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WHEN WILL THEY GET JUSTICE?

FAILURES OF SRI LANKA'S
LESSONS LEARNT AND
RECONCILIATION COMMISSION

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Cover photo: Women queue to hand their written submissions to the Lessons Learnt and Reconciliation Commission session in Jaffna, Sri Lanka, 14 November 2010.

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1. INTRODUCTION

“When there was no attack or shelling we could cook outside but when shelling was heavy we had to stay in the bunker for hours cooking and living there. For weeks my kids did not talk, they were so scared. They had to witness people dying from shell attacks and the memory of dead bodies lying all around will probably never vanish.”

Survivor trapped in Vanni in final months of the war

Thousands of civilians were killed during the final months of Sri Lanka's decades-long internal conflict, pitting the Sri Lankan government against the brutal Liberation Tigers of Tamil Eelam (LTTE). Despite the Sri Lankan government's strenuous efforts to make this a war without witnesses by barring independent monitors and journalists from the conflict zone, Amnesty International's conclusions, derived independently from eyewitness testimony and information from aid workers, are that at least 10,000 civilians were killed; that the LTTE used civilians as human shields and conscripted child soldiers; that the Sri Lankan army shelled areas it knew were densely populated by civilians; and that people trapped by fighting suffered severe and avoidable deprivation of food, water and medical care.

These actions constitute serious violations of international law, and, if left unaccounted for, set a terrible international precedent for impunity. Ongoing impunity will also significantly hamper efforts at reconciliation in Sri Lanka and foster ongoing human rights violations, as the end of armed conflict has not ended human rights violations in Sri Lanka.¹ Amnesty International continues to receive reports of enforced disappearances and police torture from victims' families, while Sri Lanka's national Human Rights Commission has reported almost half of the 5,545 complaints it received in 2009 were against the police, with thousands more coming in since then.

Nevertheless, in the face of domestic and international pressure, including from such allies as India, the Sri Lankan government has still refused to make a credible effort to seek accountability. Instead, as it has done often in the past two decades, the Sri Lankan government has established an ad hoc special commission, ostensibly to investigate and address wrongdoing, but in fact to deflect international pressure and silence internal critics.

In the most recent example of such misdirection, Sri Lanka's President Mahinda Rajapaksa has established a special commission of inquiry, the Lessons Learnt and Reconciliation Commission (LLRC). Although initially the Sri Lankan government's efforts mollified criticism, it is clear by now that emerging evidence of the gravity and extent of the alleged crimes will lead to further international pressure from across the globe. Amnesty International calls on the international community and particularly those states interested in helping genuine reconciliation in Sri Lanka, to keep in mind the LLRC's many shortcomings as they press the Sri Lankan government to move toward a sustainable reconciliation on the island and to provide justice and compensation to its own citizens in line with international law.

Sri Lanka's LLRC is not a credible accountability mechanism. Its mandate is seriously flawed and in practice it falls far short of international standards on national commissions of inquiry.² Amnesty International sent a submission to the LLRC in August 2010³ highlighting the systematic failures of domestic mechanisms to bring about justice, truth and reparations for victims.

In October 2010, Amnesty International, Human Rights Watch and the International Crisis Group declined an invitation to testify before the LLRC, noting its severe shortcomings, including the Commission's inadequate mandate, insufficient guarantees of independence, and lack of witness protection.⁴ The organisations noted that should a genuine and credible process eventually be established – featuring truly independent commission members, effective powers of witness protection, and a mandate to explore the full range of alleged violations of national and international law; and backed up by government action to end impunity and ensure that police and courts launch effective and impartial prosecutions – they would be pleased to appear.

Amnesty International urges the international community not to be deceived that the LLRC – the latest in a long line of failed domestic mechanisms in Sri Lanka – will deliver justice, truth and reparations to the tens of thousands of victims of war crimes, crimes against humanity and other crimes committed during the conflict by both sides, particularly during its last bloody few months.

Amnesty International is calling for the UN to immediately establish an independent, international investigation. Such a mechanism is crucial for two reasons: (1) to protect the global principle of accountability for international crimes, and prevent the establishment of a negative precedent for other states that may emulate Sri Lanka's attempt to flout international law so egregiously; and (2) to help the process of reconciliation inside Sri Lanka through findings issued by a neutral outside body free of perceptions of bias, that can establish the truth and provide justice for the crimes committed by all sides to the conflict, including the LTTE, government forces and their affiliates.

In this report Amnesty International examines the many failures of the LLRC's proceedings, including the lack of effective efforts to ensure that war crimes, crimes against humanity and other crimes under international law identified in the course of its work are investigated and, where there is sufficient admissible evidence, the suspects are prosecuted before competent, impartial and independent courts.

Amnesty International has analyzed the LLRC's publicly available transcripts. They show

clearly that although evidence of serious violations has emerged in the course of hearings (including evidence of widespread shelling of civilian targets such as hospitals, illegal killings and enforced disappearances) members of the commission have failed to act appropriately to address them. The Commissioners have:

- Failed to investigate witness testimony that would establish the identities of individual perpetrators, whether members of the LTTE or other paramilitary organizations, and in particular, where allegations implicated government forces;
- Made no effort to protect witnesses from threats and retaliation;
- Failed to adequately probe government or pro-government witnesses regarding allegations of violations committed by government forces and allied paramilitaries;
- Made no recommendations to date aimed at bringing individuals to justice.

Throughout the proceedings, the Commissioners' engagement with witnesses has been superficial, and because they have made so little effort to establish the facts and follow up leads provided by witnesses – including details of very grave crimes committed by both the Sri Lankan security forces and the LTTE in the course of the armed conflict that the authorities have a duty to investigate – the information contained in the transcripts is unlikely to contribute to meaningful accountability. Sri Lanka's persistent climate of impunity makes that outcome even less probable.

Observers inside and outside Sri Lanka have acknowledged that Sri Lanka's track record on accountability is poor, that the LLRC's mandate is unclear, and that it lacks independence and provisions for witness protection. Yet some still maintain that the LLRC might secure some accountability and contribute to the country's fraught reconciliation process, owing in part to the Sri Lankan government's strong political majority and international pressure. What sustains this conviction is unclear.

If international policymakers continue to treat the LLRC as a potentially credible domestic accountability mechanism capable of adequately addressing alleged violations as serious as war crimes, despite all evidence to the contrary, they contribute to dangerous delays in providing real accountability, justice and reparations for the victims. Reconciliation in Sri Lanka can only be advanced by a UN investigation augmenting a bona fide domestic accountability mechanism. Playing along with the Sri Lankan government's dangerous charade is to place expediency above experience and ignore the ongoing violations of the rights of tens of thousands of Sri Lankans of all ethnicities.

CALLS FOR AN INTERNATIONAL ACCOUNTABILITY MECHANISM: THE STATE OF PLAY

Despite the Sri Lankan government's efforts to obstruct international attention, the emerging accounts of atrocities by all sides were so severe that UN Secretary General Ban Ki-moon travelled to northern Sri Lanka in May 2009 immediately after the end of fighting. At the end of that visit, the Secretary General and Sri Lankan President Mahinda Rajapaksa issued a joint communiqué on 23 May 2009 in which the Secretary-General "underlined the importance of an accountability process for addressing violations of international

humanitarian and human rights law," and President Rajapaksa promised that the Sri Lankan government would "take measures to address those grievances." President Rajapaksa reiterated Sri Lanka's "strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations."⁵

In line with his commitments, Ban Ki-moon named a panel of international experts to advise him on accountability issues in Sri Lanka. The members of the panel were Marzuki Darusman (Indonesia), Chair; Steven Ratner (United States); and Yasmin Sooka (South Africa). The Panel's report submitted to Ban Ki-moon on 12 April 2011 "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."⁶

The report also recommended that the Secretary-General "immediately proceed to establish an independent international mechanism" to:

- (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.⁷

On 25 April 2011, Ban Ki-moon released the report publicly but asserted, contrary to prevailing legal opinion, that he lacked the authority to establish an independent international accountability mechanism.⁸ Instead, he suggested that he awaited authorization from another UN body, such as the Security Council or the Human Rights Council. However, to date (August 2011), the Secretary-General has not officially submitted the Panel's report to the Human Rights Council. On 13 April, only a day after receiving the Panel's report, the Sri Lankan External Affairs Ministry issued a rejection, despite acknowledging that it had not yet reviewed the report in depth.

The Sri Lankan authorities have mounted a diplomatic campaign to undermine the Panel's conclusions. Most used in their tool box has been the LLRC, which, in public discussions, is now described by Sri Lankan authorities as a full-blown accountability mechanism, contrary to all available evidence.

History demonstrates that Sri Lanka lacks the political will to address serious allegations of abuse or to end impunity. It has not attempted to identify government personnel alleged to be responsible for violations of international human rights and humanitarian law committed in the final stages of the armed conflict, let alone initiate steps necessary to ensure that justice is served. Furthermore, Sri Lanka has ignored commitments it made during its Universal Periodic Review in 2008, including promises to take all necessary measures to

prosecute and punish perpetrators of a variety of violations of international human rights law and humanitarian law.

Sri Lanka's unwillingness to uphold its international obligations appears less acceptable in light of emerging evidence of serious violations during the conflict. Most notably, a one hour documentary by the UK based television network Channel 4 Sri Lanka's Killing Fields, that includes highly graphic footage apparently from amateur videos and mobile telephones that seem to show clear evidence of numerous war crimes and crimes against humanity by both parties to the conflict. As a result, multiple states, in particular Sri Lankan allies India and the United States, have articulated their displeasure with the Sri Lankan government's intransigence by suggesting that unless the Sri Lankan government can show real steps toward accountability and reconciliation, they will support the call for an international mechanism to address these outstanding issues.

With this report, Amnesty International argues that the LLRC has already failed to constitute such a step. With this in mind, the UN must act immediately. While we believe Secretary-General Ban Ki-moon has the authority to constitute an international accountability mechanism, we call on the Security Council and the Human Rights Council to lend their full support to the call by the Secretary-General's Panel of Experts for an independent international mechanism to pursue justice for victims and their families.

- UN Secretary General Ban Ki-moon should work with the Human Rights Council, the Security Council and all other relevant UN agencies to initiate an independent international investigation with immediate effect, as an essential step to ensuring accountability.
- All UN member states should support the creation of an independent international investigation with immediate effect by the United Nations. Furthermore, all UN member states should fulfil their shared responsibility to investigate and prosecute persons suspected of responsibility for war crimes and crimes against humanity in Sri Lanka by exercising universal jurisdiction.

BACKGROUND

The LLRC was established by President Mahinda Rajapaksa in May 2010 after UN Secretary-General Ban Ki-moon announced that he would appoint a Panel of Experts to advise him on accountability issues in Sri Lanka – a move opposed by the Sri Lankan government. The Secretary-General appointed the Panel in response to widespread and credible allegations that crimes under international law including possible war crimes and crimes against humanity may have been committed by both the LTTE and Sri Lankan forces in the final stages of the armed conflict that ended in May 2009.

The Sri Lankan government has recently promoted the LLRC as an effective national accountability mechanism with which to respond to these allegations and has used the LLRC as its primary tool in lobbying against an independent international criminal investigation as recommended by the Panel of Experts in April.

The LLRC's warrant emphasizes the need to reflect on Sri Lanka's history of internecine conflict and prevent its recurrence. In the LLRC's mandate, President Rajapaksa charges Commissioners "to inquire and report on the following matters that may have taken place

during the period between 21st February 2002 and 19th May 2009, namely:"

1. 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;
2. whether any person, group, or institution directly or indirectly bear responsibility in this regard;
3. the lessons we would learn from those events and their attendant concerns, in order to ensure that there will be no recurrence;
4. The methodology whereby restitution to any person affected by those events or their dependents or their heirs, can be affected;
5. 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...⁹

This warrant does not explicitly mandate the LLRC to investigate violations of human rights and humanitarian law or to make recommendations aimed at bringing perpetrators to justice. Nor has the LLRC pursued these questions with vigor in interpreting and implementing its warrant. This is hardly surprising considering the composition of the commission, which includes as Chair Sri Lanka's former Attorney General, accused of obstructing investigation and prosecution of critically important human rights cases from the period of his tenure, including notably the execution style killing of five Tamil students by Sri Lankan security forces in January 2006 (commonly referred to as the 'Trinco Five' case).¹⁰

The LLRC began hearings in Colombo in August 2010. Colombo sessions featured government officials, military officers, politicians, clergy and other prominent citizens who were asked to comment on what went wrong with the 2002 ceasefire and how best to proceed with reconciliation. In all, over 140 people made representations to the commission in Colombo. Many or most were known supporters of the current government and its policies; a handful could be considered critics. The vast majority of people testifying in Colombo were from the Sinhalese majority community; about 30 were Tamil and only five were Muslim.

The LLRC also conducted hearings in the north and the east of Sri Lanka where individuals who were directly affected by the conflict testified.

The LLRC's timeframe has been extended twice. In mid-May 2011, when the commission was due to submit its final report to the President, Sri Lankan media reports indicated that the LLRC would seek a six month extension and that President Rajapaksa was prepared to grant it. The Commissioners are now scheduled to deliver a final report to the President by November 2011, buying Sri Lanka more time to negotiate away calls for an international investigation into alleged war crimes committed by both sides during the last phase of Sri Lanka's armed conflict in 2009.

Amnesty International has monitored, reported and campaigned on human rights issues in Sri Lanka for more than two decades, including numerous national commissions of inquiry which have in practice failed to deliver justice, truth and full reparations to victims of human rights violations.¹¹ Amnesty International's work with individual victims of human rights violations and their families, and our documentation of persistent patterns of abuse and a history of impunity that dates back decades convince us that reconciliation is not possible in Sri Lanka without justice, truth and reparations. The LLRC is not a viable instrument for any of these.

Amnesty International's independent assessment of the publicly available material from the LLRC's sessions leads to a conclusion that closely matches that of the UN Panel of Experts, which determined:

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.¹²

THE WEAK MANDATE OF THE LLRC

Despite the Sri Lankan government's current post hoc efforts to cast the LLRC as an accountability mechanism, the record is quite clear that the LLRC was not established to seek accountability. President Rajapaksa charged the LLRC with seeking "methodology whereby restitution to any person affected by those events [between the February 2002 ceasefire and the end of armed conflict on 19 May 2009] or their dependents or their heirs,

can be affected". But the warrant does not explain what was meant by effecting restitution. To understand the focus on restitution in this context, it is important to note that, even if compensation for violations of fundamental rights under Sri Lanka's Constitution is not easy to obtain, victims of human rights violations have had more success petitioning Sri Lanka's Supreme Court for compensation than getting justice. On the other hand, prosecutions of perpetrators for crimes under international law are extremely rare (as discussed in more detail below).

In the case of the LLRC, the President has clearly stated that the goal is to provide "restitution" without specifically defining what restitution means, or whether this restitution was subject to a finding of legal liability.

DESCRIPTION OF PRINCIPLES

Principle 8 of the Updated Set of Principles for the Protection and Promotion of Human Rights through action to Combat Impunity states "To avoid conflicts of jurisdiction, the commission's terms of reference must be clearly defined and must be consistent with the principle that commissions of inquiry are not intended to act as substitutes for the civil, administrative or criminal courts." No such provisions are included in its mandate.

Principle 8(e) goes on to require that "Commissions of inquiry shall endeavour to safeguard evidence for later use in the administration of justice". None of the publicly available material regarding the commission's operations to date suggests any such effort by the LLRC – in fact, as is set out in more detail below, the LLRC frequently seemed more eager to avoid receiving evidence that could implicate government security forces.¹³

Regrettably, no efforts were taken to engage with the public and victims in the development of the mechanism and its mandate.¹⁴

Much has therefore been left to the Commissioners themselves to determine the LLRC's scope and procedures. Unsurprisingly, given the composition of the LLRC, which includes former government officials who have publicly defended the Sri Lankan government against allegations of war crimes and others who have worked for the Sri Lankan government in various capacities, they have taken a very restrictive interpretation.

From an analysis of the LLRC's proceedings it is clear that Commissioners did not interpret the mandate to mean the President wanted them to seek justice for violations of international human rights and international humanitarian law. The Commissioners instead undertook a survey of public and official perceptions about the root causes of ethnic conflict in Sri Lanka; the reasons for the breakdown of the 2002 ceasefire and persons responsible for that breakdown (Amnesty International notes that this is different from identifying people responsible for human rights violations); and invited testimony from individuals whose conflict-related problems – such as inadequate housing – in the LLRC's view had practical solutions. When it became clear that a very large number of witnesses coming forward were seeking a missing relative or the release of family member detained without charge by the authorities, the LLRC recommended practical steps to resolve these detention cases and improve family access to the detained.

C R de Silva, Chairman of the LLRC, opened the commission's inaugural session in Colombo

on 11 August with an explanation of his understanding of the commission's mandate and purpose – an understanding that did not include accountability for violations of international law:

...His Excellency the President has appointed a Commission entrusted with the task of primarily identifying the root causes that led to the failure of the Ceasefire Agreement entered into in 2002 and also identify the person or persons or groups responsible for its breakdown.

Secondly, to identify lessons learnt from our past experiences to ensure that such incidents will not occur again.

Thirdly, and most importantly, to formulate proposals which would ensure national unity and reconciliation amongst all communities in Sri Lanka in order to usher in an era of peace and prosperity.

