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Preface

Four years ago the Tamil people in the island of Sri Lanka were subjected to “unimaginable atrocities. The government of Sri Lanka launched a military campaign in the NorthEast, the traditional homeland of the Tamil people. In the words of the report of the UN Secretary-General's Panel of Experts, “the campaign constituted persecution of the population of the Vanni.”

In this premeditated attack by the Sinhala political and military establishment, we believe more than 100,000 Tamils in the Vanni region were slaughtered. Human rights activists, most notably Gareth Evans, former Foreign Minister of Australia, warned the international community of the impending massacre. Evans even went to so far as to plead that the international community invoke the Responsibility to Protect (R2P) doctrine.

Through public and private diplomacy the Tamil diaspora urged the United Nations to save the Tamils. Despite our petitions and protests, the government of Sri Lanka committed one of the worst massacres of the 21st century. As the International Criminal Tribunal of Rwanda noted, “Genocidal intent can be inferred from the scale...of atrocities.” *Prosecutor v Akayesu ICTR-96-4-T* The recently released trophy execution photos of 12 year old Balachandran Prabakaran exposed again the cruelty and unadulterated ethnic hatred of the Sinhala establishment. We urge the international community to take into account the above in fashioning remedial justice to Tamils.

After nearly four years, the perpetrators of these heinous crimes have not yet been brought to justice. The report of the U.N. Secretary General's Panel of Experts noted “little confidence [for] justice in the existing political environment.” The 2012 U.N. Internal Review Report stated that no judicial environment conducive to domestic justice existed. Thus, it is imperative that there should be an international commission of inquiry to examine these serious crimes.

Tolerating impunity will damage the victims of abuse and set a bad precedent for others who may emulate the “Sri Lankan Solution” in their own countries. Needless to say, such emulation will threaten international peace and security.

Following the armed conflict, anti-Tamil, ethnic-based human rights violations escalated. Sinhala soldiers and the government that backs them are intruding upon Tamil civilian life, are changing the demography of the Tamil homeland, and are intent on destruction of the Tamil identity.

The international community has an obligation to ensure that human rights are respected. The sanctity and dignity of human beings are at stake, as well as the integrity of human rights institutions worldwide.



Visuvanathan Rudrakumaran
Prime Minister TGTE

TGTE is a new political concept. It is a new political formation based on the principles of nationhood, homeland and self-determination. The *raison d'être* for the TGTE is lack of political space inside the island of Sri Lanka for the Tamils to articulate and realize their political aspirations fully due to Constitutional impediments, racist political environment and military strangulation; and the coordination of diaspora political activities based on democratic principles and the rule of law. TGTE held international supervised elections in 12 countries. These elections were held to ensure that core believe of democracy be upheld within the TGTE and to demonstrate TGTE's belief and reliance upon democratic ideals. TGTE has a bicameral legislature and a Cabinet. Although an elected body, TGTE does not claim to be a government in exile. The Constitution of the TGTE mandates that it should realize its political objective through peaceful means.

Presently, in addition to the campaign for an international investigation, the TGTE is also campaigning for an International Protection Mechanism and the release of documents pertaining to Tamils prepared by the Office of the Special Advisor of the Secretary-General on the Prevention of Genocide. TGTE is also in the process of preparing the Freedom Charter incorporating the "freedom demands" of Tamils across the globe. TGTE believes that the referendum among the Tamils inside the island of Sri Lanka and the Tamil diaspora will contribute to the political resolution of the Tamil national conflict. So far, the human cost has reached 100,000 as it grows.

Executive Summary

As all eyes turn to Geneva in anticipation of a new UNHRC Resolution on Sri Lanka that will build upon the recommendations of Resolution 19/2 of March 2012, it is necessary to consider what impact the resolution has had and the content of any future action. If we look at the actions of the Sri Lankan Government since March 2012, we see that not even a weak resolution, asking the Government to implement the recommendations of its own commission, was able to induce the Government of Sri Lanka to keep their promises. Four years have passed since the end of war and until today no credible investigation into alleged war crimes or any improvement in the country's human rights record can be seen. Giving in to Sri Lanka's claims for more time to speed up the reconciliation work would prove fatal to those who continue to be affected by human rights violations.

Within this booklet we provide information and evidence on the indifference of the Sri Lankan Government towards the March 2012 resolution and any probable new resolution. This booklet also provides an overview of ongoing human rights violations against Tamils today. These ongoing violations aimed at Tamils as an ethnic group demonstrate that there is a systematic phenomenon of exclusion, physical and psychological attacks and persecution based solely on Tamil ethnicity.

The national action plan introduced by Sri Lanka in July 2012 in pursuance of Resolution 19/2 did not have a meaningful accountability mechanism, which is especially disturbing recalling that the actions recommended by the LLRC were significantly less far-reaching than what is proposed in the April 2011 report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka. The action plan did not suggest any solutions to the

impunity for human rights violations and failed to show the government's willingness to investigate alleged war crimes. More than six months after its publication, the promises of the action plan remain largely unfulfilled, while the political situation has changed for the worse.

A new UN Internal Review Report was published on November 14, 2012. The report says that between 70,000 to 100,000 Tamils may have been killed in the final months of the war (2008-09). This Report also highlighted the fact that the UN Secretary General's own legal team advised him that he has the authority under Article 99 to set up an International Commission of Inquiry on Sri Lanka.

The policy of Sinhalization by the Sri Lankan State through the use of strategic state-planned settlements, land, military intrusion, boundary changes and the renaming of villages has had a negative impact on the daily lives of Tamils. Sinhalization has crept its way into Tamil cultural events, religious life, economic activity, public sector recruitment and even the Sri Lankan education system.

The Sri Lanka State systematically favors Sinhalese people when it comes to public sector employment, especially when it concerns positions of power like those of Provincial Governor and Government Agent. Since the end of the war, examples of such appointments are most prominent in the country's Northern Province, where the State has appointed people who had been high level military officers to such positions.

A large number of Tamils, probably in the thousands, continue to be held in secret detention centers under the draconian Prevention of Terrorism Act, some for over 15 years without proper charge or trial. Even though the prevention of Terrorism Act (PTA) on its face is ethnically neutral, its effect is Tamil ethnic centered, since Tamils are almost exclusively targeted. The Government says that the Prevention of Terrorism Act (PTA) is not being misused. The students arrested at the Jaffna University demonstration in November 2012 have just been released having been held for two months under PTA powers, despite the fact that they have not committed any crime. This is part of the campaign of harassment and intimidation which has become a part of everyday life for people in the north and east of Sri Lanka. The purpose seems to keep Tamils fearful and suppressed.

The targeting and attacking of Tamils during the war and afterwards, continued militarization, Sinhalization, colonization of lands in what are areas of historical habitation of the Tamils (a planned change of demography), rape of Tamil women, the torture and rape of Tamils in detention, the continuing disappearances and abductions of Tamil civilians, the obstructions to people's livelihood, the destruction of places of worship in the North and East of the island, cumulatively seem to indicate that the GOSL is engaged in a form of systematic structural genocide against the Tamil Civilians of Sri Lanka.

Sri Lanka by rejecting through its actions any credible plan to implement human rights protection and ensure accountability has continuously proven that it is not ready to listen to the sane advice given by other UN members. We emphasize that without an International Independent Investigation in Sri Lanka there will be no justice for the Tamil people.

