubt as to the LLRC's intention to address these issues.

(d) Witness intimidation and inadequate witness protection

333. In addition, on the basis of the LLRC's transcripts of public hearings and other material before the Panel, there does not appear to be any information provided to witnesses prior to their testimony regarding the use of their testimony. In some instances, witnesses' names are not disclosed, while in other and similar situations, they are; in others still, the witness, while not named, is rendered identifiable by the content of the testimony, such as the names of family members. This is in breach of the best practice that victims providing testimony and other witnesses should be "informed of rules that will govern disclosure of information provided by them to the commission".[199]

334. This deficiency in LLRC practice occurs in the context of one of the Panel's major concerns, namely, the lack of adequate witness protection for those who want to give testimony to the LLRC. A number of reports suggest that the environment for witnesses is

[199] Updated Impunity Principles, Principle 10(d).

often intimidating and at times hostile. Although the Government, in its written responses to the Panel, has argued that "[t]he military have no role to play in the LLRC Sessions", the Panel is aware that on occasion uniformed military officers have been seated in the hearing room, photographing witnesses and the audience. The presence of the military or intelligence personnel inside or outside of the hearings has a chilling effect on witnesses who fear possible reprisals when putting forward allegations of illegal conduct on the part of the security forces. This is true, too, of the frequent presence of Government officials at hearings during witness testimony.

335. While the Government's written responses maintain that "no complaints have been received of any threat, intimidation or harassment against the presentation of testimony", the Panel for its part is aware of occasions of clear attempts to discourage the testimony of witnesses. One incident of intimidation was reportedly considered of sufficient seriousness by the Commission that it asked the police to investigate.[200] Commission sources have also been reported as recognizing the possibility of "intimidation or future repercussions".[201] The Panel has heard reports that include warnings to individuals not to testify, pressure on officials not to provide details of time and places of sessions in the provinces ahead of time, and intimidating presence and behaviour of persons observing the Commission.[202]

336. The Panel has also received reports suggesting witness manipulation, giving rise to situations in which witness testimony was at odds with earlier statements by the same witnesses. This suggests the possibility that pressure was put on the witnesses to distort their testimony before the Commission. The Panel is also unable to conclude that sufficient practical measures are in place to guarantee short and long-term protection of sensitive witness material. While the Chair of the Commission has indicated publicly that, "[i]f [witnesses] choose to tell us anything in private … [then n]obody else will know what you have said and we will maintain complete secrecy as far as your identities are concerned",[203] the Panel is unaware of any institutional or practical basis for honouring such undertakings, including beyond the lifetime of the LLRC.

337. The situation of witnesses before the LLRC is thus unsatisfactory, falling short of what can be reasonably expected of a serious inquiry process seeking to establish the truth about the final stages of the armed conflict. Witnesses, particularly victims of alleged violations, are frequently uninformed as to the form and expectation of their appearance before the commission. They are not prepared for the hearings and are not sufficiently protected from harassment on the basis of their testimony.

(e) Media and civil society: access and harassment

338. The media plays a critical role in ensuring transparency through reporting on the work of the LLRC. In other countries, including particularly Morocco, Peru and South Africa, the work of similar commissions was widely televised as a way to contribute to public debate on the issues at stake. While in exceptional circumstances the media may be excluded, international human rights law limits the authority of state bodies, such as the LLRC, to

[200] In this case, the police reportedly identified the perpetrator, but limited its action to a warning, as the victim did not wish to press the charges.
[201] http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=12029
[202] See, for example, http://transcurrents.com/tc/2010/11/caffe_condemns_intimidation_of.html
[203] LLRC hearing at Vavuniya, 14 August 2010, transcript at page 1.

restrict persons' freedom to receive and impart opinions and information.[204] The onus is on the State to justify that any such limitation is permissible and within the bounds of necessity and proportionality set out in international law. On the basis of information before the Panel, certain media agencies have been excluded by the Ministry of Defence from attending hearings, which represents a clear interference with freedom of the press. There have also been reports of intimidation of local journalists covering the proceedings.

(f) Access and transparency of work

339. The Panel has received credible reports that the LLRC has failed to conduct all of its proceedings in a transparent manner. This shortcoming has also reportedly been acknowledged at senior levels.[205] Truth commissions are heavily reliant on public support for their information gathering, and working in a public and transparent manner is an essential part of a truth commission's work. Since South Africa, almost all truth commissions have conducted public hearings and most have engaged in extensive outreach on their activities, via the radio, television, newspapers and internet, in order to raise public awareness and support.

340. This has only partially been the case with the LLRC. Beyond the basic modalities set out in the Commission's notice of 18 June 2010, at times the process has been characterized by a lack of public information on key aspects of its operations. Posting of transcripts of public sessions began some six months into the course of its hearings. There has also been general uncertainty on, and inconsistent application of, the process to select the witnesses who participate in the public hearings. Only in the Government's written responses to the Panel has it elaborated more fully on its methodology for selecting participants in the hearings, stating that "all those desirous of testifying before the Commission are required to submit a prior written representation, which is then vetted by the Commission with a view to ensuring that it meets the threshold requirements of evidentiary value" before a hearing date is set. The threshold requirements are not, however, identified, nor is there any information on the number or proportion of would-be witnesses that have been rejected for failure to meet this threshold. In any event, this approach does not seem to have been applied in the hearings in the North and East, suggesting differences in the treatment of different groups of witnesses.

341. Even for the disproportionately small number of sessions devoted to hearing victims, information on their locations, times and methodology has been inconsistent and often difficult for potential witnesses and members of the public to obtain. Reported failures to inform local residents, particularly about provincial hearings, have meant that many people were unaware that hearings were taking place.[206] The use of district and divisional officials to convey public information on behalf of the LLRC has also prejudiced the appearance of independence of the LLRC. [207]

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[204] See article 19 of the ICCPR.

[205] Minister G.L. Peiris, quoted in *The Daily Mirror* : "I think that what the Government should do now is make fuller information available to the international community about the work that is being done by the commission … Unfortunately not enough information is available in the public domain" (http://www.dailymirror.lk/print/index.php/opinion1/25708.html)

[206] http://www.nation.lk/2010/12/05/news16.htm (accessed on 6 December 2010)

[207] Two further technical issues decrease the transparency and accuracy of the LLRC's work. Firstly, it has been credibly asserted to the Panel that, in spite of the Government's written submission that "[e]fficient transcription services" exist, transcripts have frequently diverged in material respects from the actual course of the proceedings, leaving a misleading and mistaken impression on the public record as to the Commission's work.

(g) Interim recommendations

342. Many of the LLRC's interim recommendations have already been recommended in the past by different bodies, and could readily be implemented in full if the Government so wished. With one exception, the recommendations do not directly address urgent issues of accountability. A key recommendation proposes publication of a list of names of detainees, which could contribute to knowledge of their whereabouts, but to date, this key recommendation has not been implemented. The lack of recommendations addressing the range of accountability issues as well as the inaction on the publication of detainees suggest, at this interim stage, that the LLRC has not given priority to investigating the alleged violations. It also supports the conclusion that, contrary to the Government's responses to the Panel, the Government is reluctant to take actions that would shed light on sensitive aspects of its conduct in the last stages and aftermath of the war.

5. Conclusions on the LLRC

343. The LLRC offers a potentially useful opportunity for the beginning of a national dialogue regarding the final stages of the war, as well as on other issues related to the conflict. Many influential NGOs and some religious leaders have used the space offered by the LLRC to advocate on the public record their vision of what needs to happen in Sri Lanka on matters of accountability and to suggest changes for the future. The fact that large numbers of people, particularly victims, have come before the Commission confirms the need for an official space where they can raise matters related to the final stages of the war and their personal circumstances in consequence. The LLRC has also been used by some senior officials in the Government, the military and Sri Lanka's elites to promote their own approach, or to criticize the approach of previous Governments on the appropriateness of the ceasefire.

344. Because the LLRC has not yet concluded its work and filed a final report, it is not possible to make a comprehensive and final assessment. However, the Panel is able to draw some key conclusions at this point:

(a) The LLRC mandate is not tailored to the investigation of allegations of serious violations of international humanitarian and human rights law, nor of the patterns of violations and responsibility for them, but instead focuses on a wider notion of the political responsibility of past Governments in failing to protect its citizens, more closely resembling a body such as the Chilcot Inquiry than a truth commission.

(b) The LLRC fails to satisfy key international standards of independence and impartiality, compromised by the composition of the Commission and deep-seated conflicts of interests of some of its members.

(c) The work and methodology of the LLRC, to date, demonstrates that it has not conducted genuine truth-seeking on what happened in the final stages of the armed conflict, nor does it seek to investigate systematically, objectively and impartially the allegations of serious violations on both sides of the war. Large numbers of people came forward in the

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Secondly, serious concerns have been expressed as to the quality of the interpretation of some of the evidence given in Tamil, potentially leaving both those commissioners who do not speak Tamil and the wider public with an inaccurate picture of the testimony.

North and the East, but only at their own initiative and in desperation; they were not encouraged to give full accounts of the violations and other harms that they had suffered as part of the process, nor was attention given to the distinct harm suffered by particular groups such as women and children.

(d) The LLRC has not demonstrated an approach that treats victims with full respect for their dignity and their suffering, or that it hears victims in an appropriate and gender-sensitive manner. This was particularly apparent in its hearings in the North and the East. It has not indicated how it will deal with the important issue of reparations.

(e) The LLRC has not ensured the necessary protection for witnesses, even in circumstances of actual personal risk. There is evidence that particular witnesses were intimidated.

(f) The LLRC's operations have been insufficiently transparent.

345. 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.

D. Sri Lanka's justice system

346. The justice system should be the primary avenue for providing individual accountability for violations of international humanitarian and human rights law and providing an effective remedy to victims. Regardless of the outcomes of the LLRC, Sri Lanka's legal system should play a leading role in adjudicating accountability of individuals. It is not appropriate for Sri Lanka's criminal justice system to defer its responsibilities to investigate until the LLRC completes its work, although this has been a consistent pattern when commissions of inquiry have been established in the past. The following section examines the extent to which the Sri Lankan justice and military courts systems operate to provide accountability in respect of the last stages of the war.

1. The emergency regime and exemptions from judicial review

347. A defining feature of the Sri Lankan legal system is a series of key structural exemptions from judicial review. Firstly, the Constitution provides comprehensive immunity to the President for any act or omission, whether personal or official.[208] Secondly, a comprehensive regime of emergency provisions in Sri Lanka overlays the general law, significantly displacing the otherwise applicable provisions of the general law and exempting wide swathes of state action from judicial scrutiny.

348. The emergency regime in Sri Lanka is underpinned by the colonial-era Public Security Ordinance No. 25 of 1947 (PSO), as amended, which is given full status of law by the Constitution. The current state of emergency was initially proclaimed in August 2005 and has remained in continuous effect to this day, as a result of monthly ratification by the Parliament.

[208] Art. 35(1). In *Jaywardena v Sri Lanka,* the United Nations Human Rights Committee found that death threats to an MP after criticism by the President holding this immunity amounted to violation of the ICCPR (CCPR/C/75/D/916/2000), Views dated 22 July 2002.

349. Where a state of emergency has been proclaimed, the PSO also allows for the promulgation of emergency regulations where "it is expedient so to do in the interests of public security and the preservation of public order or for the maintenance of supplies and services essential to the life of the community". Detailed and broad-ranging Emergency Regulations were promulgated in 2005 and 2006, and, while amended from time to time, remain in force today.[209] These regulations confer broad powers regarding arrest and detention; supervision and search of persons, restriction of moments; seizure and requisitioning of property; and control of meetings, processions, publications, firearms and rights of entry. They have been widely used before, during and after the final stages of the war. In particular, parts of the 2005 Regulations, which were in effect up to May 2010 – and remain in effect today for persons detained or restricted up to that date – provided for preventive detention on the order of the Defence Secretary, for up to one year, with a further extension of six months permitted on national security grounds.[210]

350. In addition to the Emergency Regulations, comparable powers are set out in the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (PTA), which was amended and became a permanent regime in 1982. This Act sets out a series of offences with severe penalties (Part I), as well as powers to prohibit certain publications (Part VII). It also sets out wide powers of arrest, search, entry and seizure (Part II); provides for a regime of administratively-ordered preventive detention up to 18 months, at three month intervals;[211] and provides for restriction orders of movement or actions, in respect of any person the Minister has reason to believe or suspect is connected with or concerned in any unlawful activity. The far-reaching provisions of the PTA have also been widely employed before, during and after the final stages of the war.

351. A defining feature of the emergency regime is the broad exclusion of resort to judicial remedies for governmental acts or omissions undertaken pursuant to it. Regarding proclamations of a state of emergency, the Constitution itself provides for a blanket ban on judicial review. The PSO sets out three distinct and very wide clauses ousting judicial scrutiny.[212] Acts carried out "in good faith" under the PTA have similar immunity against judicial review. In addition, under this Act, both detention and restriction orders by the Defence Secretary are statutorily considered final and barred from any judicial review.[213] Although the ouster and immunity provisions contained in the PSO explicitly apply to emergency regulations promulgated under it, the same approach is restated in the Emergency Regulations themselves.[214]

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[209] The key sets of regulations are the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 (EMPPR 2005) and the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation No. 7 of 2006 (EPPTSTAR 2006).

[210] For persons detained after the May 2010 amendments, preventive detention is permissible under the amended regulations for up to three months.

[211] Section 9(1).

[212] Firstly, s. 8 provides that no emergency regulation or order thereunder can be called in question in any court; secondly, s. 9 provides both a broad and narrow protection from suit in respect of anything done under an emergency regulation in that (i) no suit of any kind lies against any person for any act in good faith done in actual or supposed pursuance to the emergency regulations; and (ii) the Attorney-General's written consent is required for any prosecution in respect of any act done under the emergency regulations; and thirdly, section 23 restates the s.9 approval and immunities provisions for action under Part III of the Ordinance.

[213] Sections 10 and 11(5), PTA.

[214] Firstly, Reg. 19(10) of the EMPPR 2005 makes clear that a preventive detention order under the Regulations shall not be called in question in any court on any ground whatsoever; secondly, Reg. 73 requires the Attorney-General's consent to any legal proceeding in any court of law in respect of anything done or purported to be

352. None of these exclusionary clauses have been altered by the May 2010 amendments to the Emergency Regulations; rather they remain in full effect, despite their far-reaching nature. The result of the combined effect of these provisions is that victims of acts or omissions undertaken pursuant to the emergency regime, in particular those detained as suspected terrorists, are severely limited in their ability to claim their rights in court.

2. Criminal jurisdiction in the civilian courts

(a) The Attorney-General: Investigation and prosecution of offences

353. In Sri Lanka, the Attorney-General has very broad power over the investigation and prosecution of criminal offences. Investigations carried out by police and magistrates are subject to the Attorney-General's control and direction. Likewise decisions to indict or not in cases of serious offences and the precise framing of charges and consequent prosecution lie fully within the Attorney-General's control. The Attorney-General thus holds a central position within the criminal justice system and plays a critical role. The effective exercise of accountability within the criminal justice system requires the Attorney-General to act effectively and independently, as well as a legal framework that permits the Attorney-General to proceed. This would also apply to any cases of violations during the final stages of the war.

354. The independence of the Attorney-General's Department has been challenged at particular points in the country's history. It has recently been further weakened, an issue of particular relevance if that office should assume investigations into senior members of the Government or military for the final stages of the war. Following the 2010 elections, a gazette notification setting out each ministry's functions and responsibilities removed both the Attorney-General's Department and the Legal Draftsman's Department, whose primary task is drafting new laws, from the Ministry of Justice where they had been previously located. As newly "unlisted" departments, these departments now fall under direct presidential control by virtue of Article 44(2) of the Constitution, and are understood to be now organizationally located in the Presidential Secretariat. [215]

355. Past investigations and prosecutions in Sri Lanka have been highly selective and often involved abuses of power on the part of law enforcement, rather than a fair and even-handed pursuit of justice. The United Nations Human Rights Committee has gone so far as to hold that a decision of the Attorney-General not to initiate criminal proceedings against police officers responsible for death in custody was so arbitrary as to amount to a denial of justice.[216] Investigations of allegations against state officials have often taken extraordinary amounts of time, if they are completed at all.[217] Victims making such allegations have routinely been harassed by law enforcement personnel following filing of a complaint against

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done in good faith under the Regulations; and thirdly, Reg. 19 of the 2006 Regulations provide an even wider ouster, excluding even any role for the Attorney-General, by stating that no suit lies against any public servant or person authorized by the Government to act under the Regulations, where the such person has acted in good faith and in the discharge of official duties.

[215] "The President may assign to himself any subject or function and shall remain in charge of any subject or function not assigned to any Minister…."

[216] *Sathasivam v Sri Lanka*, CCPR/C/93/D/1436/2005, Views of 8 July 2008 (United Nations Human Rights Committee).

[217] See, for example, *Sarma v Sri Lanka*, CCPR/C/78/D/950/2000, Views dated 16 July 2003; and *Banda v Sri Lanka*, CCPR/C/91/D/1426/2005, Views dated 26 October 2007 (United Nations Human Rights Committee).

state officers.[218] Criminal inquiries and indictments have even been used to harass and intimidate critics of the Government, such as journalists and human rights defenders.[219] Although judicial authority to oversee the Attorney-General's powers to initiate and supervise investigations and prosecutions has been asserted in theory, the courts have been reluctant to exercise this function. There have, however, been rare instances of judicial reprimands delivered for lack of prosecutorial diligence.[220]

(b) Inadequacies in the legal framework

356. Sri Lankan criminal law sets out many offences that cover key aspects of the conduct credibly alleged to have been committed in the final stages of the war. There are, however, key structural lacunae in Sri Lankan law that complicate the Attorney-General's ability to investigate fully or prosecute violations that may have occurred during the last phases of the war. Sri Lankan law does not expressly provide for (i) war crimes committed in internal armed conflict, as distinct from constituent conduct amounting to crimes under domestic law; (ii) explicit provisions for the responsibility of military commanders or civilian superiors for commission of a crime by ordering it (although alternatives capturing aspects of that conduct may exist, such as conspiracy or instigation); and (iii) command or superior responsibility as a mode of liability of military commanders or civilian superiors for failing to prevent or punish crimes committed by subordinates.[221]

357. A further structural lacuna is the absence of a specific crime of enforced disappearance, especially in light of the large number of disappearances that have occurred in Sri Lanka, including during the final stages of the war. This has, in the past, resulted in recourse to ordinary penal provisions for aspects of this crime and has made it substantially more difficult to establish a prima facie case within the ambit of general criminal offences on which an indictment can proceed. Nor is there a clear legal mechanism to find state responsibility when institutional responsibility for an enforced disappearance is apparent from the available evidence, but may not be sufficient to prove individual culpability.[222]

358. Further systemic weaknesses in the Sri Lankan criminal justice system complicate its ability to provide an effective recourse for crimes such as war crimes or crimes against humanity. Firstly, there are no legal procedures in place for the protection of victims and witnesses,[223] although intimidation of witnesses is widespread and not limited to the Armed

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[218] See for example, *Rajapakse v Sri Lanka*, CCPR/C/87/D/1250/2004 (Rajapakse), decided 14 July 2006; and *Gunaratna v Sri Lanka*, CCPR/C/95/D/1432/2005, Views dated 17 March 2009 (United Nations Human Rights Committee).

[219] See, for example, *Kankanamge v Sri Lanka*, CCPR/C/81/D/909/2000, Views of 27 July 2004 (United Nations Human Rights Committee).

[220] *Republic of Sri Lanka vs Suresh Gunasena and Others,* Negombo High Court, HC Minutes 02.04.2008.

[221] The United Nations Committee against Torture has commented that "those exercising superior authority - including public officials - cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures." (CAT/C/GC/2 (2008), at para. 26)

[222] The United Nations Working Group on Enforced or Involuntary Disappearance has concluded that the State has not been able to identify or take action in identifying those responsible for large numbers of enforced or involuntary disappearances of persons during earlier phases of the armed conflict. (E/CN.4/2000/64/Add.1 (1999), at paras. 60-61). See also CCPR/CO/79/LKA (2003), at paras. 9-10, and CAT/C/LKA/CO/2 (2005), at para. 12.

[223] A draft law presented to parliament in 2008 to improve witness protection has still not been passed, and is in any case deficient in key aspects, including the absence of an independent witness protection mechanism.

Forces, but extends across law enforcement agencies. Police officers accused of torture have remained in their positions despite indictments against them and are, thus, afforded an opportunity to utilize the power and influence of their positions to threaten and, on occasion, even kill witnesses in pending cases. Secondly, in breach of international law, the PTA, which is frequently employed against those suspected of having LTTE connections, explicitly places the onus on the accused to demonstrate that a confession had been coerced, increasing the likelihood that officers resort to abusive interrogations.[224]

(c) The courts

359. There is limited publicly-accessible data available on the global approach taken recently by Sri Lanka's criminal courts to serious criminal offences, notably those alleged to have been committed in the context of the armed conflict. As a consequence, the Panel assesses two major areas of traditional concern that are also directly relevant to its analysis of the final stages of the armed conflict, from which broader patterns can be inferred. These refer to the response of the Sri Lankan courts to the crimes of torture and enforced disappearance.

360. In Sri Lanka, delays at all stages of the judicial process, including pre-trial and trial proceedings, are the norm and are not unique to cases involving grave human rights violations. The length of investigations, often lasting over two years, coupled with allegations of threats against complainants and allegations of torture, have profoundly degraded the actual and perceived fairness of the criminal justice system.[225] There is no explicit right under Sri Lankan law to trial within a reasonable time, and undue delays are not explicitly addressed either in the Constitution or in the criminal justice statutes.[226] Departure from the formal rules of procedure also appears to be a common feature.[227] The majority of prosecutions initiated against the authorities on charges of abduction, unlawful confinement or torture have been inconclusive due to lack of satisfactory evidence and unavailability of witnesses.[228] A 2004 report identified the conviction rate during previous years for serious crimes committed in Sri Lanka as a mere four per cent,[229] and the Panel is not aware of improvements in this area. Courts have been reluctant to award compensation in those rare cases where convictions are entered.[230]

361. Reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by the state authorities have been persistent and widespread.[231] Torture has been

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[224] S.16(2) of the PTA in conjunction with s.24 of the Evidence Ordinance. See *Singarasa v Sri Lanka* (CCPR/C/81/D/1033/2001), Views dated 21 July 2004 (United Nations Human Rights Committee).
[225] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/7/3/Add.6 (2008), at para. 51).
[226] Pinto-Jayawardena, K. *'The Rule of Law in Decline; Study on Prevalence, Determinants and Causes of Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka',* The Rehabilitation and Research Centre for Torture Victims (RCT) Denmark, 2009, hereafter RCT Study, at pp.134-138
[227] Pinto-Jayawardena, K.'*Still Seeking Justice in Sri Lanka: Rule of Law, The Criminal Justice System and Commissions of Inquiry since 1977*', ICJ Report, January 2010 at p. 154-155.
[228] CCPR/CO/79/LKA (2003), at para. 9.
[229] *The Eradication of Laws Delays,* Committee Appointed to Recommend Amendments to the Practice and Procedure in Investigations and Courts, Final Report, 2nd April, 2004, p. 5. This was a committee established by the Ministry of Justice and headed by a former Attorney-General who functions presently as the Chairman of the LLRC.
[230] RCT Study, op. cit., at p.42.
[231] See A/HRC/7/3/Add.6 (2008).

found to be one of the two main causes of death in police custody (alongside summary executions) and an accepted practice in interrogation, with the majority of custodial deaths attributed to police conduct in the routine discharge of duties rather than isolated excesses by individual officers.[232] Allegations of widespread torture, ill-treatment and disappearances at the hands of law enforcement officials have not been investigated promptly and impartially by the State.[233] The absence of an effective *ex officio* investigation mechanism with respect to cases of torture is particularly problematic and falls short of international standards.[234]

362. By way of example regarding the treatment of very serious crimes, since the enactment of the 1994 CAT Act, which criminalizes torture, there have been 34 indictments brought by the Attorney General, with 3 convictions and 8 acquittals to date.[235] The Attorney-General has not sought to prosecute any officer above the rank of inspector of police for torture.[236] In cases dealing with enforced disappearances (usually charged under less serious types of offences such as abduction and kidnapping), the conviction rate indicated by available statistics is extremely low.[237] Courts tend to acquit in these cases on seemingly technical points, such as delays in the filing of the complaint and /or incorrect framing of the indictment. In the latter case, although both the Attorney-General and the High Court have legal authority to amend such indictments, this power is not exercised authoritatively in many cases.[238] Sentencing, when convictions are secured, tends to be unduly lenient in light of the gravity of the conduct in question.

(d) Specific criminal proceedings regarding violations during the last stages of the conflict

363. In terms of judicial proceedings against members of the LTTE, the Government has indicated to the Panel, in written answers and oral statements, that it is proceeding with criminal charges:

> [Appropriately responding to the past] would entail the institution of criminal/civil charges in relevant Courts against LTTE cadres now in custody, provided that the evidence against them reaches the threshold of a prima facie case. Since August 2008, this process has been ongoing, and a substantial number of detainees concerned in the commission of serious offences have been brought before the Courts on indictments in terms of the provisions of the PTA, or offences stipulated in the Emergency Regulations, the Penal Code and other criminal statutes. What is significant is that in all such cases, the least restrictive sentencing policies have been adopted, with a generous resort to mechanisms of non-custodial sentences.

364. The Panel does not have information on how many cases constitute "a substantial number", whether these relate to the final stages of the armed conflict or to other periods, and to what extent the charges are regular offences under the general law, rather than emergency law provisions of deeply questionable validity under international law. In addition, adopting "least restrictive sentencing" in all cases may fail to respond with the necessary severity to conduct amounting to serious violations of international humanitarian and human rights law.

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[232] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53/Add.5, at paras. 53-54).
[233] CAT/C/LKA/CO/2 (2005) para. 12.
[234] A/HRC/7/3/Add.6 (2008) paras. 55, 77, 91.
[235] A/HRC/7/3/Add.6 (2008) para. 51.
[236] Ibid, para. 52.
[237] Second periodic report of Sri Lanka to the Committee Against Torture, CAT/C/48/Add.2 (2004).
[238] 'Still Seeking Justice in Sri Lanka', op. cit., at p. 156.

The Panel also notes that the Government has not instituted criminal proceedings against certain former senior leaders of the LTTE, with clear responsibilities for the past conduct and violatory practices of LTTE forces, preferring, instead, to co-opt them into its political structures and strategies. A notable exception is Subramaniam Shivathai, who went by the name of Thamilini, was the highest-ranking woman in the LTTE and was a member of the Subcommittee on Gender of the 2002 peace negotiations; she has been in Government custody without charge since her arrest from Menik Farm in May 2009.

365. The Government has also indicated that a separate unit under the Attorney-General's office exists and has been designated to investigate culpabilities in cases that the LLRC so reports. Under this framework, and in contrast to its approach with the LTTE, the Government would appear to be deferring to the LLRC process, which is of indeterminate length, before any investigations of state officials begin. While the Government indicates that "several cases [against military personnel] have been filed", it does not specify if these cases relate to the final stages of the armed conflict; the only case it cites in support of that statement is the "Mirusivil" trial-at-bar of four Army personnel for the abduction and murder of civilians, dating back to the year 2000. The Panel is not aware of any specific case against military personnel linked to the final stages of the war. Thus, at this time, and given that two years have passed since the end of the war, the Panel concludes that the criminal justice system has not afforded accountability for violations alleged to have been committed by civilian and military personnel of the State in the final stages of the war, while efforts to achieve formal accountability for LTTE actions have been both partial and selective.