... the people are the primary concern of our deliberations and inquiries. With that in view we have invited the public to make representations to the Commission regarding matters which are relevant to the Mandate granted to us in the Warrant. In addition the Commission has decided to hold sittings in areas that were affected by the war. This has been done with a view of providing access to the people in these areas to air their grievances and identify the problems that they encountered in the past and also that they encounter at present after the ending of the war.¹⁵

At the LLRC's first field session in the northern town of Vavuniya, the Chairman urged witnesses to "forget the past" and tell the LLRC about the problems regarding their children's education, unmet medical needs and accommodations. De Silva made no mention of human rights violations among the possible "grievances," "difficulties" and "inconveniences" he encouraged witnesses to voice (although many did so), nor did he pledge to seek accountability.¹⁶

The Bishop of Mannar, Rayappu Joseph, whose testimony in Mannar in January touched on a wide variety of human rights problems faced by people in his area, presented the LLRC with lists of hundreds of enforced disappearances, detentions and extrajudicial killings, and called for public acknowledgement of these specific abuses and more generally acknowledgement of "the objective and total truth of what happened throughout the conflict and war, particularly in the closing stages of the war." The Chairman responded by discussing the LLRC's interim recommendations related to detention, land issues and language at length but failed to acknowledge the Bishop's more serious allegations of human rights violations by government forces.

Another witness who testified in Mannar in January called upon the LLRC to investigate extrajudicial killings and abductions. He expressed concern about arbitrary detention and noted persistent communal distrust and doubts that the Sri Lankan government was willing to abide by the LLRC's recommendations. In response a Commissioner remarked, "Your speech does not help us. We only want to know what the grievances are and how to rectify them."¹⁷

The Commissioners' extremely narrow view of their mandate is perhaps unsurprising. Given

the composition of the LLRC, which includes former government officials who have publicly defended the Sri Lankan government against allegations of war crimes and others who have worked for the Sri Lankan government in various capacities, and in view of their work to date, there is little chance that they will go any farther.

Furthermore, all witnesses before the LLRC are protected by the President's invocation of Section 14 of the Commission of Inquiry Act (under which the LLRC was created) which provides special immunity for witnesses. Section 14 protects any person who provides written or oral evidence to the LLRC from being held "liable to any action, prosecution, or other proceedings in any civil or criminal court." It also prohibits any evidence they provide from being admissible against them in any civil or criminal court action, prosecution, or other proceedings.

By invoking Section 14, the President has obstructed accountability where witnesses to the LLRC and their evidence are concerned.

All states have an obligation to prosecute and punish perpetrators of crimes under international law, including extrajudicial executions and enforced disappearances. Amnesties for these crimes deny the right of victims to truth, justice and reparation and are prohibited under international law. Amnesty International has consistently opposed, without exception, amnesties, pardons and similar measures of impunity that prevent the emergence of truth, a final judicial determination of guilt and innocence and full reparation to victims and their families.

The LLRC was conceived and initiated in an environment that assures its failure as an accountability mechanism. None of its predecessor commissions of inquiry have notably advanced justice for human rights violations because they have not been allowed to succeed by those in power; and Sri Lanka's criminal justice system – essential to see through any case of abuse uncovered in the course of these ad hoc inquiries – is subject to political pressure at all levels and lacks witness protection.

The vast majority of human rights cases over the past 20 years have never been investigated, let alone heard in court. Those that do make it to trial almost never conclude with a conviction; defendants are acquitted for want of evidence; witnesses refuse to testify; hearings are subject to repeated delays; even the prosecution has failed to appear in court in key human rights cases. This is not simply a problem of inadequate resources or institutional capacity (although these too are often obstacles); it is a problem of political will. As Amnesty International concluded in June 2009, after studying a previous failed commission on inquiry:

Commissions of Inquiry have not worked as mechanisms of justice in Sri Lanka. Presidential Commissions have proved to be little more than tools to launch partisan attacks against opponents or to deflect criticism when the state has been faced with overwhelming evidence of its complicity in human rights violations. The best that can be expected of these Commissions of Inquiry, given their non-judicial nature, is that they will be a truth-telling exercise. In practice, although in some cases they have managed to secure limited monetary compensation for victims' families, they have caused delays in "normal" criminal investigations, potentially polluted

evidence, and increased risks to victims and witnesses.¹⁸

FAILURE TO PROSECUTE

Tens of thousands of enforced disappearances have been reported in Sri Lanka since 1989, and many of them have been examined by a series of Presidential Commissions of Inquiry. The Attorney General's office has filed hundreds of indictments over the years, but according to government statistics, up to 2007, there had been fewer than 30 reported convictions for abduction or wrongful confinement (the charges normally associated with enforced disappearances) (See footnote 20, Amnesty International, *Twenty Years of Make-Believe*, ASA 370052009, for more detail.) To Amnesty International's knowledge there has been no progress since 2007 in accounting for enforced disappearances.

There have been more than 30 indictments but only three convictions under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act (The CAT Act). The latest was decided in 2007 and as of June 2008 there had been 17 acquittals. (See, Kishali Pinto-Jayawardena, *Study on Prevalence, Determinants and Causes of Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment (CIDTP) in Sri Lanka*, published by Rehabilitation and Research Centre for Torture Victims (RCT), Denmark, 2009.)

To Amnesty International's knowledge, there are only two cases where security forces have been convicted of killing civilians: the well publicized rape and murder of Krishanthi Kumarasamy, and killing of her family members and friend. (see Amnesty International, Urgent Action for Krishanthi Kumarasamy (ASA 222/96) which went out on 20 September 1996); and the rape and murder of another young Jaffna woman, 22 year old Valaudan Pillai Rajini in Kondavil in 1996. The second case has received far less public attention. It was decided in March 2011 and three soldiers received the death penalty; they are appealing the conviction.

Impunity goes back decades and commanding officers have escaped punishment. Police officers linked to the notorious 1988 murder of lawyer Wijedasa Liyanarachchi were convicted of conspiracy and wrongful confinement but received suspended sentences in 1991. The case was raised again by the Batalanda Commission in 1995, which found it likely that the victims had been tortured to death in the secret detention facility under investigation, but no further action was taken.

In the Embilipitiya case (the enforced disappearance of 25 Embilipitiya schoolchildren after their arrest by the army in 1989 and 1990); those convicted received 10 year sentences for conspiracy, abduction with the intent to commit murder, and wrongful confinement. After appeal, the convictions of four soldiers and a high-school principal were upheld in early 2002. But the highest ranking officer, Brigadier Liyanage, commander of the Sevana Army camp where the children were detained prior to being killed was acquitted due to lack of evidence of his direct involvement in the abductions. "In a highly critiqued finding, Brigadier Liyanage's blameworthiness was found to be 'neither more nor less than that which was attributable to all those in the chain of command.'" (SC Application No 506/99, SCM 25.11.99 per ARB Amerasinghe J), (Kishali Pinto Jayawardena, "Focus on Rights: Imperative revisions to the criminal law to ensure accountability", *The Sunday Times*, 20 May 2007).

Sri Lanka's Attorney General told the UN Panel of Experts in February 2011 and Amnesty International during a public meeting at the UN on 3 June 2011 that if the LLRC should identify apparently culpable individuals or groups that should be further investigated, those cases would be referred to the Attorney General's office, but he also claimed to UN Panellists that the LLRC's proceedings had not so far identified anyone who should be investigated. Transcripts show this statement to be false.

Given the disinterest so far demonstrated by the national criminal authorities to investigate and prosecute crimes under international law committed during the conflict, the absence of provisions in the LLRC's mandate relating to criminal justice, and the very poor quality of its investigations to date, the LLRC cannot and will not be an effective mechanism for ensuring justice, truth and reparations for victims.

THE COMMISSION'S LACK OF INDEPENDENCE

Keeping in mind the LLRC's narrow mandate, which does not explicitly address accountability for human rights violations, its credibility is further undermined by its composition, which is heavily skewed towards figures that have already publicly dismissed claims of human rights violations by government forces. This bias was exhibited in the Commissioners' conduct on the LLRC.

The LLRC Commissioners include former government officials who have publicly defended Sri Lanka against charges of war crimes, including at the UN. The LLRC's Chair, C R de Silva, has faced allegations of bias and obstructionism in regard to the investigation and prosecution of important human rights cases, including the "Trinco Five" case noted above and the massacre of 17 aid workers (the "ACF [Action Contre la Faim] case") in Muttur in August 2006. Both were investigated by a Presidential commission of inquiry established in 2006 to examine 16 cases of serious human rights violations, but the report was never made public and no prosecutions have resulted. The members of that commission of inquiry accused de Silva of serious conflicts of interest and of actively inhibiting their ability to operate independently and effectively.¹⁹

But de Silva's role is not the only problematic part of the LLRC's composition. The Commissioners are mostly Sinhalese (five of the eight panellists, which is notable in the highly charged atmosphere of ethnic conflict in Sri Lanka), male, and drawn from the ranks of government functionaries. C R de Silva PC, Chairman, a former Attorney General and Solicitor General of Sri Lanka; Dr Rohan Perera PC, who served as Legal Advisor of the Ministry of Foreign Affairs; Prof Karunaratne Hangawatte, a former Assistant Secretary to the Ministry of Justice; HMGs Palihakkara, former Permanent Representative of Sri Lanka to the United Nations. Maxwell Paranagama, also Sinhalese, was a High Court Judge.

Principle 7 of the Updated Set of Principles states that: "In determining membership, concerted efforts should be made to ensure adequate representation of women as well as of other appropriate groups whose members have been especially vulnerable to human rights violations."

Principle 7 (a) of the Updated Set of Principles states "[Commissions of Inquiry] shall be constituted in 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.”²⁰

Only two Commissioners are Tamil: C Chanmugam, a former Secretary to the Treasury and a member of the Monetary Board of Sri Lanka and Mrs. Manohari Ramanathan (the only female Commissioner), a lawyer who served as Deputy Legal Draftsman within the Ministry of Justice.

The sole Muslim Commissioner, M T M Bafiq is also a lawyer. He is the only Commissioner with substantial human rights experience, having previously served on Sri Lanka's Human Rights Commission.

Commissioners' comments before and during hearings belie claims that the LLRC is a neutral and independent body. Throughout their proceedings Commissioners appeared to defend state actions and policies and focus more attention on abuses by the LTTE, sometimes foregoing altogether critically important questions about the involvement of government forces in violations of humanitarian law.²¹

The UN Secretary General's Panel of Experts voiced similar concerns regarding de Silva's role in the LLRC. Furthermore, the Panel of Experts concluded:

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.

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. [In addition to de Silva], ... [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.

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 operations²²

FAILURE TO PURSUE ACCOUNTABILITY

The failure of the LLRC as an accountability mechanism stems from the whole conceptualization of the LLRC, which as put forth by the Sri Lankan government to the UN Secretary General's Panel of Experts "requires that what happened in the past must be relegated to history." The Sri Lankan government reportedly 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."²³

Even when witnesses have information that could identify perpetrators of violations, the authorities have attempted to deny it.

On 22 February 2011 Sri Lanka's Attorney General told the UN Panel of Experts that if the LLRC should identify a "particular culpability" that should be further investigated it would be referred to the Attorney General's office, but that "to date none of the representations made to the LLRC had identified individuals or groups to whom [responsibility for violations] could be attributed."²⁴ This is simply not true, as we demonstrate in greater detail below. In fact some witnesses could identify the people involved in the crimes they were reporting; many knew which party or group, military camp or unit they were attached to. For example:

- Witness 6, who testified at the Divisional Secretariat, Eravur Pattu, Chenkalady in eastern Sri Lanka on 11 October 2010, said that she mortgaged her house and paid Rs 150,000 to a man connected with the Morakatan army camp to secure the release of her husband who was abducted on 23 May 2009. She named both the man who took her money (now deceased) and three Criminal Investigation Division (CID) police officers connected to the army camp that he said were holding her husband and extorting the money.²⁵
- On 9 October 2010 Witness 8 from Batticaloa District was also able to provide the full name of an officer with the Special Task Force (STF) stationed at the Madapalam STF camp who witnesses told her was responsible for her husband's enforced disappearance from a paddy field where he was working on 19 February 2009.²⁶

Despite the availability of this information, based on the publicly available record of the LLRC's hearing, the LLRC Commissioners demonstrated little interest in gathering evidence, much less establishing accountability for violations of human rights, particularly when they implicated the Sri Lankan government.

2. LLRC PROCEEDINGS – A RECORD OF MISSED OPPORTUNITIES

Transcripts of the LLRC's proceedings are a frustrating record of missed opportunities to establish evidence, or more broadly seek justice and accountability. Commissioners' short and superficial responses to witness testimony lacked rigor. Government officials were not asked challenging questions regarding allegations of crimes committed by national forces. When individuals from former conflict areas testified to abuse by parties to the conflict such as enforced disappearances, Commissioners demonstrated little interest in establishing the identities of perpetrators. Commissioners failed to investigate witnesses' allegations and were perfunctory in dealing with witnesses – many of whom were reporting the loss of close family members and suffering obvious distress. The transcripts portray a commission with scant respect for the seriousness of the witnesses' allegations.

FAILURE TO PURSUE SERIOUS VIOLATIONS UNCOVERED BY WITNESS TESTIMONY

Witness testimony from the LLRC's very first field inquiries in the Vavuniya area of northern Sri Lanka on 14 and 15 August 2010 – and from virtually every session thereafter – implicated the LTTE and government forces in serious violations of human rights and humanitarian law. But the LLRC's interim report of 13 September 2010 (the basis of all government action on LLRC recommendations to date) made no reference to allegations of human rights violations and no recommendations to pursue accountability. Instead it restricted itself to suggesting practical fixes for long acknowledged problems that were raised by witnesses in the course of early hearings.

What follows is an attempt to assess the performance of the LLRC to date, based on an examination of official transcripts that have been made publicly available, supplemented by other sources. Amnesty International is aware of written submissions and important public testimony alleging violations that have not been made available by the LLRC.²⁷

VIOLATIONS REPORTED BY WITNESSES TO THE LLRC

The majority of complaints to the LLRC fell into three broad categories: missing persons, including enforced disappearances; detentions; and economic hardship as a result of armed conflict and displacement; many witnesses had more than one complaint. The only category on which the LLRC expressly invited witness testimony from the beginning was economic hardship. But almost despite itself, the LLRC's proceedings brought out serious allegations of human rights abuses by various armed groups and government forces. Unfortunately Commissioners failed to ask follow up questions of witnesses that would have allowed them to lay a foundation for a criminal inquiry.

Many witnesses identified which force they thought was responsible for a violation (although in a significant number of abduction cases perpetrators were allegedly "unknown".) A few witnesses named individual perpetrators, though the Commissioners did not pursue these claims.

Witnesses accused state forces – primarily army and police personnel (including the elite STF), but also paramilitary forces working with the Sri Lankan government (the Karuna faction²⁸ and the EPDP²⁹ feature prominently) – of arresting or abducting family members, many of whom subsequently disappeared. Murders were also reported.

- A woman in Ariyalai, Jaffna said that in January 2007, Sri Lankan Army personnel came to the family's house one evening and arrested her son who subsequently disappeared. She said her son's wife and three children also witnessed the arrest. She said she had contacted many agencies looking for her missing son but had not located him. In about June 2009 (five months prior to addressing the LLRC) she said she learned that local people had seen her son at the Ooralavu Army Camp.³⁰

- Witness 7 in Madhu told the LLRC that in 2008 her husband had been abducted from their home at 1:15 in the morning by a man the family had been acquainted with for 10 years, and who she understood to work for the CID.³¹

- Witnesses 2 and 3 from Velanai said they suspected that Navy personnel manning local checkpoints were responsible for the enforced disappearance of their missing family members in 2007.³² The 23 year old son of Witness 2 in Mannar also blamed the Navy for the disappearance of her son in 2007. The witness said he disappeared on his way home from a beer bar at Karaisal junction, where according to local people, Navy personnel in civil dress were checking ID cards.

- Witness 16 in Eravur Pattu told the LLRC that a son who had escaped from the LTTE and returned home was abducted by a man attached to the TMVP³³ office in Kiran in July 2007.³⁴

- Another witness testifying in Eravur, said five members of her family had been abducted, including her daughter (a mother of three children) who was preparing to go overseas. She was abducted in March 2007 by a man the witness identified as a member of the TMVP. The witness complained to the Eravur police that her daughter's abductor had threatened to blow up their house if she searched for them. She also told the LLRC that her husband had been shot to death by an unknown assailant in 1985, and that her son in law was shot and killed by the Karuna Faction in April 2006.³⁵

Witnesses accused the LTTE of forcibly recruiting family members, many of whom were missing or detained by the authorities:

- A farmer from Tunnukkai in Mullaitivu district said that his daughter was taken by the LTTE on 25 February 2009 when the family was displaced to Pokkanai. Ten days later he was told that the girl had sustained bullet injuries to the chest and both legs and was hospitalized. He lost track of her after the Army advanced into Pokkanai, but heard she had been seen in Army custody.³⁶

- A woman in Batticaloa said that her son was taken by the LTTE in 2006, when he was 14 years old. His family last saw him in Kilinochchi in 2008.³⁷

- In Kilinochchi a woman told the LLRC that her son had been forcibly conscripted by the LTTE on 4 July 2008 from a small shop the family ran. When she fled to Vavuniya in February 2009, her son joined her, but he surrendered to the Sri Lankan authorities – who

had directed anyone with a history of involvement with the LTTE, however brief, to inform them; he was detained at Welikanda.³⁸

Sinhalese witnesses from communities at the edge of the conflict (what used to be called “border villages”) where Sinhalese and Tamil communities lay close together, spoke of LTTE killings of civilians, displacement, people suffering from mental and physical disabilities, and economic difficulties associated with the conflict.