UN Human Rights Council: 2012 Resolution on Sri Lanka

On March 22, 2012, the UN Human Rights Council at its 19th session adopted Resolution 19/2 co-sponsored by the USA and 40 other countries on the human rights situation in Sri Lanka. This Resolution was adopted by 24 voting in favor, 15 against and 8 abstentions.

In this Resolution, the Council 'noted with concern that the report of the Lessons Learnt and Reconciliation Commission [LLRC] of Sri Lanka did not adequately address serious allegations of violations of international law.

- 1) It called on the Government to take all necessary steps to fulfill its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans.
- 2) The Council further requested the Government to present a comprehensive action plan detailing the steps implementing the recommendations made in the Commission's report and to address alleged violations of international law'.¹

The Resolution also called on Sri Lanka to credibly investigate widespread allegations extra-judicial killings and enforced disappearances, demilitarize the north of Sri Lanka, implement impartial land dispute resolution mechanisms, re-evaluate detention policies, strengthen formerly independent civil institutions, reach a political settlement on the devolution of power to the provinces, promote and protect the right of freedom of expression for all and enact rule of law reforms. The Resolution not only calls on Sri Lanka to implement the recommendations of the LLRC, but also says that the LLRC report does not adequately address serious allegations of violations of international law. A detailed action plan is expected showing the measures taken and planned related to the resolution. According to the wording of the Resolution, the Office of the High Commissioner is instructed to provide, advice and technical assistance on implementing mentioned steps. The Office of the High Commissioner is asked to present a report on the provision of such assistance to the Human Rights Council at its twenty-second session.²

Take note that the basis for the Resolution was the report and recommendations of the LLRC. ³This Commission and its report lacked independence and in most areas only considered the materials the government chose to place before it.⁴

Thousands of witnesses did not come forward because no witness protection was provided. There is no indication that the LLRC had physical access to the final war zone. Even though the LLRC claimed to have considered the April 2011 report of the UN

¹ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12001&LangID=E>

² The full text of the resolution can be found on the United Nations Human Rights website:

[http://daccess-dds-](http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/126/71/PDF/G1212671.pdf?OpenElement)

[ny.un.org/doc/RESOLUTION/GEN/G12/126/71/PDF/G1212671.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/126/71/PDF/G1212671.pdf?OpenElement)

³ The full report can be found here:

<http://slembassyusa.org/downloads/LLRC-REPORT.pdf>

⁴ <http://www.amnesty.org/en/news-and-updates/report/sri-lanka-inquiry-armed-conflict-fundamentally-flawed-2011-09-07>

Secretary-General's panel of experts⁵, it did not engage the panel's legal or factual analysis in any meaningful way. Throughout the report it seems the commission spoke the same language as the Government of Sri Lanka regarding the civilians and hospitals attacked in the No Fire Zones of the Government and other atrocities committed during the final stages of war.⁶



Despite the evidence against the independence and neutrality of the the LLRC, the Human Rights Council decided base the Resolution on an internal mechanism and passed it.

The Resolution passed at the Human Rights Council session in March 2012 against the Sri Lankan Government was rightly criticized by civil society in the island, activists in Tamil Nadu, the TGTE and others for being grossly inadequate.

Nevertheless, looking into the actions of the Sri Lankan Government since March 2012 shows that not even a weak resolution, which asked the Government to implement the recommendations of its own commission, was able to induce the Government of Sri Lanka to keep their promises. It was never a matter of more time needed to improve the situation in the country, as the Sri Lankan Government likes to tell the International Community. Four years have passed since the end of war and until today no credible investigation into alleged war crimes or any improvement in the country's human rights record can be seen.

Looking into what the Resolution asked for and what the situation in the country is now will only show that a home-grown solution as advertised by the Sri Lankan Government is not the answer to the charges of Genocide, Crimes against Humanity and War Crimes.

Without an International Independent Investigation in Sri Lanka there will not be justice for the Tamil people.

The following pages will not only describe the indifferent attitude of the Sri Lankan Government towards the Resolution, but also give an overview of ongoing human rights violations against Tamils today. These ongoing violations aimed at Tamils as an ethnic group demonstrate that there is a systematic phenomenon of exclusion, physical and psychological attacks and persecution based solely on Tamil ethnicity.

⁵ See the Report of the Secretary-Generals's Panel of Experts on Accountability in Sri Lanka, http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

⁶Criticism on the LLRC and their conclusion has been released by all relevant NGOs. International Crisis Group stated inconsistencies in the commission's work and findings in their statement: <http://www.crisisgroup.org/en/publication-type/media-releases/2011/asia/statement-on-the-report-of-sri-lanka-s-lessons-learnt-and-reconciliation-commission.aspx>

Excerpts of speeches pertaining to the 2012 Resolution from select countries⁷

USA: The USA, which introduced the resolution in the Human Rights Council, said that even though 3 years had passed since the end of the conflict in Sri Lanka little action had been taken to implement even the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) which had been appointed by the GOSL.

Therefore, the US hoped that the Human Rights Council would pass the moderate and balanced resolution in order to encourage and assist Sri Lanka to implement the recommendations made by its own LLRC and to achieve meaningful accountability upon which reconciliation could be built.



India: Urged that Sri Lanka takes forward the measures for accountability and to promote human rights that it has committed to. India subscribed to the general message of the resolution, but any assistance should be taken in consultation with the Sri Lankan Government.

European Union: Belgium, which spoke at the Council on behalf of the European Union expressed full support for the resolution in order to promote reconciliation and accountability in Sri Lanka. It emphasized that genuine reconciliation among all groups and ethnicities was essential, and that required justice and accountability for past events.

The EU went even further and noted with regret that the questions raised in the UN Panel of Experts Report had not been reflected in the LLRC report. The EU also expressed strong concern over continued reports of intimidation and reprisals against civil society representatives in Sri Lanka as well as in Geneva.

China: China speaking before the vote said that it would vote against the resolution because it condemned any action to interfere into the national reconciliation process and internal affairs of Sri Lanka. China said this Resolution was against the UN Charter and international norms.

Russia: The Russian Federation remained firm in its position that country situations could be considered in the Council only with the agreement of the State concerned and attempts to dictate to a sovereign State how policy should be carried out was unacceptable. The Russian Federation would vote against the resolution and encouraged other States to do the same.

Uruguay: Uruguay, said that it would vote in favour of the resolution, as it was balanced and constructive. Uruguay appreciated the efforts of the Colombo Government, including the priorities for human rights laid out in the Action Plan and measures contained therein. The Council had cooperation instruments and tools for achieving these objectives, working

⁷ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12001&LangID=E>

together with the authorities. Uruguay urged Sri Lanka to investigate human rights violations, including reprisals against political opponents, human rights defenders and reports of enforced disappearances.

Nigeria: Nigeria, said that it had decided to vote for the resolution, not to censure Sri Lanka but to encourage the process of reconciliation in the country. Nigeria had fought a civil war and the wounds of war had healed through an open and inclusive reconciliation process. Nigeria was ready to assist Sri Lanka and wished the Government and the Sri Lankan people every success in the reconciliation process.

Mexico: Mexico, said that it would vote in favour of the draft resolution because the text was balanced, fair and constructive. Mexico said the Council was a cooperative, coordinating body and had the competence and responsibility to act not only where Sri Lanka was concerned but also in any other country where human rights violations had occurred.

Excerpts of the speech from Sri Lanka at the March 2012 UNHRC

Sri Lanka, speaking at the Council session thanked China and Cuba for speaking in their support.