3. Criminal jurisdiction in the Military Courts System

366. With regard to offences committed by military personnel, Sri Lanka permits the concurrent application of military and civilian jurisdictions. This overall principle is set out in the Army Act, No. 17 of 1949 (s.77), which establishes a military justice system to which military personnel are subject, as well as a series of military offences. The military justice system has jurisdiction over all civil offences as well as military offences committed by military personnel, namely regular, reserve and volunteer force personnel.[239] As in civil law, the Army Act does not set out liability for war crimes or crimes against humanity, or address command responsibility for military personnel subject to the Act.[240]

367. While international law does not expressly preclude military jurisdiction over conduct amounting to human rights violations committed by military personnel, international best practice indicates a clear and strong preference for civilian jurisdiction in such cases, given that they are often not effectively pursued through military justice systems and may result in impunity.[241]

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[239] The Air Force Act, No. 41 of 1949 and the Navy Act, No. 34 of 1950 (each as amended) both also set out the principle of dual civil/service jurisdiction, as well as comparable process with respect to service-specific offences for air force and naval personnel respectively that are in principle also applicable to the final stages of the war given the engagement of those branches of the Armed Forces.

[240] The Geneva Conventions Act, No. 4 of 2006, which criminalizes grave breaches of the Geneva Conventions committed in international armed conflict, does not apply to the final stages of the war with the LTTE, as it was an internal armed conflict.

[241] Principle 29 of the Updated Principles to Combat Impunity states: "The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.

368. The Government's written submissions to the Panel state that "[m]embers of the Armed Forces suspected of violations under the Army, Navy and Air Force Acts can be brought to justice by the mechanism of a court martial or tried in civilian courts. Several cases have been filed…." It is not clear whether any of the several cases relate to military jurisdiction or whether they involve conduct in the final stages of the war. An extremely limited number of cases since the conclusion of the armed conflict cannot amount to a serious attempt to hold military personnel accountable for violations committed in the final stages of the war. In addition, although the credible allegations deal with patterns of conduct that may have been ordered or condoned at the highest levels, there are no known cases against current or former high-ranking military (or civilian) authorities in respect of alleged human rights violations.

369. The Panel has no indication that the military justice system in Sri Lanka currently operates as an effective accountability mechanism in respect of either the credible allegations it has identified or of other violations arising in the final stages of the war.

4. Victims' access to the courts

370. Victims in Sri Lanka can, in principle, contribute to accountability by filing actions in the courts against individuals allegedly responsible for conduct that amounts to breaches of international law. However, in practice, Sri Lanka's constitutional history evidences that judicial interventions have proved to be of little impact in deterring gross violations by the State. The weakening of the rule of law, resulting from broad emergency powers outside of judicial review, and a culture of impunity, resulting from a lack of political will to hold state officials to account, have combined to create an environment in which judicial pronouncements were routinely disregarded by the successive Governments.

371. In recent years, the Supreme Court, at the head of Sri Lanka's judicial system, has become increasingly politicized, with an assertive Chief Justice at the helm,[242] pursuing a course that emphasizes the power of the State and an all-encompassing notion of sovereignty that overrides international obligations.[243] The United Nations Human Rights Committee has found a number of Supreme Court decisions to be in breach of Sri Lanka's obligations under the ICCPR,[244] suggesting a shift away from earlier receptivity to international legal standards. The dismissal process for judges, the Judicial Services Commission, chaired by the Chief Justice, has also been found to operate in breach of international law.[245] Lastly, the recent enactment of the 18th Amendment has further weakened the independence of the senior judiciary, with the President acquiring broad powers to make direct appointments of senior judges following minimal consultation with a parliamentary committee.

[242] Chief Justice S. N. Silva retired in June 2009 and has been succeeded by Justice Asoka de Silva.
[243] For example, in 2006 the Chief Justice ruled for the Supreme Court that the State's act of accession to the First Optional Protocol to the ICCPR had been unconstitutional (*Singarasa v. Attorney-General & Others*, S.C. SpL (LA) No. 182/99, SCM15.09.2006).
[244] *Fernando v Sri Lanka,* CCPR/C/83/D/1189/2003, Views dated 31 March 2005; and *Joseph et al. v Sri Lanka* CCPR/C/85/D/1249/2004, Views dated 21 October 2005; and *Dissanayake v Sri Lanka*, CCPR/C/93/D/1373/2005, Views dated 22 July 2008 (United Nations Human Rights Committee).
[245] *Bandaranayake v Sri Lanka*, CCPR/C/93/D/1376/2005, Views dated 24 July 2008 (United Nations Human Rights Committee).

(a) Fundamental rights applications and other public law actions

372. Articles 17 and 126 of the Constitution together provide that a fundamental rights petition for the infringement of fundamental rights by executive action can be filed before the Supreme Court. The effectiveness of this remedy is limited, however. First, the catalogue of fundamental rights in the Constitution is not comprehensive, and the rights it does contain may be constitutionally restricted in ways that are not compatible with international law.[246] Second, such applications are subject to stringent procedural rules: petitioners need to approach the Supreme Court within one month of the alleged violation, whatever the nature of the violation and regardless of the severity of its impact in an individual case.[247] Third, standing for the fundamental rights remedy is limited to a person alleging the infringement of his or her own rights or to an attorney on his or her behalf, precluding a third party such as a friend or public interest litigant proceeding if, for whatever reason, the direct party cannot or will not proceed.[248]

373. In terms of past practice for this remedy, a recent study of 52 Supreme Court fundamental rights judgments between 2000 and 2006 on torture and cruel, inhuman or degrading treatment has shown judicial response to be troublingly inconsistent.[249] Strong decisions in favour of the victim, awarding high levels of compensation and unequivocally condemning police abuse, represent a relatively small number of judgments. Once a victim brings a fundamental rights petition, the petitioner is subjected to a legal process that is, to a considerable degree, arbitrary and unpredictable.[250] The study also found highly uneven access to justice, in that filing such a petition requires significant financial and legal resources, as well as geographic access to Colombo, which is the only place where such petitions can be filed.[251]

374. Even when the Supreme Court has accepted in a fundamental rights application that a petitioner was a victim of torture, this has not in turn resulted in effective criminal investigation and prosecution.[252] In addition, when fundamental rights cases alleging abusive misconduct succeeded, there are unexplained and seemingly arbitrary variations in whether the compensation is awarded against the State or against individual officers, the amount of compensation and the inclusion of costs in the award.

375. Nonetheless, the Government's written responses to the Panel have stated that "several fundamental rights petitions, habeas corpus and writ applications have been filed against Armed Forces personnel and Police officers". It is not clear that any of these fundamental rights or other applications relate to the conduct of state officials in the final stages of the war; the Government has not provided individual detail on any of these cases,

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[246] Note the general carve-out of all pre-constitutional law in Article 16: "[a]ll existing written law and unwritten law shall be valid and operative" despite any inconsistency with fundamental rights.
[247] This one month limitation has been considered on its own by the United Nations Human Rights Committee to jeopardize the enforcement of human rights (CCPR/CO/79/LKA (2003) para. 7)
[248] Article 126(2) of the Constitution.
[249] Pinto-Jayawardena, K. and Kois, L. *'Sri Lanka – the Right not to be Tortured; A Critical Analysis of the Judicial Response',* Law & Society Trust, 2008.
[250] Ibid, at pp. 9, 14.
[251] Out of the petitions surveyed, 'the majority of the cases under review emerged not only from the South, but also from within a 30-mile radius of Colombo. Of those cases that arose in the North and East, of which there was a total of eight, seven petitions were brought only after the victim-petitioners were transferred to Kalutara in the South. Thus, all but one of the 39 cases had a Southern nexus.'
[252] A/HRC/7/3/Add.6 (2008) para. 79.

which would enable the Panel to undertake its own assessment. Any fundamental rights petitions filed now would be generally time-barred and thus wholly ineffective due to the procedural requirement that they be filed within a month of the alleged violation.

(b) Private civil actions

376. Regarding the conduct of the State, the Government's written responses indicate that "civil action can be instituted against civilian officials if there are infringements", but provide no examples thereof; the Panel, for its part, is not aware of any such instances. In respect of civil claims against LTTE members, the Government's written submissions point out that "none of the victims of alleged violations have instituted any claims for alleged violations by the LTTE".

(c) *Habeas corpus* and detainees' access to remedies

377. *Habeas corpus* jurisdiction is the traditional means by which a detainee can, in principle, ensure the lawfulness of detention and procure release conditions, absent a sufficient legal basis, although it is limited in the extent to which it can address issues of detention. In Sri Lanka, the Constitution also provides for *habeas corpus* jurisdiction of the Court of Appeal (art. 141), granting it power to bring up before the Court and to deal with according to law, the body of any person, including any person "illegally or improperly detained in public or private custody".[253]

378. In more recent years, the constitutional *habeas corpus* remedy has proved to be of little practical value due to long delays and a range of other factors, including frequent requests for court transfers by the respondents, causing financial and logistical hardships for petitioners; dismissal of applications for minor technicalities such as errors in spelling of the name of the abductor; or on the basis of mere denial of allegations by the head of the police or army. Environmental factors also militating against succesful actions include practices of witness intimidation, a lack of public confidence in the justice system and fear of authorities implicated in an action. A survey of 844 substantive judgments and bench orders handed down by the Court of Appeal between 1994 and 2002 showed that 79 per cent of *habeas corpus* applications were dismissed.[254] These cases related to enforced disappearances, which had occurred primarily during the 1980's and early 1990's, of persons from all sectors of Sri Lankan society, including Sinhala, Tamil and Muslim.

379. There are considerable uncertainties about the legal basis under which different categories of persons were detained during and in the aftermath of the final stages of the war. The precise legal basis for mass arbitrary detention of IDPs in closed camps remains unclear, while in the case of suspected LTTE and others, the Government has cited detention powers under the Emergency Regulations, the PTA and ordinary criminal justice laws. It is also very difficult to see how either category of detainees could engage habeas jurisdiction as a practical matter and procure necessary legal representation. Although the Government's written responses maintain that court review of detention "does not have to be in the form of

[253] The same article permits the Court of Appeal to require the body of the person in question to be brought up before an appropriate Court of First Instance and to direct the judge of that court to inquire into and report on the acts of alleged imprisonment, while making necessary interim orders. Since 1990, the Provincial High Courts exercised similar powers as the Court of Appeal under the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 in respect of persons illegally detained within the province.

[254] *LST Review*, The Writ of Habeas Corpus (Part 1) – Reflecting on the State of the Legal Remedy in Sri Lanka, Bangladesh, Nepal and Pakistan, Volume 21 Issue 275 & 276 September & October 2010, pp. 1-19.

a formal petition, [but] [t]he review can be initiated by the exercise of an epistolary jurisdiction upon the mere receipt of a letter from a detainee", it provides no instances where this has happened. Nor is the Panel aware of any attempts made by the Government to ensure all detainees were aware of such a right.

380. The Government's responses further state that "[l]egal representation for detainees is freely available as a matter of choice and those who are unable to retain legal counsel, have been afforded the opportunity of legal aid which is funded by the State". It is, however, not clear whether such legal aid extends to all detainees or simply those charged with crimes; in any event, such "free availability" is dramatically inconsistent with the closed nature and tight restrictions on access to the range of different detention facilities. Although the Government maintains that "several fundamental rights petitions, habeas corpus and writ applications have been filed against Armed Forces personnel and Police officers", it has pointed to no case of a successful habeas application from any conflict-related detainee, and the Panel is not aware of any.

381. The Panel must also note that even if a detainee were to procure a court hearing, a habeas court would have great difficulty in asserting meaningful review of detention given the ouster of judicial review and mandatory detention provided for under the Emergency Regulations or the PTA.

382. Thus, on the basis of the available information before it, the Panel concludes that detainees have not had access to an effective remedy to test the lawfulness and assess the substantive justification of their detention.

E. Human Rights Commission of Sri Lanka

383. The Human Rights Commission of Sri Lanka (HRCSL), established under the Human Rights Commission of Sri Lanka Act, No. 21 of 1996, has broad formal powers to inquire into issues of violations of fundamental rights, either on its own motion or by way of complaint.[255] The remedies it has at its disposal are focussed on fact-finding and making consequential recommendations to appropriate authorities, as well as conciliation and mediation. It is not empowered to approach courts directly as petitioners in instances of grave human rights violations or to effectively refer such matters to the appropriate court, as the relevant rules of procedure have yet to be prescribed.

384. The result is that, in the past, its recommendations have often been substantially ignored, not only by the police hierarchy, but also other Government departments and officials.[256] In other countries, in contrast, national human rights institutions (NHRIs) have played an important role in advancing transitional justice questions. Examples include the Indonesian National Human Rights Commission (Komnas HAM), which carried out investigations into violations during the referendum in Timor-Leste in 1999, and the Afghanistan Independent Human Rights Commission, which documents past and current violations and also carried out a consultation on transitional justice in 2005.

[255] See section 14 of the Act.

[256] For example, the 2003 report of the Committee on Disappearances in the Jaffna Region of the HRCSL exceptionally identified perpetrators by name, including a notorious army officer, then Commander of the Navatkuli Army Camp. However, no prosecutions followed. The Committee encountered an obstructionist attitude on the part of the military authorities, leaving it to conclude that this may be due to "mix of inefficiency, indifference and an unwillingness to cooperate for fear that incriminating evidence may be revealed."

385. For the period of 2006-2009, the HRCSL lacked constitutional legitimacy, as members were appointed by the President, bypassing the constitutional requirement of approval by the Constitutional Council, which existed at the time. In 2007, the HRCSL was downgraded from "A" to "B" status by the International Coordinating Committee of National Human Rights Institutions (ICC-NHRI), following a special review of the extent to which it met internationally-agreed standards on national human rights institutions (the "Paris Principles").[257] One of the issues that the ICC-NHRI noted was the HRCSL's discontinuation of its inquiries of some 2,000 cases of disappearances in July 2006.[258] It noted that in a state of emergency as applicable in Sri Lanka, an NHRI was expected to "conduct itself with a heightened level of vigilance and independence in the exercise of its mandate".[259]

386. The President failed to appoint new members to the HRCSL in April 2009, after the terms of the previous members expired. Following the enactment of the 18th Amendment of the Constitution, which vests appointment power in the President following very limited consultations, the President appointed a new Chair and four further commissioners in February 2011.[260]

387. The Panel is not aware that the previous Commission investigated any issues of violations arising from the final stages of the war prior to its lapse in April 2009. For instance, to the Panel's knowledge, the HRCSL was not present at Omanthai or at any of the camps or other detention centres. In principle, however, the HRCSL would have a mandate to consider, either *proprio motu* or upon receiving a complaint, violations arising from the final stages of the war. It remains to be seen whether the newly reconstituted Commission will do so, and whether, even if it does, the HRCSL will be assessed as satisfying international standards of independence and effectiveness in light of its previous history and experience.

388. In the "Progress Report on the Implementation of the Interim Recommendations of the LLRC" provided to the Panel, the Government argues that:

> With regard to the evidence gathered by the LLRC on missing persons, it was revealed that many of the people alleged to be missing were last seen with the LTTE forces. Hence, it can be assumed that such people may have been killed in battle, either as a consequence of their acting as LTTE combatants, or due to their being fired upon by the LTTE when endeavouring to seek refuge with the Security Forces.

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[257] This "B" status was maintained in 2009 following a further ICC-NHRI review.

[258] The Commissioners made the decision to stop inquiring "for the time being, unless special directions are received from the government" due to the fact that "the findings will result in payment of compensation, etc." Consequent to public protests, the then Minister for Human Rights and Disaster Management stated that the HRCSL had the authority to inquire into such disappearance cases without any need for direction from the government. The HRCSL revoked its decision thereafter.

[259] ICC-NHRI, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 22 to 26 October 2007, at p. 10. See http://nhri.net/2007/Report_Sub-Committee_Oct2007_E.pdf

[260] It appears that the HRCSL Act itself has not received consequential amendment to bring it into line with the amended Constitution, making the new appointments facially in breach of the Act. The international effect of this, and the extent to which the new process of new appointments satisfies the ICC-NHRI's requirements of (a) transparent process; (b) broad consultation throughout the selection and appointment process; (c) broad advertisement of vacancies, (d) maximizing the number of potential candidates from a wide range of societal groups; and (e) selection of members to serve in individual capacities remains to be assessed by the ICC-NHRI.

389. While this statement was not further substantiated in any way and seemingly seeks to foreclose the possibility that the Government itself could be responsible for the fate of some of the missing, the Government confirmed that the Sri Lanka Institute of Information Technology maintains a database of the Rehabilitation of Persons, Properties and Industries Authority (REPPIA), "as an integral part of a project that is aimed at concluding cases of missing persons". It maintains that this project will be transferred to the HRCSL. Although the potential of this project remains to be seen, the Panel has serious reservations about the capacity of the newly-reconstituted HRCSL to advance accountability in respect of missing persons. The Panel also notes that the commissioners themselves have recognized, according to its President, that they "will have to act independently in order to serve the society" and that as "the [HRCSL] cannot be made to function effectively without an amendment to the [governing] Act, [they] have agreed in unison to make a proposal to the government regarding this".[261]

390. With respect to detainees, the HRCSL's parent Act provides it with powers to monitor the welfare of detained persons and to inspect places of detention. Indeed, it requires the Commission to be notified within 48 hours of fact and place of any detention, including under emergency powers, criminalizes any officer's wilful failure to so report, and grants the Commission authority to enter and examine such places of detention (ss.11(d) and 28). It is unclear that the HRCSL has been notified of any of the detentions arising from the last stages of the war. The new Commission should robustly exercise its mandate in this regard. This would be an especially important signal of political will given that, in the past, this obligation to report was routinely flouted, and no convictions for failure to report detention to the Commission have, to the Panel's knowledge, ever occurred.

F. Death certification process

391. In the final months of the war in Sri Lanka, and since, many people have been deprived of the knowledge of what happened to their loved ones and continue to live in uncertainty. Many practical issues dependent on the civil status of the relatives of victims, including questions of inheritance, land rights and re-marriage, can be extremely difficult to resolve without death certification. The traditional procedures for death certification in the Births and Deaths Registration Act 1954 are ill-adapted to the circumstances of potentially tens of thousands of persons who died or went missing in the final stages of the armed conflict. The 1954 Act sets out difficult timelines for reporting and complex, formal procedures, including magistrate inquiries when the cause of death is unknown or may involve a crime. These requirements are not adjusted to the reality of many victims' circumstances in the final stages of the war.

392. In December 2010, the Registration of Deaths (Temporary Provisions) Act, No. 19 of 2010 was passed in order to simplify the procedures for issuing death certificates. Its purpose, among others, is to provide "for the registration of deaths of persons reported missing as a result of terrorist or subversive activity or civil commotion". In any case, the Act, in place for three years, allows the Registrar-General or the relevant District Registrar of Births and Deaths to issue a death certificate when the person is reported missing and has not been heard of for at least a year, when the person's disappearance is attributable to such events.

[261] http://www.nation.lk/2011/02/27/news1.htm (accessed 18 March 2011).

393. It is not clear whether the Act's notion of "civil commotion" extends to the last stages of the armed conflict or whether it includes persons who may have been disappeared at the hands of the Government. The Panel assumes that it does; a contrary reading precluding such coverage would be manifestly unacceptable. It is also unclear to the Panel to what extent the Government has made public this new mechanism in the affected areas, and to what practical extent there has been resort to it.

394. A significant number of victims who came before the LLRC in the North and East gave evidence that their relatives are missing. In its written submissions presented to the Panel, however, the Government stated: "[u]ntil the report and recommendations of the LLRC are made known, at this stage, we will not be in a position to invoke the provisions of the [2010 Act]". In the Panel's view, it is unnecessary and inappropriate to require victims otherwise entitled to death certificates to have to wait for the conclusion of the LLRC's proceedings, particularly when there is no guarantee that the LLRC's report will be made public.

395. While acknowledging the importance of expeditious issuance of death certificates when requested by a relative, the Panel stresses that in light of the experience in other countries, the issuance of a death certificate should not be used to distort or obscure the truth of the circumstances surrounding a death. Issuance of a death certificate following an administrative process is not a substitute for a bona fide investigation into the circumstances of an individual's death, which meets international standards. It is also crucial to ensure that a relative's acceptance of a death certificate does not lock the individual into a definitive legal position that precludes any further legal recourse in the future.

G. Conclusions

396. International law as well as its domestic law requires Sri Lanka to investigate and, where appropriate, prosecute credible allegations of violations of international humanitarian and human rights law, including those described in this report. The experiences of other countries, including other instances where an insurgency was militarily defeated, provide important comparative guides for how effective transitional justice mechanisms can be shaped to achieve accountability in terms of truth, justice and reparations in a context such as Sri Lanka.

397. The Government of Sri Lanka has promoted its concept of restorative justice. The result is an incomplete, partial approach to the issue of accountability, which uses the LLRC to examine the political responsibility of past Governments in failing to protect its citizens from "terrorism" and seeks to deal with some surviving LTTE members through rehabilitation or, in a relatively small number of cases, through criminal investigations. Nothing is contemplated to examine the actions of the Government of Sri Lanka in the credible allegations laid out in this report or other acts, which, if proven, would constitute serious violations of international law. Nor does the model contemplate a genuine investigation into Government policy decisions or institutional practices that may have contributed to the large numbers of civilian deaths, nor a serious examination of the underlying causes of the conflict.

398. Sri Lanka's own domestic mechanisms have not, to date, operated to provide effective and even-handed accountability with respect to alleged violations committed in the final stages of the war. In particular:

(a) The LLRC is deeply flawed in concept and in practice. The concept is flawed because it is constructed on an unsound notion of accountability. It is flawed in practice because it does not meet international standards for independence and impartiality, treatment of victims, witness protection or transparency. In sum, it 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.

(b) Sri Lanka's criminal justice system has been significantly weakened in recent years in its ability to deliver fair, prompt and impartial justice in respect of rights violations, notably those alleged to have been committed by state personnel. There has been a clear absence of political will to undertake such investigations and prosecutions, while the independence of the Attorney-General, as chief prosecutor, has been diminished. Sweeping emergency provisions and reluctance on the part of the judiciary and the prosecutorial authorities to intervene in favour of victims have entrenched a culture of impunity. To date, the criminal justice system has not provided accountability for the final stages of the war.

(c) Under the law, the Human Rights Commission of Sri Lanka has important investigative powers, including in respect of detainees. Given the HRCSL's earlier downgrading for non-compliance with the Paris Principles, as well as limited capacities, the Panel has serious reservations about the ability of the recently re-established Commission to advance accountability, notably in respect of missing persons. It will need to move swiftly to demonstrate its independence and effectiveness.

(d) Although death certification can alleviate pressing humanitarian needs for relatives of victims who are seeking to reorganize their families' lives, the issuance of death certificates after the armed conflict has been slow and cumbersome. The difficulties have persisted despite the passage of recent legislation designed to simplify procurement of such certificates. A system is needed that provides relatives who request such certification with swift and non-bureaucratic determinations, without prejudice to further legal action by relatives in the future or to the State's independent responsibility to investigate these deaths.

399. In the Panel's view, these four factors present significant hurdles to addressing accountability in Sri Lanka. In the next chapter, the Panel will look at wider systemic factors which amount to further obstacles to accountability.

VI. Further Obstacles to Accountability

400. Fear and silence are the enemies of accountability. It is exceedingly difficult for a nation to deal with grave human rights violations of the past and more so if violations continue into the present. A process to achieve accountability needs independent institutions and an environment that permits an open discussion of what happened and of the grievances that led to and fed the armed conflict. Nowhere has it been easy to move from open belligerence to a frank dialogue among citizens with deeply divergent views. But that is what is required. The Panel observes with concern that there are a number of contemporary issues in Sri Lanka, which left unaddressed, will not only continue to impede accountability measures, but will also undermine possibilities for reconciliation and sustainable peace. This section outlines briefly some of these concerns.

A. Triumphalism and denial

401. The defeat of the LTTE by military means following almost thirty years of armed conflict understandably engendered a sense of relief in the Government and among many citizens of Sri Lanka, including Tamils who suffered due to LTTE's destructive strategies and members of other communities. However, the Government has used its military success to create a discourse of triumphalism, which celebrates its claim to having developed the means and will to defeat "terrorism." It is a discourse couched in terms of Sinhala majoritarianism that presents the defeat of the LTTE as the defeat of all Tamil legitimate political aspirations.

402. Moreover, the Government denies the human cost of its military strategy, claiming that it mounted a "humanitarian rescue operation" guided by a principle of "zero casualties" in the Vanni. Further, since the war ended, the Government has claimed that those who have a different analysis and who allege serious violations of international humanitarian and human rights law are misguided and prejudiced by the influence of LTTE sympathizers.

403. This report makes clear that the Panel's view of the events leading up to the defeat of the LTTE and in the immediate aftermath is fundamentally different from that of the Government. By denying that tens of thousands of lives were lost in the Vanni, the Government sends the message that the lives of those Sri Lankans killed there, mostly Tamils, were of no value to the society. By denying that its military operations resulted in tens of thousands of civilian deaths, and intimidating and threatening those who challenge that view, the Government is effectively closing off the opportunity to open a serious, national dialogue on the recent past and the needs of the future. While recognizing that extremism and triumphalism are potent constraints, it is clear to the Panel that, in the future, Sri Lankans need to dismantle these barriers and begin a candid examination of the past.

B. Exclusionary policies based on ethnicity

404. Political, social and economic exclusion based on ethnicity, perceived or real, lies at the heart of the Sri Lanka conflict. Reconciliation in Sri Lanka requires recognition and acknowledgement of the rights of all communities, including Tamils and Muslims, as full citizens. Future policies must be inclusive to prevent the potential re-emergence of violence as a form for expressing grievances.

405. In the Government's view, the interim recommendations of the LLRC address some important issues, including those related to land and language, among them a Land Kachcheri

system and the assurance of language rights as part of a Trilingual Sri Lanka policy. Yet this appears to be contradicted by other recent policies of the Government, which risk further alienation of Tamils and others, including Muslims. For example, standing in contrast to its official position, the policy requiring the national anthem to be sung only in Sinhala sends a message of exclusion to Tamil-speakers and should be reversed. Discrimination such as this shows disregard for the rights and dignity of all citizens and represents the continuation of an exclusionary mindset. Steps should be taken to review those recent decisions that have a potentially discriminatory content.

406. Other desirable steps towards more inclusive policies include rapid dissolution of the High Security Zones and the allocation of land and housing on an equitable basis. The ease with which Tamil speakers can enter public service, in all sectors including security, should be enhanced. While the recent enlistment into the police of members of the Tamil community from the North and East can be seen as positive, great care should be taken to exclude those who committed serious human rights violations as part of paramilitary groups during the armed conflict. It is equally important to begin to recruit Tamils into the Armed Forces. A mono-ethnic military representing the victorious side of a protracted ethnic conflict, and which continues to play a highly visible and assertive role in the country's administration, even two years after the war ended, is no less than a recipe for future disharmony.

407. The Government's focus on economic development in the North and East is important, and economic development is a priority for the country as a whole. However, while material support is required for rebuilding the lives of conflict-affected people, these measures are no substitute for truth, justice and reparations.

C. Continuation of wartime measures

408. A number of measures introduced by the Government as part of its strategy to defeat the LTTE continue in place. Today, they amount to an impediment to the ability of all Sri Lankans, especially Tamils living in the North and East, to conduct their lives as full citizens and represent an infringement on their rights.

409. Reference has already been made to the deleterious effects of the continuation of the Emergency Regulations and the PTA, as well as the existence of the High Security Zones, within an overall militarized environment that perpetuates an abnormal civil atmosphere. These measures can only be justified for short periods when national security is genuinely imperilled and must be subject to democratic oversight, including judicial and parliamentary review. As long-term measures they restrict human rights and prevent the proper operation of the rule of law. With no oversight, they easily engender impunity.

410. In the North and East, in particular, the heavy military presence appears to have taken on a longer term character, with the building of cantonments and reported establishment of private business enterprises under military ownership or control. This development is perceived by the populace as part of a continuing counter-insurgency strategy. Significant demilitarization of former conflict zones is necessary so that civil structures can develop without intimidation. Local government should be *de facto* as well as *de jure* in the hands of a civilian administration viewed as legitimate by the local population.