■ A witness in Buttala told the LLRC:

“There were a large number of attacks in these areas by the terrorists. There was the incident of 1998 and specially the incident of 2009 February 21st at Milliyadda in which 16 people were killed, and I personally suffered because when I went to provide relief to these people who were subjected to these attacks I got caught in an anti personal mine and I lost both my legs – one leg was affected; I did not totally lose one leg. I got one artificial limb from a NGO but I did not get assistance from the Government.”³⁹

Witnesses in Siyambalanduwa described the loss of family members in large-scale massacres of villagers engaged in swidden cultivation in the jungles near their homes by the LTTE in October and November 1995.⁴⁰

There were also descriptions of injuries and death due to shelling.

■ Three women testifying at St. Anthony's Church in Kayts, a Jaffna Island, on 14 November 2010 spoke of losing their husbands in shelling incidents. Witness 5's husband was fatally injured by a shell on 23 March 2009 at Pudumathalan, where they fled after leaving their home in Kilinochchi, where they had a shop. She said she saw the shell that killed her husband fall, and that he died in hospital. Witness 6's husband was killed by shelling on 20 February 2009 at Sudanthirapuram; Witness 7 said her husband was killed by shelling at Mathalan on 7 February 2009; she has one son.⁴¹

Muslim witnesses to the LLRC spoke of forced eviction from the north and LTTE attacks on Muslim villages in eastern Sri Lanka in the 1990s.

■ A man in Gurunagar, Jaffna told Commissioners he was 12 years old in 1990 when his family was ordered by the LTTE to leave Jaffna and fled to Anuradhapura: “...immediately after the morning prayers the LTTE made an announcement for all the men to come to the Jinnah mosque. ... A female member of the LTTE came and told us to come out of the house ... They took the house keys and pasted a cellotape on it, wrote some notes and put it into a box. We were subjected to a body check and the checking of belongings and we were allowed to go.”⁴²

■ A woman in Mullaitivu said that on 27 October 1990 on a Muslim festival day LTTE cadres entered mosques in the villages of Thannirootu, Niravipuram, Niravipiti and Hijrapuram and announced that all Muslims must leave within 24 hrs or they would be killed. “We can spare you only your lives but not your belongings or property. You can't take anything with you.” She told the LLRC that 1,300 families fled that day. In Nedunkerny the displaced families sheltered at a school, but they came under attack from an army helicopter and four people were killed. The group eventually made their way to Puttalam, where many still reside.⁴³

Both of these witnesses spoke with concern about the obstacles faced by displaced Muslims wishing to return to their home areas, including the difficulties associated with reclaiming land and re-establishing livelihoods after a 20 year absence.

Problematically, the LLRC operated with scant regard for the security or reputation of witnesses and alleged perpetrators. The names of several people who testified as well as some accused of serious violations were included in transcripts made available on the LLRC's website, exposing them to public criticism and potential acts of retribution. It is precisely to avoid these problems that international best practices dictate that individuals accused of violations should not be named publicly without proper due process. Publication of alleged perpetrators names is problematic. The Updated set of Principles states that:

Before a commission identifies perpetrators in its report, the individuals concerned shall be entitled to the following guarantees: (a) The commission must try to corroborate information implicating individuals before they are named publicly; (b) The individuals implicated shall be afforded an opportunity to provide a statement setting forth their version of the facts either at a hearing convened by the commission while conducting its investigation or through submission of a document equivalent to a right of reply.

The fact remains however, that claims made by Sri Lankan authorities that the LLRC proceedings have not brought to light the identities of individuals alleged to have been involved in violations are untrue.⁴⁴

KILLINGS

What has been described as a breakdown of law and order has plagued many parts of the north and east. In Jaffna there have been periods of especially intensive strife. Witnesses accused members of the security forces and Tamil parties aligned with the security forces of involvement in incidents where family members were dragged from their homes or abducted from businesses and never seen again. In a few cases people witnessed a murder. Reports of bodies of persons who had been abducted appearing later on roadsides or hidden in abandoned wells have been a regular feature of the Tamil press for years.

Testimony of Witness 8, Velanai, 14 November 2010⁴⁵

Witness 8: On the 19th of August 2006 at 9.45pm many men came to my house. Most of them were staying outside but some of them entered the house. At that time my husband was getting ready to go to sea (for fishing) but they came and called his name (Maxie). They broke open the door and came inside the house. We saw their faces. They were EPDP and Army men in civils. They pointed a gun at my forehead and they told us not to shout or scream and they pushed us into a room and kept us in the room.

Mrs Ramanathan: What is her husband's name? ⁴⁶

Witness 8: Her elder sister had been outside and they pushed her by the neck and asked

everybody to go inside. They asked us to show our ID cards. They said his ID card was not necessary. We will take him, make investigations and release him after that and they took him away. All the 3 were taken away.

Interpreter: Who were the 3 people were taken away?

Witness 8: My husband, his elder brother and younger brother. My uncle living a short distance away and did not know what was happening came there.

Chairman: Now ask her whether she has any information where these people are?

Witness 8: No information

Chairman: Has anybody seen them?

Witness 8: No, not seen.

Chairman: Give all the particulars to the Secretariat.

Testimony of Witness 7, Chavakachcheri Cultural Hall, 13 November, 2010⁴⁷

Witness 7: From 12th of December 2008 my husband is missing.

Chairman: Where was her husband taken into custody?

Witness 7: I don't know. Some people came to my house at midnight and called my husband out. They came and over the fence they said "Thambi, Thambi" come. He went out to see who they were. After a few minutes we didn't hear any sound so we went there to see him. There were about 10 or 15 people in Army uniform and they dragged him (away). At Murugan Kovil there is an Army camp. And there was a vehicle that proceeded towards Point Pedro.

Chairman: Does she have any information about these people?

Witness 7: No information

Chairman: No one has seen your husband anywhere?

Witness 7: No

Chairman: So give your particulars to that...

Witness 7: She has already given sir. She has come only to present the case.

Chairman: Yes, we will look into that.

Witness 9, a Justice of the Peace, testifying at the Divisional Secretary in Ariyalai, Jaffna said that after 2006 more than 10 people had been killed or murdered in his village. "The Grama Sewaka Officer of my Division was killed while on duty." He urged the LLRC to provide an allowance to the families of missing people and those who were killed so that they could afford to educate their children.⁴⁸

Elsewhere in Sri Lanka's north and east killings were also reported. In their submission to the LLRC on behalf of the Catholic Diocese of Mannar, the Bishop of Mannar Rt. Rev Dr Rayappu Joseph, Rev Fr Victor Sosai, Rev Fr Xavier Croos under the heading "extrajudicial killings" presented a list of 166 people whom they said had been reported to them as killed during the last phase of the armed conflict, from Mannar district. The Bishop noted:

This number is not complete. Thousands of persons have been reported killed during the three decade old war from the North and East, most of them, since 2007 and particularly in the last five months of war in 2009. This includes a large number from the district of Mannar. Rev Fr Pakiaranjith, a priest of our diocese was also killed on 26th September 2007 in Vellankulam Road near Thunnukai, while he was taking assistance to displaced people. Hundreds of civilians from the Mannar district have also been deliberately killed by the military at the beginning of the war in early 1980s, such as the mass massacre at 11th mile post on the Mannar – Medawachiya Road on 4th December 1984. Based on eyewitness testimonies, we believe thousands of people would have been killed in the last five months of war between January – May 2009 and we believe a large number of these people are also from the Mannar district."⁴⁹

A witness from Chettikulam, near Vavuniya described the murder of a son, apparently killed by the LTTE, or someone claiming to be from the LTTE:

Excerpt of Testimony of Witness 5, Chettikulam Divisional Secretary's Office, 14 August 2010

Witness 5: I am from Chettikulam, Kanthinagar village. I came here to speak to you about my family but I am really happy to observe the proceedings here. About my personal matter, my son was abducted and taken away about one km away from my home and shot dead.

Mrs Manohari Ramanathan: Who shot him?

Witness 5: They gave the name of the LTTE and I think it might be anybody who was using the name of the LTTE. My son was selling some publications of the EPDP political party. While he was involved in that he was abducted. I was not able to recover his body immediately because those perpetrators were still standing there. Only after 8 months that I was able to visit that place again. I was able to visit that place with the police from Chettikulam and Vavuniya as well and we were able to recover only his skull. It was sent to Colombo for investigation. So far we have not heard any information about that. The CID comes and holds inquiry and they ask whether we have got the death certificate, but we don't have such a certificate. They asked me whether we could identify the persons who had abducted and killed my

son. I told them that I cannot say that, because I don't know. But the villagers know. They are afraid to come forward and reveal their identities the reason for which you can easily understand. I request you, the Commission if possible to help me to obtain the death certificate of my son.

[Witness withdrew]

SHELLING BY THE SRI LANKAN ARMED FORCES AND THE LTTE

One of the most serious claims of violations of the laws of war and human rights law centres on the shelling of civilian areas, including hospitals, during the final phases of the conflict.

The Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka found credible allegations that:

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.⁵⁰

The publicly available records of the LLRC's proceedings show that the Commissioners, instead of trying to investigate these claims, spent significant time arguing in defense of the Sri Lankan military. In contrast to the deferential attitude Commissioners displayed toward pro government witnesses, the Commissioners on occasion grilled witnesses claiming violations by government forces, trying to impeach their credibility or to direct them toward blaming the LTTE.

The UN Panel report described Commissioners' treatment of victims as "curt and dismissive," their questioning of people reporting violations as either "desultory," or "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." ⁵¹ The report provides by way of example a prolonged exchange between Commissioners and a witness who testified in Mullaitivu on 20 September 2010. The witness alleged that the Navy had fired on a boatload of civilians, killing eight people.⁵²

Witnesses reported deaths of family members due to shelling; particularly in testimony from people in Mullaitivu and Kilinochchi. In some cases Commissioners attempted to ascertain whether the Sri Lankan Army or the LTTE was responsible for the shelling, but in other cases they failed to do so.

Testimony of Witness 3, Mullaitivu Divisional Secretariat, 20 September 2010⁵³

Witness 3: I am at Battapalai. On the 16th of May 2009 we crossed over to the Army controlled area. While we were proceeding through the Mullivaikkal – myself, my eldest daughter, 2 grandchildren and my son-in-law, all were going. So we went into the Army controlled area. My eldest daughter was hit by a shell and she died. My eldest daughter she was hit by a shell; she died instantly. So my eldest son and my son-in-law took her and laid her at the bridge because she was dead. There was another shell attack at the spot and the Army had come, and one of my grand daughter's also was injured; that girl was taken by the Army.

Q. Who fired the shells?

Witness 3: Both sides; there were shelling from both sides.

Q. Now where is your grand daughter?

A. One grandchild died and those who came behind us said that my son-in-law is also dead and they said one grandchild was missing. So I don't know whether my grandson who sustained injuries is alive. The son-in-law died; one of the daughters died; and one of her grandchildren had sustained injuries but he was alive. She was told that he was alive. Now I want to find out whether you could trace that grandchild.

[end of testimony]

Testimony of Witness 3, Chavakachcheri Cultural Hall, 13 November, 2010⁵⁴

Witness 3: My husband and my son died of shell attack at Puthukuduiruppu.

Chairman: When was that?

Witness 3: 22nd of January 2009. I have 2 daughters and they are studying. Now she says that father is no more; son is no more; she has 2 daughters; and she needs some financial help. She must be given some support.

Chairman: What she wants is financial assistance (or compensation)? Yes we will try to

explore the possibility of getting you some financial assistance.

Application form she has filled it and brought.

Chairman: So ask her to hand it over to the Secretariat.

Witnesses described their flight from place to place to escape shelling; most accounts were brief:

Witness 4, in at the Divisional Secretariat in Poonagari told Commissioners:

“.... As the shelling was there and to escape from the shellings we moved from place to place. No sooner we get to a point we dig a bunker and stay there, and when there is shellings we move from that place to another place. We were moving from place to place to avoid the shelling.”⁵⁵

In the process he said, he lost his 17 year old son, who was abducted by the LTTE.

A witness in Neerveli spoke of seeing civilians in Pokkanai killed as they waited to collect humanitarian relief:

Excerpt of Testimony by Witness 9 Neerveli, Jaffna

Witness 9: ...Something which we cannot digest very precisely I want to tell you. At an area called Pokkanai when we were waiting in the queue to collect milk powder there was shelling and a lot of people died. Again when we were in a place where the LTTE was selling some short eats (one particular item for Rs.50), there also again they were shelling and I saw 35-40 people dying on the spot. We were economically well off and prosperous. We had Land Master, we had tractors, we had generators, we have everything. Now we have lost all our belongings. We cannot easily forget all what we saw there; it is still in our memory (at the last stages of the war in Wanni).

Rapporteur: Respondent was asked whether he would like to give evidence in camera and he stated as follows:

Witness 9: Things were obvious; everybody has seen it; there is nothing to hide.

A witness at the field session in Poonagari was permitted a rare opportunity to present at length. He provided a detailed critique of the behaviour of both sides, which vividly described the effects of shelling on civilians in broader context:

Excerpt of Testimony of Witness 5, Poonagari Common Hall, 19 September 2010⁵⁶

After the liberation of the Eastern Province [in 2007] they started the war in the North and called it a humanitarian operation. Gradually we were displaced from Mukaman area and we moved towards Kilinochchi. People who were displaced in Mannar came to Jayapuram area and then through Wanneri they too came to Kilinochchi. While we were in Kilinochchi there were enough attacks, aerial attacks,

aerial bombing as well as shelling. After that we were displaced to Pullaiyanpokuna, Wanneri and Watakachchi areas. At this point of time the LTTE supporters and their families were given safe passage to the South of Sri Lanka as well as to India. The other people who were non supporters of the LTTE and those families who have lost their children to the LTTE we were confined to this area. At the outset the LTTE categorically said that it was the duty of each and every family to provide at least one member of the family as a fighter to the LTTE movement. After that our young boys and girls who had not received even one month's training were sent to the front. At the same time the LTTE announced that all able bodied men would have to come and work for them to construct bunkers and to attend to other duties. At this time the people were really frustrated and they were undergoing a state of trauma. At this point the people tried to escape the grip of the LTTE. Some people managed to travel with great difficulty through the jungles in order to escape from the LTTE but when they arrived at those areas were controlled by the Army. The Army also attacked them.

At this time the people could not decide whether to stay here or got to Vavuniya but at the same time they were expecting the arrival of the Army as well. Even before the arrival of the Army, the aerial bombing and the shelling activities caused frustrations amongst our people because many of their people died as well as they lost their limbs. Then the people decided to leave for Viswamadu, Dharmapuram taking all their belongings with them because they were afraid to stay because of the continuous shelling. The government created an area of security in Thevipuram, Suvandrapuram and Vishwamadu. People from Mannar, Mullaitivu and Kilinochchi came to this security area. The LTTE infiltrated this security zone and they came inside along with the ordinary people and used it as a base to attack the Army. When this happened the Army retaliated and this act of the government despite the announcement that they have already announced the area as a security zone, how can they start retaliating when the civilian population was there and this is the main question we wish to pose to you as this cannot be justified.

The government again announced a new security zone including Puthumathalan and Wattuwal. From my point of view it is the government that gave the LTTE an opportunity to use the civilian population as pawns and as a human shield.

Dr Perera: Can you explain what you mean by the government giving an opportunity to the LTTE to use civilians as pawns and human shields?

Witness 5: It was the government that first announced Thevipuram, Viswamadu and Surandiranpuram as security zones which the people can trust and go and settle. Our people trusted this announcement and on the basis they went there. If the government had not made that announcement saying that this is the security zone and you can go, our people would have found their own ways of reaching the government controlled area.

Dr Perera: civilians in that area?

Witness 5: The people went to that area because the government had made the

announcement that it was a safe place. As a result of this that area became besieged by the LTTE. What I think is that the government gave them the opportunity where the LTTE could consolidate their position including their cadres as well as their arms and ammunition in this particular area. From my point of view an average of 350 to 650 civilian people were either injured and about 200 people died on an average everyday because of aerial bombing and shelling. When the people tried to escape through the jungles and were trying to come towards Vavuniya the LTTE shot at them and attacked them with coconut sticks. When the Army started listening to these noises they started shelling and their shelling also in turn affected the fleeing civilian population. At this point of time I and my family tried to come out of Surandiranpuram but we couldn't do that so we decided to go again to Puttumathalan, Ambalalkokani and Valaipada because these areas were subsequently announced by the government as safe zones.

Mr Bafiq: Can you give the approximate dates?

Witness 5: After the 15th January 2009. So one night we were trying to move away from the LTTE and then the LTTE stopped us and said yes you can go to the new safety zones. Though we wanted to spend that night at Surandiranpuram with our children and belongings, our relatives were loading our things into tractors. That night we spent in a place called Achithotam. The next morning where we were staying we experienced shelling, shells started falling on us and I think it was from the government side. About 17 women and 6 children were killed in that shelling incident.