Sri Lanka called the draft resolution introduced by the US misconceived, unwarranted and ill timed and that it would have adverse ramifications for not only Sri Lanka but also to other countries. Sri Lanka said that this resolution would be counter-productive and that it only served to endure that no domestic process would be able to deliver on its mandate.

Sri Lanka also seemed to accuse those who sponsored the Resolution as supporters of the Liberation Tigers of Tamil Eelam (LTTE), even though they had proscribed the organization.

Sri Lanka's Actions/Inactions Pertaining to Accountability in the HRC Resolution from March 2012 to February 2013

On July 26, 2012, Sri Lanka published a National Plan of Action as a gesture to the international community, that it is moving forward with addressing human rights concerns called for in the UNHRC March 2012 Session. However, this plan is not comprehensive, particularly on issues relating to deaths of civilians, arbitrary detention and enforced disappearance. Where investigations are envisioned at all, responsibility has been given to the army and police, the very institutions implicated in these serious human rights violations in the first place.⁸

⁸ <http://www.amnesty.org/en/for-media/press-releases/sri-lanka-s-empty-promises-and-denial-rights-crisis-exposed-un-2012-11-01>

The national action plan did not have a meaningful accountability mechanism, which is especially disturbing recalling that the actions recommended by the LLRC were significantly less far-reaching than what is proposed in the April 2011 report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka. The action plan did not suggest any solutions to the impunity for human rights violations and failed to show the government's willingness to investigate alleged war crimes. More than six months after its



publication, the promises of the action plan remain largely unfulfilled, while the political situation has changed for the worse.⁹

Sri Lanka has not made any progress in steps towards accountability, a fact that several reports by the UN and international NGOs and members of civil society have highlighted.

A recent report by the Sri Lankan Army, **which investigated itself**, found that no violation of international law was committed by the Sri Lankan Armed Forces and any act which led to civilian deaths had to be laid at the doorstep of the LTTE.¹⁰ The proceedings of this Army inquiry was not transparent, were done in secrecy, and the findings come amidst enough civilian witnesses available to give evidence to prove otherwise, including some who had given evidence before the LLRC.

The government has conducted no credible investigations into allegations of war crimes, disappearances or other serious human rights violations.¹¹

The Government claims that there are no extrajudicial killings in Sri Lanka and that there is no evidence that the Channel 4 footage of executions is genuine. This footage has been authenticated by numerous independent experts including the UN Special Rapporteur on Extrajudicial Killings, Christof Heyns.¹²

During a riot at Vavuniya Prison, in June 2012, excessive force was used by State forces and prisoners were subjected to torture, resulting in the death of two prisoners. During another riot in Welikada Prison, in November 2012, which resulted from a raid on the prison by Special Task Force officers, 27 prisoners were reportedly killed and 43 wounded with allegations that a number were executed. The Government states that police

⁹ International Crisis Group came to this conclusion in its recently published report: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/243-sri-lankas-authoritarian-turn-the-need-for-international-action.pdf>

¹⁰ <http://dbsjeyaraj.com/dbsj/archives/16752>

¹¹ See report of International Crisis Group why an International Investigation is necessary in Sri Lanka <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/243-sri-lankas-authoritarian-turn-the-need-for-international-action.pdf>

¹² See <http://blog.srilankacampaign.org/2013/02/the-governments-response-to-un-high.html> and Comments by the Sri Lankan Government to the Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka, Paragraphs 6-8

investigations into the two cases are currently in progress, but no further information is available.¹³

The Government also claims that concerns about disappearances in Sri Lanka are without basis. There is a disappearance every five days reports 'Groundviews.' **Twenty one disappearances (including attempted abductions) have been reported by Sri Lanka's English media in the 100 days between April 1st and July 9th 2012. This brings the total number of disappearances reported from 1st January to 9th July to 57.**¹⁴

Sri Lanka has more outstanding cases before the UN Working Group on Disappearances than any country except Iraq. The Working Group has been asking to visit for over six years and Sri Lanka has not accepted the request.¹⁵

UN's actions / inactions pertaining to the HRC Resolution from March 2012 to February 2013.

1. Sri Lanka and the Universal Periodic Review (UPR) of November 2012

The first UPR submission of Sri Lanka was made in 2008. Subsequently after four years Sri Lanka's turn for reviewing its human rights record came this November 2012. India, Benin and Spain reviewed the performance of Sri Lanka over the past four years.

The leakage of the Charles Petrie report commissioned by the UN to review the failure of the UN in protecting the civilians took centre stage and overshadowed the coverage of the UPR. During its first review in 2008 Sri Lanka in all got 95 recommendations from 39 countries. In all it accepted 52 recommendations to be implemented over a period of 4 years and rejected 25 with no clear position on 8.



The very next year Sri Lanka set out on, in the words of the UNSG Panel, a "... campaign [that] constituted persecution of the population of

the Vanni," "which ended up in the killing of more than 100,000 Tamils. The then mute international community has woken up to see the cruel treatment of the Tamils in the 'War without Witness' with a series of expose's in the international media. This new awareness

¹³ The incidents are also explicitly mentioned in the Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka.: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38_en.pdf

¹⁴ See <http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/>

¹⁵ See <http://blog.srilankacampaign.org/2013/02/the-governments-response-to-un-high.html>

is reflected in the participation of 99 countries in the UPR of Sri Lanka. 29 NGOs and INGOs made their submissions along with 17 joint submissions by individuals.

An overwhelming 210 concrete recommendations were made by these 99 countries. Sri Lanka accepted 110 of those recommendations and rejected an overwhelming 100 recommendations, nearly half the recommendations made. This is the highest rejection by a member state in the history of the UPR. In all, Sri Lanka rejected the recommendations of 45 countries. Some of the most concrete suggestions which would have gone a long way in Sri Lanka mending fences with the Tamils, Muslims and the international community, that were rejected are :

- Accede to the Rome Statute of the International Criminal Court (ICC) and draft a law on cooperation between the State and the Court
- Accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Sign the International Convention for the Protection of All Persons from Enforced Disappearance
- Fully incorporate the Convention on the Elimination of Discrimination against Women into its domestic system
- Abolish the death penalty
- Adopt the draft bill on witness and victim protection
- Adopt legislation on appointments that would ensure the independence of the Human Rights Commission
- Fully implement the recommendations of the LLRC, in particular steps to ensure independent and effective investigations into all allegations of serious human rights violations, in the context of Sri Lanka's civil war and its aftermath
- USA sought removal of the military from civilian functions, creation of mechanisms to address cases of the missing and detained, issuance of death certificates, land reform; devolution of power; and disarming paramilitaries
- Expedite implementation of reconciliation measures in the North. This would include removing oversight of humanitarian and NGO activities from the purview of Ministry of Defense to a civilian body, reducing the intrusiveness of military presence on civilian life in the North and setting a specific date for free and fair Northern Provincial Council elections
- Adopt a national policy to provide human rights defenders with protection and ensure investigation and punishment of threats or attacks against them

- Fully cooperate with United Nations Human Rights mechanisms.
- Create a reliable investigation commission consisting of professional and independent investigators to identify, arrest and prosecute the perpetrators of the Muttur murders
- Publish the names and places of detention of all the imprisoned persons



- Take action to reduce and eliminate all cases of abuse, torture or mistreatment by police and security forces

- End impunity for human rights violations and fulfill legal obligations regarding accountability

- Strengthen judicial independence by ending government interference with the

judicial process, protecting members of the judiciary from attacks and restoring a fair, independent and transparent mechanism

- Grant due process rights to all detainees held in both military and police facilities, including those held in administrative detention; disclose all unofficial detention sites; and facilitate effective and independent monitoring of detainees
- Allow the International Committee of the Red Cross unrestricted access to detention centers
- Undertake measures that would allow citizens to have access to public information, in particular on alleged violations of human rights
- Ensure that all human rights defenders, including individuals cooperating with UN HR mechanisms, are protected effectively from unjustified criminalization, harassment or intimidation and can perform freely their legitimate duties.