411. In addition, the continued use by the State of "elite units" of the Special Task Force (STF) of the police as well as paramilitaries is of particular concern. State proxies used to

intimidate citizens and perpetuate violence have no place in a free and democratic society. Moreover, the use of Tamil paramilitaries fosters and deepens ethnic divisions. The Government should have a clear policy aimed at disbanding such groups and prosecuting crimes committed by them. Its own security agencies must certainly not be involved in threatening or criminal conduct, either directly or indirectly, and those responsible should be held to account.

412. Finally, the restoration of a thriving civil society is key to Sri Lanka's transition and the effectiveness of an accountability process. Policies such as placing the registration of NGOs under the auspices of the Ministry of Defence are inappropriate. Further, it is disturbing to read reports of human rights organizations being investigated by the CID. Pressures on human rights defenders are also of concern; they should have unrestricted freedom of movement throughout the country to be able to monitor and report on human rights issues.

D. Media restrictions

413. A free press is a vital component of a society that respects human rights and is among the conditions required for sustainable peace. While Sri Lanka has a proud journalistic tradition, press freedom was circumscribed during the conflict, especially in the latter stages. While independent media continue to operate, they still face restrictions and intimidation. Many journalists who fled the country during the war because of violence and threats are still fearful and believe that it is not safe to return. Within the country, there is very limited tolerance of views critical of the Government or sympathetic to Tamil grievances.

414. In January 2009, a high-profile journalist and government critic, Lasantha Wickrematunge, was assassinated. In August 2009, J.S. Tissainayagam, a journalist who had published criticism of the Government's military campaign, was sentenced to 20 years of hard labour, in what was the first conviction of a journalist under the PTA. Another well known journalist and cartoonist, Prageeth Ekneligoda, also a government critic, disappeared in January 2010 and has not been heard of since. These three examples, unfortunately, reflect a much wider malaise.

415. Reporters Without Borders ranked Sri Lanka 158 of 175 countries in its 2010 Press Freedom Index, an improvement of just four places since 2009. In a statement on 30 December 2010, it condemned:

> …the new forms of censorship and obstruction being used by the Government to prevent diverse and freely-reported media coverage of the situation in Sri Lanka. The fall in the number of physical attacks, threats and cases of imprisonment is to be welcomed, but it is worrying that the authorities are blocking the return of real editorial freedom.[262]

416. Press freedom has at least two benchmarks in Sri Lanka. The first is that journalists be able to publish freely in Sri Lanka, which would require lifting the Emergency Regulations and making amendments to the PTA to bring it into line with international standards. The second would be met when journalists who have fled abroad feel sufficiently safe to return and practice their profession at home.

[262] Reporters Without Borders, 2010, www.en.rsf.org/sri-lanka-less-anti-media-violence-in-2010-30-12-2010

E. The Tamil diaspora

417. It is to be expected that the Sri Lankan Tamil diaspora, large parts of which provided vital moral and material support to the LTTE over decades, continues to harbour grievances about the plight of Tamils and to protest the actions of the Government during the last stages of the conflict. However, significant elements of the diaspora create a further obstacle to sustainable peace when they fail to acknowledge rights violations committed by the LTTE and its role in the humanitarian disaster in the Vanni.

418. During the last stages of the war, many in the diaspora remained silent in the face of numerous LTTE violations, including holding tens of thousands of Tamils hostage in the Vanni, using violence to prevent their escape and forcibly recruiting children into their ranks. At the end, parts of the diaspora appeared more concerned about preserving the political State of "Tamil Eelam" than about the suffering of the civilian population trapped between two fighting forces.

419. The LTTE engaged in mafia style tactics abroad, especially among expatriate Tamil communities, to generate funds for their cause. Significant parts of the Tamil diaspora, who were supportive of the LTTE, played an instrumental role in fuelling the conflict in this way. It is reported that former front organizations for the LTTE continue to operate through private businesses and to control some of the temple incomes. Activities of these organizations should be monitored. In addition, funds acquired by the LTTE from the diaspora and elsewhere, and which still exist, should be secured for the purpose of making reparations to those in the Sri Lankan Tamil community who were victims in the conflict.

420. Members of the Tamil diaspora, through their unconditional support of the LTTE and their extreme Tamil nationalism, have effectively promoted divisions within the Sri Lankan Tamil community and, ironically, reinforced Sinhalese nationalism. A stable future in Sri Lanka demands that all of its ethnic communities, including those living abroad, recognize and respect the rights and interests of others with whom they share a common homeland. The diaspora, which is large, well educated and has considerable resources, has the potential to play a far more constructive role in Sri Lanka's future.

VII. Conclusions

1. Nature and scope of the allegations

421. Both parties to the armed conflict in Sri Lanka conducted military operations with flagrant disregard for the protection, rights, welfare and lives of civilians and failed to respect the norms of international law. There is a reasonable basis to believe that large-scale violations of international humanitarian and human rights law were committed by both sides. As a direct consequence, up to tens of thousands of Sri Lankan civilians were killed and hundreds of thousands suffered immensely, including through the loss of loved ones, serious injuries, displacement and loss of homes and livelihoods. In the aftermath of the armed conflict, many were forced to endure further hardships and humiliation.

422. The credible allegations involving conduct by the Government of Sri Lanka fall into five core categories of potential serious violations of international humanitarian and human rights law: (i) killing of civilians through widespread shelling; (ii) shelling of hospitals and humanitarian objects; (iii) denial of humanitarian assistance; (iv) human rights violations suffered by victims and survivors of the conflict, including both internally displaced persons (IDPs) and suspected LTTE cadre; and (v) human rights violations outside the conflict zone, including against the media and other critics of the Government. The credible allegations involving conduct by the LTTE associated with the final stages of the war reveal six core categories of potential serious violations: (i) using civilians as a human buffer; (ii) killing civilians attempting to flee LTTE control; (iii) using military equipment in the proximity of civilians; (iv) forced recruitment of children; (v) forced labour; and (vi) killing of civilians through suicide attacks.

423. The Panel's assessment of what happened during the final stages of the war, and therefore the political, legal and moral obligations that follow, stands in stark contrast to the position of the Government, which continues to hold that it conducted a "humanitarian rescue operation" with a policy of "zero civilian casualties" and, therefore, has no responsibility for any wrongdoing.

2. Legal evaluation of the allegations

424. If proven, these credible allegations on both sides would amount to serious violations of international humanitarian and human rights law; many would amount to war crimes and crimes against humanity. Criminal responsibility would extend to both individuals who commit acts and to military commanders and civilian superiors. The credible allegations also point to numerous crimes under Sri Lankan law.

425. Addressing violations of international humanitarian or human rights law is not a matter of choice or policy; it is a duty under domestic and international law. Under international humanitarian law that applies to internal armed conflict as well as international human rights law, the credible allegations trigger a legal duty of the Government to conduct immediate and genuine investigations and, if the evidence warrants, to prosecute those most responsible.

3. Asymmetrical warfare and protection of civilians

426. The Government of Sri Lanka has sought to promote its military strategy as a successful means of defeating terrorism and has suggested that the "asymmetrical" nature of the war rendered some codes of international humanitarian law inapplicable, or at least in need of review. During the conflict, the LTTE also suggested that it was beyond the reach of international humanitarian law. While recognizing a State's right under international law to national security and to defend itself against armed attacks, the Panel emphasizes that all actions taken for those legitimate purposes must comply with the requirements of international law. The Panel firmly rejects the view that international humanitarian laws are inappropriate for certain forms of modern warfare, including those used in Sri Lanka. Indeed, discussion is needed to increase safeguards to protect civilians in situations of armed conflict.

427. In this regard, during the final stages of the war, the United Nations political organs and bodies failed to take actions that might have protected civilians. Moreover, although senior international officials advocated in public and in private with the Government that it protect civilians and stop the shelling of hospitals and United Nations or ICRC locations, in the Panel's view, the public use of casualty figures would have strengthened the call for the protection of civilians while those events in the Vanni were unfolding.

4. Ongoing violations by the Government

428. Nearly two years after the end of the fighting, the root causes of the ethno-nationalist conflict between the Sinhalese and Tamil populations of Sri Lanka remain largely unaddressed and human rights violations continue. There are consistent reports of such activities, some committed by agents of the State or state-sponsored paramilitaries; these include arbitrary detention without trial, abductions and disappearances, killings, attacks on the media and other threatening conduct. In this context, victims and survivors of the armed conflict in the Vanni have been unable to return to a normal life. An end to this violence, and the climate of fear that accompanies it, is critical to the creation of an environment conducive to accountability. Sri Lanka's poor record in relation to enforced disappearances over a period of decades, up to the present time, has drawn deep expressions of concern from international bodies and requires immediate and serious attention.

5. Accountability based on international standards

429. In line with international standards, accountability includes, but goes beyond the investigation and prosecution of serious crimes. It is a broad process for ascertaining the political, legal and moral responsibility of individuals and institutions for past violations of human rights and dignity. Accountability is integral to a larger dynamic aimed at building sustainable peace based on respect for all human rights and a restoration of full citizenship to all members of the society. Consistent with international standards and best practices, accountability necessarily includes the achievement of truth, justice and reparations for victims. Accountability also requires an official acknowledgment by the State of its role and responsibility in violating the rights of its citizens, when that has occurred. In keeping with United Nations policy, the Panel does not advocate a "one-size-fits-all" formula or the importation of foreign models for accountability; rather it recognizes the need for accountability processes to be defined based on national assessments, involving broad citizen participation, needs and aspirations. Nonetheless, any national process must still meet international standards.

430. In formulating its advice on accountability, the Panel has given priority to the rights and needs of the thousands of victims who have suffered at the hands of both parties in the protracted armed conflict in Sri Lanka. Women, children and the elderly usually bear the brunt of suffering and loss in wars, and Sri Lanka is no exception, particularly during the final stages.

6. The Government's concept of accountability

431. The Government has stated that it is seeking to balance reconciliation and accountability, with an emphasis on restorative justice. The assertion of a choice between restorative and retributive justice presents a false dichotomy. Both are required. Moreover, in the Panel's view, the Government's notion of restorative justice is flawed because it substitutes a vague notion of the political responsibility of past Government policies and their failure to protect citizens from terrorism for genuine, victim-centred accountability focused on truth, justice and reparations.

432. The Sri Lankan Government's approach to accountability does not envisage an examination of its decisions and conduct in prosecuting the final stages of the war or the aftermath, nor of the violations of international humanitarian and human rights law that may have occurred as a result. It does not envisage the identification of persons responsible for wrongdoing, nor that they be held to account. While the Government has acknowledged that excesses by military or police may have taken place and that a few cases are pending, it is not clear that any of these cases correspond to the serious allegations in this report, regarding Government conduct. Rather the Government is concentrating narrowly on the culpability of LTTE cadre, invoking rehabilitation for the majority and lenient sentences for the "hard core" as a model of "restorative justice". Therefore, the Panel has concluded that the Government's notion of accountability is not in accordance with international standards. Unless the Government addresses the allegations of violations committed by both sides and places the rights and dignity of the victims of the armed conflict at the centre of its approach to accountability, its measures will fall dramatically short of international expectations.

433. Helping people to rebuild their lives is not only a matter of providing material benefits, however necessary this may be, and certainly the Government needs to undertake a range of measures that address the immediate plight of those whose rights were and continue to be violated; it also requires the State to take genuine steps towards accountability.

7. Lessons Learnt and Reconciliation Commission

434. The Government has established the Lessons Learnt and Reconciliation Commission as the cornerstone of its policy to address the past, from the ceasefire agreement of 2002 to the end of the conflict in May 2009. The LLRC represents a potentially useful opportunity to begin a national dialogue on the legacy of Sri Lanka's conflict; the need for such a dialogue is illustrated by the large numbers of people, particularly victims, who have sought spontaneously to speak with the Commission.

435. Nonetheless, the LLRC fails to satisfy key international standards of independence and impartiality, compromised by the composition of the Commission and deep-seated conflicts of interests of some of its members. The mandate of the LLRC, as well as its work and methodology, to date, are not tailored to investigating allegations of serious violations of

international humanitarian and human rights law, or to examining the root causes of the decades-long ethnic conflict; instead these focus strongly on the wider notion of political responsibility mentioned above, which forms part of the flawed and partial concept of accountability put forth by the Government. The work to date demonstrates that the LLRC has: not conducted genuine truth-seeking on what happened in the final stages of the armed conflict; not sought to investigate systematically and impartially the allegations of serious violations on both sides of the war; not employed an approach that treats victims with full respect for their dignity and their suffering; and not provided the necessary protection for witnesses, even in circumstances of actual personal risk.

436. Moreover, for three decades numerous commissions of inquiry have been established to examine a number of serious human rights issues. While some have served important fact-finding goals, overwhelmingly these commissions have failed to result in comprehensive accountability for the violations identified. Many commissions have failed to produce a public report and recommendations have rarely been implemented.

437. The LLRC has provided an opportunity for Sri Lankans to air some of their concerns and, taken together, its interim and forthcoming final recommendations may result in improvements in the living conditions of some of those affected by the armed conflict. However, 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. A new approach is required, both to ensure genuine investigations of specific allegations of violations by the LTTE and the Government, and to undertake a broad examination of the past, with a focus on the root causes of the conflict.

8. The Sri Lankan justice system and Human Rights Commission

438. The justice system should play a leading role in the pursuit of accountability, irrespective of the functioning or outcomes of the LLRC. However, based on a review of the system's past performance and current structure, the Panel has little confidence that it will serve justice in the existing political environment. The Attorney-General holds a central position within the criminal justice system, controlling both investigations and prosecution, but the independence of the Attorney-General has been weakened in recent years. Investigations and prosecutions have frequently been arbitrary and slow, and criminal inquiries have been used to harass and intimidate many critics and victims of the Government's actions. At present, the criminal justice system is ineffective in combating a culture of impunity. This is due much more to a lack of political will than to lack of capacity. Sri Lanka has a well-established legal infrastructure and educated professionals who are capable of upholding justice, but this requires an enabling environment that is currently lacking. The continuing imposition of Emergency Regulations combined with the Prevention of Terrorism Act in its current form, present significant immediate obstacles for the justice system to be able to address wrongdoing while upholding human rights guarantees.

439. Equally, the Panel has seen no evidence that the military courts system has operated as an effective accountability mechanism in respect of the credible allegations it has identified or other crimes committed in the final stages of the war.

440. The Human Rights Commission of Sri Lanka could potentially contribute to advancing accountability, but the Panel still has serious reservations and believes that the

Commission will need to demonstrate political will and resourcefulness in following up on cases of missing persons and in monitoring the welfare of detained persons.

9. The way forward

441. Sri Lanka's efforts, nearly two years after the end of the war, fall dramatically short of international standards on accountability and fail to satisfy either the joint commitment of the President of Sri Lanka and the Secretary-General, or Sri Lanka's legal duties. The Government of Sri Lanka has not discharged its responsibilities to conduct a genuine investigation, nor has it shown signs of an intention to do so. In such situations, as aptly stated in the Report of the Secretary-General on the Protection of Civilians in Armed Conflict, "[I]t is imperative that international steps to ensure accountability not be held hostage to unnecessarily slow or otherwise ineffective national efforts." Thus, while the Sri Lankan authorities should immediately embark on a genuine investigation of the alleged violations in this report, the Panel considers that an independent and complementary international approach is imperative.

442. The Government's current approach to accountability does not correspond to basic international standards that emphasize truth, justice and reparations for victims. Moreover, following its defeat of the LTTE, the Government's ongoing denial that immense harm was done to its citizens, including the death of tens of thousands, not only by the LTTE, but also by its own armed forces, presents a fundamental obstacle to accountability. An enabling environment that would permit a candid appraisal of the broad patterns of the past, including the root causes of the long-running ethno-nationalist conflict, does not exist at present. It would require concrete steps towards building an open society in which human rights are respected, as well as a fundamental shift away from the Government's triumphalist posture, towards a genuine commitment to a political solution that recognizes Sri Lanka's ethnic diversity and the full and inclusive citizenship of all of its people, as the foundation for the country's future.

VIII. Recommendations

443. In light of its conclusions, the Panel offers the following recommendations regarding the implementation of the joint commitment on accountability. The Panel hopes they will serve as the framework for an ongoing and constructive engagement between the Secretary-General and the Government of Sri Lanka on this matter. These recommendations will require complementary action by the Government of Sri Lanka, the United Nations and other parties. The recommendations address the various dimensions of accountability that the Panel considers essential. The Panel emphasizes that the recommendations below constitute an integrated and interdependent whole. The Panel has grouped them thematically and it sees each recommendation as essential for accountability.

444. The Panel's report and its advice to the Secretary-General, as encapsulated in these recommendations, are inspired by the courage and resilience of the victims of the war and civil society in Sri Lanka. If followed, the recommendations would comprise a genuine process of accountability that would satisfy the joint commitment and would set Sri Lanka on the course of justice, dignity and peace.

Recommendation 1: Investigations

A. In light of the allegations found credible by the Panel, the Government of Sri Lanka, in compliance with its international obligations and with a view to initiating an effective domestic accountability process, should immediately 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.

B. The Secretary-General should immediately proceed to establish an independent international mechanism, whose mandate should include the following concurrent functions:

   (i) Monitor and assess the extent to which the Government of Sri Lanka is carrying out an effective domestic accountability process, including genuine investigations of the alleged violations, and periodically advise the Secretary-General on its findings;
   (ii) Conduct investigations independently into the alleged violations, having regard to genuine and effective domestic investigations; and
   (iii) Collect and safeguard for appropriate future use information provided to it that is relevant to accountability for the final stages of the war, including the information gathered by the Panel and other bodies in the United Nations system.

Recommendation 2: Other immediate measures to advance accountability

In order to address the immediate plight of those whose rights were and continue to be violated, and to demonstrate the Government's commitment to accountability, the following measures should be undertaken immediately:

A. The Government of Sri Lanka should implement the following short-term measures, with a focus on acknowledging the rights and dignity of all of the victims and survivors in the Vanni:

(i) End all violence by the State, its organs and all paramilitary and other groups acting as surrogates of, or tolerated by, the State;
(ii) Facilitate the recovery and return of human remains to their families and allow for the performance of cultural rites for the dead;
(iii) Provide death certificates for the dead and missing, expeditiously and respectfully, without charge, when requested by family members, without compromising the right to further investigation and civil claims;
(iv) Provide or facilitate psychosocial support for all survivors, respecting their cultural values and traditional practices;
(v) Release all displaced persons and facilitate their return to their former homes or provide for resettlement, according to their wishes; and
(vi) Continue to provide interim relief to assist the return of all survivors to normal life.

B. The Government of Sri Lanka should investigate and disclose the fate and location of persons reported to have been forcibly disappeared. In this regard, the Government of Sri Lanka should invite the Working Group on Enforced and Involuntary Disappearances to visit Sri Lanka.

C. In light of the political situation in the country, the Government of Sri Lanka should undertake an immediate repeal of the Emergency Regulations, modify all those provisions of the Prevention of Terrorism Act that are inconsistent with Sri Lanka's international obligations, and take the following measures regarding suspected LTTE members and all other persons held under these or any other provisions:

(i) Publish the names of all of those currently detained, whatever the location of their detention, and notify them of the legal basis of their detention;
(ii) Allow all detainees regular access to family members and to legal counsel;
(iii) Allow all detainees to contest the substantive justification of their detention in court;
(iv) Charge those for whom there is sufficient evidence of serious crimes and release all others, allowing them to reintegrate into society without further hindrance.

D. The Government of Sri Lanka should end state violence and other practices that limit freedoms of movement, assembly and expression, or otherwise contribute to a climate of fear.

Recommendation 3: Longer term accountability measures

While the current climate of triumphalism and denialism 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. Taking into account, but distinct from, the work of the LLRC, 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. The Government of Sri Lanka 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.

Recommendation 4: United Nations

Considering the response of the United Nations to the plight of civilians in the Vanni during the final stages of the war in Sri Lanka and the aftermath:

A. The Human Rights Council should be invited to reconsider its May 2009 Special Session Resolution (A/HRC/S-11/L.1/Rev. 2) regarding Sri Lanka, in light of this report.

B. The Secretary-General should conduct a comprehensive review of actions by the United Nations system during the war in Sri Lanka and the aftermath, regarding the implementation of its humanitarian and protection mandates.

Marzuki Darusman
Chair

Steven R. Ratner

Yasmin Sooka

New York, 31 March 2011

Annex 1

Joint Statement

United Nations
Office of the Resident Co-ordinator
Colombo, Sri Lanka

JOINT STATEMENT AT THE CONCLUSION OF UN SECRETARY-GENERAL'S VISIT TO SRI LANKA, 23rd MAY 2009

At the invitation of the H.E. Mahinda Rajapaksa, President of Sri Lanka, the Secretary-General of the United Nations, H.E. Ban Ki-moon paid a visit to Sri Lanka. During the course of his visit, he held talks with the President, Foreign Minister as well as other senior leaders of Sri Lanka. During his stay, he also consulted other relevant stakeholders, members of the international humanitarian agencies and civil society. The Secretary-General visited the IDP sites at Vavuniya and overflew the conflict area, near Mullaitivu that was the scene of the conflict.

President Rajapaksa welcomed the Secretary-General as the highest dignitary to visit Sri Lanka in the post-conflict phase. This was a reflection of the close cooperation between Sri Lanka and the United Nations as well as Sri Lanka's commitment to work with the UN in the future.

President Rajapaksa and Secretary-General Ban Ki-moon agreed that following the end of operations against the LTTE, Sri Lanka had entered a new post-conflict beginning. In this context, the Government of Sri Lanka faces many immediate and long-term challenges relating to issues of relief, rehabilitation, resettlement and reconciliation. While addressing these critical issues, it was agreed that the new situation offered opportunities for long-term development of the North and for re-establishing democratic institutions and electoral politics after 2 ½ decades. The Government expressed its commitment to ensure the economic and political empowerment of the people of the North through its programmes.

President Mahinda Rajapaksa and the Secretary-General agreed that addressing the aspirations and grievances of all communities and working towards a lasting political solution was fundamental to ensuring long-term socio-economic development. The Secretary-General welcomed the assurance of the President of Sri Lanka contained in his Statement in Parliament on 19th May 2009 that a national solution acceptable to all sections of people will be evolved. President Rajapaksa expressed his firm resolve to proceed with the implementation of the 13th Amendment, as well as to begin a broader dialogue with all parties, including the Tamil parties in the new circumstances, to further enhance this process and to bring about lasting peace and development in Sri Lanka.

President Rajapaksa and Secretary-General Ban Ki-moon discussed a series of areas in which the United Nations will assist the ongoing efforts of the Government of Sri Lanka in addressing the future challenges and opportunities.

United Nations, Office of the UN Resident Co-ordinator
202-204 Bauddhaloka Mawatha • P.O.Box 1505, Colombo 7, Sri Lanka
Telephone: +94 (1) 2583805 • Fax: +94 (1) 2581116 or 2589691 • Internet: registry.lk@undp.org

Annex 1

With regard to IDPs, the United Nations will continue to provide humanitarian assistance to the IDPs now in Vavuniya and Jaffna. The Government will continue to provide access to humanitarian agencies. The Government will expedite the necessary basic and civil infrastructure as well as means of livelihood necessary for the IDPs to resume their normal lives at the earliest. The Secretary-General welcomed the announcement by the Government expressing its intention to dismantle the welfare villages at the earliest as outlined in the Plan to resettle the bulk of IDPs and call for its early implementation.

The Government seeks the cooperation of the international community in mine-clearing which is an essential prerequisite to expediting the early return of IDPs.

The Secretary-General called for donor assistance towards the Common Humanitarian Action Plan (CHAP) jointly launched by the GOSL and the UN, which supports the relief, shelter and humanitarian needs of those in IDP sites.

President Rajapaksa and the Secretary-General recognized that the large number of former child soldiers forcibly recruited by the LTTE as an important issue in the post-conflict context. President Rajapaksa reiterated his firm policy of zero tolerance in relation to child recruitment. In cooperation with UNICEF, child-friendly procedures have been established for their "release and surrender" and rehabilitation in Protective Accommodation Centres. The objective of the rehabilitation process presently underway is to reintegrate former child soldiers into society as productive citizens. The Secretary-General expressed satisfaction on the progress already made by the Government in cooperation with UNICEF and encouraged Sri Lanka to adopt similar policies and procedures relating to former child soldiers in the North.

President Rajapaksa informed the UN Secretary-General regarding ongoing initiatives relating to rehabilitation and re-integration of ex-combatants. In addition to the ongoing work by the office of the Commissioner General for Rehabilitation, a National Framework for the Integration of Ex-Combatant into Civilian Life is under preparation, with the assistance of the UN and other International Organizations.

Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances.

Ministry of Foreign Affairs
May 23, 2009

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Annex 2

Correspondence

Explanatory Note

The Panel first conveyed its interest in meeting with Sri Lankan officials shortly before the opening of the sixty-fifth session of the General Assembly. On 17 September 2010, the Chair of the Panel wrote a letter to the Sri Lankan Permanent Representative to the United Nations noting that the Panel had formally commenced its work the preceding day and that it would be helpful to the Panel, in the context of building sustainable peace, to engage with the Government and especially members of the LLRC. After a tentative agreement by the Mission to a meeting between the Attorney-General of Sri Lanka, present in New York for the annual session of the General Assembly, and the Panel, the Mission later indicated that such a meeting would not take place.

On 18 November 2010, the Chairperson of the Panel sent another letter to the Permanent Representative referring to the earlier correspondence and expressing the interest of the Panel members to avail themselves of their presence in New York in early December 2010 to meet with the Permanent Representative to discuss possible modes of engagement between the Panel and the Government, including the LLRC.

On 23 November 2010, the Permanent Representative responded in writing inviting the Panel to lunch in early December to discuss the matters raised in the Panel Chair's letter of 18 November 2010. On 3 December 2010, the Permanent Representative informed the Panel orally at that meeting that the Government of Sri Lanka would be prepared to facilitate a visit of the Panel to meet with the LLRC. When a member of the Panel noted that the Panel would wish to meet with a variety of Government officials in Sri Lanka to carry out its mandate, the Permanent Representative stated that he would convey that request to his Government. At a second brief meeting on 6 December 2010 the Permanent Representative conveyed the willingness of the Government to facilitate a visit, and it was agreed that the Panel would indicate the officials with whom it wished to meet, in addition to the LLRC, and the proposed dates for the mission.

On 8 December 2010, the Panel's Chairperson sent a letter to the Permanent Representative noting that the lunch had been a good opportunity to exchange views and requesting written confirmation of the offer to facilitate a visit and to engage with the LLRC, Government officials and others relevant to the Panel's work.

That same day, the Permanent Representative responded with a letter to the Panel's Chairperson stating that, following consultations, his Government remained ready to facilitate a visit by the Panel "for the purpose of making representations to the Lessons Learnt and Reconciliation Commission". This letter referred to a separate letter conveyed on 3 November 2010 to the Under-Secretary-General for Political Affairs B. Lynn Pascoe, which itself enclosed a Note Verbale dated 15 October 2010 from the Ministry of External Affairs to the Office of the United Nations in New York stating the Ministry's willingness to "facilitate those desirous of presenting representations to the Commission" and attaching a Public Notice published on 18 June 2010 from the LLRC that invited "any person or organization" to submit "written representations" or, if invited by the LLRC, "oral evidence," to it.

Annex 2

In response to the 8 December letter, the Panel's Chairman sent a letter to the Permanent Representative on 14 December 2010. The letter noted that the Panel was clear that its visit was pursuant to its mandate as expressed in its Terms of Reference, rather than to make representations to the LLRC, and that the Panel looked forward to a mutual exchange of views with the LLRC. The letter further recalled that, as discussed during the meeting of 3 December 2010, the Panel wished to meet with the LLRC as well as with others from the Government and public sector. The letter noted that further discussions regarding the facilities required for the conduct of the Panel's work were likely to be necessary, and enclosed a list of named individuals in the Sri Lankan Government with whom it would wish to speak, whose functions and responsibilities were, in the Panel's view, relevant to Sri Lanka's accountability mechanisms and processes.