Dr Perera: What made you think that the shelling came from the government side?

Witness 5: As far as the LTTE was concerned they used to send their shells towards the Army and the Army used to retaliate in that direction at the LTTE. That was a time when hundreds of thousands of people were on the move. We decided to turn back and come to Surandiranpuram. On the way we were stopped by a group of LTTE cadres. They tried to stop us telling us not to go to the government controlled areas as the Army is ill treating our people especially our women so you should not go and I think this sort of advice was an advice after everything happened. When we tried to move against their advice they opened fire on us. This was my experience and I have also heard similar identical incidents in other places as well. I was enraged when they stopped me and I used my motorbike to attack them. At this point of time they started attacking all of us with these coconut sticks and there were about 50 to 60 families there and all of them suffered the same fate. Even women and children underwent this sort of experience. As I was wearing a helmet I luckily escaped all these attacks. At a point when we decided that we could no longer resist their attacks we again decided to move towards Surandiranpuram and Ambalavakokana losing all our belongings and we did not even have food at that time. It was nightfall when we arrived at Iranapalai. We erected a tent with a tarpaulin. Early in the morning when we woke up and looked around us even under the tent there were pits, small and big pits and dead bodies were there in the pits. All the people were traveling together who were displaced. It took us about 3 hours to cover a distance of one mile. We arrived at Ambalankokonai.

Dr Perera: You said that the pits were full of dead bodies. How do you think that happened?

Witness 5: Most of these pits I think were shell craters and people who happened to pass before us were effected, they left their dead bodies there, that's what I think. I don't know whether the deaths were caused by the LTTE or the Army. It was an LTTE controlled area.

Chairman: So how could the Army have come and caused those deaths.

Witness 5: It was not a direct attack from the Army but shelling. It was shelling that was done on the people who were moving. So in this manner the people reached the new security area in Ambalankokona and Puttumathalan. Though we were a bit peaceful to some extent staying there, the LTTE again used that area for their armed activity. The particular area we were staying though it was declared a security zone by the government that area had no facilities economically so there was no food production there so we were thrown virtually to starvation. In this background things came in the ships and it was brought to our area but all that went into the possession of the LTTE and at the same time the LTTE had some food items which were perished and inconsumable items which they started distributing those items to the people by taking the items that came by ship into their hands. We the people who were there which was over 12,000 had no drinking water, we had no proper food, we had no dress to change, no clothing and we were going through untold suffering and agony. In this background there is a place called Iranapalai where our people went and plucked the coconut that was there as that particular area was under the control of the LTTE, they went there plucked the coconuts without the knowledge of the LTTE, they came back and sold those coconuts for Rs.500 and Rs.1000 a nut and those people who went to pluck the coconuts were forcibly taken by the LTTE. While they were there plucking coconuts the LTTE took them and also the deep infiltration forces of the Army also started to attack them. While we were living in these conditions the Army had come to close proximity to the security zone. The narrowing of the space between the Army and the LTTE. There were antenna towers there and the Army started to attack those towers. There were about 300 to 400 casualties daily as a result of the firing by the Army. Over a thousand people got injured daily. When there is an aerial attack there is a counter attack by the LTTE also. So while the LTTE was attacking there was cluster bombing from the Sri Lanka Army side. So people were forced to take shelter in bunkers. On 18th April 2009, in this background and in this environment one of my daughters sustained gunshot injuries which were fired by the Army. So now one bullet went through her cheek and she lost all her teeth but now she is studying.

Dr Perera: Did you see the Army firing at your daughter?

Witness 5: Yes. I saw.

Mr Perera: Cross fire.

Witness 5: While the cross fire was taking place. My daughter is 14 years old. Now she is attached to the Nedunkulam Maha Vidyalaya.

Chairman: It was not deliberate firing on the part of the Army to injure your daughter. It was a cross fire.

Witness 5: It was a cross fire. The cross fire means, the gap has now narrowed between the LTTE and the Army, the LTTE fired at them and they will not stay but the retaliation from the Army hits the people, the damage is on the people. Now we were told that thriposha [a nutritional supplement] would be distributed to expectant mothers and children. When the mothers and the children went to that particular point where thriposha was supposed to be distributed while they were staying there at that particular point of time the LTTE used their walkie talkies and the Army shelled that particular spot and over 40 to 45 expectant mothers and children were the casualties. The Tamil Rehabilitation Organization gives them porridges. So the children go there to get porridge and many children died as a result of the shelling by the Army. When the mothers and children go to collect the porridge given by the Tamil Rehabilitation Organization the Army shells them.

Prof Hangawatte: How do you know that it happens usually? Were you present at all those places?

Witness 5: At that particular point of time, I was there.

Prof Hangawatte: When?

Witness 5: In April 2009. My daughter was admitted to Puthumathalan hospital. That hospital was under the control of the LTTE. In that hospital the ordinary injured people were not given preference but the LTTE supporters were given preference and were taken in the ships. Injured LTTE family members were given preference. I had to plead with the medical officer there. I had to raise both my hands and I worshipped him, I pleaded with him to take my daughter in the ship. This is what I encountered and all other families encountered the same problem. The wife and the two children were taken to hospital, the other children were with me at Ambalanpokanai. My children were taken by ship to Trincomalee and from Trincomalee they were taken to the Kantalai hospital. From Kantalai they were transferred to the Vavuniya hospital.

Prof Hangawatte: When was your daughter shot?

Witness 5: April 15th 2009. I was given a lot of pressure by the LTTE subjecting me for conscription of my daughter.

Mr Paranagama: Do you think that while you were moving you were made to suffer more by the Army or the LTTE?

Witness 5: We had to undergo more hardships from the LTTE. We also had to encounter some difficulties from the Army also. On 24th April 2009 the Army

entered the Putumathalan Ambalankokonai area.

Dr Perera: Can I get the sequence clear once again? Now the daughter was injured. She was entered into the hospital controlled by the LTTE where you said priority was given to the injured LTTE cadres. Then you had to worship the Doctor to get attention for your daughter. At which point did the pressure come for conscription of your daughter.

Witness 5: It is between the 15th and 20th April 2009. They tried to conscript but I some of the other prevented it but there were other families who could not prevent conscription, lost their children.

Dr Perera: But before you said you begged them.

Witness 5: I pleaded with the Doctor to take the child to the hospital because the hospital was giving preference to the family members of the LTTE so I raised my hands and worshipped the Doctor and the Doctor finally took the child and the child was taken to Trincomalee and from Trincomalee the child was transferred to Kantalai hospital on 15th April 2009. By the 23rd the Army had entered the Puthumathalan and Ambalakokonai area. It may be on the 23rd or 24th morning. I suppose the Army came in there and opened fire and took us from the bunkers safely and took us to safe areas. On the 25th along with many other families we were taken to Cheddikulam. All this is based on my experience and as far as I could remember I relate this to you....

The Sri Lankan army has been accused of knowingly shelling Puthukudiyiruppu Hospital in February 2009.⁵⁷ When an eyewitness to that incident, Dr T Vartharajah – one of the Tamil government doctors who was detained by the army at the end of the conflict was questioned about this incident, LLRC members repeatedly asked about the position of LTTE artillery, the presence of LTTE members inside the hospital and LTTE imposed restrictions on freedom of movement. Dr Vartharajah was never asked whether government forces shelled the hospital.⁵⁸ (After some time in detention, Dr Vartharajah publicly recanted reports of civilian war casualties at a government-sponsored press conference, leading to charges that he had been compelled to contradict his earlier statements.)⁵⁹

Excerpt of exchange between Commissioners and Dr Thurairajah Vartharajah, Colombo

Mr Chanmugam: Dr Vartharajah now when did you leave Puthukudiyiruppu hospital?

Dr Vartharajah: [February] 3rd night 4th morning.

Mr Chanmugam: At that time was there any shelling of the hospital?

Dr Vartharajah: 4th of February was our Independence Day and there was a talk among the people that the Army was going to take over Puthukudiyiruppu and on that particular night there was very intensive fighting in the Puthukudiyiruppu area. Within a distance of 500 meters area from our hospital the fight was taking place and the people thought that the hospital was a more safer place for them to stay and

they moved into the hospital. And most of the people, our staff and hospital staff and all of us throughout the night were inside the bunkers. The bunkers were filled to capacity and I and another two of us couldn't find space inside the bunker. I was outside safe behind a protective wall but the sounds were so near to me that I felt as if the shells were falling on my head.

Mr Chanmugam: Was there heavy artillery with the LTTE? How far away were those guns placed from the hospital?

Dr Vartharajah: I can't give you the exact distance but I think that it was very close range to the hospital they had their artillery.

Chairman: Now you said that a lot of people came into the hospital because they thought the hospital was safe?

Dr Vartharajah: Yes.

Chairman: Were there LTTEers also who came into the hospital?

Dr Vartharajah: Normally we don't allow LTTE cadres to come into the hospital either in uniform or carrying their weapons. Only if they are injured they come to the hospital.

Mr Paranagama: Did the LTTE obstruct the people from moving into safe areas?

Dr Vartharajah: They had a system wherein whoever wants to move from their controlled area to the Army controlled area must compulsorily get a pass, and that system they maintained till the last. Even doctors had to obtain a pass to move out.

Chairman: So if people tried to move from those areas without a pass were they shot at?

Dr Vartharajah: I heard about such incidents but I didn't witness it. People at Puthumathalan and Mullivaikkal areas were talking about it.

Mr Paranagama: On what basis did they issue a pass to go into the Army controlled area?

Dr Vartharajah: During the normal times, that was prior to the war, they must give sufficient reasons (like going for a wedding house; going for a funeral etc.) Even the doctors they have to give a reason as to why they are going. That was during the normal period. But after the war started only seriously injured people were given passes.

Chairman: So if a person who was not injured during the time of the war wanted to leave that area he was not issued with a pass?

Dr Vartharajah: No, then a pass is not given but they must move out without the

knowledge of the LTTE. A specific number of people moved out daily in the morning (at dusk) or from points where LTTE was not present to Army areas. It was a daily sequence.

Chairman: So if the LTTE saw these people moving out without passes they would have shot at those persons?

Dr Vartharajah: Yes.

Mr Paranagama: In the same way if the LTTE did not obstruct the people to move out freely to the Army controlled areas, there wouldn't have been (many people) injured?

Dr Vartharajah: It is well known. It is quite obvious.

Prof Hangawatte: At the Puthukudiyiruppu hospital you said you were kind of standing near the wall and you felt shells falling in the area. Was there...

Dr Vartharajah: The sounds were so intensive I felt like it was dropping on my head.

Prof Hangawatte: Question I have is: in that area close to the hospital was there a LTTE gun position or an artillery position?

Dr Vartharajah: Because the war was so intensive and severe and the shells were exploding everywhere, we didn't move out of the hospital.

Chairman: But you said that the LTTE heavy artillery positions were placed very close to the hospital?

Dr Vartharajah: I can't identify the artillery character or capacity of the artillery but from the sounds I could recognize it was from very close range to the hospital.

Prof Hangawatte: That is not the question; I think the question is misunderstood. The question is whether there was a LTTE artillery or gun position (in other words) close to the hospital?

Dr Vartharajah: I don't know whether they had positioned it so close to the hospital, but from the sound I can say it was close to the hospital. I didn't venture outside, but I felt it was close to the hospital.

Prof Hangawatte: While you were serving at the hospital you would have known if there was some artillery positioned close to the hospital?

Dr Vartharajah: If I go outside I will die because of the shelling. So we know it is a risky thing to go out. So we don't want to invite unnecessary risk to our life.

Mr Chanmugam: Just one more question. Dr when you left the patients also came out. So you actually evacuated the hospital at that time? There were no casualties

left behind? Everyone left?

Dr Vartharajah: When we move out we move out with all the patients and the injured. We had an ambulance, we had a lorry and we had a bus and we used all these vehicles to transport the patients along with us.

ENFORCED DISAPPEARANCES / MISSING PERSONS

The LLRC received numerous complaints from people searching for missing family members, including some that appeared to be victims of enforced disappearances. The witnesses' testimony potentially implicated the Sri Lankan military and security forces (in particular the Army and the STF – an elite police commando unit); paramilitary forces now allied with the Sri Lankan government, such as the Karuna Group, the EPDP; and the LTTE. But in the cases publicly available the Commissioners demonstrated a lack of interest in pursuing the details of these allegations. In particular, the Commissioners repeatedly failed to ask for information that could be used to identify individual perpetrators, or initiate an investigation that would lead to locating the missing person. Enforced disappearances are a gross violation of human rights and a particularly persistent form of abuse in Sri Lanka – where tens of thousands from earlier periods of conflict still remain unresolved and unpunished – but enforced disappearance is not specified as a crime under Sri Lankan law (instead authorities apply laws governing abductions and related offenses), and the LLRC made little effort to address accountability for such cases.

For instance, after one witness described the apparent enforced disappearance of five young men, including her son, the LLRC failed to follow up with any questions to help locate the missing, or to identify the military units who may have been involved in the incident.

Evidence given by Witness 21, Divisional Secretariat, Madhu, 9 January 2011:⁶⁰

Witness 21: My son along with another four youngsters had gone inland water fishing at the lake, Vanankuliyankulam, and in that area where the tank is the army and the Air Force had camped. On the 17th of May 2007 they went to that particular tank to do fishing. When they had gone there to the particular tank the army who was there had caught all five boys and removed their shirts and asked them to raise their hands up, and subsequently three elderly people also had gone there, and these three people had seen this incident. They were a bit scared to tell us, nevertheless one person divulged that the army had taken them and was keeping them there. It was dusk and we went there in search of them, but it was dark. The following day we went and informed the army camps which were close to our place, but they said they will also join to do a search but they did not. So a hundred of us from the village went in search of them in the jungle.

Prof Karunaratne Hangawatte: When did this happen?

Witness 21: 17th of May 2007. We have informed the necessary authorities including the ICRC. So far there is no information about them.

Chairman: We will try to see whether we could locate them in any one of the camps.

Witness: Thank you.

When a mother seeking her son who was abducted by the LTTE (one of many such complaints) approached the LLRC in Nedunkerny, a Commissioner commented that since the abuse was perpetrated by the LTTE it was not the Sri Lankan government's responsibility:

Mr Palihakkara: "Since the child was taken by the LTTE the government finds it difficult because it's not the government's responsibility but please tell this also that we are heartfelt about her loss and the Chairman has undertaken to check with the security authorities whether they have found him in any place and if so we will get back."⁶¹

In fact, under international human rights law the state has a responsibility to protect individuals from abuse, whether the perpetrator is a government agent or a non-state actor.

ALLEGED ENFORCED DISAPPEARANCE OF SURRENDERED LTTE LEADERS

Several witnesses testified that surrendering family members who had been affiliated with the LTTE were loaded onto army buses in Mullaitivu in the final days of the war, after which they disappeared. A woman who testified in Ariyalai in November 2010 estimated that there were more than 50 people on the bus her husband boarded on 18 May.⁶² Another said she counted 16 such buses. Among those reported missing were high ranking members of the LTTE who witnesses identified by their noms de guerre: Ilamparithi (Puthukkudiyiruppu's Political Head), Kumaran, Ruben, Babu and Velavan; Puthuvai Raththinathurai, an LTTE poet; Baby Subramaniam, from the education wing; and Lawrence Thilagar, once the LTTE's international representative.

A witness testifying in Kandawalai told Commissioners that not only was a son in law missing, who was in the LTTE and surrendered to the Army on 18 May at the urging of a catholic priest, but also a daughter and the couple's children – including a toddler – who had surrendered with him. While Commissioners asked questions designed to flesh out the witness' story, they did not attempt to identify the Army unit alleged to have carried out the enforced disappearances.

Testimony of Witness 3, Kandawalai Divisional Secretariat⁶³

Witness 3: On 17th May 2009 we went into the Army control area at Mullaitivu, Vadduhawal [Vadduvaikkal]. On 18th at about 10.00AM there was an announcement that those who were with the LTTE should surrender to the Army. Two fathers [priests], Father Francis and Father Reginald took them and handed over them to the Army and surrendered. I saw it myself. All my 4 children were taken and handed over to the Army.

Chairman: Where is Francis Father now?

Witness: I am on the lookout for him but I don't know where he is.

Chairman: Where is Father Reginald?

Witness: I am searching for him also. I don't know where they are. A lot of people were taken by them and surrendered to the Army and I saw it myself.

Chairman: So now do you have any notice of the whereabouts of your children?

Witness: I have been looking and I have no information. I am alone. I am going every where to find them but I could not find them. I have made so many appeals to various people but nothing has happened. I hope I can get a favorable response through you. At least the future generations should live in peace. I am not asking for money, land or property, I am asking for my children who have been my treasure. His offences could be investigated. He was an LTTE member, but what about the small children, they are not LTTE members, why were they taken by the father and handed over to the Army?

Chairman: What are their ages?

Witness: Son in law is 32, daughter is 29, the child was born in 2006.

Chairman: They were also handed over.

Witness: The whole family was taken. Father Francis took the son in law, my daughter and the two children. I pleaded with the Father, but he said the whole family should go and surrender, they were held by their hands and taken to the Army and surrendered. We have been searching for Francis Father, we found out about him from his relations and we were told that Francis Father was also taken by the Army.