These recommendations, if accepted, would have helped Sri Lanka in addressing issues of War crimes, Crimes against humanity and Genocide.

Sri Lanka is a tiny island, so why should more than half the member nations of the UN make these recommendations? The participation of so many countries clearly shows that Sri Lanka is on the wrong path. Already a resolution against Sri Lanka was passed in March 2012 to mend its ways in treating the Tamils. The UPR process is to help countries to correct their past mistakes and morally accept responsibility. It is also to usher in a new beginning through democratic processes and plan a better future.

Sri Lanka by rejecting these concrete suggestions has once again proved that it is not ready to listen to the sane advice given by other UN members. The international community needs to take serious note of this and must work towards a just solution to the Tamil problems.

Apart from the UPR, a new UN Internal Review Report was published on November 14, 2012. Popularly known as the 'Petrie Report', this report highlighted the failures of the UN in responding to the crisis during the last phase of the war in 2008-09.

2. The UN Internal Review Report on Sri Lanka (November 2012)

The Petrie Report says that between 70,000 to 100,000 Tamils may have been killed in the final months of the war. This Report also highlighted the fact that the UN Secretary General's own legal team advised him that he has the authority under Article 99 to set up an International Commission of Inquiry on Sri Lanka.

"The panel's report concludes that events in Sri Lanka **mark a grave failure of the U.N. to adequately respond to early warnings**, and to the evolving situation during the final stages of the conflict and its aftermath, to the detriment of hundreds of thousands of civilians and in contradiction with the principles and responsibilities of the U.N."

The UN Internal Review noted the Sri Lankan Government's obstructions and manipulations of UN Personnel and the exploitation of disagreement among UN Principals. The Review Panel in its report stated *inter alia*:

"Throughout the final stages, the UN issued many public statements and reports accusing the LTTE of committing human rights and international humanitarian law violations, and mentioning thousands of civilians killed. But, with the above exception, the UN almost completely omitted to explicitly mention Government responsibility for violations of international law. 36 UN officials said they did not want to prejudice humanitarian access by criticizing the Government – and maintained this position even when access within the Wanni was almost non-existent."

"When the RC [Resident Coordinator] and UNCT [United Nations Country Team] member did a briefing to the diplomatic corps in Colombo they did not explicitly address government responsibility for the situation or shelling.

And when describing the lack of food and medicine, the briefing did not explain that most immediate cause for the severe shortfall had been government obstruction to the delivery including its artillery shelling."

"Issues continue to have been defined as political not because they had a political aspect but rather because UN action to address them would have provoked criticism from the Government thus raising concern over who was killing, how many civilians were being killed off, how many civilians were actually in the Wanni, were all at various time described as political issues."

“UN did not confront the Government directly with the fact that obstructing assistance was counter to its responsibilities under international law.”

The Review Panel stated: “The UN’s failure to present the full circumstances of the relocation to member states or the general public and the government did not face any significant criticism for its actions. The expectation that the UN would not confront it on



the issues may in turn have influenced Government actions.” The Panel continued to state that, “given the UN’s approach towards the Government regarding its conduct of the conflict over the previous few months, and given the lack of clear support for UN action from the member states in war’s final days the UN was not well positioned to exercise leverage with the government on this issue.”

It is also stated in the Review Panel Report that:

“The Special Adviser on the Prevention of Genocide, who also has an international Human Rights and humanitarian law mandate, raised concern with the Government and the Secretary-General over the situation but favoured quiet diplomacy and told the Government he would “not speak out.” When his office later tried to issue a public statement this was not supported by UNHQ.”

It is not clear from the above whether the conduct of Ambassador Francis Deng was an act of “quiet diplomacy” or appeasement. Presuming “quiet diplomacy,” the death of 100,000 Tamils, clearly demonstrates that “quiet diplomacy” did not save lives. **Thus it is time for public, robust diplomacy.** We are launching a signature campaign requesting Ambassador Dieng to make public the report/statement on Tamil Genocide in the island of Sri Lanka. In this regard, TGTE is launching a 3 months signature campaign coinciding with the March 2013 UNHRC Session.

It is stated in the Review Panel Report that “according to the UN data most casualties were cause by Government fire.” It also states:

“When the UN began to collate information through the COG, reports pointed to the large majority of civilian killings as being the result of Government shelling and aerial bombardment, with a smaller proportion of killings resulting from the LTTE actions.”

“The UN repeatedly condemned the LTTE for serious international human rights and humanitarian law violations but largely avoided mention of the Government’s responsibility.”

“Numerous UN communications said that civilians were being killed in artillery shelling, but they failed to mention that reports most often indicated the shelling in question was from Government forces.”

“Some UN staff in Colombo, expressed to the UNCT leadership they’re dismay that the UN was placing primary emphasis on LTTE responsibility when the facts suggested otherwise.”

Challenging the argument of the Sri Lankan Government and some sections of the international community that development would bring peace and stability, the Review Panel stated:

“It is nevertheless clear that there can be no lasting peace and stability without dealing with the most serious past violations and without a political response to the aspirations of Sri Lanka’s communities. The UN cannot fulfill its post-conflict and development responsibilities in Sri Lanka without addressing these fundamental concerns; and the UN should continue to support implementation of the recommendations of the Panel of Experts on Accountability.”

While the Review Panel acknowledged the Secretary General’s sustained personal diplomacy following May 2009, it placed the responsibility for lack of action during the war on the absence of “any form of central coordination and common sense purpose or responsibility” in the UN. As the chief executive officer, the Secretary General should be held accountable for this lack of coordination to a great degree. Mere acknowledgement of the failings or reports of reform will not do justice to the tens of thousands of innocent Tamil victims. The Secretary General should find a means to provide remedial justice to the victims. As his own legal advisor suggested, we call upon him to invoke his power in Article 99 of the UN charter and establish an international investigation. He need not wait for the exhaustion of domestic remedies. As the Review Panel has stated, “the LLRC was fundamentally constrained by a mandate that did not focus on actual accountability and by the lack of an enabling environment for judicial follow up.” It is for the Secretary General to provide the leadership and galvanize international justice. We also implore him, as the Review Panel has suggested, to bring the issue to the Security Council.



In the Review Panel Report, UN objectives in 2009 were: “achieving the political solution to the conflict; nominating a special envoy; establishing a Human Rights field presence; and ensuring accountability for past Human Rights Abuses and violations of International Humanitarian Laws.” No progress has been made since 2009, thus we urge the Secretary General to implement those objectives.

The UN Human Rights Council has yet to date not considered the UN Secretary General’s Panel of Experts Report (April 2011), which was forwarded by the Secretary General to the Council in September 2011.

Neither has the UN Secretary General gone ahead with advice granted to him regarding appointing a Commission of Inquiry (COI) (using his powers under Article 99 of the UN Charter) to consider alleged violations of international law during the war in Sri Lanka. This recommendation was made both by the UN Panel of Experts¹⁶ and the UN Internal Review Panel.¹⁷

3. The UN High Commission For Human Rights

In pursuance of the recommendations in the 2012 UNHRC Resolution, in September 2012, the UN High Commissioner for Human Rights sent a technical team to assess the progress of implementing the recommendations in the LLRC by the Government of Sri Lanka (GOSL). The Team met with members of the Government and the Civil Society. It was determined that conditions were not appropriate for a visit by the UNHCHR herself at that time.