The Panel did not receive a reply to this letter. Instead, on 20 December 2010, the Permanent Representative sought a meeting with the Secretary-General's Chef de Cabinet, at which he delivered a letter of the same date seeking confirmation that the Panel would visit Sri Lanka only for the purpose of making representations to the LLRC and attaching a Media Release from the Ministry of External Affairs stating its willingness to make arrangements for the Panel to make such representations. The Chef de Cabinet responded orally that he could make no such commitment on behalf of the Panel. In a letter dated 23 December 2010, the Chef de Cabinet elaborated that "the Panel [was] clear that its proposed meetings with officials in Sri Lanka would be in the form of consultations to engage with the domestic institutions responsible for accountability, in accordance with its terms of reference". On a meeting between the Panel and the LLRC, he noted that he "[was] advised that the Panel also view[ed] this as a consultation for the purpose of learning about the important work that the LLRC [was] undertaking and to exchange views given the Panel's knowledge and experience, as experts in their respective fields". He noted that the Panel was independent and invited the Permanent Representative "to engage in further discussions on the visit directly with the Panel".

Having received no reply to its letter to the Government of 14 December 2010, on 7 January 2011 the Panel, through its Chief of Staff, sent an email to the Permanent Representative noting that its time for completing this report was near and that the Panel would be available to visit Sri Lanka in the first week of February. The same day, the Deputy Permanent Representative of Sri Lanka to the United Nations sent a reply to the Chef de Cabinet's 23 December 2010 letter emphasizing that (1) the Panel was free to "make representations" to the LLRC "in terms of the Public Notice of the LLRC of 18th June 2010"; (2) the Government "does not accept any 'mandates' or 'terms of reference' which have not only been drawn up unilaterally, but also constitute an infringement of the sovereignty of Sri Lanka"; and (3) "prior to any interaction between the Panel and the LLRC …. the modalities and parameters must be clearly defined through discussion and agreement involving … the Office of the Secretary General" and the Permanent Mission. On 11 January, the Panel reiterated its availability for a visit to Sri Lanka in the first week of February through a phone conversation with the Deputy Permanent Representative (which took place shortly before the Panel had seen his 7 January 2011 letter) and subsequent email to him. On 13 January, the Panel followed up these communications with a letter to the Deputy Permanent Representative containing a set of topics on which it would welcome an exchange of views with the LLRC and other Governmental

officials in the course of the proposed visit. The Panel did not receive a reply to the 11 January email nor to the 13 January letter.

On 26 January 2011, the Chef de Cabinet responded to the letter from the Sri Lankan Permanent Mission dated 7 January, reiterating the Secretary-General's intentions in appointing the Panel and his support for contacts between the Panel and the relevant Sri Lankan authorities. He also encouraged the Government to meet the Panel and to make the arrangements through the Panel's Secretariat. On 28 January, the Panel, through its Chief of Staff, wrote again to the Permanent Representative of the Government of Sri Lanka to New York noting that the Panel remained interested in visiting Sri Lanka, or to engage in other ways with the relevant Sri Lankan authorities, and sharing a list of questions for discussion or response within three weeks. On 9 February, the Panel's Chief of Staff spoke by telephone with the Permanent Representative to remind him of the Panel's deadline for completion of its work.

On 16 February 2011, following discussions between the Sri Lankan Mission, on the one hand, and the United Nations Department of Political Affairs, on the other, the Permanent Representative delivered to the United Nations a Note confirming the visit of a delegation from Colombo to meet with senior Secretariat staff along with members of the Panel. The Note also enclosed a communication from the Sri Lankan Minister of Foreign Affairs with the Government's responses to the Panel's questions. The communication consisted of the following:

(a) Note Verbale dated 16 February enclosing:
(i) Letter dated 15 February from the Minister of External Affairs to the Secretary-General;
(ii) Memorandum concerning the Panel's questions to the LLRC;
(iii) Annex I containing a progress report on the implementation of the LLRC's interim recommendations;
(iv) Annexes II and III containing the Commissions of Inquiry Act Nos. 17 of 1948, 8 of 1950, 40 of 1953, 8 of 1955, 29 of 1955 consolidated; and the Commissions of Inquiry (Amendment) Act No. 16 of 2008 respectively.

(b) Note Verbale dated 16 February enclosing:
(i) Memorandum concerning the Panel's questions to other Governmental officials;
(ii) Annexes I and II containing the Supreme Court judgments of 10 January 2011 in the case of Gardihewa Sarath C. Fonseka;
(iii) Annex III containing the Registration of Deaths (Temporary Provisions) Act, No. 19 of 2010; and
(iv) Annex IV containing "the current status of the on-going rehabilitation of LTTE surrendees".

The official correspondence described above is attached to the current report. The two notes verbales with enclosures are also attached except for the Supreme Court judgments as well as the laws as these are available in the public fora. On 22 February, the Panel joined Secretariat officials for a meeting with the Sri Lankan high-level delegation that consisted of Attorney-General Mohan Peiris, Foreign Secretary Chrysantha Romesh Jayasinghe, the Sri Lankan Permanent and Deputy Permanent Representatives, and an Adviser to the Ministry of External

Affairs. At the meeting, the Sri Lankan delegation mainly elaborated on the Government's written responses to the Panel. Both the oral and written responses of the Government have been incorporated in the report.

Annex 2

Correspondents:

For Sri Lanka:

H.E. Mr. Palitha Kohona, Ambassador and Permanent Representative of the Democratic Socialist Republic of Sri Lanka to the United Nations in New York ("Ambassador Kohona")

H.E. Mr. Shavendra Silva, Acting Ambassador and Permanent Representative of the Democratic Socialist Republic of Sri Lanka to the United Nations in New York ("Acting Ambassador Silva")

Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations in New York ("Permanent Mission")

For the United Nations:

Mr. Vijay Nambiar, Chef de Cabinet of the Executive Office of the United Nations Secretary-General ("Mr. Nambiar")

Mr. B. Lynn Pascoe, United Nations Under-Secretary-General for Political Affairs ("Mr. Pascoe")

Mr. Marzuki Darusman, Chairperson of the United Nations Secretary-General's Panel of Experts on Sri Lanka ("Mr. Darusman")

Mr. Richard Bennett, Chief of Staff of the United Nations Secretary-General's Panel of Experts on Sri Lanka ("Mr. Bennett")

Correspondence:

2.1: Letter dated 17 September 2010 to Ambassador Kohona from Mr. Darusman

2.2: Letter dated 21 October 2010 to Ambassador Kohona from Mr. Bennett

2.3: Letters dated 3 November from Ambassador Kohona to Mr. Pascoe

2.3.1: Note Verbale dated 15 October 2010 to the Office of the United Nations in New York from the Ministry of External Affairs

2.3.2: Public Notice of the Lessons Learnt and Reconciliation Commission

2.4: Letter dated 18 November 2010 to Ambassador Kohona from Mr. Darusman

2.5: Letter dated 23 November 2010 to Mr. Darusman from Ambassador Kohona

2.6: Letter dated 8 December 2010 to Ambassador Kohona from Mr. Darusman

2.7: Letter dated 8 December 2010 to Mr. Darusman from Ambassador Kohona

Annex 2

2.8: Letter dated 14 December 2010 to Ambassador Kohona from Mr. Darusman

2.9: Letter dated 20 December 2010 to Mr. Nambiar from Ambassador Kohona
2.9.1: Media Release dated 18 December 2010 of the Ministry of External Affairs

2.10: Letter dated 23 December 2010 to Ambassador Kohona from Mr. Nambiar

2.11: Letter dated 7 January 2011 to Mr. Nambiar from Acting Ambassador Silva

2.12: Letter dated 13 January 2011 to Acting Ambassador Silva from Mr. Bennett

2.13: Letter dated 26 January 2011 to Ambassador Kohona from Mr. Nambiar

2.14: Letter dated 28 January 2011 to Ambassador Kohona from Mr. Bennett
2.14.1: "Issues for Consultation with the Commission on Lessons Learned and Reconciliation"
2.14.2: "Issues for Consultation with Relevant Government Officials"

2.15: Note Verbale dated 16 February 2011 from the Permanent Mission to the Executive Office of the United Nations Secretary-General
2.15.1: Letter dated 15 February 2011 from H.E. Mr. G. L. Peiris, Minister of External Affairs, to the United Nations Secretary-General
2.15.2: Memorandum of the Presidential Secretariat on the Panel's issues for consultation with the Lessons Learned and Reconciliation
2.15.3: "Progress Report on the Implementation of the Interim Recommendations of the LLRC"

2.16: Note Verbale dated 16 February 2011 from the Permanent Mission to the Executive Office of the United Nations Secretary-General
2.16.1: Memorandum of the Ministry of External Affairs on the Panel's issues for consultation with relevant Government officials
2.16.2: "Current status of the on-going rehabilitation of LTTE surrendees"

2.17: Letter dated 16 February 2011 to Mr. Pascoe from Ambassador Kohona

Annex 2.1

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SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA
GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA

REFERENCE:

17 September 2010

Excellency,

I write to you in my capacity as Chairperson of the Panel of Experts appointed by the Secretary-General of the United Nations on 22 June 2010. As you know, the Panel is expected to provide the Secretary-General with advice on an accountability process with respect to the final stages of the war in Sri Lanka and in particular the modalities, applicable international standards and comparative experience as set out in the enclosed Terms of Reference.

On 16 September 2010, following a meeting with the Secretary-General, the Panel formally commenced its work. I am writing to you as it would be helpful to the Panel, in the context of building sustainable peace, to engage with the Government of Sri Lanka and especially members of the Lessons Learnt and Reconciliation Commission.

Yours sincerely,

Marzuki Darusman
Chairperson

Enclosure

H.E. Mr. Palitha T.B. Kohona
Ambassador Extraordinary and Plenipotentiary Permanent Representative
Permanent Mission of the Democratic Socialist
Republic of Sri Lanka to the United Nations
630 Third Avenue, 20th Floor
New York, N.Y. 10017

cc. Mr. Vijay Nambiar, Chef de Cabinet, Executive Office of the Secretary-General

Annex 2.1

Panel of Experts (POE) for Sri Lanka

Terms of Reference

In the Joint Statement of the Secretary-General and the President of Sri Lanka issued at the conclusion of the Secretary-General's visit in the country on 23 May 2009, the Secretary-General underlined the importance of an accountability process to address allegations of violations of international humanitarian and human rights law committed during military operations between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE). The President of Sri Lanka undertook to take measures to address these grievances. At this time and against this background:

1. The Secretary-General has decided to establish a panel of experts to advise him on the implementation of the said commitment with respect to the final stages of the war.

2. The purpose of the panel shall be to advise the Secretary-General on the modalities, applicable international standards and comparative experience relevant to the fulfilment of the joint commitment to an accountability process, having regard to the nature and scope of alleged violations.

3. It shall be composed of three members having appropriate and relevant experience. The Panel shall develop its own working modalities and be assisted by a Secretariat with the support of OHCHR.

4. The Panel shall submit its report to the Secretary-General within four months of the commencement of its work.

5. The Panel shall be funded from the Secretary-General's unforeseen budget.

Annex 2.2

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SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA
GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA

21 October 2010

Dear Mr. Ambassador,

I write as Chief of Staff of the Panel of Experts appointed by the Secretary-General to provide him with advice on an accountability process with respect to the final stages of the war in Sri Lanka and in particular on relevant modalities, applicable international standards and comparative experience.

Further to our Chairperson's letter of 17 September 2010, in which he informed you of the formal commencement of the panel's work and welcomed engagement with the Government of Sri Lanka and the Lessons Learnt and Reconciliation Commission, I wish to inform you that the Panel has decided to invite written submissions from interested organisations and individuals. A notice in this regard will be posted on a United Nations website shortly and a copy of the notice is enclosed.

I remain,
Dear Mr. Ambassador,

Yours sincerely,

Richard Bennett
Chief of Staff

H.E. Mr. Palitha T.B. Kohona
Ambassador Extraordinary and Plenipotentiary Permanent Representative
Permanent Mission of the Democratic Socialist
Republic of Sri Lanka to the United Nations
630 Third Avenue, 20th Floor
New York, NY 10017

cc. Mr. Vijay Nambiar, Chef de Cabinet, Executive Office of the Secretary-General

Annex 2.2

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SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA
GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA

18 October 2010

On 22 June 2010, the UN Secretary-General established a Panel of Experts to advise him on the issue of accountability with regard to alleged violations of international human rights and humanitarian law during the final stages of the conflict in Sri Lanka. The members of the Panel are Marzuki Darusman, Steven Ratner and Yasmin Sooka. The Panel officially began its work on 16 September 2010.

The Panel will look into the modalities, applicable international standards and comparative experience with regard to accountability processes, taking into consideration the nature and scope of any alleged violations in Sri Lanka. The Panel advises the Secretary-General and is not an investigative or fact-finding body.

Anyone wishing to make submissions in respect of the above may do so as follows:

1. Organizations and individuals may make one written submission not exceeding ten pages, and must include the contact details for the author(s) of the submission.
2. The Panel will receive submissions until **15 December 2010**.
3. Submissions may be sent to: **panelofexpertsregistry@un.org**.
4. Submissions made to the Panel of Experts will be treated as confidential.

Further information may be solicited from the Panel's Secretariat at the following address: panelofexpertsregistry@un.org

Annex 2.3

PERMANENT MISSION OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA TO THE UNITED NATIONS

Tel: (212) 986-7040
Fax: (212) 986-1838
E-Mail: mail@slmission.com

630 THIRD AVENUE (20TH FLOOR)
NEW YORK, N Y 10017

Ref: POL/G/190

3rd November, 2010

Mr. Lynn Pascoe
Under Secretary-General
Department of Political Affairs
United Nations
New York.

Dear Mr. Pascoe,

Further to the discussion between H.E. Mr. Mahinda Rajapaksa, the President of Sri Lanka and H.E. Mr. Ban Ki-moon, the Secretary-General, during the period of the General Assembly, I am pleased to forward the attached note sent by the Ministry of External Affairs of Sri Lanka.

I would be grateful if this is brought to the attention of the appropriate authorities.

Yours sincerely,

Palitha T.B. Kohona
Ambassador & Permanent Representative.

DPA/OUSG
Rec'd 3 NOVEMBER 2010
Log# 3876
ACTION ASIA FOR ACTION
B&P/OM/TS

Annex 2.3

PERMANENT MISSION OF THE DEMOCRATIC SOCIALIST
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630 THIRD AVENUE (20TH FLOOR)
NEW YORK, N.Y. 10017

Ref: POL/G/190

3rd November, 2010

Mr. Lynn Pascoe
Under Secretary-General
Department of Political Affairs
United Nations
New York.

Dear Mr. Pascoe,

Further to my letter No. POL/G/190 dated 3rd November, 2010, I will be available to discuss any required follow-up action.

Yours sincerely,

Palitha T.B. Kohona
Ambassador & Permanent Representative.

Annex 2.3.1

Ref : UN/HR/1/10/B

The Ministry of External Affairs of the Democratic Socialist Republic of Sri Lanka presents its compliments to the Office of the United Nations and with reference to the meeting on 24th September 2010 in New York between H E. the President of Sri Lanka and H E the Secretary-General of the United Nations, has the honour to inform that the Commission of Inquiry on "Lessons Learnt & Reconciliation" appointed by His Excellency President Mahinda Rajapaksa under Section 2 of the Commissions of Inquiry Act has issued a Public Notice carried by the newspapers in Sri Lanka on 18th June 2010 in the Sinhala, Tamil and English languages calling for representations to the Commission The text of this Public Notice is attached

The Ministry of External Affairs wishes to add in this regard that the Government of Sri Lanka remains ready to facilitate those desirous of presenting representations to the Commission, as set out in the mandate of the Commission.

The Ministry of External Affairs of the Democratic Socialist Republic of Sri Lanka avails itself of this opportunity to renew to the Office of the United Nations, the assurances of its highest consideration

ombo, 15th October 2010

Ministry of External Affairs
Democratic Socialist Republic
of Sri Lanka

Office of the United Nations
New York

Annex 2.3.2

NOTICE TO THE PUBLIC

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

His Excellency Mahinda Rajapaksa, President of the Democratic Socialist Republic of Sri Lanka in pursuance of Section 2 of the Commissions of Inquiry Act (Chapter 393), has appointed the following as Commissioners of the above Commission :

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

His Excellency the President has appointed Chitta Ranjan de Silva Esquire, President's Counsel and retired Attorney General to be the Chairman of the Commission.

2. The Commission is empowered to inquire into and report on the following matters that may have taken place during the period between 21st February 2002 and 19th May 2009, namely ;

   I. the facts and circumstances which led to the failure of the ceasefire agreement operationalized on 21st February 2002 and the sequence of events that followed thereafter up to the 19th of May 2009 ;
   II. whether any person, group or institution directly or indirectly bear responsibility in this regard ;
   III. the lessons we would learn from those events and their attendant concerns, in order to ensure that there will be no recurrence ;
   IV. the methodology whereby restitution to any person affected by those events or their dependents or their heirs, can be effected ;
   V. the institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future and to promote further national unity and reconciliation among all communities, and to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant.

3. The Commission hereby invites any person or organization to submit, in the first instance, written representations to Commission in respect of all or any of the above matters.

4. All such written representations should reach the Secretary to the Commission at the address given below on or before 18th August 2010.

5. The Commission, after examining the written representations received, may invite any person or organization to give oral evidence.

6. Arrangements could be made for any person to give evidence in camera.

7. Every person who gives evidence before the Commission shall be entitled to the privileges for witnesses as provided for in the Commissions of Inquiry Act.

By Order of the Commission

S.M. Samarakoon
Secretary to the Commission

COMMISSION OF INQUIRY ON LESSONS LEARNT AND RECONCILIATION
Lakshman Kadirgamar Institute of
International Relations and Strategic Studies ,
No.24
Horton Place, Colombo 07.

Annex 2.4

UNITED NATIONS NATIONS UNIES

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SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA
GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA

18 November 2010

Excellency,

Further to my letter of 17 September 2010, in which I informed you of the formal commencement of the Panel's work and welcomed engagement with the Government of Sri Lanka as well as the Lessons Learnt and Reconciliation Commission, I wish to inform you that the Panel plans to meet in New York between December 3rd and 10th, 2010.

We wish to avail ourselves of the opportunity of being in New York to meet with you to discuss possible modes of engagement between the Panel and the Government of Sri Lanka, including with the Lessons Learnt and Reconciliation Commission.

We hope you are amenable to meeting with us and we look forward to your positive response as well as to a constructive exchange of views and information.

Yours sincerely,

Marzuki Darusman
Chairperson

His Excellency
Mr. Palitha T.B. Kohona
Permanent Representative of the Democratic Socialist
Republic of Sri Lanka to the United Nations
630 Third Avenue, 20th Floor
New York, NY 10017

cc. Mr. Vijay Nambiar, Chef de Cabinet, Executive Office of the Secretary-General

Annex 2.5

PERMANENT MISSION OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA TO THE UNITED NATIONS

Tel: (212) 986-7040
Fax: (212) 986-1838
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630 THIRD AVENUE (20TH FLOOR)
NEW YORK, N.Y. 10017

Ref: POL/G/190

23rd November, 2010

Dr. Marzuki Darusman
Chairperson
Secretary General's Panel of Experts on Sri Lanka
Office of the Secretary General
United Nations
New York.

DM/EXECUTIVE OFFICE
29 NOV 2010 PM7:28

Dear Chairperson,

I refer to your letter dated 18th November, 2010.

I will be very happy to host you for lunch on December 3rd or 4th, 2010 to discuss the matters raised in your letter. My office can be contacted 212 986 7040 or 917 716 5023 (Geethani).

Yours sincerely,

Palitha T.B. Kohona
Ambassador & Permanent Representative

cc: Mr. Vijay Nambiar, Chef de Cabinet, Office of the Secretary General

Annex 2.6

UNITED NATIONS NATIONS UNIES

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SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA
GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA

8 December 2010

Excellency,

Thank you for your letter dated 23 November 2010. Allow me further to extend, on behalf of the Panel, our appreciation for the lunch you hosted last Friday. It was a good opportunity for us to exchange views.

We await written confirmation of your verbal offer to kindly facilitate our visit to Sri Lanka in pursuit of our mandate and to engage with the Lessons Learnt & Reconciliation Commission (LLRC), Government officials as well as others relevant to our work.

Please accept, Excellency, the assurances of my highest consideration.

Marzuki Darusman
Chairperson

His Excellency
Mr. Palitha T.B. Kohona
Permanent Representative of the Democratic Socialist
Republic of Sri Lanka to the United Nations
630 Third Avenue, 20th Floor
New York, NY 10017

cc. Mr. Vijay Nambiar, Chef de Cabinet
Executive Office of the Secretary-General

Annex 2.7

PERMANENT MISSION OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA TO THE UNITED NATIONS

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630 THIRD AVENUE (20TH FLOOR)
NEW YORK, N Y 10017

Ref: POL/G/190

8th December, 2010

Dr. Marzuki Darusman
Chairperson
Secretary General's Panel of Experts on Sri Lanka
Office of the Secretary General
United Nations
New York.

Excellency,

I thank you for your letter dated 8th December 2010. I have also consulted Colombo on this response.

Consistent with the terms of the understanding reached between H.E. the President of Sri Lanka and the Secretary-General, and in terms of the communication addressed to the Secretariat of the United Nations by the authorities in Sri Lanka, and conveyed to Mr. Lynn Pascoe on 3rd November, 2010, I am pleased to advise that the Sri Lankan authorities remain ready to facilitate the Secretary-General's Panel for the purpose of making representations to the Lessons Learnt and Reconciliation Commission (LLRC).

This Mission will be pleased to make the necessary arrangements once the dates are confirmed.

Yours sincerely,

Palitha T.B. Kohona
Ambassador & Permanent Representative

cc: Mr. Vijay Nambiar, Chef de Cabinet, Office of the Secretary General

Annex 2.8

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SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA
GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA

14 December 2010

Excellency,

Thank you for your letter of 8 December 2010. We recall your verbal offer at our lunch meeting on 3 December 2010 to kindly facilitate our visit to Sri Lanka.

I should like to clarify at the outset that the Panel's visit to Sri Lanka is in pursuit of its mandate as found in the attached Terms of Reference rather than to make representations to the Lessons Learnt and Reconciliation Commission (LLRC). We look forward to a mutual exchange of views between the Panel and the LLRC.

As discussed during the lunch meeting, the Panel would like to meet with the LLRC as well as others from the Government and public sector. Please see attached an initial list of the individuals and entities the Panel would wish to meet.

Further discussions regarding the facilities required for the independent conduct of the Panel's work in respect of the visit to Sri Lanka are likely to be necessary; and to that end, we kindly ask your office to communicate with our Chief of Staff, Mr. Richard Bennett.

Please accept, Excellency, the assurances of my highest consideration.

Yasmin Sooka for

Marzuki Darusman
Chairperson

Attachments

His Excellency
Dr. Palitha T.B. Kohona
Permanent Representative of the Democratic Socialist
Republic of Sri Lanka to the United Nations
630 Third Avenue, 20th Floor
New York, NY 10017

cc. Mr. Vijay Nambiar, Chef de Cabinet, Executive Office of the Secretary-General

Annex 2.8

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List of individuals and entities from Government and public sector

- Lessons Learnt & Reconciliation Commission (LLRC)
- Hon. Prof. G.L. Peiris, Minister of External Affairs
- Hon. Basil Rajapaksa, Minister of Economic Development and Chair, Presidential Task Force for Resettlement, Development and Security in the Northern Province
- Justice J.Asoka N. De Silva, Chief Justice of Sri Lanka
- Lt. Gen. Jagath Jayasuriya, Commander of the Army
- Hon. Rauf Hakeem, Minister of Justice
- Hon. Mohan Peiris, Attorney-General of Sri Lanka
- Brigadier Sudantha Ranasinghe, Commissioner General for Rehabilitation
- National Human Rights Commission of Sri Lanka

Annex 2.8

Panel of Experts (POE) for Sri Lanka

Terms of Reference

In the Joint Statement of the Secretary-General and the President of Sri Lanka issued at the conclusion of the Secretary-General's visit in the country on 23 May 2009, the Secretary-General underlined the importance of an accountability process to address allegations of violations of international humanitarian and human rights law committed during military operations between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE). The President of Sri Lanka undertook to take measures to address these grievances. At this time and against this background:

1. The Secretary-General has decided to establish a panel of experts to advise him on the implementation of the said commitment with respect to the final stages of the war.

2. The purpose of the panel shall be to advise the Secretary-General on the modalities, applicable international standards and comparative experience relevant to the fulfilment of the joint commitment to an accountability process, having regard to the nature and scope of alleged violations.

3. It shall be composed of three members having appropriate and relevant experience. The Panel shall develop its own working modalities and be assisted by a Secretariat with the support of OHCHR.

4. The Panel shall submit its report to the Secretary-General within four months of the commencement of its work.

5. The Panel shall be funded from the Secretary-General's unforeseen budget.

Annex 2.9

Hand-delivered by Ambassador.

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PERMANENT MISSION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA TO THE UNITED NATIONS

Mr. Pasoe
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630 THIRD AVENUE (20TH FLOOR)
NEW YORK, N.Y. 10017

Ref: POL/G/190

20th December, 2010

Mr. Vijay Nambiar
Chef de Cabinet
Under Secretary General
Executive Office of the Secretary-General
United Nations
New York.

Excellency,

Further to the public notice issued by the Lessons Learnt and Reconciliation Commission of Sri Lanka (LLRC) calling for representations to the Commission and consistent with the arrangement reached between His Excellency the President of Sri Lanka and His Excellency the Secretary-General and in terms of the communication addressed to the Secretariat of the United Nations by the authorities of Sri Lanka and conveyed to Mr. Lynn Pasoce on 3rd November 2010, I seek confirmation that the visit of the Secretary-General's Panel to Sri Lanka will be only for the purpose of making representations to the LLRC. In the light of the statement made by the Secretary-General's spokesman on 9th July 2010 that the Panel was not tasked to investigate individual allegations, my authorities are not clear on the reasons for the Panel seeking appointments with individuals or other entities during their visit to Sri Lanka.

I would be grateful if you would confirm the understanding that exists between the two sides as reflected above as early as possible so that dates for the visit could be arranged in consultation with the authorities in Colombo.

Please accept, Excellency, the assurances of my highest consideration

Palitha T.B. Kohona
Ambassador & Permanent Representative

Annex 2.9.1

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வெளிவிவகார அமைச்சு
MINISTRY OF EXTERNAL AFFAIRS
රාජාංග මන්දිරය, කොළඹ 1, ශ්‍රී ලංකාව குடியரசுக் கட்டடம், கொழும்பு 1, இலங்கை Republic Building, Colombo 1, Sri Lanka

මගේ අංකය / எனது இல / My No
ඔබේ අංකය / உமது இல / Your No
දිනය / திகதி / Date

Media Release

United Nations Secretary-General's Panel of Experts on Sri Lanka

The attention of the Ministry of External Affairs has been drawn to reports in the media of a possible visit to Sri Lanka by the United Nations Secretary-General's Panel of Experts on Sri Lanka.

The Ministry wishes to point out in this regard that the Commission on Lessons Learnt and Reconciliation which was appointed by His Excellency President Mahinda Rajapaksa under Section 2 of the Commissions of Inquiry Act, has issued a Public Notice carried by the newspapers in Sri Lanka on 18th June 2010 in the Sinhala, Tamil and English languages calling for representations to the Commission. The Government of Sri Lanka therefore has the responsibility to facilitate those desirous of presenting representations, as set out in the mandate of the Commission.

Accordingly, in the event of the Panel of the Secretary-General wishing to present representations to the Commission, the Ministry of External Affairs will make the arrangements that are necessary to enable the Panel to do so. This position has already been conveyed through diplomatic channels, to the United Nations in New York.

Ministry of External Affairs
Colombo

18 December 2010

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Annex 2.10

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EXECUTIVE OFFICE OF THE SECRETARY-GENERAL
CABINET DU SECRETAIRE GENERAL

REFERENCE:

23 December 2010

Excellency,

Thank you for your letter of 20 December 2010 regarding the proposed visit to Sri Lanka by the Secretary-General's Panel of Experts. As discussed at our meeting the same day, I have acquainted the Panel with your suggestions.