Chairman: Where is Francis Father's church?

Witness: I don't know him. I only knew him when they were surrendering.

Chairman: What was your son in law's connection with Francis Father?

Witness [interpreter]: His son in law was in the LTTE. They were taken in 16 buses. They were taken from Vadduhal Mullaitivu to the main road. My son in law was in the LTTE but not the mother or the two children. All were taken together and it was Francis Father who did that. A lady at the hostel told me that Francis Father was taken to the hospital by the Army for medical treatment. For the first time I saw Francis Father when he took away my family to surrender to the Army. The Poykulam Temple is in the Vavuniya town. There is a preschool functioning there and a lady teacher who is there had told me that she saw the Army taking Francis Father to the hospital. She told me that she wanted to talk to Francis Father but since he was brought by the Army she said she was scared.

Chairman: We will look into the matter.

ARBITRARY DETENTION

The LLRC received hundreds of complaints from people seeking to locate relatives they believed were in detention because of real or suspected links to the LTTE, or – if they had contact with them – asking to have their release expedited. In most cases the commission simply asked for details in writing and promised to contact the authorities. At later stages, after the LLRC has submitted its interim report, the Chairman reminded witnesses several times that they had already recommended that the Sri Lankan government create a “special mechanism” to examine detention cases and expedite their resolution.

More than 11,000 people were detained by the Sri Lankan authorities at the end of the conflict on suspicion of affiliation with the LTTE. Many of them surrendered to the army; others were arrested in displacement camps. They were detained in a variety of *ad hoc* detention facilities broadly referred to by the authorities as “rehabilitation camps.” Detainees were not charged with offenses, provided access to counsel or brought before a magistrate. There were already an estimated 1,900 longer term detainees, including people who had been arrested and sent to Boosa prison pending investigation by the Terrorist Investigation Division (TID) of the police as well as people held at other jails and lock-ups and at police headquarters by the TID or CID. Some had been detained without charge or trial for years. Although many families eventually gained access to detained relatives, some did not, and others lost track of them as they were transferred from one facility to another. Amnesty International has received reports of other secret and unacknowledged places of detention and of incommunicado detention, torture and enforced disappearances of detainees.

Among the useful recommendations made by the LLRC in September 2010 (discussed below) was the call to expedite resolution of detentions cases (either charging detainees with offenses or releasing them) and to establish a registry of detainees. Though critically important, the acknowledgement of the need to resolve detention cases was hardly new or controversial, and had been previously noted by the Attorney General.

3. EVIDENCE OF THE LLRC'S PRO-GOVERNMENT BIAS

Failure to fully scrutinize government actions when interviewing government witnesses

Unlike the treatment of witnesses whose testimony cast the Sri Lankan government in a negative light, the sessions with government officials were largely conciliatory. Commissioners allowed government officials, including Secretary of Defence Gotabhaya Rajapaksa to repeat unchallenged claims that Sri Lanka followed a "zero civilian casualty policy" and that the final military offensive against the LTTE in the north was a "humanitarian operation."⁶⁴ There is no indication that the LLRC has followed up on such responses even after it received evidence that government forces, in practice, violated the laws of war on a massive scale.

Excerpt of Representation by Gotabhaya Rajapaksa, Secretary, Ministry of Defence

Mr Rajapaksa: ...The President told that this is not a military campaign but this is a military operation conducting to liberate the people in that area, so he said, just call it humanitarian operation. The practice [sic] that we have followed for so many long years, you know, somebody might think it is minor thing but it is a very important fact you know from the top to the bottom of the military that the message from the President himself that they have to remember that the liberation of the people in that area so that we named it the Humanitarian Operation. Then a very important thing took place and that the President and the Security Council decided that we have to include a major concept that the zero civilian casualties that it was introduced in all the operational orders the first heading of all operational orders going from the Army headquarters, Navy Headquarters Air force Headquarters or even lower level this was maintained the zero casualties where all possible steps must be taken to avoid civilian casualties.⁶⁵

Commissioners did not question officials on the Sri Lankan government's many public misrepresentations of the facts during the war. The most disturbing of these are the Sri Lankan government's repeated claims that there were under 100,000 civilians left in the Vanni at the beginning of 2009 when officials later conceded there were some 300,000 and that the security forces were not using heavy weapons in civilian areas when the military eventually admitted they were.⁶⁶

Commissioners failed to closely question officials about allegations of human rights violations committed by their subordinates or followers. The exchanges between Commissioners and Government Ministers Douglas Devananda, V Muralitharan and S Chandrakanthan illustrate this reluctance. All three men are leaders of armed Tamil groups aligned with the Sri Lankan government that have entered mainstream politics and whose supporters have been accused of human rights violations. In the context of much longer sessions addressing a wide range of issues, including land and resettlement issues, economic reconstruction and ethnic reconciliation, each was asked about reports that abductions and extortion were taking place

in areas they dominate, but Commissioners trod lightly and the subject was quickly dropped.

Douglas Devananda

Douglas Devananda is the founder and head of the Eelam People's Democratic Party (EPDP). He is also a cabinet minister, currently serving as Minister of Traditional Industries and Small Enterprise Development. The EPDP, a Tamil party that opposed the LTTE and has been aligned with the Sri Lankan government since 1990, is a significant political actor in Jaffna. The EPDP has a long record of human rights abuses and has been accused by witnesses to the LLRC of involvement in abductions and killings.

In the session on 3 September 2010, Commissioner Palihakkara noted in the course of a much longer exchange that although the LTTE was "no more," people in the North had complained to the LLRC that their practices, such as abductions and extortion continued, and asked what measures Devananda would recommend to prevent them, "because all the Commissioners were told by so many people that these terrible practices continue, and they don't know who is doing that."⁶⁷

Devananda initially blamed remnants of the LTTE and claimed to take a hard line against perpetrators. Commissioner Paranagama tried again, this time specifying that Tamil parties aligned with the Sri Lankan government had been accused of these crimes, but he failed to name Devananda's party as a potential perpetrator:

Mr M P Paranagama: But when we visited one or two people said that some of the Tamil parties who are with the government, supporters of those party people, abuse power and take this kappam [extortion] from the farmers when they come to sell the paddy.⁶⁸

Devananda admitted abuse by pro government parties, but claimed the situation was under control:

Devananda: Yes. You are right. But now it is almost under control. I don't want to say openly even some issues, but that was there. Now it is under control. In any society you have the good and the bad characters, especially in war torn areas. If we have fence problems between two houses they will take the knife. Now they will come with an AK47 or grenade or mine. It is that type of culture. That type of culture because of the unfortunate thing it is brought among the Tamil community. I think under reconciliation you will have to look into that also.⁶⁹

At this point, the Chairman ended the session with Douglas Devananda.

V Muralitharan

V Muralitharan (alias Karuna or Karuna Amman) is Vice Chairman of the ruling Sri Lankan Freedom Party and Deputy Minister for Resettlement. Muralitharan is a former LTTE leader from eastern Sri Lanka who founded a breakaway Tamil party (the Tamil Makkal Viduthalai Pulikal or TMVP) before joining the ruling party. Karuna has been accused of complicity in human rights abuses as a member of the LTTE, including involvement in the assassination of

hundreds of Sri Lankan police in eastern Sri Lanka in 1990, and LTTE massacres of Muslim villagers. Karuna's supporters and members of the TMVP party, which is now led by another former LTTE member and Muralitharan's former deputy 'Pillayan' (Sivanesathurai Chandrakanthan, now Chief Minister of the Eastern Province) have been accused of killings, abductions, intimidation and extortion.

During their exchange with Minister Muralitharan, the Commissioners raised allegations of abductions and extortion, this time mentioning the alleged involvement by Muralitharan's former party, the TMVP, but they did not persist. Commissioners' queries focused on prevention and compensation rather than on justice, truth and full reparations.

Excerpt of exchange between Commissioners and Minister Vinayagamoorthy Muralitharan [aka Karuna]⁷⁰

...Mr Palihakkara: Minister Muralitharan thank you for your presentation. When we went to Batticaloa the people told us that although LTTE is no more, the practices of LTTE continue like extortion (that is kappan) and sometimes people are forcibly taken by unknown people. Sometimes the name of TMVP was also mentioned. So as the Minister responsible what can you suggest to do to stop this because people are suffering; they told us; and who is responsible for these things?

Hon Muralitharan: I think within the 2 year period there were no big incidents happening in Batticaloa; it was very peaceful. Before, during LTTE operational time many things happened because all the people were recruited by the LTTE; they were kidnapped by the LTTE. Then at the battle front nobody knows who died, especially Thoppigala operational time lot of LTTE people died. At the time nobody knows who died. Later I also heard some news and saw the newspapers that people were blaming the TMVP. Really I am not a TMVP member. I am with the SLFP; I joined the Government. Now TMVP is maintained by our Eastern Province Chief Minister. But they also didn't get involved in those kinds of things because nowadays law and order is going on very well. There are no weapons; nobody can carry any weapons; all the weapons have been removed by the Police and the Police are doing their duty very well. At the same time some independent people who want to provoke they could use, because day before yesterday also we heard the news near Colombo they robbed the jewellery and 6 people died. That kind of activities sometimes happened there like that but Police has taken action into those kinds of activities. At the same time there is no any movement activities I think. Really there is no LTTE; there is no other movement; nobody can carry weapons because that much law and order is being maintained very well in the north and east now....⁷¹

Commissioners then changed the subject. They asked a series of unrelated questions: should Muslims who were massacred by the LTTE in the east in 1990 be compensated? (witness answered yes); whether the witness was forcibly recruited into the LTTE (no); what form a political solution should take; (one that "should not in any way offend the majority community"); what strategy he recommended for bringing about reconciliation between the different communities (Tamil politicians have to work together and support the President); Did the government orchestrate settlement of Sinhalese people in the north and the east with a view of changing the demographic patterns in those areas? (no).

Commissioner Paliakkara returned to his original question, but the line of questioning was not pursued for long:

Mr Paliakkara: Minister thank you for your answer but you did not answer the last part of my question because the people have told the Commission when we visited Batticaloa that kappan and forcible recruitments are still taking place by unknown people. What can we do to prevent this from happening; what would you suggest because it is acting against reconciliation; that is what the people told us. Since our mandate ... so what can you do about this? What are the measures?

Hon Muralitharan: Especially I follow your Commission. I got some points. I informed the Batticaloa DIG [Deputy Inspector General of Police] also people are complaining like that and we should be careful about that matter. But recruitment: there is no recruitment because there are no armed cadres now. Even the LTTE, there are no LTTE. 2-3 kidnapping incidents happened. I complained to the Police; I got the people to complain to me also and I conveyed the message. Police also tried to find out. That kappan: some people are doing. Sometimes they use our name also. Over the phone they tell like this; then I got the numbers. Lot of phone numbers I have given to the Police also; these are the numbers you have to follow and you arrest them. Then already they arrested. Several people arrested by the Police, this kind of people. But nowadays it is getting better I think. There is no problem I think. This is really ... my answer to you this is a Police duty. Everywhere we have opened the Police Stations, they have to do their duty.

At this point a Commissioner again changes the subject and the discussion does not return to the issues of extortion and abductions.

Prior to this in the course of a lengthy and wide-ranging session, the Chairman also asked Karuna to comment on allegations by “a number of witnesses” that when he was the LTTE leader of the Batticaloa region the LTTE “eliminated” over 600 police officers. The witness denied responsibility for the LTTE’s capture and execution of surrendered police officers, claiming that he was in Jaffna at the time and that LTTE’s supreme leader, Vellupillai Prabhakaran had ordered the killings, implying that they were carried out by the LTTE’s intelligence wing leader Pottu Amman (both of whom are now dead).

That happened I think in 1989 period after the IPKF [Indian Peace Keeping Force] went off. Prabha ordered everybody to launch the attack. Really I was not in Batticaloa at the time I was in Jaffna but I heard that news. They were arrested and handed over to Pottu, Intelligent Wing, after that nobody knows what happened to them. That is the real story. That is done by the ... All brutal things done by Prabhakaran because I was always involved with the military wing. I was the military wing leader – one of the leaders. Then we are always involved with the military operations and we spent our time in the battle front and everywhere. Bomb blasts, killing of civilians, everything is done by them. Several times I also tried to correct Prabhakaran. After each incident I told him don't do this one; we joined for the freedom fighters like that, we are called freedom fighters that is why I also joined, everybody joined, then don't do this one. But he never gave a proper answer and he never stopped also. Again and again, twin tower bomb blast, Dalada Maligawa bomb

blast, then everywhere bomb blast. Continuously they were doing that.⁷²

Despite the importance of this case in the history of Sri Lanka's armed conflict and the other very serious incidents Karuna raised in his response, none of the Commissioners attempted to pursue the line of questioning.

S Chandrakanthan

Sivanesathurai Chandrakanthan (alias Pillayan) is Chief Minister of the Eastern Province. A former LTTE child soldier who rose through the ranks of the LTTE, Pillayan was deputy leader of the TMVP under Karuna (discussed above) and now heads that party. As a member of the LTTE and of the TMVP he has been accused of direct involvement in attacks on civilians. Pillayan's current supporters are accused of ongoing human rights violations, including abductions and killings, particularly in the context of internecine conflict with Karuna supporters. The handling of S. Chandrakanthan's testimony was even more tenuous than the other interviews discussed above; more evidence that the LLRC had no intention of uncovering the truth.

When the LLRC conveyed general concerns about past and ongoing human rights violations committed by Pillayan he actually asked the Commissioners to be more specific, but instead the Commissioners dropped the subject, clearly demonstrating that the LLRC was not pursuing accountability; it was barely going through the motions:

Excerpt of exchanges between Commissioners and Chief Minister Sivanesathurai Chandrakanthan⁷³

Mr Palihakkara: Thank you Mr Santhirakanthan [as the name appears in the transcript, hereafter Amnesty International will use the more common spelling, Chandrakanthan]. I have two questions. Firstly, when we visited the Eastern Province people have told us that although the LTTE is no more, LTTE-like practices continue. They complain about harassment, extortions and sometimes problems about children. What are your views about solutions to this, as to what should be done?

Chandrakanthan: Very importantly there are some incidents which do take place. If you could be very specific about and directly say what it is I may be able to give an answer. But like in other provinces, like in other areas, similar incidents do take place in our area also. But through the legal and judicial means we are trying to take action.

Palihakkara: What are the actions that can be taken?

Chandrakanthan: If you could specifically say about the incidents I may be able to tell you, but there are one or two abductions that have taken place.

Palihakkara: Well I have been specific enough. I think they also mentioned some political party names.

Chandrakanthan: I also saw it in the papers. It may be those incidents similar to what I have told you now. Lot of incidents have taken place between the period 2002 to 2008. For example, if you take the framework of our organizations you will see that in one particular family, one member of the family will be a supporter of the LTTE and the other member of the very same family will be a supporter of the TMVP. So there were confrontations or conflict of opinions based on that. Through a legal framework, a legal system these matters have been taken up and inquiries or investigations are proceeding.

The Commissioners simply failed to provide any specific questions or follow up on the necessarily vague responses to seek justice or compensation for any of the victims. Later, in the context of a discussion about land issues, a Commissioner notes that witnesses who testified in Batticaloa were afraid of Chandrakanthan, but does not pursue the issue in any depth:

Mrs Manohari Ramanathan: ...We have been to Batticaloa and when we came back we were very sad. Lot of people in Batticaloa spoke to us in camera. They say that they were unable to get their lands back, unable to sell their lands because of the conflict they got displaced. We asked them why they are so scared. Of you.

Chandrakanthan: I feel sorry. If that is the situation there then I really feel sorry for them.

Ramanathan: If they are frightened of you is that the truth or is it a rumour?

Chandrakanthan: They should not be frightened. They should not be reluctant or have any fear to claim their rights and get their rights, and whenever their problems are surfaced I immediately go to the place instantly and try to solve the problem, and if it is possible by you and if you have confidence and trust in me please tell me those problems, submit those problems to me, and I will study it and solve it.

Ramanathan: We told them so, but they are frightened.

Astonishingly, the LLRC not only failed to try to understand the cause of the fear of Pillayan expressed by witnesses, a former (and reputedly current) leader of an armed group, but appeared to support him.

In a continuation of the question and answer session with Chandrakanthan, the LLRC Chairman again introduced the issue of the LTTE's execution of more than 600 surrendered policemen in eastern Sri Lanka in 1990, and noted that individuals now under the command of the witness ("persons who are members of your group") were alleged to be involved in that massacre. But instead of pursuing a line of questioning aimed at clarifying events and identifying individuals responsible, he merely asks whether the witness believes a public apology is in order. Perplexingly, the LLRC made no effort whatsoever to seek accountability for this case, one of the major incidents in the country's long armed conflict.

Chandrakanthan denied involvement in the massacre, suggesting that Minister Muralitharan – his former commander and current rival – should issue an apology:

Chairman: Mr Chandrakanthan, you know that over 600 policemen were asked to surrender and they were all lined up and shot and persons who are members of your group were instrumental in that massacre. Now, don't you think for the purpose of bringing about ethnic reconciliation that your group should make a public apology to the members of the families of those officers who were killed?

Chandrakanthan: That is a good question that you have asked. If we are asked to ask for a public pardon for being members of the LTTE....

Chairman: No. Not pardon, but apology.