The Office of the High Commissioner for Human Rights released its report in February 2013¹⁸, in which it categorically stated that not much progress has been made in Sri Lanka in terms of reconciliation or addressing issues of accountability and that an **independent international inquiry** should be pursued.

Even though continuous calls have been made by internal UN bodies towards an independent international inquiry in the form of a Commission of Inquiry, little action has been taken by the Secretary General, the Security Council or the UNHRC to establish such a COI. And this is in the midst of continuing revelations of fresh evidence against the GOSL.¹⁹

Though it was believed that UN High Commissioner for Human Rights Navanethem Pillay would visit Sri Lanka before the 22nd Session of the UNHRC, it did not take place. Nor has any positive signal been given by Sri Lanka towards the pending requests it has from some of her Special Rapporteurs, including the Special Rapporteur on Extrajudicial Killings and the Special Rapporteur on Torture.

¹⁶ Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (2011), para. 444.

¹⁷ Report of the Secretary-General’s Internal Review Panel on United Nations Action in Sri Lanka (2012), para. 38

¹⁸ <http://reliefweb.int/report/sri-lanka/report-office-united-nations-high-commissioner-human-rights-advice-and-technical>

¹⁹ The most recent of these being photographs publicized by UK’s Channel 4 which shows the LTTE Leader’s 12 year old son, Balachandran alive in custody and then of him dead having been shot.

Actions / inactions pertaining to the HRC resolution by the International Community from March 2012 to February 2013

While the US and several other countries are planning to bring another resolution before the March 2013 UNHRC Session, there is little that they have done in the face of massive human rights violations by the GOSL other than 'expressing concern.'

The International Community could have taken note of the Petrie report, which admitted the failures of the UN in Sri Lanka, but there seems to have been no attempt to do so. The governments of these countries have also failed to take note that what is happening in Sri Lanka currently is a form of systematic structural genocide.

The Commonwealth has still to declare that it will NOT host the Commonwealth Heads of Governments Meeting (CHOGM) in Sri Lanka. Plans are going ahead in full swing in Sri Lanka to host that meeting later this year. Only the Canadian Prime Minister has taken note of the serious human rights situation in Sri Lanka and warned that he will not attend the CHOGM unless there is progress in human rights protection in the country.

No other leader seems to have followed his example. The Commonwealth should take note of all the requests made to it to move the CHOGM to an alternate location because of past and continuing abuses committed against Tamils in that island.

Other developments /disclosures between March 2012 and February 2013

There has been more evidence becoming freely available now of the atrocities that happened during the last phase of the war. A new UK Channel 4 documentary titled 'No Fire Zone,' the UN High Commissioner for Human Rights report to UNHRC's 2013 Session, and reports by several international organizations, including the recent Human Rights Watch report on rape of Tamil political prisoners have demonstrated the continuing abuses against Tamil civilians and lack of steps taken by the GOSL to hold those accountable for the mass killing of Tamils and rape of Tamil women by Sri Lankan security forces.

The new Channel 4 documentary demonstrate the shelling and deliberate attacking of hospitals and Tamil civilians, witness accounts have appeared in the media (in newspapers as well as in books) and some witnesses have even attested to the deliberate targeting and use of Phosphorous bombs before the LLRC, which had unfortunately dismissed such claims. This wealth of information should be used for any future international independent investigation that is set up.

Ethnic Centered Human Rights violations from March 2012 to February 2013

The U.S. State Department Report for the year of 2010, which was published on April 8, 2011, states *inter alia*:

“... a disproportionate number of victims of human rights violations were Tamils.”

The majority of crimes against Tamils are committed on a systematic basis, as the few examples in the following will show.

Ever since independence in 1948, government policies have systematically violated the social, economic and cultural rights of Tamils in Sri Lanka. The Sinhalization of the traditionally Tamil areas was enforced through state-sponsored colonization of the North-East by Sinhalese settlers, frequently accompanied by forceful eviction of Tamils, and through a discriminatory language, education and recruitment policy. The Tamils have first sought to redress the long-standing systemic violation of social, economic and cultural rights by peaceful means. However, promises made by successive governments were broken, and regular, increasingly bloodier pogroms were carried out against the Tamils. Having exhausted all peaceful means and fearing for their survival as a people, arms were taken up in the aftermath of the anti-Tamil pogrom of 1983.²⁰

Looking at the reported and known facts, the denial of political rights and human rights has a clear ethnic background and an intention to marginalize, annihilate and destroy the Tamils as a nation.

1. Highest concentration of Military (Sinhala) to Civilian (Tamil) ratio in the world:

The presence of a 150,000 strong army almost exclusively Sinhalese in the Northern Province – a Tamil area, one soldier to every five civilians (highest ratio in the world) – give the reality on the plight of Tamil civilians facing constant abuses, notably intimidation, torture and sexual abuse including rape.

Incentive is given to soldiers posted in the North when they have a third child.



In February of 2012, women from nine villages in Mannar raised concerns about the state's decision to build an army camp in Tharavankottai, Mannar Town, Mannar. 564 women signed a petition which was addressed to Tamil National Alliance (TNA) parliamentarians, the Justice Minister, the Lands Commissioner and the Mannar District Secretariat. The women cited security concerns and an invasion of privacy as the principal reason behind the petition.²¹

a) “High Security Zones” in the Tamil Area are Still an Issue in Post-War Sri Lanka.

Sampur East, Sampur West, Navaretnapuram, Kadatkarachenai and Konitivu are all villages in the

²⁰ See Publication of Society for Threatened Peoples Germany, <http://www.gfbv.de/inhaltsDok.php?id=383>

²¹ See The Sunday Leader, 19th February 2012, <http://www.thesundayleader.lk/2012/02/19/land-allocation-for-army-upsets-mannar-women>

Sampur area of Trincomalee district. Before their displacement in 2006, more than 1,300 families had been living in these places. Since the end of the war, instead of helping displaced Tamils return home, the government has decided to build a coal power plant in this area which will cover approximately 10,000 acres of land.²² No compensation has been given to the inhabitants.

The plant is a joint venture between the Ceylon Electricity Board (CEB) and the National Thermal Power Corporation (NTPC) of India. The agreement was to construct a 500MW power plant in Sampur, which will be commissioned by July 2016. In February 2013 news say that the project is progressing.²³

2. Sinhala Militarization of Tamil Civilian Life

The most important element of the process of Sinhalization is the continued militarization of many aspects of Tamil civilian life.

For instance, the military is involved in a diverse array of initiatives, from tourism to urban planning. Military personnel have even constructed numerous restaurants and cafés along the A9 road. Soldiers are also engaged in cultivation and selling vegetables and other produces in the North and East. All of this has a direct impact on members of the community members where unemployment is running at over 20%.²⁴

The concept of Sinhalization extends well beyond the subjects of strategic state-planned settlements, land, military intrusion, boundary changes and the renaming of villages. Sinhalization has made its way into Tamil cultural events, religious life, economic activity, public sector recruitment and even the Sri Lankan education system.