The Panel is clear that its proposed meetings with officials in Sri Lanka would be in the form of consultations to engage with the domestic institutions responsible for accountability, in accordance with its terms of reference.

With regard to the proposed meeting between the Panel and the Lessons Learned and Reconciliation Commission of Sri Lanka (LLRC), I am advised that the Panel also views this as a consultation for the purpose of learning about the important work that the LLRC is undertaking and to exchange views given the Panel's knowledge and experience, as experts in their respective fields.

It is important that the parameters of the visit are clearly defined before it commences. As mentioned during our meeting, the Panel is independent and I invite you to engage in further discussions on the visit directly with the Panel.

Please accept, Excellency, the assurances of my highest consideration.

Vijay Nambiar
Chef de Cabinet

His Excellency
Mr. Palitha T.B. Kohona
Permanent Representative of Sri Lanka
to the United Nations
New York

cc: Mr. Pascoe
Mr. Haysom

Annex 2.11

Mr Pascoe
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630 THIRD AVENUE (20TH FLOOR)
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7th January 2011

Mr. Vijay Nambiar
Chef de Cabinet
Executive Office of the Secretary General
United Nations
New York

Your Excellency,

I write with regard to your letter of 23rd December 2010 and further to the discussions on the matter of the proposed interaction between the UN Secretary General's Panel of Experts on Sri Lanka and the Lessons Learnt & Reconciliation Commission (LLRC), appointed by H.E. the President of Sri Lanka.

Let me say at the outset that Sri Lanka has always been clear as to the high priority to be attached to reconciliation, consequent to the end of separatist terrorism. Reconciliation was identified as among the four immediate and long term challenges faced by Sri Lanka , in the joint Statement issued on 23rd May 2009 at the end of the visit by the UN Secretary General.

Following extensive and comprehensive national consultations, the Government thereafter appointed on 15th May 2010 the LLRC. The establishment of the Commission in terms of the provisions of the legislation enacted by our parliament on Commissions of Inquiry , is a sovereign act by Sri Lanka. The LLRC therefore necessarily and appropriately functions under the law of our land.

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It is our position, Your Excellency , that the essential and non-derogable act of sovereignty of establishing the LLRC was fully recognized and endorsed by H.E. Mr. Ban Ki-mon, during the bilateral meeting in New York on 24th September 2010 with H.E. the President of Sri Lanka. It is for this reason that the understanding was reached, namely that the Public Notice issued by the LLRC and carried in the Sri Lanka media on 18th June 2010 inviting representations to the Commission by any person or organization, does provide the necessary amplitude for the panel to make its own contribution to the fulfillment of the mandate of the Commission.

Subsequently, when the Chairperson of the Panel wrote to the Permanent Representative of Sri Lanka, H.E.Dr. Palitha T.B.Kohona on 18th November 2010 requesting that the panel members and the Permanent Representative should meet in New York, Dr. Kohona agreed to do so on the understanding that the discussion would be specific to the modalities of the panel making representations to the Commission. It was therefore singularly unhelpful for the Chairperson to state as follows in his letter of 14th December 2010 to H.E.Dr. Palitha T.B.Kohona:

> "I should like to clarify at the outset that the Panel's visit to Sri Lanka is in pursuit of its mandate as found in the attached Terms of Reference rather than to make representations to the Lessons Learnt and Reconciliation Commission(LLRC)".

You will appreciate that as the mandate of the Panel is one that has been unilaterally drawn up, we as a sovereign nation, are not bound by it.

I note that in your letter to H.E. Dr. Palitha T.B.Kohona of 23rd December 2010, mention is made once again of "terms of reference", which I must observe are the outcome of an arrangement confined to the Office of the Secretary General and the Members of the Panel.

We are also aware of the lead role of the Office of the Secretary General behind the establishment of the panel. This was emphasized when at the press briefing on 22nd June 2010 the Spokesman of the Secretary General said the "Secretary General has appointed a Panel of Experts……", with the subordinate role of the panel being specifically emphasized through reference to its "advisory responsibilities". This aspect was reiterated in yet another statement issued by the Spokesperson on 9th July 2010 wherein it

Annex 2.11

was said that "the United Nations has consistently held that this panel has been set up to advise the Secretary General .....". Given this context, any dialogue entered into by the Government of Sri Lanka has to be with the Office of the Secretary General and not with any other entity.

Your Excellency, you have in your letter of 23rd December 2010 also stated "it is important that the Parameters of the visit are clearly defined before it commences". I entirely agree with this sentiment and therefore for reasons of clarity wish to sum up our position as follows:

(a) the Panel is free to make representations to the Commission in terms of the Public Notice of the LLRC of 18th June 2010 which was attached to our Note (Reference:UN/HR/1/10/B) of 15th October 2010 to the United Nations in New York. The Government of Sri Lanka is ready to facilitate a process within the mandate of the Commission;

(b) the Government of Sri Lanka does not accept any "mandates" or "terms of reference" which have not only been drawn up unilaterally, but also constitute an infringement of the sovereignty of Sri Lanka, which the Government it constitutionally obligated to protect;

(c) prior to any interaction between the Panel and the LLRC taking place, the modalities and parameters must be clearly defined through discussion and agreement involving on the one hand the Office of the Secretary General in New York and on the other , the Permanent Mission of Sri Lanka to the to the United Nations.

Please accept, Your Excellency, the assurances of my highest consideration.

Major General Shavendra Silva
Acting Permanent Representative

Annex 2.12

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SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA
GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA

13 January 2011

Excellency,

I write further to our previous exchanges by telephone and electronic message to propose on behalf of the Panel of Experts a series of areas for exchange of views with the Government of Sri Lanka, including the Lessons Learned and Reconciliation Commission (LLRC), during the Panel's forthcoming visit proposed for 1 to 3 February 2011.

In the first instance, the Panel would welcome the opportunity to offer its own experience in areas of comparative international practice and experience, should the LLRC and the Government wish to draw on this advice.

The Panel looks forward to familiarizing itself in the course of its visit with the work of the LLRC and also engaging with other Government officials, in order that it may best frame its advice to the Secretary-General. In that vein, with respect to the LLRC, the Panel would welcome an exchange of views on issues such as the Commission's mandate and legal framework, its structure and working methods, the issue of reparations and the approach to victims, and the process of formulation and implementation of recommendations. In respect of other Government officials with relevant responsibilities, the Panel would wish to consult on issues such as systems of criminal and military justice, the relevant legal framework and access to the courts, reparations and rehabilitation processes, and the approach to women and vulnerable groups.

The Panel would appreciate your Government's feedback on additional issues on which, for its part, the Government would also welcome discussion.

On behalf of the Panel, I look forward to your advice at your Government's early convenience as to confirmation of the proposed dates of the Panel's visit.

Yours sincerely,

Richard Bennett
Chief of Staff
Panel of Experts

H.E. Mr. Shavendra Silva
Acting Permanent Representative
Permanent Mission of the Democratic Socialist
Republic of Sri Lanka to the United Nations
630 Third Avenue, 20th Floor
New York, NY 10017

cc. Mr. Vijay Nambiar, Chef de Cabinet, Executive Office of the Secretary-General

Annex 2.13

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EXECUTIVE OFFICE OF THE SECRETARY-GENERAL
CABINET DU SECRETAIRE GENERAL

REFERENCE:

26 January 2011

Excellency,

I write to thank you for the letter from His Excellency Mr. Shavendra Silva dated 7 January 2011 concerning the proposed visit to Sri Lanka by the Panel of Experts of the Secretary-General as agreed between His Excellency President Rajapaksa and the Secretary-General.

I wish to reiterate that the Secretary-General has appointed the advisory panel to provide him with expertise on an issue falling within his purview. Also, as I have stressed in our meeting of 20 December 2010, and subsequently in my letter dated 23 December 2010, the Panel of Experts is expected to discharge its function independently of the Executive Office of the Secretary-General, as noted in the Terms of Reference.

As you are aware, the Secretary-General has always been supportive of contacts between his Panel and relevant Sri Lankan authorities, including the Lessons Learnt and Reconciliation Commission. Such engagement would help the Panel better understand the domestic accountability process of Sri Lanka and provide an opportunity to share relevant information pertaining to international standards and best practices in the area of accountability. As mentioned, the Panel could serve as a useful resource for Sri Lankan authorities, including the Lessons Learnt and Reconciliation Commission, should your Government wish to avail itself of its expertise, in implementing the commitment made on accountability in the joint statement of the President and the Secretary-General in May 2009.

His Excellency
Mr. Palitha T.B. Kohona
Permanent Representative of the Democratic
Socialist Republic of Sri Lanka to the
United Nations
New York

Annex 2.13

Meanwhile, I understand the possibility of a "high-level visit" to New York has been mooted through Resident Coordinator Buhne by the Attorney General and the Secretary for External Affairs. I would encourage such a visit to meet the Panel should they consider it useful. In such an event, support for arrangements regarding the programme should be worked out with the Secretariat of the Panel.

Please accept, Excellency, the assurances of my highest consideration.

Vijay Nambiar
Chef de Cabinet

Annex 2.14

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SECRETARY-GENERAL'S PANEL OF EXPERTS ON SRI LANKA
GROUPE D'EXPERTS DU SECRETAIRE GENERAL AU SRI LANKA

28 January 2011

Excellency,

On behalf of the Secretary-General's Panel of Experts on Sri Lanka, I refer to our previous correspondence including my letter dated 13 January 2011 to the Deputy Permanent Representative, seeking to give effect to the agreement between President Rajapksa and the United Nations Secretary-General that the Panel of Experts undertake a visit to Sri Lanka.

I note that the Panel's timeframe for submission of its report to the Secretary-General has been extended to the end of February 2011. The Panel remains interested in visiting Sri Lanka. Any visit would need to be undertaken in the near future and we request your response with regard to our earlier exchanges on this matter.

The Panel has been informed that the Government has mooted a visit by a high-level delegation to New York and a video conference between the Panel and the Commission on Lessons Learned and Reconciliation.

In order to make best use of the limited time remaining for a visit, and, if a visit does not take place, to offer the Government of Sri Lanka the opportunity to respond to key issues that the Panel wishes to consider, I enclose an indicative list, elaborated by the Panel from the overall themes shared on 13 January 2011.

On behalf of the Panel, I would be grateful if Your Excellency could relay the questions addressed to the Lessons Learned and Reconciliation Commission to that body, and the questions raising broader issues to the competent authorities in Colombo with authority in respect of the matters in question.

His Excellency
Mr. Palitha T.B. Kohona
Permanent Representative of the Democratic Socialist
Republic of Sri Lanka to the United Nations
630 Third Avenue, 20th Floor
New York, NY 10017

Annex 2.14

The Panel would be most grateful if replies on these issues could be provided at the Government's convenience, and, given the timeframes in question, at the latest within three weeks of today's date. The replies may be in writing or conveyed in person during the exchanges referred to above should they proceed.

Please accept, Excellency, the assurances of my highest consideration.

Richard Bennett
Chief of Staff
Panel of Experts

Annexes:
1. Issues for consultation with the Commission on Lessons Learned and Reconciliation
2. Issues for consultation with Relevant Government Officials

cc: Mr. Vijay Nambiar, Chef de Cabinet
Executive Office of the Secretary-General

Annex 2.14.1

Annex I

Issues for Consultation with the

Commission on Lessons Learned and Reconciliation

The Secretary-General's Panel of Experts ("Panel") would welcome consultations with the Commission on Lessons Learned and Reconciliation ("LLRC") on the following issues. The questions are drawn from comparative experiences and international standards and are intended to enhance the Panel's understanding of the LLRC.

1. Senior Governmental figures have made various public comments regarding the scope of the LLRC's mandate. The Panel would value clarification by the LLRC on its own interpretation of its mandate, specifically whether and to what extent it includes accountability for any violations of international humanitarian or human rights law.

2. The Panel would be grateful if the LLRC would share its understanding of the notion of reconciliation and how it sees its own process as contributing to that end.

3. The Panel would welcome the views of the LLRC on whether its membership is sufficiently pluralistic and whether its independence is adequately safeguarded by the Commissions of Inquiry Act.

Structure and working methodologies

4. The Panel would value knowing whether the LRRC has undertaken any comparative study of the work of commissions in other States, and if so, how it has selected the previous experiences it considers most relevant for Sri Lanka.

5. The Panel would appreciate clarification as to the current structure of the LLRC, including whether it has units or staff dedicated to investigations, research, statement-taking, and issues related to victims, such as appropriate protection and psycho-social support.

6. The Panel would value a better understanding of how the LLRC decides when and where public hearings and in camera hearings will be utilised, and how these hearings are structured.

7. The Panel would value the LLRC's clarification on whether it has a separate process for formal statement-taking in addition to public hearings, and, if not, its reasons for not including such a process.

8. The Panel is interested in learning how the LLRC selects its witnesses how it carries out assessments for witness protection, how it ensures protection of witnesses and whether victim witnesses are treated differently from other witnesses. It would also value the LLRC's views on its approach to reports of witness intimidation, and whether it has been satisfied with any follow-up undertaken in this respect by the Government.

9. The Panel would welcome information on the LLRC's language policies, including provision of interpretation and transcription services.

10. The Panel would value additional information on the means for publicizing its hearings, including the existence of a public information unit or media liaison and the reasons that local government officials and not the LLRC have been announcing the public hearings in various parts of the country. It would also appreciate clarification of the role played by the military in relation to the Panel's hearings.

Interim recommendations

11. The Panel would be grateful for the LLRC's views on the extent to which its interim recommendations to the Government have been implemented.

12. On specific topics in the interim recommendations, the Panel would value the LLRC's clarification of the categories of detainees covered. It would also value advice on how the LLRC intends to further encourage appropriate law enforcement in the former conflict areas.

Specific accountability issues

13. The Panel would value the LLRC's indication as to whether it already pursued, or intends to investigate, alleged violations of international humanitarian and human rights law and to report on them, or whether it intends to recommend their investigation.

14. Should the LLRC find potential responsibility for alleged violations of international humanitarian and human rights law, the Panel would welcome the LLRC's clarification on how such issues will be pursued before existing justice mechanisms.

15. The Panel would be interested to know whether the LLRC anticipates recommending compensation for victims who have suffered loss or damage and, if so, the criteria for identifying victims and determining compensation.

Annex 2.14.2

Annex 2

Issues for Consultation with

Relevant Governmental Officials

Specific accountability issues

1. The Panel would value the Government's advice on the process by which it assesses whether criminal (or civil) charges are warranted against alleged LTTE combatants. How many and what type of criminal charges and civil proceedings have been filed against alleged LTTE cadres, both high or lower-ranking, since August 2008? Which courts have they been filed in, and on what statutory basis? Please describe the access and form of legal representation provided for these proceedings.

2. Please describe the extent to which alleged LTTE cadres who have been detained have been able to test the lawfulness of their detention, whether by *habeas corpus* or other form of application. What kind of legal representation is available for such purposes?

3. Have victims of alleged violations of the LTTE instituted any proceedings to claim compensation or restitution from any alleged LTTE combatants? If so, what has been the outcome of these cases?

4. Has the State instituted any other mechanisms through which victims of alleged violations of the LTTE may claim compensation or be awarded restitution, whether from LTTE funds at the disposal of the State or from other State sources?

5. Please describe the military justice process, both in terms of criminal and disciplinary or administrative jurisdiction, for members of the armed forces and commanders suspected of responsibility for alleged violations of international humanitarian law or military codes of conduct. How many such cases have been lodged since August 2008 against current or former members of the armed forces? Please also describe the access to counsel that defendants enjoy in such cases.

6. Please provide the same information with respect to members of the security forces other than the armed forces.

7. Please describe what laws exist to hold civilian officials responsible for violations of international humanitarian law or human rights law, and whether any proceedings have been initiated in relation to conduct since August 2008, whether civil or criminal.

8. Please detail the extent to which victims of alleged violations of international humanitarian and human rights law have judicial recourse under Sri Lankan law to obtain compensation or restitution for damage suffered. Please give examples of any such recent proceedings and their outcome. In addition, is there any provision at an early stage of interim relief or assistance for victims of alleged violations?

9. How does the Government award death certificates to relatives of persons alleged to have been killed during the conflict? What do such certificates indicate? How many such certificates have been awarded since August 2008?

Broader issues

10. What access to the courts is there for persons other than LTTE who were detained following the conflict, in particular to test the lawfulness of their restricted movement or detention? What access to counsel have such detainees had? How many proceedings have been instituted?

11. Has the State filed any criminal, civil or disciplinary charges against members of the security forces or other officials in respect of conduct, or culpable omissions, alleged to have been committed against such detainees following the conclusion of the conflict?

12. What steps have been undertaken to ensure the basic rights of persons returning to the Vanni in terms of sufficient physical security, as well as access to and enjoyment of core economic, social and cultural rights, such as the right to shelter, food and water?

13. What measures have been instituted to provide special protection for women, single-parent households, children and groups of persons facing particular vulnerabilities to violations of their rights?

14. The Panel is concerned that, on its face, the recently adopted Eighteenth Amendment to the Constitution adversely affects the structural independence of key accountability institutions and processes, through centralising in the executive a very high degree of appointment power. Could the Government respond with its views on this issue?

15. Emergency powers that limit judicial recourse continue to be maintained in force by Parliament on a monthly basis, more than one and a half years following conclusion of the conflict. In addition, certain far-reaching emergency provisions which have been repealed for the future remain in place on an ongoing basis for persons in respect of whom those powers were applied in the past. Does the Government maintain that the State presently faces a public emergency threatening the life of the nation, which is the threshold requirement under international law before certain measures derogating from international human rights norms can be considered? If not, when will these measures be repealed?

16. The Panel would value the Government's confirmation as to whether the work of the earlier Group of Eminent Persons, established following the publication of the 2009 Report to the U.S. Congress on Incidents During the Recent Conflict in Sri Lanka, has been referred to the LLRC.

Annex 2.15

PERMANENT MISSION OF THE DEMOCRATIC SOCIALIST
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Ref: POL/G/190 (2011/46)

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations in New York presents its compliments to the Executive Office of the Secretary General of the United Nations and has the honour to refer to the attached letter dated 15th February 2011 from the Hon. G.L. Peiris, Minister of External Affairs of Sri Lanka, addressed to His Excellency Ban Ki-moon, Secretary General of the United Nations which contains three (03) annexes, and a "Progress Report on the Implementation of the Interim Recommendations of the Lessons Learnt & Reconciliation Commission (LLRC)".

The Permanent Mission of Sri Lanka would be grateful if the Executive Office of the Secretary General would convey the attachment to its highest destination urgently.

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka avails itself of this opportunity to convey to the Executive Office of the Secretary General, the assurances of its highest consideration.

February 16th, 201[illegible] New York

PERMANENT MISSION OF
SRI LANKA TO THE U. N

Executive Office of the Secretary General of the United Nations
38th Floor
United Nations Secretariat
New York .

Annex 2.15.1

Prof. G. L. Peiris M. P.
Minister of External Affairs
Sri Lanka

15th February 2011

His Excellency Ban Ki-moon
Secretary-General of the United Nations
New York

Excellency,

His Excellency President Mahinda Rajapaksa has directed me to convey his warm greetings and very good wishes for the success of all your endeavours. The President values your understanding of the steps taken by his Government in the reconciliation process, inclusive of the work undertaken by the Lessons Learnt & Reconciliation Commission (LLRC) mechanism. My President firmly believes that there should be a seamless connectivity between your approach and that of the LLRC.

You may recall that at your meeting with the President in New York last September, it was agreed that the instrument of the Public Notice published by the Lessons Learnt & Reconciliation Commission of Sri Lanka would be a platform for engagement between the Commission and the Secretary-General's Panel of Experts on Sri Lanka. However, the letter of 14th December 2010 by the Chairperson of the Panel to our Ambassador in New York appeared to pursue a somewhat different path.

On the 28th of January 2011 the Chief of Staff of the Panel addressed a letter to our Permanent Representative, containing 15 questions to be directed to the LLRC. You will appreciate that the appointment of the LLRC is a sovereign act deriving its power from a Statute, which requires the Commission to report only to His Excellency the President in keeping with its mandate. However, His Excellency in recognition of our close relationship with the United Nations and your own goodwill and support for the continued progress of Sri Lanka, has thought it appropriate to convey to the UN system the purposeful work being carried out by the Commission. Towards this end, he tasked his Secretariat, which drew up the Warrant for the LLRC to respond to the questionnaire in an endeavour to share with you the Government's understanding of the work of the LLRC. The text of the response accordingly framed by the Secretariat on His Excellency's directions is attached hereto.

Please accept, Excellency, the assurances of my highest consideration.

G.L. Peiris, M.P.
Minister of External Affairs

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Annex 2.15.2

It is best to outline the mandate of the Commission, which reads as follows :

- 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 concerns, 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 effected,
- 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 this Warrant."

The mandate therefore clearly enjoins the LLRC to inquire into and report on the sequence of events that supervened up to 19th May, 2009. Hence, the mandate necessarily includes the consideration of any evidence indicating violations of international humanitarian or human rights law.

The concomitant onus to locate direct or indirect responsibility of any person, group or institution is reflective of the accountability mechanism that has been built into the mandate.

By virtue of its mandate the Commission is required to inquire into and report among other matters, on the institutional administrative and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future, and to promote further national unity and reconciliation among all communities, and to make any such other recommendations with reference to any of the matters that have been inquired into under the terms of the Warrant.

A stable transition from violence to peace requires a broad-based participatory process that takes into account the specific needs of all groups in the country. The work of the Commission to uncover the complete truth, to stimulate public awareness with a focus on the past, to do what is possible to recognize the suffering of victims and to rehabilitate them both mentally and physically, and to reform institutions, will facilitate this process.

Having heard diverse submissions at its public sittings, the LLRC submitted an interim report to the President on 13 September 2010. The interim recommendations were based on extensive testimony received by the LLRC during its interaction with affected civilians following field visits to several locations in the conflict-affected areas, including places of detention, rehabilitation and IDP welfare centers. The objective of the interim recommendations of the LLRC is to highlight issues which deserve the urgent attention of the GoSL in order to provide relief and engender a sense of confidence among the people, and to give impetus to the process of reconciliation.

Annex 2.15.2

The President of Sri Lanka recognized the importance to the reconciliation process of the issues highlighted by the LLRC. Thereafter by Cabinet Paper dated 27 October 2010, the Minister for External Affairs took the imitative to establish an Inter-Agency Advisory Committee (IAAC) to facilitate the implementation of the recommendations of the LLRC. The objective of the IAAC is to implement the recommendations of the LLRC through practical measures and to strengthen the related processes that are already underway.

The IAAC which is headed by the Hon. Attorney General, the Chief Legal Officer of the State, consists of the Secretary to the Ministry of Defense, Secretary to the Ministry of Public Administration and Home Affairs, Secretary to the Ministry of Justice, Secretary to the Ministry of Economic Development, Secretary to the Ministry of Rehabilitation and Prison Reforms, Secretary to the Ministry of External Affairs and the Secretary to the Presidential Task Force for the Northern Province.

Since its establishment, the IAAC has met regularly under the Chairmanship of the Hon Attorney General, in order to review and implement the recommendations of the LLRC. The recommendations made by the LLRC pertain to measures to be taken in relation to the following areas;

- Detention
- Land issues
- Law and Order
- Administration and Language issues
- Socio-economic and livelihood issues.

Substantial progress has been made on the above thematic areas and Annex I delineates the progressive measures that have been adopted.

The composition of the LLRC is representative of the multi ethnic and pluralistic polity of Sri Lanka and it comprises persons of eminence from various communities who have excelled in their chosen vocations. Some of them are acclaimed jurists while others have held high office in the civil, administrative and judicial branches of government.

The Commission was set up under the provisions of Section 2 of the Commissions of Inquiry Act and it is empowered by the Act to hold all such inquiries and to make all such investigations into matters as may appear to the Commissioners to be necessary, and to this end they are required to transmit to the President a report embodying their findings and recommendations.

The Commissions of Inquiry Act further empowers the LLRC to procure and receive all evidence and to examine all such persons as witnesses "as the commission may think it necessary or desirable to procure or examine, to summon any person residing in Sri Lanka to give evidence or produce any document or other thing in his possession and, notwithstanding any of the provisions of the Evidence Ordinance, to admit any evidence, whether written or oral which might be inadmissible in civil or criminal proceedings", (vide Sections 7 (a), (c), (d) and 8 of the Commissions of Inquiry Act attached at Annex II).

As evidenced above a Commission appointed under the Commissions of Inquiry Act enjoys wide powers and the LLRC does make use of these powers without any let or hindrance. In this context it is worth recalling the following words of Justice K.D.de Silva, the one man

Commissioner, appointed to the Navy Commission in his report, (Sessional Paper VI-1963, page 31).

> "This is not a court proceeding. This inquiry is held under the provisions of the Commissions of Inquiry Act. The Evidence Ordinance is not wholly applicable to it.
>
> A Commission appointed under the Act shall have the power notwithstanding any of the provisions of the Evidence Ordinance to admit any evidence whether written or oral which might be inadmissible in civil or criminal proceedings.
>
> As I have stated earlier, this is mainly a fact finding Commission. The object is to ascertain the truth pertaining to relevant matters."

The above statement which is a guide to the principles that pertain to the adduction of evidence before the Commission demonstrates the full amplitude of the powers of the LLRC with regard to the receipt of evidence and its manifest capacity to analyze and evaluate evidence, with a view to formulating recommendations.

By the Commissions of Inquiry (Amendment) Act No 16 of 2008 further powers were conferred on a Commission in respect of applying to a court of law or any tribunal, for certified copies of inter alia the proceedings of any case, requiring any person to produce any document, a certified copy thereof or any other material in his possession and to require any person to provide to the Commission, any information in writing which he is likely to possess.

If there is evidence of individual responsibility, there is nothing in the Act that precludes the LLRC from making a recommendation that the matter be investigated and prosecuted, since as mentioned above a search for accountability is a component element of the mandate. It has to be borne in mind that Principle 8 of the UN Updated Principles to Combat impunity, is to the effect that no other body-including a Commission of Inquiry has jurisdiction to pass judgment on individual criminal responsibility and punish accordingly unless it is a constitutionally established criminal court. The State remains committed to probe all cases of gross violations that the LLRC would recommend as cases that merit investigation and in this process the LLRC is untrammeled in the execution of its mandate in hearing evidence and making its recommendations.

Moreover, by virtue of the Commissions of Inquiry (Amendment) Act No 16 of 2008 the Attorney General is empowered to institute criminal proceedings in a court of law in the course of an investigation or inquiry, as the case may be, by a Commission of Inquiry appointed under the Act – please vide Annex III.

In fact the adduction of evidence before the LLRC is not undertaken by the officers of the Attorney General's Department, so that the subsequent interposition of the prosecutorial responsibility upon the recommendations of LLRC would in no way be visited with allegations of prior participation of the Attorney General's Department at an anterior stage.

It has to be noted that in addition to recommending prosecutions, the LLRC is uniquely placed to recommend measures for reparation, including compensation, rehabilitation, restitution and guarantees of non-repetition.

Thus the LLRC operates with sufficient independence to execute its mandate.

The experiences related to the South African Truth and Reconciliation Commission and the Chilcott Inquiry on the British involvement in Iraq, were considered in the run-up to the establishment of the LLRC. It is understood from the Interim Recommendations that the Commission is also particularly interested in issues pertaining to lands and land settlement, that other reconciliation processes too have had to grapple with.

We also structured the mandate, as incorporated in the Warrant, on the basis of a process of restorative justice. This was a deliberate and conscious decision having considered other options such as retributive justice combined with the grant of amnesties. It is our considered view that amnesties intrinsically encourage a culture of impunity and are therefore inappropriate. Any process based on retribution was also thought to be inappropriate, having regard to the fact that our people have gone through a long and traumatic thirty year conflict, which culminated with the chief non-state actors being in any event not available to be held to account. We concluded that it is wholly appropriate for the State, due to the failure of successive administrations to protect the people from violence, to take upon itself the burden of reconciliation in respect of all its people, irrespective of ethnicity or religion.