Chandrakanthan: As I told you in the course of my evidence earlier, on the 11th of June 1990 I was in school at that time and I know that the LTTE encircled many areas. I went to join the LTTE on the 4th of February 1991, but I remember having been told by the people that all those police officers who were encircled and taken by the LTTE were killed after two or three weeks. I think that if you say that we must make a public apology to those people, I think the most appropriate person would be Mr Karuna who was the leader at that time.

The following exchange was equally disturbing. Chandrakanthan was asked whether he had seen Sri Lankan government forces engaging in violations. He listed a series of atrocities he witnessed as a teenager in 1990, which the Commissioner questioning him seems to imply were justified as "part of the war." Again there was no in-depth questioning of the witness to establish where or when the incidents took place or who perpetrated them. They concluded that the appropriate response is a public apology.

Mr M P Paranagama: In fairness to what Chairman asked you, you might think that we are only asking about the wrong done by the LTTE. Can you say of any instance where our forces have done any grave crime like that?

Chandrakanthan: I was an eye-witness to similar incidents by the forces in the year 1990.

Paranagama: How many incidents?

Chandrakanthan: I was an eye-witness to an incident where one Seeni Thambi who was an immediate neighbour to me was shot by the forces, and I saw partly burnt bodies scattered on the roads at that time, and there was a special force that was brought to our area at that time and they were called *vettu* party, that is slaughtering group. I have seen many people taken alive and shot, cut and thrown into the rivers. I saw two of my classmates taken away at midnight and I saw one Rasa who was another neighbour of mine, at midnight the army came took him and he prayed at their feet, worshipped at their feet, but they kicked him and I saw them shooting him on the spot. I was a teenager of 16 years and I got assaulted by the army.

Paranagama: But weren't that a part of the war that was at the time?

Chandrakanthan: Yes, of course. We must look at the political background for those

incidents and all the political leaders and all the political leaders who worked or who injected these incidents must make a public apology.

Chairman: Mr Chandrakanthan, I also concede that if there were excesses the government also must tender an apology. Now, I must take this opportunity for thanking you for coming over here and expressing your views very candidly and I think some of the views you expressed were very important and we will take that into consideration in formulating our recommendations. Thank you.

[session ends]

It is important to note that, like all witnesses to the LLRC, both Douglas Devananda, and V Muralitharan and S Chandrakanthan are protected by the President's invocation of Section 14 of the Commission of Inquiry Act (under which the LLRC was created) which provides special immunity for witnesses, thereby shielding them from prosecution based on evidence they provide to the commission.

COMMISSIONERS IMPOSE THEIR OWN VIEWS DURING QUESTIONING WITNESSES

Commission members also made personal interventions during hearings that went beyond examination of witness testimony, and sometimes appeared to impose their own views during the process:

Excerpt of exchange between Commission Chair, C R de Silva and Major General Kamal Gooneratne

Chairman: General there is one thing that concerns us. We are fully possessed of what you are saying but there is one thing that concerns us because this was a report by the International Press. Regarding the surrender procedures and also the fact that the persons who were surrendering were assassinated. Now there was an allegation like that. Now we would like to have your views on that because that is very relevant to our ...to the final recommendations that we propose to make.

Security Forces Commander, Wanni: Yes, I don't agree with that allegation sir because I told you that we went into action of this humanitarian operation with a clear mind set and whoever surrendered were handed over to the authorities and nobody was assassinated as surrendeers.

Chairman: As a matter of fact some of the people who surrendered were questioned by us and they said that the Forces were assisting them and there was no question of them being in any way humiliated or in any way subject to any type of force by the Forces. So that is why I asked you this question because there were some of the LTTE cadres who had surrendered who informed us that while surrendering that the Army was very helpful and in other words the Army went to the extent of guiding them to avoid the land mines and other obstacles. That was what they said. So in view of this allegation that was levelled against the Forces that is why I asked this question from you so that you deny any type of force used by the Armed Forces on the persons who were surrendering.

Security Forces Commander, Wanni: Correct sir. I can strongly deny this allegation and in addition to that we being professionals in the military field we consider a surrendered LTTE cadre as a very valuable source of information. So unless otherwise you treat him properly he will not come out with his heart out.

Excerpt of exchange between Commissioner Palihakkara and Commander of the Navy Tisara Samarasinghe⁷⁴

Commander: Finally, let me wind up, I don't know whether this letter has been forwarded by any other person Secretary would have sent. We worked very closely with the ICRC and they know exactly, this Mr Paul when I was in charge of operations in 2009, we were very clear of our attitude and the mission, that is filtered from the top of the country when as it is said it is a humanitarian operation, zero casualties, help people and it was demonstrated that soldiering is a noble profession so I wind up by saying that and which was said by none other than the head of the ICRC.

Mr. Palihakkara: Thank you very much Commander knowing your commitment to humanitarian principles personally. This to ask you, during the last part of the operation I think you described the role you played, the Navy together with the CBS (sic) to maintain the only life line to those 300,000 people held hostage by the LTTE and we would like to for the Commission's record get those details, I think you had a slide on that about the supplies and also on your return journey you took the wounded and amongst would have been LTTE cadres, those details and also my question to you, specially the Navy under the ceasefire and since our mandate also includes lessons learnt part, we would like your thoughts on that. The Navy was actually excluded, I wouldn't say excluded but the naval surveillance was excluded from the ceasefire agreement and the seas was basically free for the LTTE, having suffered that handicap and the Navy going to the rescue assistance to the people trapped by the LTTE at that point it was a dilemma. When you supply food you know very well a part of that goes to the fighting cadres so in effect you had to feed and fight both. How was that handled basically that is one and we would like to have the date (sic) [presumably means data] from you or the CDS [Chief of Defence Staff].

STRONG CHALLENGING OF EXPERTS AND WITNESSES WHO CRITICIZE THE STATE

In contrast to their highly sympathetic handling of official witnesses, transcripts show that Commissioners strongly challenged expert testimony when it was perceived to be critical of the state. On some occasions Commissioners cited official witnesses whose testimony contradicted submissions by others; on other occasions Commissioners were openly sceptical about the validity of witnesses' statement.

Excerpt of exchange between Commission Chair, C.R. de Silva and Sri Lanka's Anglican Bishop – Rev Duleep de Chickera⁷⁵

...Bishop Rev Duleep de Chickera: Certainly the military has done a great deal of good work in the post-war situation and that is not being questioned. But there is a perception that 100,000 military families will be settled in that area. Now 100,000 military families – if this is correct – would amount to one fourth of that population and that is going to have an impact on the demography of that area.

Chairman: Actually we asked this same question from Mr Gotabhaya Rajapaksa and he said there is absolutely no truth in that type of settlement. There is absolutely no intention on the part of the Government to settle military families and he completely denied because we asked this question, because there were certain witnesses who came before us who expressed certain fears about the change of demographic patterns by the settlement of these people. But he completely denied that position.

The ethnic nature of the armed conflict in Sri Lanka, in which the LTTE sought to create a separate state for the Tamil minority and to divide the island along ethnic lines, makes all issues related to regional demographics extremely sensitive. Many Sinhalese see no reason why, now that the conflict has ended, they should not seek new economic opportunities in the north and east; or return to homes they fled years ago when ethnic violence escalated. Many Tamil residents of former conflict areas fear that now that the fighting is over, members of the Sinhalese majority community (starting with military families) will move into areas that have long been occupied by Tamils, bringing with them competition for land, economic resources and cultural and political influence. These feelings have been manipulated by politicians on all sides.

The Muslim minority, most of which is Tamil speaking, is considerably smaller than the other two groups, and has traditionally lived in close proximity with Tamils in northern and eastern Sri Lanka. In the course of the armed conflict, political forces exploited differences between Tamils and Muslims too, leading to communal violence and human rights violations against members of both communities, including massacres of Muslim and Tamil villagers in the east and the mass expulsion of northern Muslims by the LTTE in 1990.

Excerpt of exchange between Commission Members and M I M Mohideen, Executive Director, Muslim Documentation Centre:⁷⁶

Dr Rohan Perera: Thank you very much Mr Mohideen for your submissions, you did refer to a particular incident I believe in Muttur. You referred to the fact that both the LTTE and the security forces attacks resulted in civilian deaths. Could you shed more light on this. Was it a case of deliberate targeting of civilian population or installations or were the civilians caught in a cross fire between the LTTE and the security forces, were the LTTE using civilians as a buffer as part of a strategy, so was it a case of deliberate targeting or civilians being caught in a cross fire. Could you clarify please.

Mr Mohideen: ... they never specifically targeted Muslims but what happened had Muttur been a Sinhala dominated area, the approach would have been entirely different, they would have considered the security of the people who were there the Sinhalese, on the other hand if Muttur had been a Tamil dominated area, LTTE also would also have seen that the Tamils are not seriously affected by this war. But these two parties, the government forces and the LTTE were not interested in the security of the majority community, the Muslims and also those people there, but to answer the question here, they never cared for the security of the majority Muslim people.

LTTE abducted 200 people and thousands of people left the place because they had no food, no water, nothing for 48 hours. The government forces did nothing as far as the safety of the Muslims [were] concerned. Therefore, what I am trying to say here is the responsibility of the government to see that innocent people are not victimized. War crimes, regardless they were firing at innocent people, they rocketed, they bombed the schools, the hospitals, the mosques all those places.

My experience in this is that the government forces, we were not looking for any consideration or safeguard from the LTTE. We were promised, don't leave Muttur the government security forces would safeguard you. Shifting of the 400 military personnel who were stationed in Kinniya to Mavilaru gave an opening to the LTTE to come and capture and massacre the Muslims. Muslims were not only massacred in Muttur, they have been killing Muslims all over the north east so they wanted to kill as many Muslims as possible. This war gave them a good opportunity and the government forces did nothing. We can call it as neglected by our experience the lessons that we have learnt is that they never cared for it, neglecting is something and don't care let anybody come kill anybody and go, something like that attitude. Our people the Muslims lost all hope because we never supported terrorism.

Dr Rohan Perera: Just to sum up in the light of that clarification, your position is that rather than deliberate targeting, it was failure to take adequate precautions where civilians were concerned, failure to take adequate precautions to protect civilians rather than a matter of deliberate targeting. That's your position?

Mr Mohideen. My position is, again I am repeating, if Muttur had been a Sinhala majority area government forces would have adopted a different procedure to get rid of the LTTE, if Muttur was a Tamil majority area, the LTTE would have adopted a different procedure. This war is a crime against the Muslims.

Mr Hangawatte: Mr Mohideen, thank you for coming. When you say that the forces failed to provide adequate security which resulted in some massacre by the LTTE, you are assuming that this is the case, there is no evidence to support that, I guess. Do you have any? I mean you are just assuming because it was a Muslim area they failed to provide adequate security. Why I am saying this is that there were many Sinhala villages in the East as well where the villagers had been massacred by the LTTE according to documented data and whole villages have been expelled. Again did the forces fail to provide security because these were Sinhala villages.

Mr Mohideen. I am not directly accusing that they have been deliberately targeting or committing families became refugees. 32 Muslims have been killed, 7 are still missing, that is sufficient evidence for us to prove that this war has caused so much of damages to the Muslim interest.

Mr Hangawatte: I would grant you that, just like it caused damages to other populations as well.

Mr Mohideen: The approach was entirely different with regard to Muslims.

Similarly, during sessions held in the north and east,⁷⁷ Commissioners interacting with prominent witnesses who criticized the Sri Lankan government or identified potential violations sometimes guided testimony or defended the Sri Lankan government against criticism. A key example of the LLRC's efforts to skirt any evidence that could lead to establishing culpability on behalf of the Sri Lankan government arose during the testimony of a surrendered LTTE witness, who testified that the LTTE did not have weapons in the No Fire Zone. This information is highly relevant to establishing whether the LTTE, or the Sri Lankan government, or both, violated the legal prohibition against targeting civilians or knowingly endangering civilians by placing military targets in close proximity to them. Instead of probing this issue, the LLRC seemed more anxious to assert the Sri Lankan government's position:

Excerpt of exchange between Commissioner Palihakkara and a high profile surrendered member of the LTTE media wing in St Anthony's Church, Kayts, 14 November 2010

Mr Palihakkara: Do you have any idea of civilian casualties?

Witness 13: No

Mr Palihakkara: If the LTTE had not used the civilians as human shields could not the death toll have been minimized.

Witness 13: What really happened was at the last stage of the [battle] the people converged to a very narrow area of Mathalan and Kakanai. The LTTE launched their shelling attacks on the army from these places. The government forces retaliated to the spot where the LTTE was staying, as a result there was a number of deaths which is why I referred to both sides. At the last phase of the battle if the LTTE has allowed these people to go out all these casualties could have been avoided.

Mr Palihakkara: Did the LTTE bring in arms into the no fire zone?

Witness 13: There was no weapons to be seen.

Mr Palihakkara: There were three no fire zones. The LTTE was firing from the no fire zone.

Witness 13: Neither side respected the no fire zone.⁷⁸

FAILURE TO TREAT VICTIMS AND THEIR FAMILIES WITH DIGNITY AND RESPECT

Thousands of civilians came forward when the LLRC announced it would hold hearings in former conflict areas – some at great personal risk (most were told to submit their complaints in writing due to lack of time). Many were Tamil women seeking news of missing relatives they believed had been taken into the custody of the security forces. Some witnesses alleged serious crimes on the part of state forces or the LTTE, including enforced disappearances.

The LLRC process in the north and east exposed important evidence of abuse. But here too the LLRC transcripts show that Commissioners failed to investigate their allegations in depth.

The sessions were short; Commissioner's responses to the witnesses were often perfunctory. They asked few follow up questions, often merely promising to forward written complaints to relevant officials. What follows are transcripts of two complete sessions, as reported on the LLRC website. Like many other sessions from the region, these are brief exchanges and indicate a disturbing lack of compassion:

Testimony of Witness 9, District Secretariat Kilinochchi, 18 September 2010⁷⁹

Witness 9: My son (X2) is under detention in the Welikanda Detention Camp. I have 4 daughters and my husband cannot do any work because he has been afflicted. The Army wanted all the people who had anything to do with the LTTE to register their names, so my son went and registered his name. They promised to release them within 6 months. So far they have not released them.

Q. Tell her that we will be writing to the authorities.

Witness 9: Please help us. We have registered a complaint ... We have been spending quite a lot of time. We went to Vavuniya Police also several times to make a complaint.

Witness 9: They promised to release them within 6 months, now it is more than a year.

Q. Right, right.

Testimony of Witness 12, Gurunagar Cultural Hall, Jaffna, 12 November 2010⁸⁰

Chairman: Did you give particulars about a missing person?

Translator [apparently answering for Witness 12]: Yesterday she gave sir.

Chairman: Yesterday you gave. We did not have time.

Witness 12: I have 4 children. I haven't any support or any help. I don't know the whereabouts of my husband. Please try to trace him.

Chairman: We will try to do that.

Witness 12: My eldest son is 14; he is a school boy.

Chairman [apparently to translator]: Yesterday they gave it; they can't expect us to go through it today? You tell them.

Non governmental observers who monitored the northern proceedings described an LLRC that was ill-prepared to deal with the large numbers of civilians coming forward with complaints: timeframes to hear testimony were too short and the commission had inadequate Tamil translation.

Furthermore, little support has been provided to victims who give testimony to the LLRC, contrary to the Updated Set of Principles which state: "Social workers and/or mental health-care practitioners should be authorized to assist victims, preferably in their own language, both during and after their testimony, especially in cases of sexual assault"⁸¹ and "[a]ll expenses incurred by those giving testimony shall be borne by the State."⁸²

The Session in Pachchillaipallai Division Secretariat on 18 September 2010 was delayed by the late arrival of the LLRC prompting the first witness to chide the Chair:

...we have waited here more than two hours from 2.30 itself. We had been informed that your Commission is coming by 2.30. Most of the people came and waited up to now and some people have gone back on their own.⁸³

The Centre for Human Rights, a Sri Lankan NGO, described a session in Mannar on 8 January 2011 in which preferential treatment was given to high profile witnesses at the expense of ordinary civilians. This practice belies the notion that the LLRC was seeking accountability for individual violations or gathering evidence to that end:

The session which was scheduled to begin at 9.30 am on January, 8 commenced only at 10.30 am. CHR representatives noted that there weren't [sic] adequate seating available and most of the people have been exhausted after travelling a long distance and were sitting on the ground. 4.30 submissions were presented in the session at Mannar DS.

Bishop of Mannar, Rt. Rev Rayappu Joseph and many other religious and community leaders gave evidence before the LLRC. Both local and foreign media were eager to cover the session and gave prominence to these dignitaries' submissions. As the prominent figures made extensive presentations, the ordinary citizens who were directly affected by the war and were desperate to talk to the Commissioners were forfeited their allocated time, as CHR has pointed out earlier.

Chairman of the LLRC spoke about there [sic] interim report in which they had recommended certain methods to address the issues of the people. Although, this notification made in English would have been of extreme importance to the people, his speech, was not translated into Tamil. Further, it is to be noted that the overwhelming majority of those present do not understand English.⁸⁴

If the Sri Lankan government is serious about reconciliation it must be serious about truth and justice. Any mechanism purported to address public grievances about the treatment of civilians during the war must be given adequate scope and resources to allow for individuals to receive a fair hearing and sufficient authority to ensure redress. It must also treat all witnesses in a safe and humane fashion, something that is impossible without good witness protection and Commissioners that treat ordinary people with the same respect they show to public officials.