During the civil war more than 350 Hindu Temples in the country's North and East were demolished. The State has been building Buddhist shrines and other religious monuments where some of these Hindu temples existed.²⁵

In March 2012 Tamil National Alliance (TNA) members objected to the construction of a Buddhist Vihara where a several decade old Hindu temple used to be, pointing out that this has been going on since the end of war.²⁶

²² Salt on Old Wounds: The Systematic Sinhalization of Sri Lanka's North, East and Hill Country by The Social Architects (TSA), <http://www.internationalpolicydigest.org/wp-content/uploads/2012/10/Salt-on-Old-Wounds.pdf>

²³ See article in The Hindu "NTPC's Sampur power project progressing, says Sri Lanka"

<http://www.thehindubusinessline.com/companies/ntps-sampur-power-project-progressing-says-sri-lanka/article4459350.ece>

²⁴ See The Tamil National Alliance, "Sri Lanka Status Report: North and East" (October 2011) and Salt on Old Wounds: The Systematic Sinhalization of Sri Lanka's North, East and Hill Country by The Social Architects (TSA), <http://www.internationalpolicydigest.org/wp-content/uploads/2012/10/Salt-on-Old-Wounds.pdf>

²⁵ See Salt on Old Wounds: The Systematic Sinhalization of Sri Lanka's North, East and Hill Country by The Social Architects (TSA), <http://www.internationalpolicydigest.org/wp-content/uploads/2012/10/Salt-on-Old-Wounds.pdf>

²⁶ See <http://www.srilankabrief.org/2012/03/hindu-council-objects-buddhist-vihara.html>

There is a concerted effort to venerate Sinhalese Buddhist traditions and denigrate the historical and cultural significance of Tamils.

In March 2010, 4.5 million Sri Lankan rupees were allocated to the development of Kakkchankulam, Vavuniya North, Vavuniya. In order to encourage Sinhalese settlement in the area, the name of Kakkchankulam was given a Sinhalese name, “Kalapovasewa”, and 165 Sinhalese families have been settled on 200 acres of paddy fields and in this area. This has been done with the assistance of Sri Lankan military personnel. Additionally, the Tamil name “Kokkchankulam” has even be removed from the Vavuniya District Secretariat’s annual report of 2010 and 2011.

State-sponsored settlement of Sinhalese in historically Tamil areas is a well-established practice of State policy, so established it has been normalized. In the past prominent international aid organizations have actively promoted the State’s policy of Sinhalization in the form of both technical and financial assistance, notably in Mahaweli River developments by the World Bank.

In post-war Sri Lanka, history is repeating itself; ethnic Tamils are being excluded from the development process, especially in the Northern Province.

Distressingly, when international NGOs cooperate with such policies, State-backed extremist Sinhala Buddhist objectives are legitimized, strengthened and allowed to grow.²⁷

Since 2006, nearly 100 village names have been changed from a Tamil name to Sinhalese ones. Much of this renaming has occurred since the end of the civil war.²⁸

The State is purposely redrawing boundaries in Tamil border villages in the country’s North and East. This is yet another part of extremist Sinhala Buddhist ideology. Lands belonging to Tamils are being incorporated into predominantly Sinhalese districts. Boundary changes are being undertaken to reduce the representation of Tamils in various areas. The aim is to dilute Tamil majority administrative areas to change the demography and thereby the number of parliamentary representatives the community can elect.²⁹

A document has been made public which shows that the GOSL plans to change the names of 87 more villages in the North East into Sinhala village names.³⁰ This is more evidence of the Sinhalization of the North East in order to destroy the distinct identity of the Tamils.

In a letter to the Central Government of India in January 2013, Tamil Nadu’s DMK party president M Karunanidhi said that he accuses the Government of Sri Lanka of renaming Tamil villages, and redrawing of village, town and district boundaries.³¹

²⁷ Salt on Old Wounds: The Systematic Sinhalization of Sri Lanka’s North, East and Hill Country by The Social Architects (TSA), <http://www.internationalpolicydigest.org/wp-content/uploads/2012/10/Salt-on-Old-Wounds.pdf>

²⁸ Ibid.

²⁹ See Tamilnet article “Colombo plans to annex Tamil border villages in Batticaloa with Apmpaa’rai” (29.11.2011), <http://www.tamilnet.com/art.html?catid=13&artid=34658>

³⁰ See http://www.tamilnet.com/img/publish/2013/01/DMK_Chief_Letter_to_Indian_PM_19_01_2013.pdf

On the Sri Lankan Army's website many economic projects of the military are listed. These include running a 180 acre farm near Jaffna.³²

The military is deeply involved in the civil administration of the north. Even funerals and birthday parties need the military's approval. The military is much larger now than it has been at any time in its history and larger than it was when the war ended.³³

3. Exclusion of Tamils in the Public Sector in Tamil Areas

The Sri Lanka State systematically favors Sinhalese people when it comes to public sector



employment, especially when it concerns positions of power like those of Provincial Governor and Government Agent. Since the end of the war, examples of such appointments are most prominent in the country's Northern Province, where the State has appointed people who had been high level military officers to such positions.

In the Eastern and Northern Provinces, former Sinhalese military men Sinhalese hold a number of senior governmental positions, including the Governorship of the entire province.

The Government Agent of Trincomalee, the Provincial Council Secretariat and the Land Commissioner of the Eastern Province, among others, are all ex-military men.

Due to strategic decisions made by the State, far more Sinhalese people hold significant public sector positions in the country's North and East than in the past.

This practice makes it difficult for Tamils to perform basic activities, for example filling out forms in State buildings, in their own language.

Such discrimination invariably limits opportunities for ethnic Tamils.³⁴

The Sri Lankan Government also uses this policy of exclusion in the education system. Recently there has been news that Military personnel have been co-opted to teach Sinhala in the schools in the Vanni. This is to facilitate the Sinhalization policy of the Sri Lankan Government.³⁵ More and more Sinhalese professors and teachers are nominated to teach

³¹ See <http://www.indianexpress.com/news/lanka-erasing-tamil-culture-dmk-chief-to-pm-sonia/1062370>

³² See <http://www.army.lk/detailed.php?NewsId=5822>

³³ See the report of International Crisis Group on Military presence in the North of Sri Lanka <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/219-sri-lanka-north-i-the-denial-of-minority-rights> and Inner City Press Report on Militarization in Sri Lanka <http://www.innercitypress.com/imflag1sri020612.html>

³⁴ See Salt on Old Wounds: The Systematic Sinhalization of Sri Lanka's North, East and Hill Country by The Social Architects (TSA), <http://www.internationalpolicydigest.org/wp-content/uploads/2012/10/Salt-on-Old-Wounds.pdf>

³⁵ See <http://vimarsanam-vimansa.org/report/military-teaching-in-north-schools-defies-llrc/>

in the North and East. That leaves Tamil students with no choice than to study in English. The State appointed a Sinhalese Professor to teach math at Jaffna University last year. This man will teach only in English. These types of appointments are creating serious tension in predominantly Tamil schools. The State appears unwilling to appoint many Tamil teachers to predominantly Sinhalese universities, yet consistently appoints Sinhalese teachers to Tamil universities without hesitation.³⁶

4. Indefinite Detention and Imprisonment of Tamils

The U.S. State Department Report for the year of 2010, which was published on April 8, 2011, states *inter alia*:

Many independent observers cited a continued climate of fear among minority populations, in large part based on past incidents. Security forces tortured and abused detainees; poor prison conditions remained a problem; and authorities arbitrarily arrested and detained citizens. Repercussions of the nearly 30-year war against the Liberation Tigers of Tamil Eelam (LTTE) continued to have an effect on human rights, despite the defeat of the LTTE in May 2009. In an effort to prevent any violent separatist resurgence, the government continued to search for and detain persons it suspected of being LTTE sympathizers or operatives.