We have endeavoured to ensure that the Lessons Learnt & Reconciliation Commission is therefore an appropriately autochthonous mechanism based on the best traditions of our rich national heritage of jurisprudence.

It is to be noted that the LLRC has been provided with staff dedicated to investigation and legal research. The Cabinet decision establishing the Commission moreover ensures an automatic financing of its operational requirements, on the basis of the General Treasury being obliged to provide funding as requested by the Commission Secretariat.

Section 10 of the Commissions of Inquiry Act specifically provides that every offence of contempt committed against or in disrespect of the authority of the Commission shall be punishable by the Court of Appeal under Article 105 (3) of the Constitution. As such any person interfering or attempting to interfere with the presentation of evidence before a Commission, would be acting in disrespect of the authority of the Commission and be liable for contempt. The Commission may refer such infraction of the law to the Court of Appeal. Accordingly, every person testifying before the Commission, is afforded the due protection of the law and up to now no complaints have been received of any threat, intimidation or harassment against the presentation of testimony. The LLRC is endowed with the necessary human resources to record Statements.

With regard to psycho-social support in the North and in the East, both the Government as well as many non-governmental organizations inclusive of faith based organizations, are providing the necessary advice to persons affected by the conflict. In instances where the responsibility of supporting the family has fallen on the female parent, the Government is particular to ensure that such persons are given livelihood and other support, in order to sustain the dual role they now undertake.

It is understood that the LLRC structures its procedure so as to afford both public and in camera hearings, on grounds analogous to those in Article 106 of the Constitution.

The provision is available for the making of a Statement in addition to Public Hearings at the LLRC. The testimony of those who come before the Commission is transcribed and made available for public consumption.

In terms of its Public Notification of 18th June 2010, soliciting presentations, all those desirous of testifying before the Commission are required to submit a prior written representation, which is then vetted by the Commission with a view to ensuring that it meets the threshold requirements of evidentiary value. Once this requirement is satisfied, the witness is granted a date and his/her testimony is taken. Thus, a large number of persons have testified before the Commission not only in Colombo, but also when the Commission convened in Mannar, Trincomalee and Jaffna. Attention is drawn to Section 13 of the Commissions of Inquiry Act which is to the effect that every person who gives evidence before a Commission appointed under the Act, shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a Court of Law is entitled in respect of evidence given by him before such Court.

A person testifying can do so in any language he/she is competent in, due to the availability of competent interpretation covering the Sinhala, Tamil and English languages. Efficient transcription services are also available at the LLRC.

The Commission's work has been given wide publicity in both the print and electronic media on a regular basis, with media personnel being permitted access to its hearings. The Commission has also appointed a Media Spokesman. Transcripts of testimonies are available on its website at www.llrc.lk. The military have no role to play in the LLRC Sessions. However, when the Commission meets in locations outside Colombo, the head of the civil administration in that area has the responsibility to ensure the security and other logistical arrangements required for the sound conduct of the proceedings.

Due to the protracted nature of the proceedings that have taken place and having recognized the need to put in place urgent measures pertaining to the day to day lives of the people, the LLRC has brought to the attention of the President, certain Interim Recommendations. It is consequent to those recommendations that the IAAC was established. (Attention is drawn in this regard as well to Annex I)

Attention is drawn to the specific measures taken in relation to detainees and the recruitment of persons from the Tamil community to the Police as spelt out in Annex I. The other measures contemplated by the IAAC are :

- the establishment of more Courts to further strengthen the administration of justice in the former conflict affected areas ;
- the establishment of more Mediation Boards and alternate dispute resolution mechanisms ;
- the holding of frequent Land Kachcheris, which are an administrative fact assessment mechanism for the settlement of persons on land. These would help to resolve those land related matters in the areas that were affected by the conflict ;
- the establishment of Legal Aid Centres.
- amendments to the Agrarian Services Act, which bestows on the tenant cultivator a further alternate dispute settlement mechanism.

Enhanced sanctions to criminalize possession of unauthorized fire-arms coupled with the commitment to consider in the longer-term the greater induction of persons from the North and from the East to the Defence Services, are also related measures.

It is welcome that the question of compensation for victims has been broached, as the mandate of the Commission is essentially restorative in nature. Advice on whether suitable experts in the complex legal area of assessment and determination of compensation can be made available to the LLRC, would be helpful. This may be expanded to cover matters related to land settlements and the subjects of townships, fields and human settlements in general. It may be noted in this regard that 100,000 houses are to be constructed in the North and in the East with the financial assistance of the Government of the Republic of India and of the World Bank. There is also the urgent need for the restoration of the Lands Registry, which in some localities has been degraded due to the conflict situation. Another pertinent aspect is whether in demarcating land holdings, state of the art technology can be utilized.

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Annex 2.15.3

ANNEX I

PROGRESS REPORT ON THE IMPLEMENTATION OF THE INTERIM RECOMMENDATIONS OF THE LLRC

The Inter-Agency Advisory Committee (IAAC) takes this opportunity to record the progress made so far on the implementation of the interim recommendations made by the Lessons Learnt and Reconciliation Commission (LLRC).

The Lessons Learnt and Reconciliation Commission (LLRC) was established by HE the President pursuant to the Warrant dated 15 May 2010.

The LLRC commenced its public sittings on 11 August 2010. On 13 September 2010, the LLRC submitted its interim recommendations to H.E. the President. The interim recommendations were based on extensive testimony received by the LLRC during its interaction with affected civilians following field visits to several locations in the conflict-affected areas, including places of detention, rehabilitation and IDP welfare centres. The objective of the interim recommendations of the LLRC was to highlight issues which deserved the urgent attention of the Government of Sri Lanka (GoSL) in order to provide relief and engender a sense of confidence among the people, and to give impetus to the process of reconciliation.

H.E. the President of Sri Lanka endorsing the importance of the objective behind the LLRC interim recommendations, supported the adoption in Cabinet of the Paper dated 27th October 2010 to establish an Inter-Agency Advisory Committee (IAAC) to facilitate the implementation of the interim recommendations. The objective of the IAAC is to implement these recommendations of the LLRC through practical measures and to strengthen the related processes that are already underway.

The IAAC which has as its Chair the Hon. Attorney-General, has as its other members the Secretary to the Ministry of Defence, Secretary to the Ministry of Public Administration and Home Affairs, Secretary to the Ministry of Justice, Secretary to the Ministry of Economic Development, Secretary to the Ministry of Rehabilitation and Prison Reforms, Secretary to the Ministry of External Affairs and the Secretary to the Presidential Task Force.

Since its establishment, the IAAC has met regularly under the Chairmanship of the Attorney General, in order to review and implement the recommendations of the LLRC. The recommendations made by the LLRC pertain to measures to be taken in relation to the following areas:

- Detention
- Land issues
- Law and Order
- Administration and language issues
- Socio-economic and livelihood issues

Annex 2.15.3

The progress on the recommendations of the LLRC is summarized as follows:

With regard to the matters pertaining to detention

A four-member special committee, chaired by a Deputy Solicitor-General was appointed from the Attorney-General's Department to study the cases of LTTE suspects in detention and expedite legal action where necessary. The objective of the Committee is to expedite releases for rehabilitation, or expedite investigations where adequate evidence of hardcore involvement in the LTTE is available. The Committee began its work by visiting the Boossa Detention Centre and interviewing 182 detainees on 19th January 2011. A further 80 detainees from Boossa were interviewed in Colombo on 22nd January 2011. The team of officers also visited the Omanthai camp on 31st January 2011.

With regard to land issues, the following progress has been made:

- As highlighted in the LLRC process, the GoSL recognizes the complexity of land related grievances and its impact on the lives of civilians as arising from the protracted conflict. Some of these issues need solutions which cannot be offered through existing legal remedies, due to the devastation of administrative infrastructure and private and public documentation as a result of 3 decades of conflict. In view of the hardship and pain of mind caused to civilians from land related issues, GoSL will expedite necessary administrative measures. A Land Kachcheri system is being considered by the GoSL , while awaiting the final recommendations of the LLRC on this complex issue.

- Demining has been accelerated so that more land can be made available for resettlement. The State wherever it occupies lands of those who have been identified as owners, pays rents for occupation of such lands.

- Complex issues arise in regard to lands that were expropriated by the LTTE for allocation thereafter outside the law of the land. Steps are afoot to allot lands to the original owners, who have thus had to face expropriation.

- Land Kachcheris-a mechanism of state land allocation where the Government Agent of the District after due and fair inquiry plays a central role in assigning ownership and tenurial rights, will soon be held with ever greater regularity.

- It is a constitutionally recognized fundamental right of every citizen to choose his residence anywhere within Sri Lanka and the GoSL categorically states that there is no policy of forced settlement by the GoSL. Furthermore, it is categorically stated that any citizen of Sri Lanka is free to purchase land or own land anywhere in the country. There is no policy of expansion of High Security Zones (HSZ), as alleged by some. On the contrary, the policy is to shrink such Zones, as rapidly and as significantly as possible.

- The GoSL expects that with the implementation of the two projects in the North to develop 100,000 housing units, the housing issue could be greatly eased. The GoSL will give priority to aggrieved persons, where housing allocation is concerned.

- The GoSL will encourage the process where, except when essential for security reasons, High Security Zone (HSZ) lands are being progressively released. This has already commenced in the areas surrounding the Palaly HSZ. The GoSL notes the progress already underway as initiated by the Special Committee under the Chairmanship of the High Court Judge Jaffna. Action has been taken to return 256 houses in the Palaly area to the civilians. A further 2392 houses have been identified for civilian occupation in more than 2500 hectares of land that were set aside for HSZs. Demining is being accelerated for this purpose

With regard to **Administration and Language issues**, the IAAC observes that :

The GoSL acknowledges the need to ensure language rights of all citizens particularly in the Tamil speaking areas of Sri Lanka. The Language Policy of Sri Lanka is enshrined in Chapter IV of the Constitution of Sri Lanka, as amended by the 13th Amendment and the 16thAmendment. It is also reflected by the vision of H.E. the President of Sri Lanka who has firmly advocated a "**Trilingual Sri Lanka**'.

The IAAC reiterates the commitment of the GOSL to address the grievances arising from language related issues, including through the recent specific measures put in place by the Ministry of National Languages and Social Integration and the key institutions coming under its purview. Emphasis has been given to the effective implementation of the existing Gazette Notifications and Public Administration Circulars relating to the Official Languages Policy. The recently adopted Long Term and Short Term Action Plans of the Ministry of National Languages and Social Integration at National, District and School/Pirivena levels, provide extensive details in this regard.

The GoSL has encouraged the process whereby the Ministry of Defense has implemented the following steps :

Members of the Tamil community from the North & the East have been enlisted to the Police Department in the year 2010, as there was an urgent need for such officers capable of performing duties in the Tamil language in the newly re-established Police Stations in the Northern and Eastern Provinces.

On 01.06.2010 Police Constables	265
On 01.07.2010 Police Constables	54
On 01.06.2010 Women Police Constables	16
Total	335

A further recruitment of Tamil speaking Police Officers will be done in future as follows:

Sub Inspector of Police	50
Women Sub-Inspector of Police	25
Police Constables	350
Women Police Constables	50
Total	475

With regard to **law and order issues,**

With regard to disarming of persons carrying illegal arms, the GoSL has taken immediate steps by giving a deadline for the surrendering of illegal weapons, as was successfully done in the Eastern Province, following the clearing of the LTTE from that area.

The GoSL intends to enact an amendment to the Fire Arms Ordinance, which will restrict the grant of bail for those who are apprehended whilst in unauthorized possession of fire arms or explosives. This special provision is intended to be in operation for a limited period, until the objective of ensuring the surrender of weapons is achieved.

The GoSL observes that with the return to normalcy following a long-drawn conflict, criminal activities such as robberies, killings and extortions are likely to recur. These would be dealt with by utilizing the criminal law and process of the country. Police have been given strict instructions in this regard.

Socio-economic/livelihood issues

Theses could be looked at in two components namely

a) free movement of persons on A9-the arterial highway to ensure greater participation in economic, social and cultural rights.
b) the further strengthening of co-operation between Government Agents and Security Forces for the normalization of civilian activities.

The principal achievement in regard to infrastructure is the opening of the A9 road which has greatly improved and increased the freedom of movement to the North. The resettlement of the IDP's along with the building of the Sangupiddy Bridge and the removal of restrictions on fishing has transformed the lives of people with activities, such as fisheries and agriculture, having resumed in full earnest. Normalization of civilian administration has been achieved in the East to such an extent that elections to local government and provincial councils were conducted. In the North, both the Presidential and Parliamentary elections were held in 2010 in a free and fair manner, without after several decades, the menace of terrorism.

The island wide local government elections scheduled to be held in March will see the participation of people in the North and in the East exercising their franchise without let or hindrance.

Private sector participation and entrepreneurial activities in the North are on the increase and with well known industrialists establishing their businesses and investments, livelihood and employment opportunities have been afforded to the people. This is particularly evidenced in the apparel sector.

Efforts have been made to encourage economic activity and foreign investment and necessary infrastructure is being put in place to that end. Mention must be made in this regard of the Jaffna International Trade Fair conducted in January 2011 under the aegis of the Federation of Chambers of Commerce and Industry and the Chambers of Commerce and Industry of Yarlpanam, along with India as the "partner country".

Wide consultations have been held with those members of the Tamil diaspora who have evinced interest in participating in the development of the North and the East.

In May 2010 there was a substantial scaling down of Emergency Regulations and the IAAC is looking at the possibility of a further repeal of the Emergency Regulations, leading to an eventual phasing out.

Missing Persons

With regard to the evidence gathered by the LLRC on missing persons, it was revealed that many of the people alleged to be missing were last seen with the LTTE forces. Hence, it can be assumed that such people may have been killed in the battle, either as a consequence of their acting as LTTE combatants, or due their being fired upon by the LTTE when endeavouring to seek refuge with the Security Forces. The Government is also conducting investigations and in cases where the dossier of investigation discloses a prima facie case of culpability, institution of proceedings will follow in ordinary course.

The Sri Lanka Institute of Information Technology (SLIIT) is maintaining a data base of the Rehabilitation of Persons, Properties and Industries Authority (REPPIA) and this information will be transferred to the National Human Rights Commission. The information contained in the database is an integral part of a project that is aimed at concluding cases of missing persons.

Conclusion

Whilst the IAAC offers its gratitude to His Excellency the President for all the directions that were given at all times to facilitate the work of the IAAC and the progress made so far on the recommendations, the IAAC also takes this opportunity to thank all stakeholders from civil society and from government, for their unstinted support and cooperation.

While soliciting and looking forward to the continued corporation of all concerned in this national exercise of nation building, the IAAC reiterates its commitment to exploring further avenues towards the effective implementation of the interim recommendations in their full plenitude.

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Annex 2.16

PERMANENT MISSION OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA TO THE UNITED NATIONS

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Ref: POL/G/190 (2011/45)

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations in New York presents its compliments to the Executive Office of the Secretary General of the United Nations and has the honour to refer to Annex II captioned 'Issues for consultation with relevant Government officials" attached to the letter dated 28th January 2011 from the Chief of Staff of the Secretary General's Panel of Experts on Sri Lanka, addressed to the Permanent Representative of Sri Lanka.

The observations sent by the Ministry of External Affairs of Sri Lanka in response to Annex II are forwarded herewith.

The Permanent Mission of Sri Lanka would appreciate if the Executive Office of the Secretary General would convey the enclosed response to its high destination at the earliest .

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka avails itself of this opportunity to convey to the Executive Office of the Secretary General, the assurances of its highest consideration.

February 16th, 2011

PERMANENT MISSION OF
SRI LANKA TO THE U. N.

Executive Office of the Secretary General of the United Nations
38th Floor
United Nations Secretariat
New York

Annex 2.16.1

It is important to appreciate that the whole LLRC process is structured on the philosophy of restorative justice. It is this philosophy which would govern the consideration of civil or criminal liability. The entire endeavour requires that what happened in the past must be relegated to history, by all communities inclusive of the majority community. This must be accompanied by a manifestation of contrition on the part of the wrong doer as a recognition of the supremacy of the rule of law within a democratic process. This would entail the institution of criminal/civil charges in relevant Courts against LTTE cadres now in custody, provided that the evidence against them reaches the threshold of a prima facie case. Since August 2008, this process has been ongoing and a substantial number of detainees concerned in the commission of serious offences have been brought before Courts on indictments in terms of the provisions of the PTA, or offences stipulated in the Emergency Regulations, the Penal Code and other criminal statutes. What is significant is that in all such cases, the least restrictive sentencing policies have been adopted, with a generous resort to mechanisms of non-custodial sentences. It is also to be noted that these defendants have been afforded the right of legal counsel, advice and representation in keeping with the constitutional guarantees and due process.

A four member special Committee chaired by a senior officer of the Attorney-General's Department has been set up and this Committee has already visited the Centres where the detainees are housed. It is the intention of the Government to rehabilitate back into society through counseling and vocational training those ex-combatants who are not involved in serious offences. It is the intention of the Government to expeditiously conclude this particular phase.

In addition to the above process if the Lessons Learnt & Reconciliation Commission, which is currently hearing testimony reports that a particular culpability must be investigated and or prosecuted, the Office of the Attorney-General has a separate Unit which would supervise the process of bringing to book any offender, if there is prima facie evidence to satisfy the threshold of criminal liability.

The judicial review of detention can be sought either through a petition of Habeas Corpus, a Writ Application or an application for a violation of fundamental rights.

Moreover, the judicial review process in the case of a detainee does not have to be in the form of a formal petition. The review can be initiated by the exercise of an epistolary jurisdiction, upon the mere receipt of a letter from a detainee. In addition, the Attorney-General has been vested the discretion to grant bail. Where the detention is in terms of an order made under the Emergency Regulations, there is a periodic scrutiny of the detention by the relevant Magistrate who could order the release of the suspect in given circumstances.

Legal representation for detainees is freely available as a matter of choice and those who are unable to retain legal counsel, have been afforded the opportunity of legal aid which is funded by the State.

It is a matter of record that none of the victims of alleged violations have instituted any claims for alleged violations by the LTTE. In this regard, the Government has taken upon itself the restorative responsibility whether the victim be a member of the Armed Forces or a member of civilian society. The State does so out of its own resources and the provisions made have had to be substantial.

There are no LTTE funds at the disposal of the Government as their resources have been taken out of the country and channeled to fund the various activities, such as the so-called "Transnational Government of Tamil Eelam". In these circumstances, the Government has

taken upon itself to provide restitution to the victims through the mechanism of reasonable reparation via grants sanctioned by Parliament, which has the ultimate power over public finance.

The military justice process is essentially a process that has been inherited from British jurisprudence as prevailed at the time of gaining Independence. Members of the Armed Forces suspected of violations under the Army, Navy and Air Force Acts can be brought to justice by the mechanism of a court martial or be tried in civil courts. Several cases have been filed and one of such cases is the Mirusivil case, where four Army personnel are being tried before a trial at bar for abduction and murder of civilians in the year 2000.

Moreover, several fundamental rights petitions, habeas corpus and writ applications have been filed against Armed Forces personnel and Police officers. Police officers are also liable to face disciplinary inquiries under the Establishment Code. A finding of guilt would expose them to legal sanctions inclusive of dismissal, loss of emoluments, deprivation of superannuation benefits and loss of seniority. Access to counsel is freely available . Recently the Supreme Court delivered two separate judgments with regard to the legal status of a court martial which confirm that a court martial is a constitutionally recognized legal body which enjoys a parity of status with other courts. Copies of the relevant two judgments are at Annex I and Annex II respectively.

The Police are governed by the Police Ordinance and the Establishments Code.

The Civil Defence Force, which has been instituted recently is governed by the ordinary laws of the land.

There are a plethora of remedies that enable the holding of civilian officials liable for violations of international humanitarian law or human rights law. This liability is expressly set out in Chapter III of the Constitution of Sri Lanka, with regard to executive or administrative action. For example, torture or cruel, inhuman or degrading treatment or punishment occasioned by executive or administrative action has been made justiciable by virtue of Article 11 of the Constitution. Chapter III contains, among other things, prohibition against death or imprisonment being caused otherwise than under a lawful order of a competent court and therefore by implication recognizes the right to life, as pronounced by several pronouncements of the Supreme Court. The implementation of the death penalty has been subject to a moratorium for nearly 3 ½ decades. In terms of Article 126(4), the Supreme Court is vested with a jurisdiction which has been often utilized to award compensation or just and equitable restitution for damage suffered. In addition the ICCPR Act No 56 of 2007, Torture Act, No 22 of 1994 and Geneva Conventions Act No 4 of 2006 also render officials liable for infractions of international norms.

Moreover, civil action can be instituted against civilian officials if there are infringements. The criminal law of the land can also be used to prosecute acts that violate the international obligations undertaken by Sri Lanka, provided the infringements fall within the definitional parameters of the offences.

Several cases have been and continue to filed against alleged violations.

For instance, the eviction of persons from their lands has led to complaint and litigation that has resulted in their being restored to their former habitats. Those who were the owners of lands in areas where High Security Zones (HSZ) were situated, petitioned the Supreme Court for

redress and have been restored to their homes. It has to be noted that the High Security Zones have substantially shrunk, consequent to the lands within them being progressively released, a process which has already commenced in the areas in particular surrounding the Palaly HSZ. This process of restitution got underway as initiated by a Special Committee under the Chairmanship of High Court Judge Jaffna, under the supervision of the Supreme Court.

Interim relief and redress have been provided through the re-settlement of Internally Displaced Persons by the Special Task Force for the Northern Province.

The Directive Principles of State Policy enjoin the state to establish measures that are conducive to accomplish its constitutional obligations.

The existing legal mechanism to issue death certificates is the Registration of Deaths (temporary provisions) Act, No 19 of 2010 which prescribes the procedure for awarding death certificates to next of kin of those alleged to have been killed owing to a host of causes such as a conflict or a natural disaster. In terms of this Act where any person is reported missing and his whereabouts have been unknown for a period exceeding one year by those who would naturally have heard of him had he been alive and his disappearance is attributable to any terrorist or subversive activity or civil commotion which has taken place within Sri Lanka, the next of kin of such person if he verily believes such person to be dead, may apply in the manner set out in the Act, to register the death of such person under the Provisions of the Births and Deaths Registration Act and to have issued to him, a Certificate of Death in respect of such person.

Every application to this effect should be made in the form specified in the schedule to the Act and should be forwarded to the Registrar General or the District Registrar for Birth and Deaths of the District in which such missing person was last resident or had his permanent residence. The application has to be accompanied by an affidavit of the applicant setting out the grounds for his belief that the person whose death is sought to be registered, is dead, and shall be accompanied by a report from the Grama Niladhari (Village Officer) Division in which the person whose death is sought to be registered was last resident or had his permanent residence.

There is also another procedure prescribed for the issuance of a Death Certificate. Where a Commission appointed under the Commissions of Inquiry Act such as the LLRC or a special Presidential Commission of Inquiry established under the Special Presidential Commission Law, No.7 of 1978 finds that a person has disappeared or is missing, the next of kin of that person may, apply to the Registrar General or to the District Registrar of Births and Deaths of the District in which that person was last residing or had his permanent residence substantially in the form set out in the schedule to the Act, to register the death of that person under the Births & Deaths Registration Act and to have issued to him a Certificate of Death, in respect of the death of that person.

Every such application has to be accompanied by an affidavit of the applicant and a certified copy of the findings of the Commission of Inquiry or Special Presidential Commission of Inquiry as the case may be. A copy of the legislation is attached as Annex III.

Several persons have testified before the LLRC as regards information of their missing relatives and kith and kin who might have come by their deaths in the course of the conflict and this is a matter that is currently before the LLRC. Until the report and recommendations of the LLRC are made known, at this stage, we will not be in a position to invoke the provisions of the Registration of Deaths (Temporary Provisions Act No 19 of 2010).

It has to be observed that the only persons detained following the end of the conflict situation were those complicit in LTTE activities. However, any other person would fall into a category which attracts the normal provisions of the law and would be dealt with in terms of the law, civil or criminal. If he is under detention, he could test the lawfulness of his detention by way of a writ of certiorari, an application for Habeas Corpus or an application for violation of his fundamental rights. He can rely on the same mechanisms if his freedom is restricted. There is a liberal access to counsel which the detainee can make use of along with his right to utilize the mechanism of legal aid.

In the event a particular arrest is declared to be unlawful, it is crystal clear that the Members of the Security Forces or other officials involved in such mala fide conduct or omission, would be dealt with under the disciplinary procedures set out in the Army Act, Navy Act or Air Force Act or in the case of Police Officers, under the Establishments Code. Criminal charges could also be filed against such officials.

The matters of ensuring the basic rights of persons returning to the Vanni while affording them their core economic, social and cultural rights as well as special protection for women, have been dealt with in Annex I attached to the observations of the Presidential Secretariat forwarded by the communication of the Hon. Minister of External Affairs of Sri Lanka, to H.E. the Secretary-General of the United Nations.

Please also see the current status of the on-going rehabilitation of LTTE surrendees as evidenced by Annex IV.

The concern with regard to the 18th Amendment is entirely out of place, having regard to the fact that a 2/3rd majority of Members of Parliament inclusive of the minority parties thought it appropriate to enact this amendment and that moreover the Amendment more than adequately provides for a mandatory consultation process, which includes all parties represented in Parliament.

Although peace has been regained in the nation at great cost, it has to be borne in mind the externally based residues of the LTTE have not ceased and abated their activities. Large caches of arms secreted by the terrorists continue to be recovered on a daily basis. Vast tracts of lands have been demined and this ongoing process is long and arduous. Some sleeping cadres with links abroad have been identified. Large sums of money which still flow into the country through irregular channels pose a detriment to the peace and good order of the nation. The apologists of the LTTE continue to propagate activities which include the funding of a so-called transnational government, which is disinterested in supporting reconciliation. The reality of these activities has been confirmed by the arrest of LTTE activists in Europe and the seizure of their assets.

In these circumstances, it is only prudent for a government to take cognizance of this pernicious trend and ensure that all communities are protected from any further upheaval. Therefore, emergency laws are maintained at a minimal level in the hope that there will be eventually a complete removal of the emergency regulations at the earliest possible prudent opportunity.

It is understood that the Group of Eminent Persons has transmitted to the LLRC the work conducted by them in relation to the Report to the US Congress.

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Annex 2.16.2

Annex IV

a. Number of Beneficiaries Undergoing Rehabilitation under BCGR as at 08.02.2011.

Srl no	Protective Accommodation and Rehabilitation Centres (PARCs)	Male	Female	Total
1	Technical College – Nellikkulam	536		536
2	PPM Campus Hostel Centre	342		342
3	Tamil Primary College – Vavuniya (Adult Education Centre)	468		468
4	Maradamadu	850		850
5	Thellippale Centre	151	17	168
6	Welikanda Centre	423		423
7	Kandakadu Army Farm	955		955
8	Triconamadu Air Force Farm	820		820
9	Co-Op Trg Centre – Poonthottam		19	21
	Grand Total	**4545**	**36**	**4581**

b. Number of Rehabilitees Reintegrated as at 08.02.2011.

	Male	Female	Total
Ex-Child Combatants	363	231	594
Adult Combatants	3329	1886	5215
Grand Total	**3692**	**2117**	**5809**

1 of 3

Annex 2.16.2

c. The Details of Programmes Including Vocational Training Conducted for The Beneficiaries Undergoing Rehabilitation by BCGR.