FAILURE TO RESPOND TO THREATS AGAINST WITNESSES

Sri Lankans, particularly in the north and east of the country, remain subject to serious threats including enforced disappearances and extrajudicial killings, which continue to be reported. People with former links to the LTTE, including family members of detained cadres face particular dangers, as do individuals who have been released from detention and attempt to return home. Threats, intimidation and even the murder of witnesses in both criminal and human rights cases are ongoing problems.

In order to create an environment conducive to receiving useful testimony, commissions of inquiry must be able to respond to threats against witnesses. Principle 10 of the Updated Set of Principles states "Effective 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."

The LLRC has no witness protection procedures. Nor does an adequate witness protection scheme exist in the country's judiciary. Sri Lanka's Parliament never passed draft legislation first introduced in 2007 and re-introduced in 2008 that would have established a system for protection of victims and witnesses. (The draft has been criticized as inadequate by Sri Lankan legal experts.)

The LLRC's interim recommendations, sent to the President in September, did not reflect concern for the protection of witnesses, despite the fact that several people told the commission they had been threatened.

In November 2010 people who came forward to give evidence before the LLRC in Kayts Island, Jaffna were reported by NGO observers to have been threatened by armed men alleged to be members of the EPDP. In subsequent sessions there were reports that witnesses and Commissioners were photographed by members of the security forces.

The Centre for Human Rights described a session at the Periyapanrivirichchan AGA's Office in Madhu where army personnel photographed LLRC witnesses:

The session was scheduled to start at 9 am but it began only at 10.45. Around 10.15 am a group of army officers arrived at the DS Office and recorded the names of the LLRC staff and others from outside the area. Another officer took photos of the LLRC Commissioners and those who had come to give evidence.⁸⁵

4. GOVERNMENT ACTION ARISING FROM THE LLRC

The LLRC's interim report was submitted in September 2010.⁸⁶ It contained some useful recommendations to address ongoing complaints from witnesses; it did not make recommendations aimed at accountability for past abuses.

In March 2011, the Sri Lankan *Sunday Times* newspaper published excerpts of a six page "Progress Report on the Implementation of the Interim Recommendations of the LLRC," highlighting the work carried out so far by the Inter Agency Advisory Committee (IAAC) appointed in October 2010 to implement the LLRC's interim recommendations [submitted after only one month of field visits, all in the Vavuniya area]. The IAAC will address LLRC interim recommendations related to detention; land issues; law and order; administration and language issues, and "Socio-economic and livelihood issues."⁸⁷

The IAAC has begun work, but progress in most areas has been slow.

DETENTION

Thousands of people remain in detention without charge under the Prevention of Terrorism Act (PTA) and emergency regulations in a variety of venues, including jails and prisons, police lock-ups, detention and "rehabilitation" camps and other even less formal or secret places of detention (including, reportedly, paramilitary safe houses).

The LLRC's interim report of September 2010 noted that:

There are persistent complaints pertaining to persons being held in detention for long periods without charges.

In this regard the Commission recommends that –

a) A special mechanism be created to examine such cases on a case by case basis and recommend a course of action in regard to disposal of each case, as appropriate. Further, to support this process the establishment of a focal point in the Attorney Generals Department is also recommended.

b) A major concern raised before the Commission was the fact that many people did not know the whereabouts of family members in detention as they were constantly being shifted from camp to camp.

Accordingly, the Commission recommends an independent unit being established e.g. in the Ministry of Justice, to address the following issues —

1. Publishing a list of names of those in detention.

2. When a person is discharged a certificate be issued so that the same person is not taken into custody again, unless new evidence is discovered against him for being linked with the LTTE.
3. To look into the general issue of laws delays (to expedite prosecution or discharge detainees).⁸⁸

The IAAC's progress report noted that "a four-member 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."⁸⁹ The report provides no further details, but Amnesty International learned in March that a widely publicized release of 118 PTA prisoners from Boosa prison was in fact merely a transfer from one form of arbitrary detention (custody of the TID) to another (detention for up to two years under the emergency regulations in Poonthotham rehabilitation camp), still without the benefit of charge or trial.

Since then, there have been other announced releases, but about 3,000 people remain in detention without charge.⁹⁰ There is no publicly available consolidated list of detainees.

In mid June 2011, the police announced that three information centres had been established by the Terrorist Investigation Division where families could seek information about detainees who had been held under detention orders and were in police custody. TID said it would only provide information on detainees to relatives; no other individual or organization would be provided with such information even if the detainees requested it. The centres, operated by TID, are housed at the office of the Deputy Inspector General of Police in Vavuniya, the TID headquarters in Colombo, and in Boosa Detention Centre. But many people who attempted to access records have been disappointed. On 24 June, Police Media Spokesman Prishantha Jayakody said that about 1,300 family members and relatives had sought information from the TID offices in Vavuniya, Boosa and Colombo and 250 people had phoned TID looking for detained relatives since the centres opened, but that only about seven percent of families got what they were looking for; most inquiries had been about detainees in military custody, not people held by TID. He said only immediate relatives would be provided with information and confirmed that the information held by the centres was not a complete registry of all detainees; the centres could not provide information on people detained by the military, or detainees being held by the police without detention orders.⁹¹

In July 2011 the Sri Lankan cabinet announced government plans to gradually relax the Emergency Regulations and to lift the state of Emergency by the end of the 2011. This promise must be monitored as there have been previous declarations which failed to significantly alter the substance of the Emergency Regulations.⁹²

LAND

On land issues, the IAAC noted that some issues "need solutions which cannot be offered through existing legal remedies," and acknowledged the need to establish a new system for land allocation. It emphasized that citizens had a right to choose their residence anywhere in Sri Lanka and that there was no policy of forced settlement, and said that the Sri Lankan government would "encourage the process, where, except when essential for security reasons,

High Security Zones (HSZ) lands are being progressively released.” It said action had already been taken to return 256 houses in the Palaly area of Jaffna to civilians. The report noted that a further 2,392 houses had been identified for future civilian occupation in more than 2,500 hectares that were set aside as HSZs, and that demining was being accelerated.

LANGUAGE

On language issues, the IAAC emphasized the need for “effective implementation of the *existing* [emphasis added] Gazette Notifications and Public Administration Circulars relating to the Official Language policy” and pointed to ongoing initiatives such as recruitment of Tamil police in 2010.

LAW AND ORDER

Many witnesses to the LLRC in the north, and particularly in Jaffna, noted law and order concerns, specifically extortion, abduction and other criminal acts by armed groups, some with ties to the Sri Lankan armed forces. The LLRC recommended that the Sri Lankan government disarm “illegal armed groups.” The IAAC reported that the Sri Lankan government had “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.” It said that the Sri Lankan government intended to enact an amendment to the Firearms Ordinance, which would restrict bail for people arrested in possession of firearms or explosives, noting that this was a special provision that was intended to be in operation only until the surrender of weapons was achieved.

It is unclear whether any progress has been made towards this objective, as of late June there were still reports of abductions and killings by unidentified armed groups in Jaffna district; individuals suspected of involvement were said to be members of paramilitary groups with ties to the Sri Lankan armed forces.⁹³ Threats and acts of intimidation against opposition politicians reportedly increased in July in the run up to local elections.

Amnesty International believes that disarmament alone will not end the pattern of violence; accountability is essential. The refusal of Sri Lankan authorities to acknowledge and investigate allegations of such violations and bring perpetrators to justice fuels a growing lawlessness in the country, including by members of the state security forces and their paramilitary affiliates.

SOCIAL AND ECONOMIC ISSUES

The IAAC’s progress report noted that the opening of the A-9 highway, an essential land route for goods and people that runs between the central Sri Lankan city of Kandy and Jaffna, had allowed free movement of persons from north to south and “greater participation in economic, social and cultural rights”. While it is true that the LLRC recommended that the Sri Lankan authorities “encourage free movement of persons on A-9 to ensure greater participation in the economic, social and cultural activities,” the actual opening of the highway to civilian traffic occurred in 2009, long before the appointment of the LLRC and progress in that regard cannot be attributed to either body.

The LLRC also recommended strengthening cooperation between Government Agents (local government administrators) and Security Forces for the “normalisation of civilian activities.”

The IAAC had relatively little to say about this recommendation, noting only that "the re-settlement of IDPs [Internally Displaced Persons] along with the building of the Sangupiddy Bridge and removal of restrictions on fishing has transformed the lives of the people."

In fact, the north is still highly militarized; civil administration, humanitarian relief and development activities are dominated by the army and the Ministry of Defence. Elsewhere in Sri Lanka the Defence Ministry is taking an increasingly prominent role in civil administration.

5. THE NEED FOR AN INDEPENDENT INTERNATIONAL INVESTIGATION

Given Sri Lanka's long history of other failed commissions of inquiry, and the disappointing practice of the LLRC to date, Amnesty International does not consider that the LLRC will ever deliver justice, truth and full reparations to Sri Lankan victims of human rights violations.

The LLRC was never an appropriate mechanism for investigating crimes of the magnitude alleged to have occurred in the final days of Sri Lanka's armed conflict. It is flawed at every level: in mandate and conceptualization, in composition and in practice. Moreover, Sri Lanka's current political climate is not conducive to accountability. Impunity continues to be the rule rather than the exception in Sri Lanka, as it has been for decades, and persistent official tolerance for human rights violations has been exacerbated by a post-conflict triumphalism that rejects responsibility for any violation committed by Sri Lankan forces in pursuit of victory over the LTTE and penalizes critics of these practices. Sri Lankan officials have also failed to call surviving LTTE members who may be guilty of violations to account. But in time, we hope, Sri Lanka's leadership may relax its grip enough to allow the kind of honest questioning that is essential to establishing the truth, securing justice, and thus reconciling Sri Lanka's people. That transition could take years.

Publicizing atrocities is important, and the Panel of Experts report is a vital tool for that. As Secretary General Ban Ki-moon noted in a BBC interview in June about the Panel's report on Sri Lanka, "I have published this report to the world, to the public...everybody knows what has happened there." but publicity isn't enough. Relying on international attention to promote change only works when it is unified in approach and backed by concrete action. Diplomatic failure to support calls for an international investigation in Sri Lanka weakens all accountability efforts, domestic and international.

Continued diplomatic defense of the LLRC creates a very dangerous precedent of denying justice, truth and reparations to victims of crimes under international law in the face of clear evidence that Sri Lanka is unwilling and unable to meet its international obligations.

The UN has a responsibility to investigate allegations of crimes under international law without delay, regardless of Sri Lanka's domestic efforts. Investigations should be conducted independently and in accordance with international standards and should culminate in the criminal prosecution of individuals found responsible in full conformity with international standards for fair trial.

The UN also has a responsibility to monitor and report on any actions Sri Lanka takes to pursue truth and reconciliation, and if they ever emerge, accountability.

Sri Lanka also has a responsibility to protect human rights and ensure accountability, regardless of international action. Sri Lanka should publicly acknowledge that its forces were responsible for large scale civilian casualties in the last phase of the war; and acknowledge and support the rights and dignity of survivors; Sri Lanka should establish a national policy to

bring perpetrators of violations of human rights and humanitarian law to justice, publicly acknowledging alleged wrongdoing by its forces and speaking out forcefully against human rights violations. Sri Lanka should investigate new reports of abductions, enforced disappearances and killings in northern Sri Lanka and throughout the country, and ensure perpetrators identified are brought to justice and tried in full conformity with international standards for fair trial.

6. ENDNOTES

¹ "HRC Received over 11,000 Complaints from 2009 Till 2011" *Sunday Leader* (online), 21 July 2011
<http://www.thesundayleader.lk/?p=43073>

² Relevant standards include those set out in the "Updated Set of Principles for the Protection and Promotion of Human Rights through action to Combat Impunity," endorsed by the Commission on Human Rights in 2005, United Nations, E/CN.4/2005/102/Add.1, 8 February 2005
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>

The principles were endorsed by the UN Commission on Human Rights in Resolution E/CN.4/RES/2005/81 of 21 April 2005 during the Commission's 61st session. The text of the resolution is available at: <http://www.unhcr.org/refworld/category,LEGAL,UNCHR,,,45377c930,0.html>

³ Submission to the Lessons Learnt and Reconciliation Commission, 17 August 2010, (TG ASA 37/2010.001)

⁴ Amnesty International, *Sri Lanka: International inquiry needed to address alleged war crimes (Joint Letter to the Lessons Learned & Reconciliation Commission (LLRC) on Sri Lanka from Amnesty International, Human Rights Watch & International Crisis Group*, 14 October 2010 (Index: ASA 37/015/2010)
<https://www.amnesty.org/en/library/asset/ASA37/015/2010/en/b8167216-c0aa-48be-99f8-bdcb5cab5d84/asa370152010en.pdf>

⁵ Joint Statement by UN Secretary-General, Government of Sri Lanka, SG/2151, 26 May 2009
<https://www.un.org/News/Press/docs/2009/sg2151.doc.htm>

⁶ Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, Executive Summary Page ii, http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

⁷ *ibid*, Page vii

⁸ Secretary-General Releases Expert Panel's Report on Accountability With Respect to Final Stages of Sri Lanka Conflict, SG/SM/13524, 25 April 2011

⁹ His Excellency Mahinda Rajapaksa, President of the Democratic Socialist Republic of Sri Lanka, P.O. No CA/3/3/24, <http://www.llrc.lk/images/stories/docs/Mandate%20English.pdf>

¹⁰ On 2 January 2006, five students gathered near the seaside in Trincomalee were killed and two were seriously injured by Sri Lankan security forces, believed to be police from the elite Special Task Force (STF). A post-mortem revealed that the students died from gunshot wounds; three victims had been shot in the head. On 13 February 2006 the Criminal Investigation Department (CID) obtained detention

orders under the Emergency Regulations, signed by the Ministry of Defence, to detain a Sub-Inspector attached to the Trincomalee police and 12 STF personnel for a month pending investigation. The Attorney General later instructed the CID to release the STF suspects. No reason was given by the Attorney General's Office and the investigation appeared to end there. In September 2006 President Mahinda Rajapaksa established an ad hoc commission of inquiry to probe 16 cases of "serious" human rights violations. The father of victim Ragihar Manoharan gave evidence to the commission. Dr Manoharan's testimony, delivered by video conference from an undisclosed location outside the country due to previous threats, was televised, attracting a high level of public attention. But the Commission's report, delivered directly to the president, has never been published, no thorough investigation has ever been conducted and no one has been brought to justice. (See, Amnesty International, *Twenty Years of Make-Believe; Sri Lanka's Commission's of Inquiry* (Index: ASA 37/005/2009)

<https://www.amnesty.org/en/library/asset/ASA37/005/2009/en/c41db308-7612-4ca7-946d-03ad209aa900/asa370052009eng.pdf>

¹¹ See, Amnesty International, *Twenty Years of Make-Believe; Sri Lanka's Commission's of Inquiry* (Index: ASA 37/005/2009)

¹² Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, Executive Summary, Page v

¹³ Amnesty International has received a number of submissions made to the LLRC from witnesses living outside the country who say they were not invited to testify before the Commission

¹⁴ Principle 6 of the Updated Set of principles specifically notes: "To the greatest extent possible, decisions to establish a truth commission, define its terms of reference and determine its composition should be based upon broad public consultations in which the views of victims and survivors especially are sought. Special efforts should be made to ensure that men and women participate in these deliberations on a basis of equality", Principle 6 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, United Nations, E/CN.4/2005/102/Add.1, 8 February 2005

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>

¹⁵ "Chairman's opening statement; Proceedings of public sittings of the 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." Lakshman Kadirgamar Institute of International Relations and Strategic Studies, No 24, Horton Place, Colombo 07, 11 August 2010 (LLRC/PS/11-08-10/01), Page 1

¹⁶ Proceedings of public hearings of the 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, District Secretary's Office, Vavuniya, 14 August, 2010

http://www.llrc.lk/images/stories/docs/August2010/District_Secys_Office-Vavuniya-14.08.2010.pdf

¹⁷ Testimony of Witness 4, proceedings of public sittings of the 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, Mannar District Secretariat, Mannar, 8 January 2011, Page 19

¹⁸ Amnesty International, *Twenty Years of Make-Believe; Sri Lanka's Commission's of Inquiry* (Index: ASA 37/005/2009)

¹⁹ For a fuller discussion of the Attorney General's Role in the 2006 Commission of Inquiry, see Amnesty International, *Twenty Years of Make-Believe* (Index: ASA 37/005/2009)

²⁰ Updated Set of principles for the protection and promotion of human rights through action to combat

impunity, United Nations, E/CN.4/2005/102/Add.1, 8 February 2005,

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>

²¹ See for example (and below), the Commission's handling of testimony by Dr. Varatharajah, [http://www.llrc.lk/images/stories/LLRC_30.11 - Dr. T.Vartharajah.pdf](http://www.llrc.lk/images/stories/LLRC_30.11_-_Dr._T.Vartharajah.pdf)

²² "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 the 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.'" Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, Page 85

²³ Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, Paras 279–80, Page 78

²⁴ Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, Para 281, Page 78

²⁵ Testimony of Witness 6, proceedings of public sittings of the 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, Divisional Secretariat, Eravur Pattu, Chenkalady, 10 October, 2010

²⁶ Testimony of Witness 8, proceedings of public sittings of the 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, Batticaloa District Secretariat, 9 October 2010

²⁷ The transcripts posted on the LLRC's website contain many stylistic inconsistencies and typographical errors. Spellings of names of individuals and places vary. For simplicity's sake, interview transcription style has been standardized; as have the spelling of Commissioners' names and those of other prominent individuals. Place names remain as presented in the transcripts.