In the east and the north, military intelligence and other security personnel, sometimes working with armed paramilitaries, carried out documented and undocumented detentions of civilians suspected of LTTE connections. The detentions reportedly were followed by interrogations that frequently included torture. There were reported cases of detainees being released with a warning not to reveal information about their arrests under the threat of rearrest or death if they divulged information about their detention. There were also previous reports of secret government facilities where suspected LTTE sympathizers were taken, tortured, and often killed.

A large number of Tamils, probably in the thousands, continue to be held in secret detention centers under the draconian Prevention of Terrorism Act, some for over 15 years without proper charge or trial.

Even though the prevention of Terrorism Act (PTA) on its face is ethnically neutral, its effect is Tamil ethnic centered, since Tamils are almost exclusively targeted.

The Government says that the Prevention of Terrorism Act (PTA) is not being misused: The government says that PTA detainees are just held by the army for a little while and then passed on to the police.³⁷ The students arrested at the Jaffna University demonstration in November 2012 have just been released having been held for two months under PTA powers, despite the fact that they have not committed any crime.³⁸

³⁶ Ibid.

³⁷ Comments by the Sri Lankan Government to the Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka, Paragraph 5

³⁸ See <http://www.lanka-advocacy.org/wp-content/uploads/2012/12/Eigenbericht-Sri-Lanka-Advocacy-Only-German2.pdf>



east of Sri Lanka. The purpose seems to keep especially Tamils fearful and suppressed. It is evident that these arrests happen mostly during and after celebrations or demonstrations to discourage public gatherings.³⁹

Since the protests at Jaffna University, at least 40 such arrests have been reported. Some of these stories have made it to the media, but over thirty of the arrests have not been made public. The people arrested are held under the PTA, the same act that was used against the Jaffna students, and which allows the Government of Sri Lanka to effectively hold them indefinitely without charge. It is part of the campaign of harassment and intimidation which has become a part of everyday life for people in the north and

The Government claims that concerns about detention in Sri Lanka are unfounded: There are no secret prisons, there is a comprehensive database of the detained, the rehabilitation process is completely transparent, and released rehabilitated Tamil Tiger (LTTE) fighters do not have to register with the army.⁴⁰

The UN Committee Against Torture (CAT) is one of many bodies to have expressed concern about secret prisons operating in Sri Lanka. No outside source has seen the database of the detained and families of the missing still struggle to find out if, and where, their relatives are detained. There was no outside access granted to the rehabilitation centers. The Red Cross (ICRC) did not have access for many years and journalists are not allowed. Allegations of rape and torture within these centers have emerged continuously. Sources inside and outside Sri Lanka confirm the fact that released Tamil Tiger (LTTE) fighters have to register with the army⁴¹.

5. New PTA Regulations

There are five new regulations issued by the President under the Prevention of Terrorism Act (in 2011). Of these Regulations, No. 4 of 2011 deals with detainees and remandees, and strips Magistrates of all discretionary power to order the release of suspects on bail and converts detentions under emergency regulations into detentions under the PTA.

Regulation No. 5 of 2011 deals with surrendees care and rehabilitation. The regulations affect the rights of scores of Tamils from the North and East who sought to surrender to the armed forces for various reasons. Shockingly, even those who surrendered merely 'through fear of terrorist activities' may be detained for up to two years without inquiry.

³⁹ See <http://blog.srilankacampaign.org/2013/02/the-four-students-that-were-freed-hides.html>

⁴⁰ Comments by the Sri Lankan Government to the Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka, Paragraphs 21-28: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-38-Add1_en.pdf,

also see <http://blog.srilankacampaign.org/2013/02/the-governments-response-to-un-high.html>

⁴¹ See <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/219-sri-lankas-north-i-the-denial-of-minority-rights>

It is these very same regulations that were used against the Students of the Jaffna University who protested against military intrusion into their hostels. These students have been sent for rehabilitation even though they have no affiliation to the LTTE or without being tried for such. Their arrest had been categorized as surrender in order to be sent for rehabilitation. This shows that any ordinary civilian can be sent for 'rehabilitation' on the mere whim of the Government in the name of suspicion. As Amnesty International notes, there is nothing to stop the authorities from also transferring an individual back from rehabilitation into police custody.⁴²

6. Plight of Tamil Women - Rape & Sexual Abuse

There are up to 90,000 Tamil war widows, according to a report of the British Foreign and Commonwealth Office on Human Rights and Democracy.⁴³ These widows and their daughters face sexual abuse including rape by the Sri Lankan security forces.

The situation of Tamil women has been repeatedly highlighted by several NGOs. The submission to the Universal Periodic Review by the European Center for Constitutional and Human Rights and its briefing document for the European Parliament on gender-based violence in Sri Lanka back the observation of the High Commissioner for Human Rights.⁴⁴

An International Crisis Group report mentions that Tamil women from the North are also trafficked to the South to work in brothels and are sexually abused on the way to garment factories and that exploitation for sexual purposes is happening throughout the North and East especially with the war widows.⁴⁵

Recently over one hundred young Tamil girls were said to have been recruited to the Army. No formal procedures were followed and some of them have managed to escape and return home. Sixteen other girls have suddenly gone down with 'mass hysteria' and admitted to the Kilinochchi hospital and no one was allowed to meet them. All this raises grave suspicions as to the actual status of these girls in the Army. Anyone who questions about this is harassed or charged under Prevention of Terrorism Act. When a Member of Parliament raised the matter in Parliament, he was promptly subjected to a Criminal Investigation Department inquiry in breach of Parliamentary privilege. His security was removed and his office was raided by the Terrorist Investigation Division and alleged to have recovered some explosives and pornographic materials. They have also arrested two of his staff and are holding them under the PTA.

Human Rights Watch recently released a 141 page report on the sexual abuse, including rape of Tamil detainees. Most of the cases followed a pattern of an individual abducted from home, taken to detention center and abused.

⁴² Amnesty International, LOCKED AWAY: SRI LANKA'S SECURITY DETAINEES, March 2012, p. 12

⁴³ Also see ICG: *Sri Lanka: Women's Insecurity in the North and East*, Crisis Group Asia Report N°217, 20 December 2011

⁴⁴ After the UPR submission ECCHR briefed the European Parliament on the situation of Tamil women in Sri Lanka, who especially suffer under the high military presence in the North: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/604_ecchrupr_/604_ecchrupr_en.pdf. Also see The Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka, Paragraph 50

⁴⁵ *id.*

The large number of female-headed households in the country's North and East has left many Tamil women with not many choices to protect them and their children. Many women enter into exploitive relationship with Sinhalese men, including military personnel to escape from harassment by the same.⁴⁶

7. IDPs

While the Sri Lankan Government proudly proclaims that it has successfully resettled all the IDPs the latest statistics that this is far from true. More than 93,000 people, are estimated to still be displaced as of late December 2012 (Government statistics as compiled by UNHCR, 31 December 2012; IDMC interview, January 2013).⁴⁷ Many of these IDPs do not have access to proper livelihood ventures and even to proper housing. The last batch of IDPs from the Menik Farm stands testimony to this.⁴⁸

8. Attacks On Tamil Media

Even though the media in general is under attack, journalists covering Tamil issues and Tamil journalists are more vulnerable.