Srl No	Type of Course/ Workshop	Training Centre/ Location	Duration	No of Course	No of Parti.
1	Accelerate Skills Acquisition Programme (ASAP)	PPM Campus Hostel R/C	15 Days	1	25
2	ASAP	Thelippale R/C	15 Days	1	30
3	ASAP	Kaithady R/C	15 Days	2	49
4	ASAP	Zone 06 B R/C	15 Days	2	65
5	ASAP	Technical College-VNA	15 Days	3	120
6	ASAP	Maradamadu	15 Days	1	40
7	ASAP	Dharmapuram	15 Days	1	40
8	Aesthetic (Music)	Welikanda R/C	03 Months	1	32
9	Aesthetic (Music)	Dharmapuram	03 Months	1	37
10	Aesthetic (Music)	Welikanda	03 Months	2	62
11	Advanced Modeling Concepts Training Programme	Pampaimadu	14 Days	1	30
12	Agriculture based programme	Kandakadu	06 Months	1	989
13	Agriculture based programme	Triconamadu	06 Months	1	1938
14	Agriculture based Workshop	Welikanda	01 Day	1	100
15	Agriculture based Workshop	Triconamadu	01 Day	1	200
16	Agriculture based Workshop	Kandakadu	01 Day	1	100
17	Beauty Culture	PPM Campus Hostel R/C	03 Months	1	30
18	Beauty Culture	PPM Campus Hostel R/C	03 Months	1	30
19	Carpentry Course	Thelippale R/C	04 Months	1	27
20	Carpentry Course	HANDWERK - Kaluthara	15 Days	6	87
21	Carpentry Course	Welikanda	03 Months	5	129
22	Computer Course	Thelippale R/C	03 Months	1	24
23	Computer Course	Pompaimadu (Gateway – VNA)	04 days	1	30
24	Coconut Cultivation (Coconut Research Institute – Polonnaruwa)	Triconamadu	03 Days	1	165
25	Coconut Cultivation (Coconut Research Institute – Polonnaruwa)	Kandakadu	03 Days	1	113
26	Coconut Cultivation (Coconut Research Institute – Polonnaruwa)	Welikanda	14 Days	1	126
27	Computer Aided Drafting (CAD) and 3D Drafting	Pampaimadu	14 Days	1	30
28	Certificate programme on Psychosocial Counseling	Poonthottam	06 weeks	01	50
29	Driving and Motor Traffic	Triconamadu	12 Days	1	50
30	Emotional Intelligence and Strength of Life Skills Programme	Pampaimadu	03 days	1	120
31	Emotional Intelligence and Strength of Life Skills Programme	Thelippalai	03 days	1	130
32	Emotional Intelligence and Strength of Life Skills Programme	Poonthottam	04 days	1	36
33	Electrician	HANDWERK - Kaluthara	15 Days	6	88
34	Garment Training	Tri Star Apparel – Ratmalana/Dambadeniya	03 Months	1	544
35	Garment Training	Link Apparel – Homagama	03 Months	1	98
36	Garment Training	Triconamadu (Pan Lanka Garment)	01 day	1	20
37	Heavy Machinery Training (Dozer)	Kandakadu Farm	01 Month	2	60
38	House Wiring	Triconamadu	12 Days	1	50
39	House Wiring	Welikanda	03 Months	2	56
40	Masonry	HANDWERK - Kaluthara	15 Days	6	87
41	Masonry	Welikanda	03 Months	5	132
42	Masonry	Dharmapuram	03 Months	1	250
43	Masonry	Maradamadu	03 Months	1	250
44	Mushroom Cultivation (Agri Research Institute – Aralaganwila)	Triconamadu	01 Day	1	100

2 of 3

Annex 2.16.2

45	Modeling and Bridal Dressing	Pampaimadu	03 Months	1	36
46	Nursery Management (Agri Research Institute – Aralaganwila)	Triconamadu	01 Day	1	100
47	OMB (Sri Lanka Navy)	Thelippalai	07 days	02	75
48	Plumbing	Thelippale R/C	03 Months	1	30
49	Plumbing	Welikanda	03 Months	3	89
50	Pre-School Diploma Course (Reintegrated female beneficiaries)	Poonthottam	03 months	01	31
51	Sinhala Class	Triconamadu	01 ½ Months	1	25
52	Sugar-Cane Cultivation	Kandakadu	01 day	01	100
53	Tailoring	Thelippale R/C	10 Days	1	23
54	Tailoring	PPM Campus Hostel R/C	03 Days	1	30
55	Typing and Shorthand	Thelippale R/C	04 Months	1	14
56	Three Wheel repairing Course	David Peris Company	10 Days	5	150
57	Welding	HANDWERK - Kaluthara	15 Days	6	88
	TOTAL				7560

2. Other Programmes Conducted for the Beneficiaries;
   a. Meditation programmes
   b. Spiritual Development Programme
   c. Group counseling & therapy sessions
   d. Training workshops on Marital, Pre-Marital, Family Planning Counseling and Career related issues.
   e. Aesthetics/Drama Therapy Programmes
   f. Classes for GCE (O/L) and GCE (A/L) examination
   g. Language Training (Sinhala & English)
   h. Culinary Skills
   i. Sports activities (Cricket for Change/Sports Meet/Festivals)

3. Special Projects Launched for the Benefit of the Beneficiaries;
   a. Scientific Agriculture Programme
   b. Catch up Education Programme
   c. Mass Marriage Ceremony
   d. Bridal Show
   e. Organizing Scholarships for University Students (Beneficiaries)
   f. "Peace Village" – A separate village was established for 53 married couples (Beneficiaries)
   g. Pre-reinsertion and reintegration mentorship Programme
   h. Providing of National Identity Cards, Birth Certificates, Death Certificates and other mandatory documentations etc.
   i. Conducting of Mobile Workshop
   j. Establishing of an IT Lab with 30 Computers at Pompaimadu Campus Hostel
   k. On the Job Training / Employment on different trades
   l. Cultural Programmes
   m. Awareness programmes for the Religious Leaders and the Government Officials including the Community Leaders.
   n. Enhance Emotional Intelligence & Strength to Life Skills
   o. Organizing religious festivities and presenting of gifts to beneficiaries as appropriate.

Annex 2.17

PERMANENT MISSION OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA TO THE UNITED NATIONS

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630 THIRD AVENUE (20TH FLOOR)
NEW YORK, N.Y. 10017

Ref: POL/G/190

16th February, 2011

Mr. Lynn Pascoe
Under Secretary-General
Department of Political Affairs
Room No. NL 02060
United Nations
New York.

My dear Under Secretary-General,

I refer to your letter of 14th February, 2011 and I am pleased to advise that a high level Sri Lankan delegation will be in New York on 22nd and 23rd February. Further to the discussion your office had with my authorities in Colombo, I would be grateful if you would suggest times for this delegation to meet with senior Secretariat staff along with members of the Panel on the 22nd and with only senior Secretariat staff on the 23rd. I am also attaching copies of communications addressed to the Executive Office of the Secretary-General by my authorities.

I would be grateful if you we could discuss details of the above meetings, either personally or on the phone.

Yours sincerely,

Palitha T.B. Kohona
Ambassador & Permanent Representative.

Annex 3

Satellite Imagery

Explanatory Note

With support from the United Nations Office of Military Affairs and the United Nations Institute for Training and Research (UNITAR-UNOSAT), the Panel reviewed and assessed key satellite imagery – obtained from the public domain – of the conflict zone. The attached are examples of some of the images. The caption and analysis for these images were done by UNOSAT. The first six images show damage to hospital buildings consistent with artillery impact, with estimated dates of those impacts. While it is not possible to determine from the images which artillery hit the hospitals, it is clear that the damage is consistent with artillery fire. They also corroborate other information received by the Panel. The second ten images show artillery batteries and their projected fire bearing and range capabilities, derived from the direction in which their barrels were pointed (which is visible from satellite imagery). The series of diagrams were designed by UNOSAT to show that artillery batteries were redirected over time from the first to the second and then the third No Fire Zones. The last image is a map of official and makeshift hospitals which operated in the Vanni Region prior to and during the final stages of the war, commissioned by the Panel.

Annex 3

Satellite Imagery of Damage to Hospitals in the Vanni

3.1: Udaiyaarkaddu Hospital

3.2: Vallipunam Hospital

3.3: PTK Hospital

3.4: Ponnampalam Hospital

3.5: Puttumatalan Hospital

3.6: Mullaivaikal Hospital

Artillery Batteries and Projected Fire Bearing and Range Capability by Date

3.7: Established Before 5 February 2009

3.8: Established Between 15 – 18 February 2009

3.9: Established Between 18 February – 6 March 2009

3.10: Established Between 6 – 15 March 2009

3.11: Established Between 15 – 23 March 2009

3.12: Established Between 23 – 29 March 2009

3.13: Established Between 29 March – 19 April 2009

3.14: Established Between 19 April – 6 May 2009

3.15: Established Between 6 – 10 May 2009

3.16: Established Between 10 – 17 May 2009

Annex 3

Satellite imagery of damage to hospitals in the Vanni

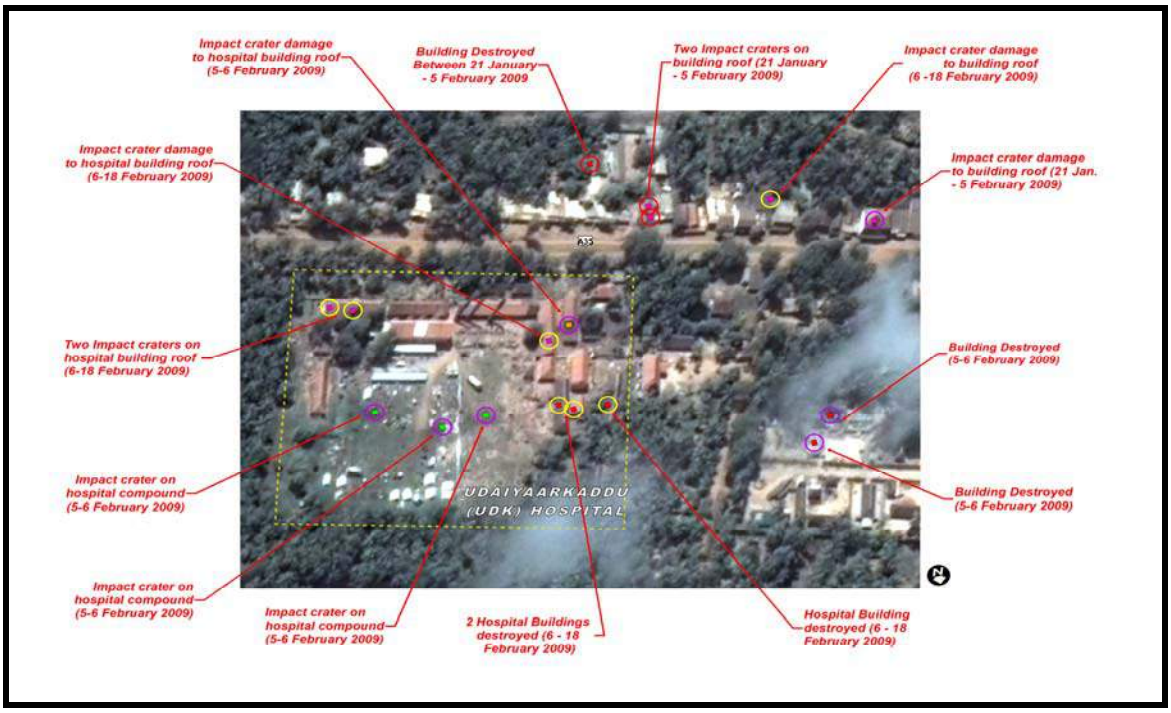


Image 3.1: Udaiyaarkaddu Hospital (First NFZ)

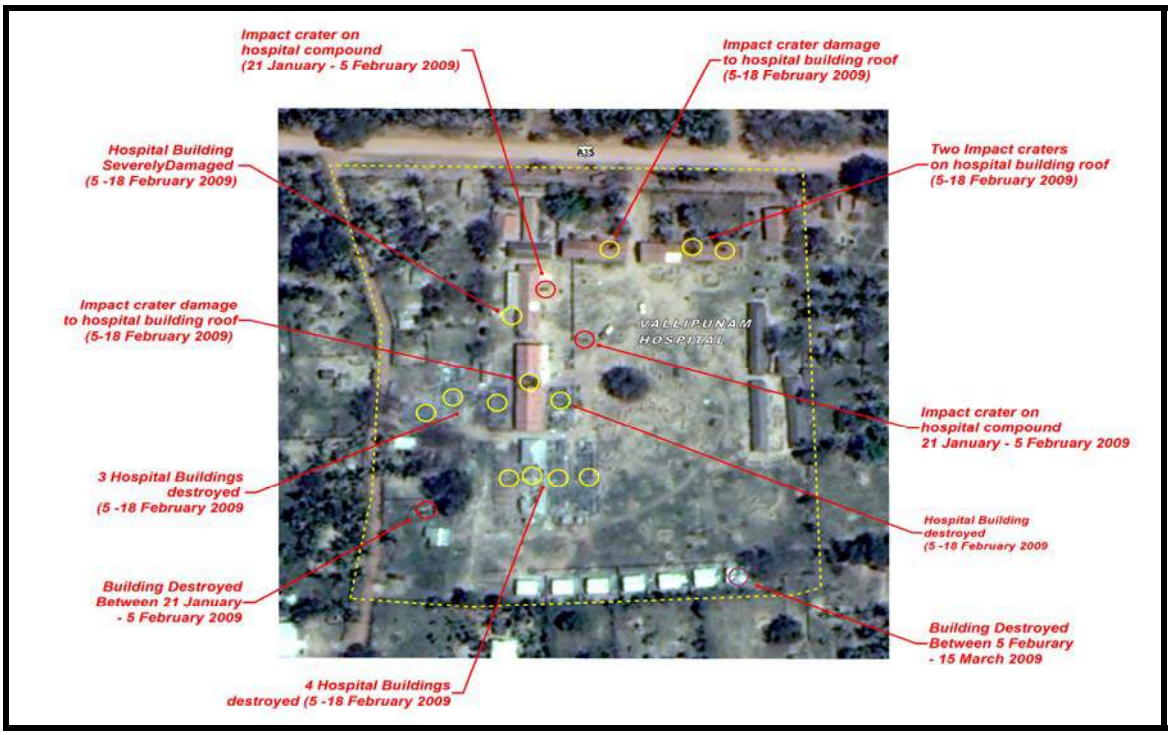


Image 3.2: Vallipunam Hospital (First NFZ)

Annex 3

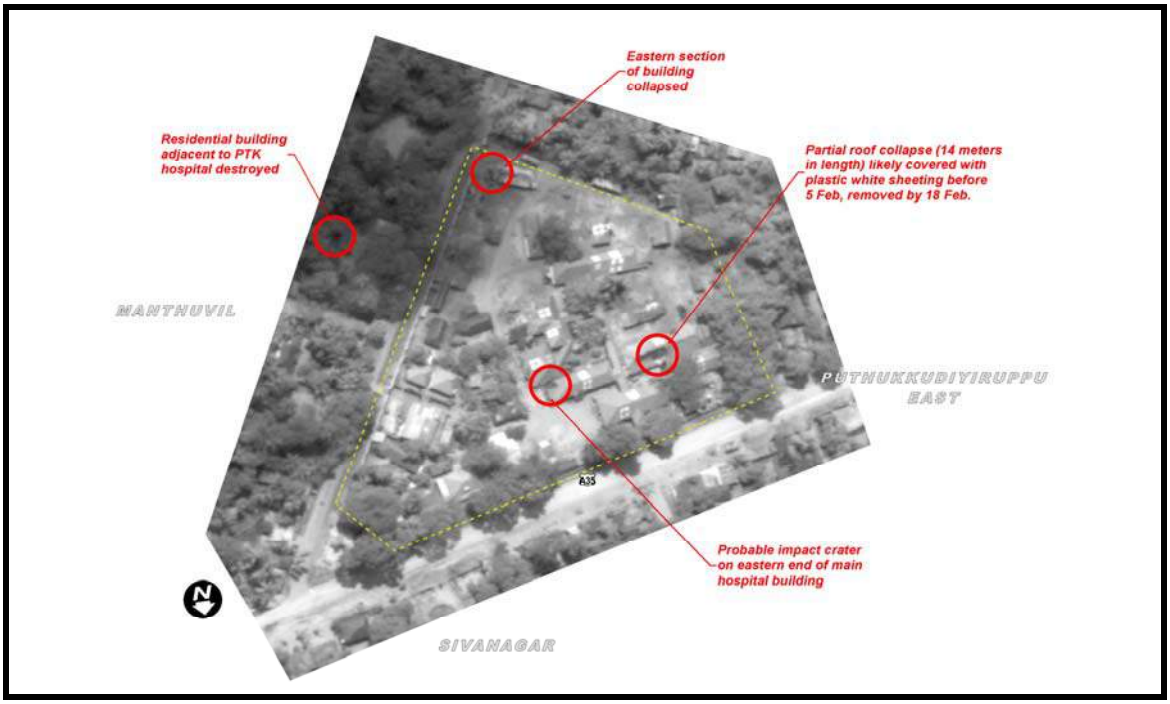


Image 3.3: PTK Hospital

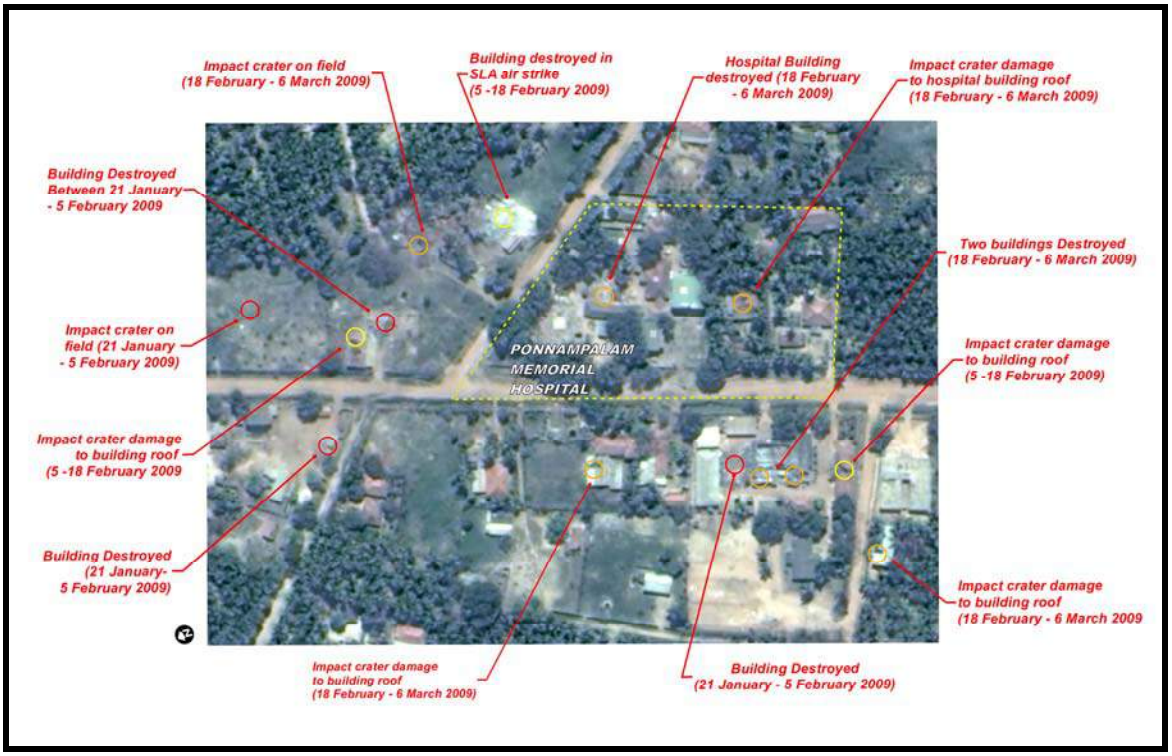


Image 3.4: Ponnampalam Hospital

Annex 3

Image 3.5: Puttumatalan Hospital (Second NFZ)

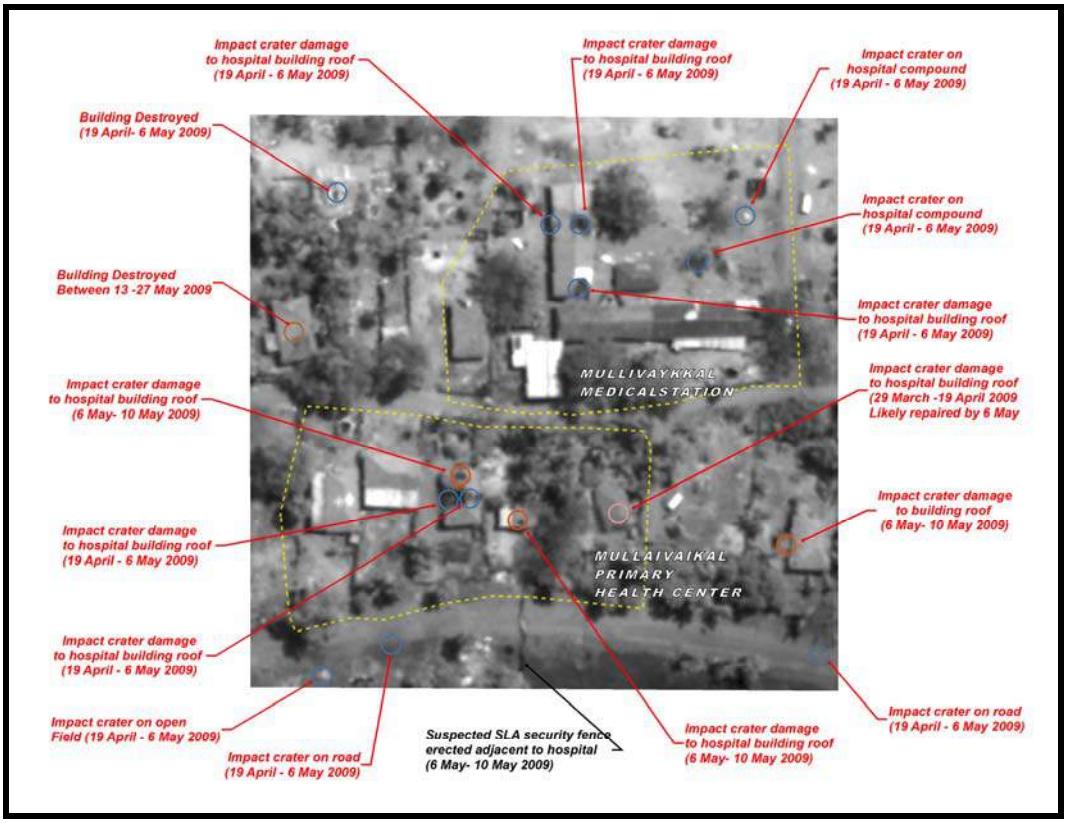


Image 3.6: Mullaivaikal Hospital (Second NFZ)

Annex 3

Artillery Battery adjustments from 5 February 2009 to 19 May 2009

Image 3.7

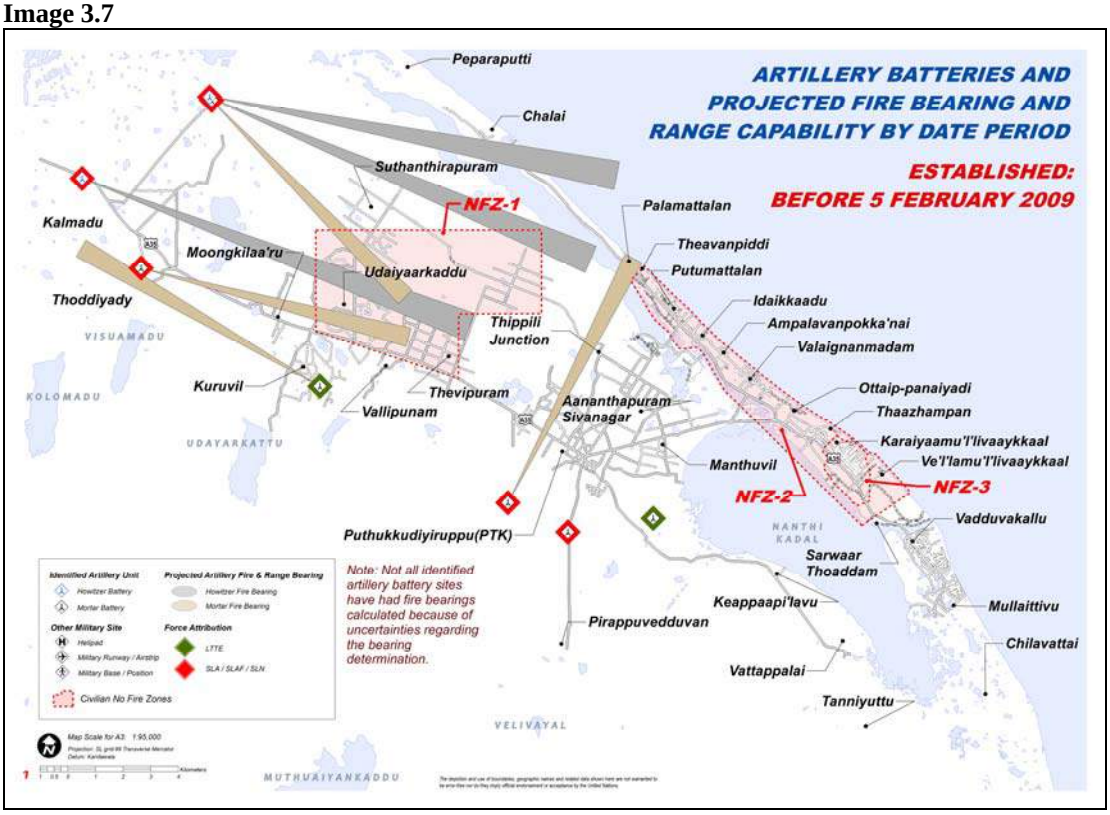
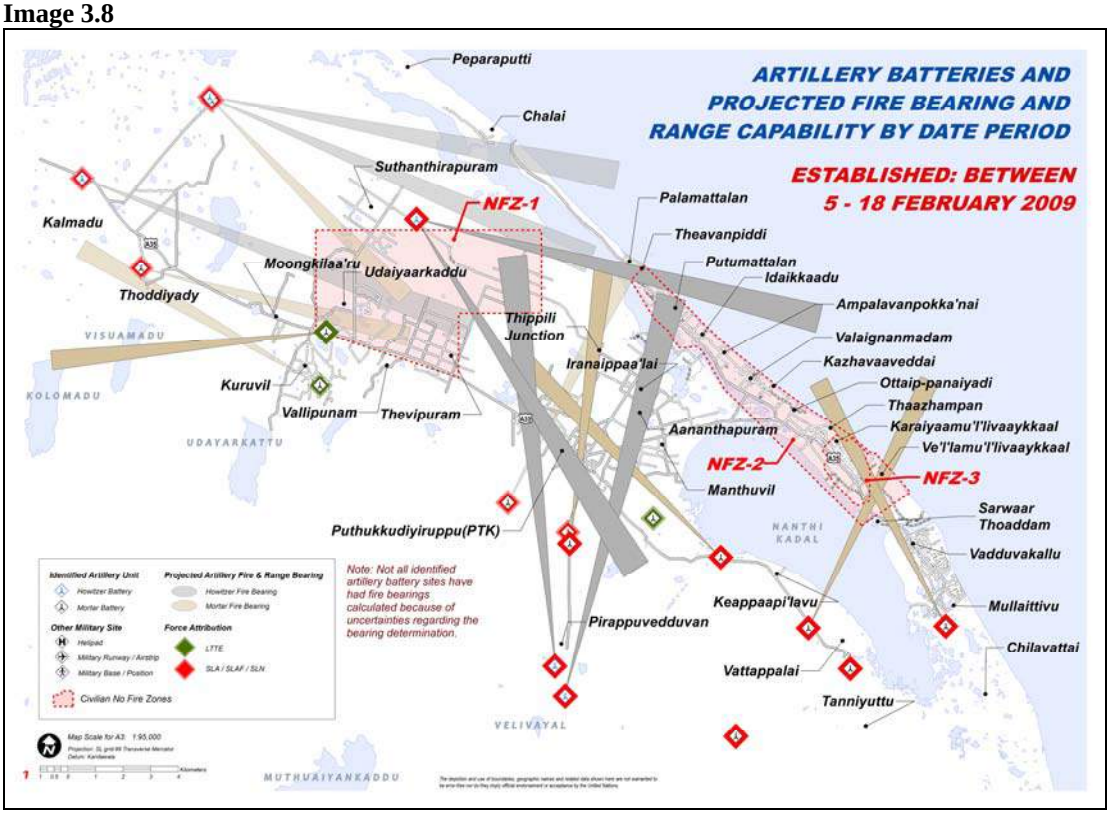