²⁸ Supporters of Government Minister Vinayagamoorthy Muralitharan (aka Colonel Karuna Amman), a former LTTE leader and founder of the breakaway Tamil Makkal Viduthalai Pulikal (Tamil People's Liberation Tigers or TMVP)

²⁹ The Eelam People's Democratic Party, a Tamil political party aligned with the government

³⁰ Testimony of Witness 2, Divisional Secretariat, Ariyalai, Jaffna, 11 November 2010

³¹ Testimony of Witness 7, Proceedings of public sittings of the 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, Divisional Secretariat, Madhu, 9 January, 2011

³² Testimony of Witnesses 2 and 3, Proceedings of public sittings of the 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, Velanai, 14 November, 2010

³³ Tamil Makkal Viduthalai Pulikal (Tamil People's Liberation Tigers); a government-aligned political

party founded by Vinayagamoorthy Muralitharan as a breakaway faction of the LTTE. Now headed by another former LTTE member S Chandrakanthan, Chief Minister of the Eastern Province

³⁴ Testimony of Witness 16, proceedings of public sittings of the 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, Divisional Secretariat, Eravur Pattu, Chenkalady, 10 October, 2010

³⁵ Testimony of Witness 19, proceedings of public sittings of the 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, Divisional Secretariat, Eravur Pattu, Chenkalady, 10 October, 2010

³⁶ Testimony of Witness 2, proceedings of public sittings of the 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, District Secretariat, Mullaitivu, 20 September 2010, LLRC/PS/20-09-10/01

³⁷ Testimony of Witness 12, proceedings of public sittings of the 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, Batticaloa District Secretariat, 9 October 2010

³⁸ Testimony of Witness 13, proceedings of public sittings of the 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, District Secretariat Kilinochchi, 18 September 2010

³⁹ Testimony of Witness 5, proceedings of public sittings of the 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, District Secretariat, Buttala Divisional Secretariat, 26 March 2011

⁴⁰ Proceedings of public sittings of the 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, Siyambalanduwa District Secretariat, 26 March 2011

⁴¹ Testimony of Witnesses 5, 6 and 7, proceedings of public sittings of the 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, St Anthony's Church, Kayts, 14 November 2010

⁴² Testimony of Witness 1, proceedings of public sittings of the 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, Gurunagar Cultural Hall, 12th November, 2010

⁴³ Testimony of Witness 10, proceedings of public sittings of the 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, District Secretariat, Mullaitivu, 20 September 2010, LLRC/PS/20-09-10/01

⁴⁴ See for example, a statement made by Sri Lanka's Attorney General to the UN Secretary General's Panel of Experts claiming that the LLRC proceedings had not identified individual perpetrators, Report of the Panel of Experts on Accountability in Sri Lanka, Para 281, Page 78

⁴⁵ Proceedings of public sittings of the 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, Velanai, 14 November, 2010

⁴⁶ As with many the LLRC transcripts, the text of this exchange includes without differentiation questions

apparently addressed to the interpreter (and answered by the interpreter), as well as statements directly attributable to the witness

⁴⁷ Proceedings of public sittings of the 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, Chavakachcheri Cultural Hall, 13 November, 2010, LLRC/FV/13-11-10/02

⁴⁸ Evidence given by Witness 9, Divisional Secretariat, Ariyalai, Jaffna, 11 November 2010

⁴⁹ Excerpt of Testimony of Bishop of Mannar, Rt Rev Dr Rayappu Joseph, Proceedings of public sittings of the 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, Mannar District Secretariat, Mannar, 8 January 2011

⁵⁰ Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka; Executive Summary, Page ii

⁵¹ Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, Page 91

⁵² Ibid. See also, Testimony of Witness 1, proceedings of public sittings of the 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, District Secretariat, Muillativu, 20 September 2010, LLRC/PS/20-09-10/01

⁵³ Testimony of Witness 3, proceedings of public sittings of the 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, Mullaitivu Divisional Secretariat, 20 September, 2010, LLRC/PS/20-09-10/01

⁵⁴ Proceedings of public sittings of the 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, Chavakachcheri Cultural Hall, 13 November, 2010, LLRC/FV/13-11-10/02

⁵⁵ Testimony of Witness 4, Proceedings of public sittings of the 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, Divisional Secretariat Poonagari, 19 September, 2010

⁵⁶ Proceedings of public sittings of the 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, Poonagari Common Hall, 19 September 2010

⁵⁷ See "SLA Shelling of PTK Hospital," Report of the Panel of Experts on Accountability in Sri Lanka, pp25-6

⁵⁸ Testimony of Dr T Vatharajah, 30 November 2010, http://www.llrc.lk/images/stories/LLRC_30.11_-_Dr._T.Vartharajah.pdf

⁵⁹ Amnesty International, *Four Doctors Released, One Still in Danger*, (UA: 129/09 Index: ASA 37/020/2009) <http://www.amnesty.org/en/library/asset/ASA37/020/2009/en/829e6aef-4a2a-4862-97dd-c8a40405b3bd/asa370202009eng.html>

⁶⁰ Evidence given by Witness 21, proceedings of public sittings of the 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, Divisional Secretariat, Madhu, 9 January 2011

⁶¹ Evidence Given by Witness 8, Proceedings of public sittings of the 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, Divisional Secretariat Nedunkerny, 15 August

⁶² Evidence given by Witness 1, Proceedings of public sittings of the 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, Ariyalai, 11 November, 2010

⁶³ Proceedings of public sittings of the 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, Kandawalai Divisional Secretariat, 19 September 2010

⁶⁴ "Representations made by Mr Gotabhaya Rajapaksa, Secretary Ministry of Defence to the Commission of Inquiry on Lessons Learnt and Reconciliation at its public sitting held on 17th August 2010 at the Lakshman Kadirigamar Institute of International Relations and Strategic Studies."
<http://www.ilrc.lk/images/stories/docs/August2010/Gotabaya%20Rajapakshe.pdf>

See also, "Representations by Air Chief Marshal W D R M J Gunatillaka," 8th September, 2010
<http://www.ilrc.lk/images/stories/docs/Roshan%20Gunatillake%20-%20Air%20Force%20Commander.pdf>

⁶⁵ Excerpt of "Representations made by Mr Gotabhaya Rajapaksha, Secretary Ministry of Defence" Commission of Inquiry on Lessons Learnt and Reconciliation at its public sitting held on 17th August 2010 at the Lakshman Kadirigamar Institute of International Relations and Strategic Studies."
<http://www.ilrc.lk/images/stories/docs/August2010/Gotabaya%20Rajapakshe.pdf>

⁶⁶ Amnesty International, *Sri Lanka: Government misrepresentations regarding the scale of the crisis*, (Index: ASA 37/012/2009) <http://www.amnesty.org/en/library/asset/ASA37/012/2009/en/0a7a7b9b-93b8-4dc1-bb2b-3e1955c7e567/asa370122009en.html>

⁶⁷ Excerpts of "Representations made by Hon Douglas Devananda," proceedings of public sittings of the 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, Lakshman Kadirigamar Institute of International Relations and Strategic Studies, No.24, Horton Place, Colombo 07, 3 September, 2010

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Excerpts of "Hon Vinayagamoorthy Muralidaran (sic)," proceedings of public sittings of the 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, Lakshman Kadirigamar Institute of International Relations and Strategic Studies, No.24, Horton Place, Colombo 07, 13 December 2010

⁷¹ Ibid

⁷² Ibid

⁷³ Excerpts of "Representations made by Mr S Santhirakanthan (sic), Chief Minister, Eastern Province," proceedings of public sittings of the 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,

Lakshman Kadirgamar Institute of International Relations and Strategic Studies, No.24, Horton Place, Colombo 07, 20 October, 2010

⁷⁴ Representations made by Commander of the Navy Tisara Samarasinghe, proceedings of public sittings of the 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, Venue: Lakshman Kadirgamar Institute of International Relations and Strategic Studies, No 24, Horton Place, Colombo 07, Date: 08th September 2010

⁷⁵ Duleep de Chickera was Sri Lanka's 14th Anglican Bishop. He served from May 2001 until he retired on 31 December 2010

⁷⁶ "Representations made by Mr M I M Mohideen, " proceedings of public sittings of the 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, Lakshman Kadirgamar Institute of International Relations and Strategic Studies, No 24 , Horton Place, Colombo 07, 3rd September 2010

⁷⁷ Field visits were conducted from 14 August 2010 – 19 February 2011: Vavuniya: 14 August 2010 Public Sittings – DS Vavuniya , DS Cheddikulam , IDPP Centre, Manik Farm; 15 August 2010 Public Sittings – DS Nedunkerni. Kilinochchi & Mullaitivu: 18 September 2010 Public Sittings – DS Kilinochchi and DS Pachchillaipillai; 19 September 2010 Public Sittings – DS Poonagary; 20 September 2010 Public Sittings – DS Mullaitivu; 20 September 2010 Mullaitivu Security Forces Headquarters. Batticaloa: 09 October 2010 Public Sittings – DS Batticaloa; 09 October 2010 Public Sittings – DS Oddamavaddy; 11 October 2010 Public Sittings – DS Eravurpattu. Jaffna: 11 November 2010 Public Sittings – Ariyalai; 12 November 2010 Public Sittings – Gurunagar Cultural Hall; 12 November 2010 Public Sittings – Vadukkodai East, Sittankerney; 12 November 2010 Public Sittings – District Secretariat, Jaffna; 14 November 2010 Public Sittings - St. Anthony's Church, Kayts. Trincomalee: 03 December 2010 - District Secretariat, Trincomalee; 04 December 2010 - District Secretariat, Mutur. Puttalam & Mannar: 07.01.2011 - District Secretariat, Puttalam; 08.01.2011 - District Secretariat, Mannar; 09 January 2011 - District Secretariat, Madhu. Galle & Matara: 18 February 2011 - District Secretariat, Matara; 19 February 2011 - Hall de Galle, Galle

⁷⁸ Proceedings of public sittings of the 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, Venue: St. Anthony's Church Kayts, Date: 14 November 2010
http://www.llrc.lk/images/stories/Kayts_Public_Sittings_Amended.pdf

⁷⁹ Representations made by the public at District Secretariat Killinochchi, Proceedings of public sittings of the 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, 18th September 2010, LLRC/PS/18-09-10/01. http://www.llrc.lk/images/stories/docs/Sep2010/Killinochchi_Div_Sec_-_Amended.docx

⁸⁰ Testimony of Witness 12, Gurunagar Cultural Hall, Jaffna, 12 November 2010

⁸¹ Principle 10 (b), "Updated Set of Principles for the Protection and Promotion of Human Rights through action to Combat Impunity," endorsed by the Commission on Human Rights in 2005, United Nations, E/CN.4/2005/102/Add.1, 8 February 2005
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>

⁸² Principle 10 (c), "Updated Set of Principles for the Protection and Promotion of Human Rights through action to Combat Impunity," endorsed by the Commission on Human Rights in 2005, United

Nations, E/CN.4/2005/102/Add.1, 8 February 2005

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>

⁸³ Proceedings of public sittings of the 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, 18th September 2010, Representations made by the Public at Pachchillaipallai Divisional Secretariat, LLRC/PS/18-09-10/02, page 1

⁸⁴ Rajit Keethi Tennakoon, "LLRC Mannar Sessions: Oscillation between Hope and Hopelessness," <http://www.srilankaguardian.org/2011/01/llrc-mannar-sessions-oscillation.html>

⁸⁵ Rajit Keethi Tennakoon, "LLRC Mannar Sessions: Oscillation between Hope and Hopelessness," <http://www.srilankaguardian.org/2011/01/llrc-mannar-sessions-oscillation.html>

⁸⁶ See, "LLRC Interim Report to the Government," Groundviews, 11 November 2010, <http://groundviews.org/2010/11/11/llrc-interim-report-to-government/>

⁸⁷ The Committee is headed by Sri Lanka's Attorney General Mohan Peiris, and includes as members, Defence Secretary Gotabhaya Rajapaksa; Secretary to the Ministry of Public Administration and Home Affairs, P B Abeykoon; Suhada Gamlath, Secretary to the Ministry of Justice; Dr Willie Gamage, Secretary to the Ministry of Economic Development; A Dissanayake, Secretary to the Ministry of Rehabilitation and Prison Reforms; and Romesh Jayasinghe, Secretary to the Ministry of External Affairs. D S Divaratne is IAAC Secretary. Divaratne also serves as Secretary to the Presidential Task Force responsible for Resettlement, Development and Security in the Northern Province. "Diplomatic lapses put SL under world pressure," *Sunday Times*, 6 March 2011 <http://www.sundaytimes.lk/110306/Columns/political.html>

⁸⁸ Interim Report to the President, September 2010

⁸⁹ Ibid

⁹⁰ S Selvakumar, "KP rehabilitated, says Keheliya" *The Nation* (Sri Lanka), 10 July 2011 <http://www.nation.lk/2011/07/10/news5.htm>

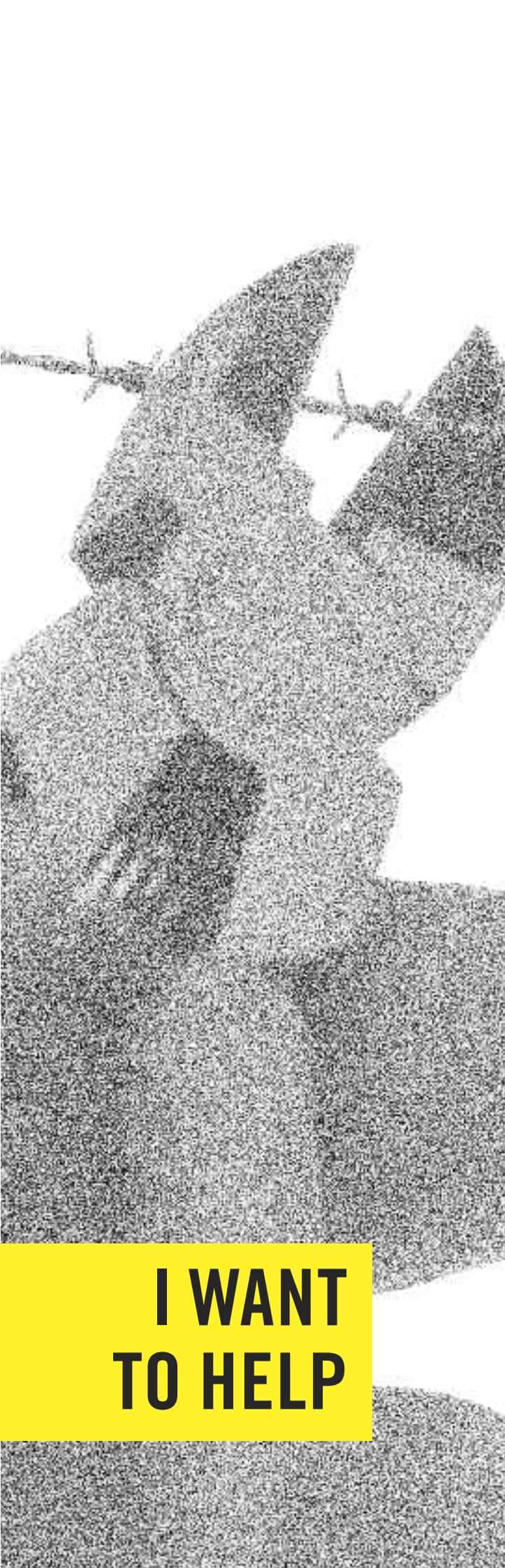
⁹¹ "Missing Persons: only 7 % Gets Info," *Daily Mirror* 24 June, 2011 <http://www.dailymirror.lk/news/12099-only-seven-per-cent-get-information-on-detainees.html>

⁹² See, for example: "Govt. to relax Emergency Regulations", *Daily News*, 28 July 2011 <http://www.dailymirror.lk/news/12658-govt-to-relax-emergency-regulations.html>

See also: "Prolong Emergency Regulations not Govt's Desire", *The Official Government News Portal of Sri Lanka*, 28 July 2011

<http://www.news.lk/home/18570-prolong-emergency-regulations-not-govts-desire>

⁹³ In one of the latest reported incidents, on 26 June Balachandran Sathhunaraja, age 30 was found beaten to death and hanging from a playground goal post in Achchuveli, Jaffna; involvement by an army intelligence officer has been alleged; the motive may have been personal, although one press reports alleged that Balachandran was a former LTTE member and had been recently released from detention.



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Amnesty International's analysis of transcripts from LLRC sessions exposes a catalogue of missed opportunities and outright negligence. The LLRC Commissioners have not acted impartially towards witnesses, have made no apparent effort to follow up allegations of human rights violations and have done nothing to protect witnesses from threats or retaliation.

The LLRC is just the latest in a long line of failed domestic mechanisms putatively aimed at securing justice in Sri Lanka. The international community must not be deceived. Only an international, independent investigation can deliver truth, justice and reparations to the thousands of victims of violations committed during Sri Lanka's bloody war. Only then will the voices of these victims really be heard.

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