Media freedom still does not exist in the country. Attacks on journalists and media personnel still occur on a regular basis and their freedom of movement is being constantly denied. 'Groundviews' reported about restrictions and intimidation on journalists covering resettlement processes in the Vanni last year.⁴⁹

Attacks against the Tamil media continue with the last known example being the attack on a distributor of the 'Thinakkural paper' in Putthur on the 7th of February, 2013.⁵⁰

The Jaffna-based newspaper "Uthayan" has been under attack regularly in the last years. In January this year a reporter and distributor of the newspaper was assaulted. His motorcycle and newspaper bundles were set on fire. 'Uthayan' reports 20 violent incidents in the past and states that none of the incidents have been thoroughly investigated. This is only one of many attacks against journalists and independent media.⁵¹

Realistic possibility of accountability through domestic mechanism

Following are some of the observation about whether there is any realistic possibility of accountability through domestic mechanism:

⁴⁶See EECR brief,
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/604_ecchrupr_/604_ecchrupr_en.pdf.

⁴⁷ [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/D19BC2605A15FBF2C1257816004B8C9D?OpenDocument#45.2.1](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/D19BC2605A15FBF2C1257816004B8C9D?OpenDocument#45.2.1)

⁴⁸ <http://groundviews.org/2012/09/29/putting-paid-to-the-governments-false-claims-the-new-idps-in-sri-lanka/>

⁴⁹ See <http://groundviews.org/2012/10/31/restrictions-and-intimidation-on-journalists-covering-resettlement-process-in-the-vanni/>

⁵⁰ see <http://vimarsanam-vimansa.org/report/another-newspaper-burning-in-north-agent-beaten/>

⁵¹ See Sri Lanka Briefing Notes, Issue No 05 – 25 February 2013

... 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. [UNSG Panel of Experts Report]

"The LLRC was fundamentally constrained by a mandate that did not focus on actually accountability and by the lack of an enabling environment for judicial follow up" [UN Internal Review Panel Report].

Nearly four years after the war, the Sri Lankan accountability process has finally been set in motion, but in a sense it has barely begun. The majority within the UNHRC that the United States cobbled together for the March 2012 resolution may dissipate over time. In the end, states may emphasize other important aspects of national reconciliation within Sri Lanka and may no longer push the question of accountability. It may well be that a full and fair examination by the Sri Lankan government of the state's own conduct and that of its adversary will need to await electoral developments some years down the road. [‘Accountability And The Sri Lankan Civil War’ by Steven R. Ratner- *The American Journal of International Law*. Vol. 106.778]

These statements attest that **any credible independent domestic investigation is impossible** in Sri Lanka. The Government of President Mahinda Rajapakse has strong electoral support having won all National, Provincial and Local elections (except for the North and in the Local Authorities in the East where the Tamil National Alliance has the strong support of the Tamil People) and has a 2/3 majority in Parliament.

This was recently illustrated during the impeachment of Chief Justice Shirani Bandaranayake. The Parliamentary Select Committee, which was appointed to hear her case, was neither independent nor transparent and composed mainly of Rajapakse acolytes whose behavior prompted Chief Justice Bandranayake to walk out of the hearings.

Similarly the LLRC's independence was questioned roundly not only by international NGOs but also by the UN Panel of Experts. Reports by previous Commissions of Inquiry set up by the Sri Lankan Government have not been acted upon nor often made public.

The Army inquiry into allegations in the LLRC report was held in private behind closed doors and its report, which was handed over to the authorities in January 2013, claimed that the army has not committed a single violation of international humanitarian law and the blame for any targeting or attack of civilians was laid at the door of the LTTE.

These examples amply demonstrate that a domestic inquiry into violation of human rights and international humanitarian law in Sri Lanka will only serve to whitewash Sri Lankan Government and not find legitimate responses to concerns raised by independent international actors.

A domestic process will only serve to give more time to complete successfully the systematic annihilation of the Tamil people.

Reiteration of the call for an international independent investigation

During the last year more and more international bodies have echoed the call for an international independent investigation into the last phase of the war.

More recently, this call was made by, the Office of the High Commissioner for Human Rights in the report of the technical team submitted in pursuance of UNHRC Resolution 19/2 on Sri Lanka.⁵²

Other international actors in the form of Experts in International Criminal Law, civil society actors and international NGOs as well as Tamil Parliamentarians from the island have reiterated this call.

We have always stood for an international independent investigation into the atrocities the Sri Lankan Government have committed against Tamil Civilians, which include War Crimes, Crimes Against Humanity and Genocide. The case for consideration of war crimes and crimes against humanity by an international body has been amply made in the UN Panel of Experts Report of 2011.

The targeting and attacking of Tamils during the war and afterwards, continued militarization, Sinhalization, colonization of lands in what are areas of historical habitation of the Tamils (a planned change of demography), rape of Tamil women, the torture and rape of Tamils in detention⁵³, the continuing disappearances and abductions of Tamil civilians, the obstructions to people's livelihood, the destruction of places of worship in the North and East of the island, cumulatively seem to indicate that the GOSL is engaged in a form of systematic structural genocide against the Tamil Civilians of Sri Lanka.

The Dublin People's Tribunal in its finding on January 2010 stated *inter alia*:

The possible commission of the crime of genocide

Although the charge of genocide was not included in the inquiry requested of the Tribunal, some of the organizations and persons that gave testimony insisted that it be recognized that genocide occurred, or may have occurred, against the Tamil population in Sri Lanka. There was not enough evidence presented before the Tribunal to determine that the crime of genocide be added to the charges of war crimes and crimes against humanity. Some of the facts presented should be investigated thoroughly, as possible acts of genocide. Such facts include the following:

- A possible pattern of forced "disappearances" of Tamil individuals carried out by the Sri Lankan armed forces and by paramilitary forces with the acquiescence of the State, directed against crucial members of the Tamil community (journalists,

⁵² <http://reliefweb.int/report/sri-lanka/report-office-united-nations-high-commissioner-human-rights-advice-and-technical>

⁵³ See more recently the Human Rights Watch Report, "We will teach you a lesson" – Sexual Violence against Tamils by the Sri Lankan Security Forces', 26 February 2013

physicians, politicians) to destroy, as Lemkin said, “the grounds for the continuity of the life of the group”(in this case, the Tamil group); and

- The persistence of the situation of the Tamil population in the IDP camps; the continuity of shootings, systematic rape and forced “disappearances;” the widespread destruction of infrastructure in those parts of the country where there is a concentration of Tamils; and the lack of food, medicine and other fundamental needs for the continuity of life of the Tamil people.

Although the facts listed above are current, we have not received enough evidence to include them as charges. However, the Tribunal acknowledges the importance of continuing investigation into the possibility of genocide.

Therefore we stress that any international independent investigation that is appointed should include within its jurisdiction War Crimes, Crimes Against Humanity and Genocide.

We also point out that the Chief Minister of Tamil Nadu (India) Honorable Dr. Selvi . J Jayalalithaa and the Tamil Nadu Governor have characterized the 2009 atrocities committed against the Tamils as an act of genocide. This view is also shared by international law professor Francis A. Boyle who represented the Bosnia in the International Court of Justice.

Conclusion

The resolution of the UNHRC from March 2012 asked the government only to implement the recommendations of their own LLRC. With the few examples given here, it is clear that the Sri Lankan Government has not done enough to do so.

It is also evident that the violations of the rights of Tamils have the intent to marginalize and destroy the Tamils as a nation. If Genocide, Crimes against Humanity and Human Rights violations against Tamils are not investigated and punished through international mechanisms, progress internationally monitored and Tamils protected, there will be no peace and no justice for past and future crimes against Tamils.