Image 3.8



Annex 3

Image 3.9

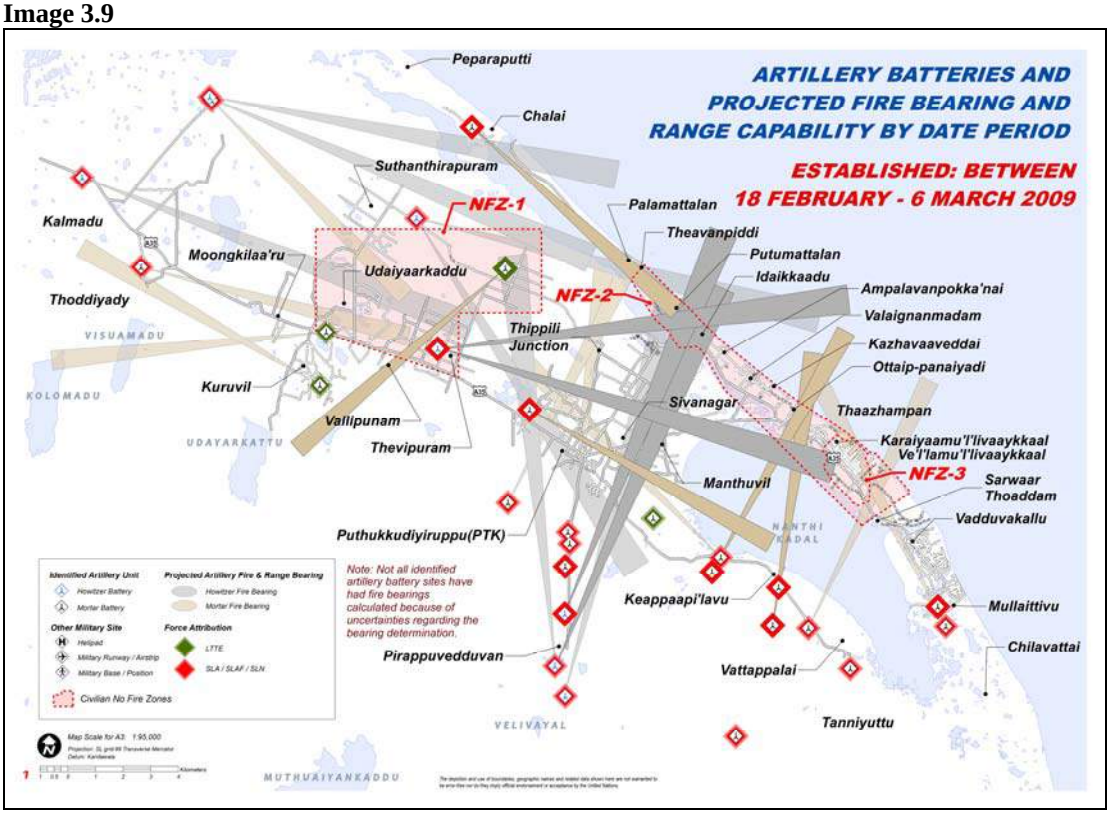
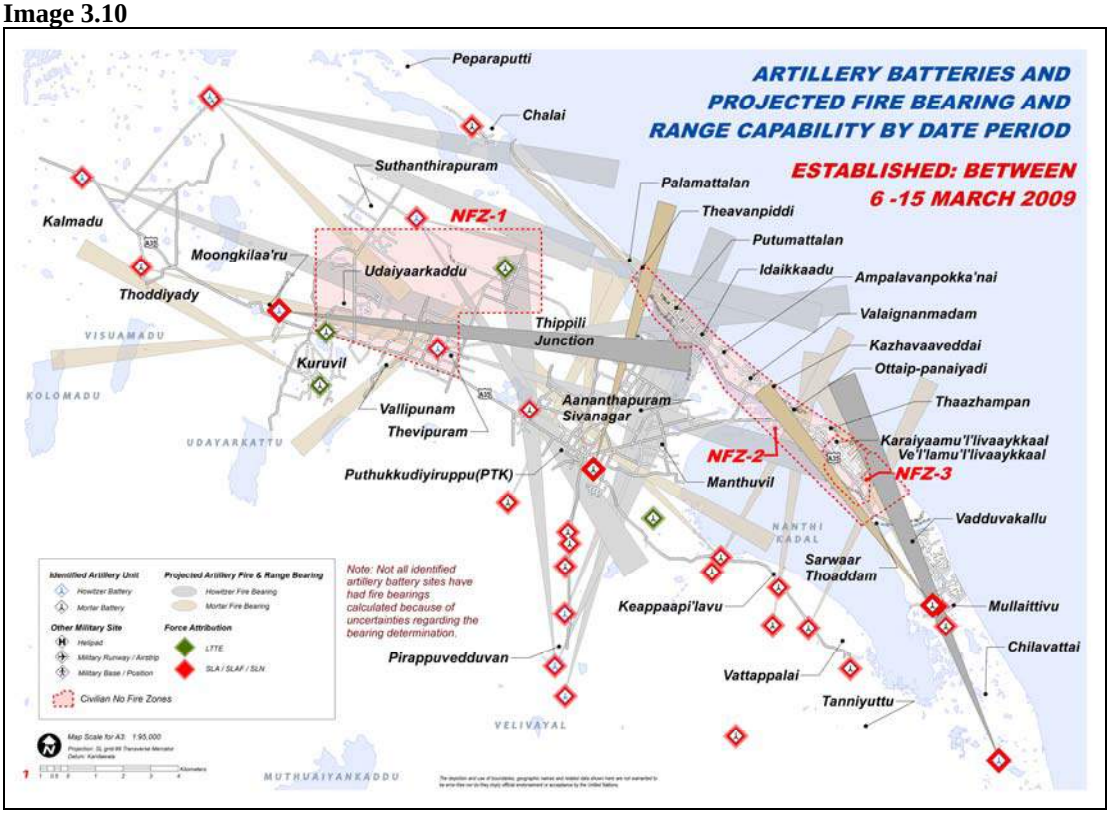


Image 3.10



Annex 3

Image 3.11

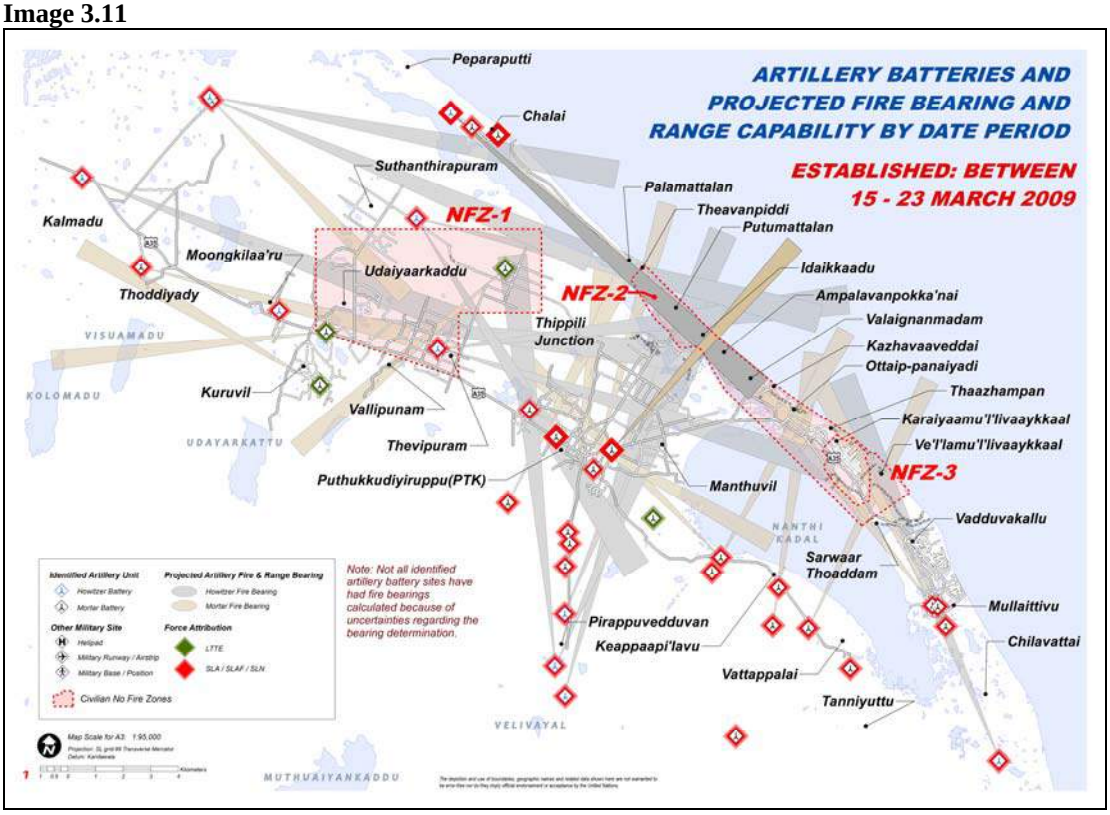
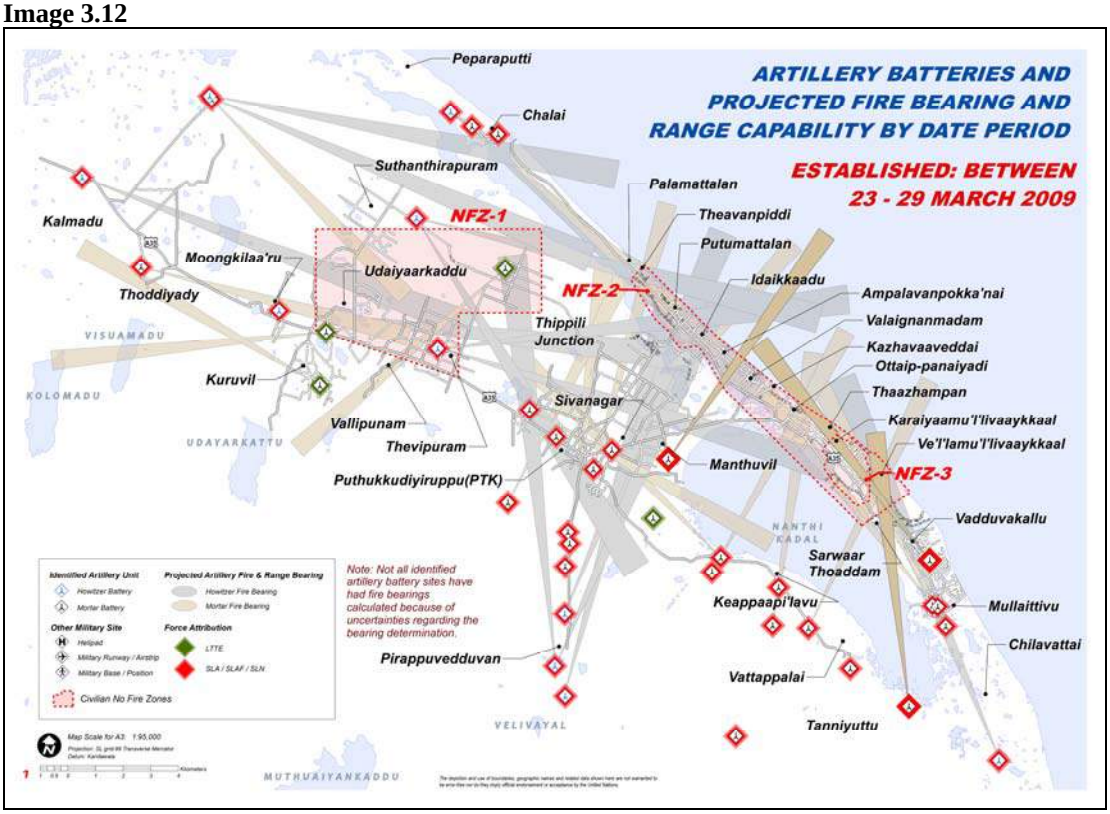


Image 3.12



Annex 3

Image 3.13

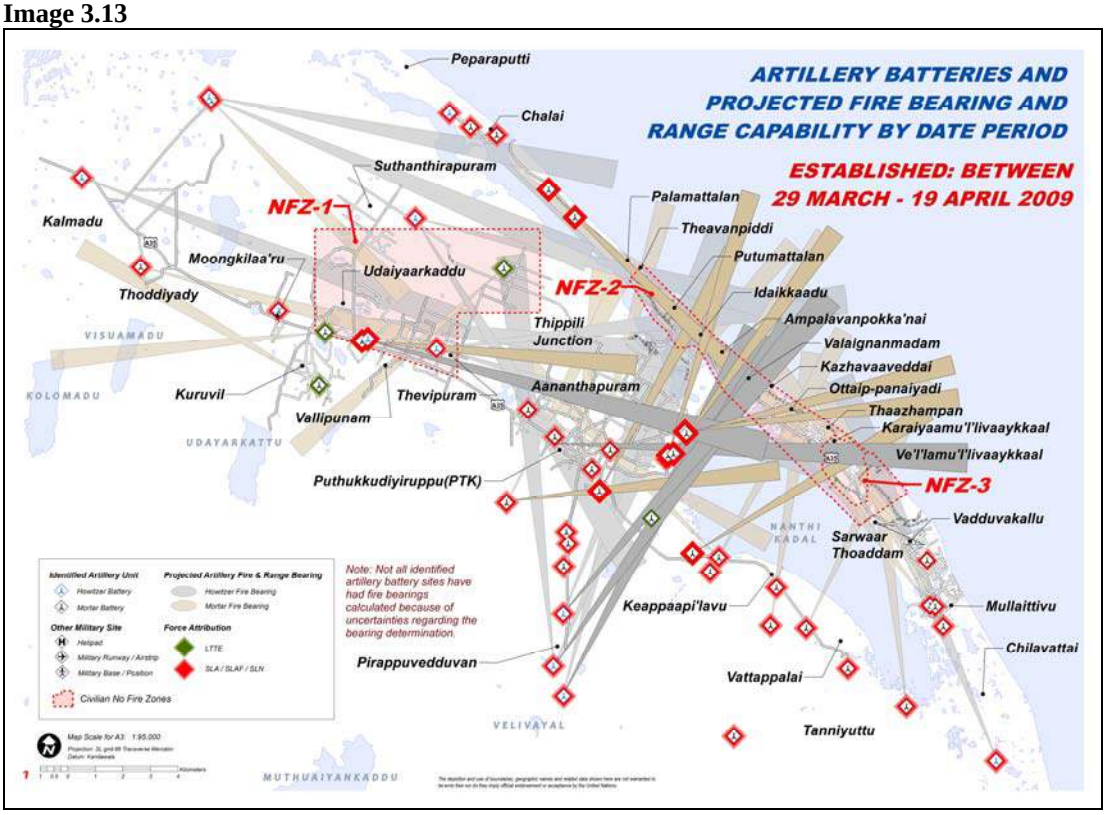
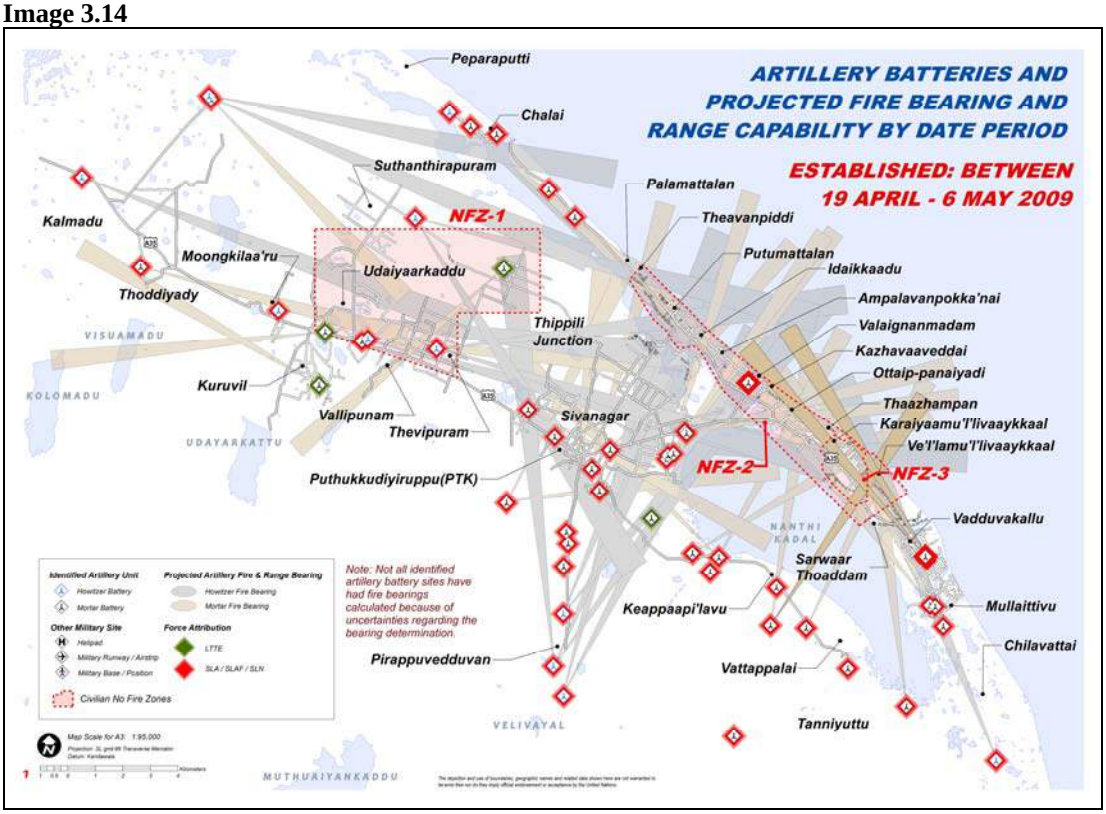


Image 3.14



Annex 3

Image 3.15

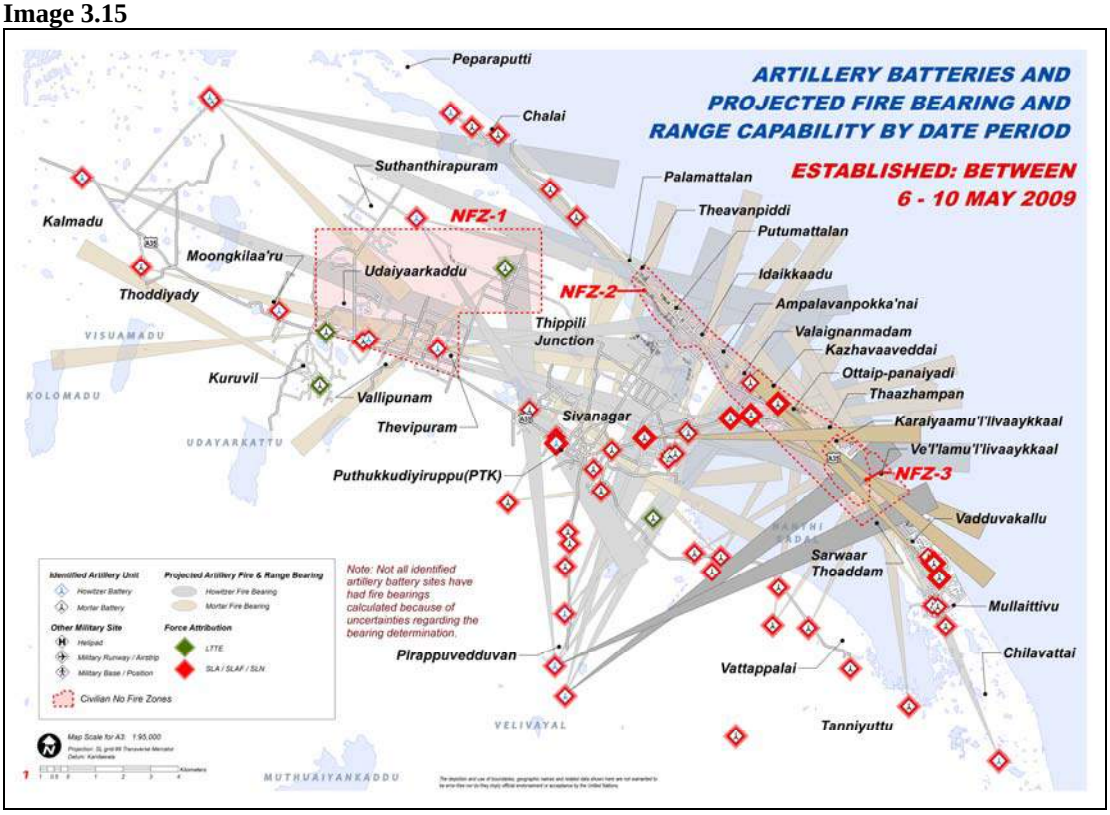
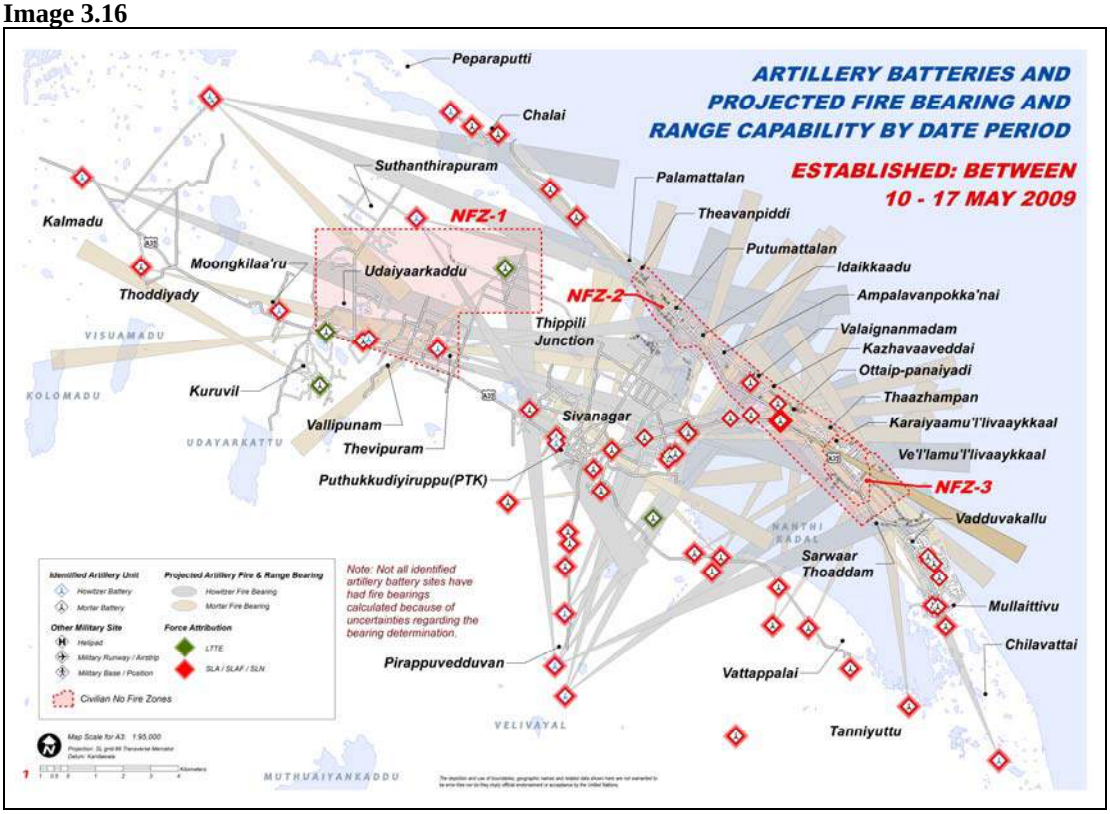
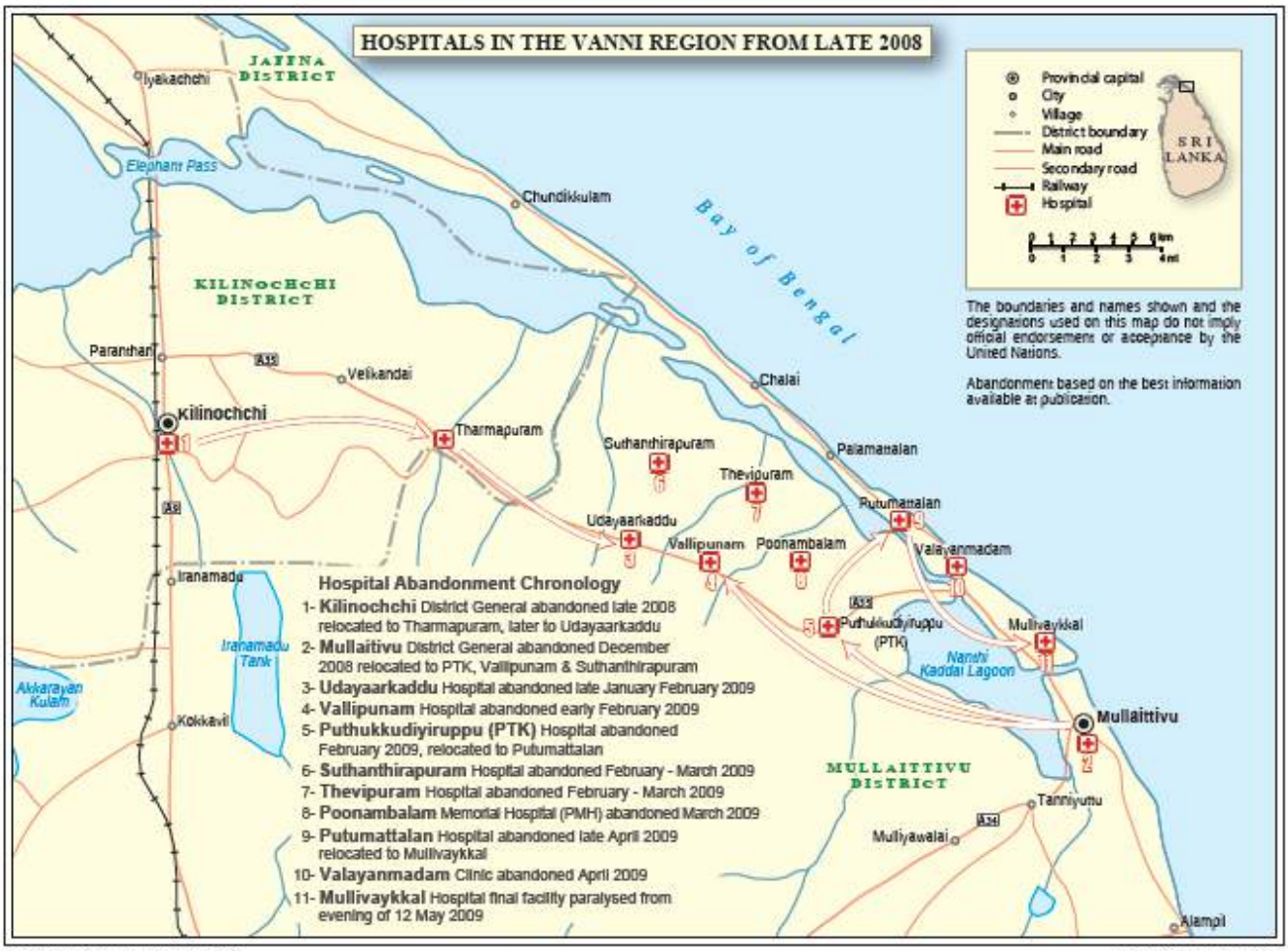


Image 3.16



Annex 4

Hospitals in the Vanni