

## Lessons Learnt and Reconciliation Committee Report: A Valuable Process than an End Product

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### **Summary**

The Report of the Lessons Learnt and Reconciliation Committee (LLRC), which was made public in December 2011, is a major achievement for post-war Sri Lanka. Mandated to generate a report on the facts and circumstances which led to the failure of the Ceasefire Agreement and the sequence of events that followed till the end of the war—whether any person, group or institution directly or indirectly bears responsibility, 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 communities—the Commission’s Report met with comment, criticism as well as appreciation within Sri Lanka and in the international community. The Report brings in representations from all sections of Sri Lankan society and provides a series of recommendations on issues of dispute, the situation on the ground, and the need for reconciliation, amity, and national harmony. When all issues are taken into consideration, the progressiveness of the Report lies more in the process it created and the multiple narratives it brought in from the periphery, rather than as an end product in itself.

Made public a little more than a month ago, the Report of the Lessons Learnt and Reconciliation Committee (LLRC) is a major achievement for post-war Sri Lanka. Fifteen months after it started its sessions on August 11, 2010, and after having gone through three extensions of tenure since its inception in May 2010, the Chairman of the LLRC handed over the report to President Rajapaksa. Although doubts lingered about whether the Report would ever be made public, it was finally tabled in the Sri Lankan Parliament on December 16, 2011. As expected, the Report was met with comment, criticism as well as appreciation within Sri Lanka and in the international community. Taking all the pros and cons into consideration, rather than the end product in itself, the value of the Report rests more in the process it created, the multiple narratives it brought in, and the space it has provided for the hitherto unheard to have their say.

A year after the civil war came to an end, faced with international pressure in the UN, UNHRC as well as from the Tamil diaspora, the Mahinda Rajapaksa government appointed the Commission of Inquiry on Lessons Learnt and Reconciliation on May 15, 2010. Comprising eight members, the Commission was mandated to generate a report on “the facts and circumstances which led to the failure of the Ceasefire Agreement and the sequence of events that followed [till the end of the war], whether any person, group or institution directly or indirectly bear responsibility, 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 communities [...]” (pp. 5, 6). The appointment of the commission was followed by responses of all sorts. They included distrust on the neutrality of several members of the commission who had close relations with the regime in power, uncertainty derived from the track records of the previous commissions on disappearances and human rights violations, including the International Independent Groups of Eminent Persons (IIGEP)<sup>1</sup> founded in November 2006 to observe investigations into fifteen high profile cases of human rights violations, which unilaterally suspended their work citing “lack of political and institutional will on the part of the Government [...]”<sup>2</sup>.

The process of investigation involved a series of representations from civilians, civil society, defence and military officials, public servants, political and religious leaders, academics, journalists, other professionals, former LTTE cadres, and former members of other armed groups across the country. It also covered the war-affected areas in the north and the east.

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<sup>1</sup> “Lanka finally appoints ‘International Independent Group of Eminent Persons’ monitored body to probe HR violations and abuses”, *Asian Tribune*, November 07, 2006, available at <http://www.asiantribune.com/node/3071>, accessed on January 29, 2012.

<sup>2</sup> Iqbal, M. C. M. (2010) “The Latest Commission of Inquiry in Sri Lanka”, *Ground Views*, May 29, 2010, available at <http://groundviews.org/2010/05/29/the-latest-commission-of-inquiry-in-sri-lanka-another-exercise-in-deception/>, accessed on January 26, 2011.

The sessions were held in public, barring exceptional cases, and adopted a flexible approach to the language of presentation. In addition to public hearings, the Commission made use of several issues raised in previously published material, in the form of reports by national and international organizations, including the UN Secretary General's *Advisory Report* on Sri Lanka. Despite being invited, Amnesty International, Human Rights Watch, the International Crisis Group, the Tamil National Alliance, the United National Party, and former President Chandrika Bandaranaike Kumaranathunga did not make presentations before the Commission.

The Report is a 388-page long document consisting of nine chapters, including the Preamble. Having deliberated upon the evidence presented through the narratives and explanations by different individuals and collectives, the Commission came up with a series of recommendations for the Government of Sri Lanka (GoSL) on the following basis: issues of dispute, situation on the ground, and need for reconciliation, amity, and national harmony. The Report is bold enough to name Vinayagamoorthy Muralitharan, alias Karuna, a Minister in the current government, and the Eelam People's Democratic Party (EPDP) led by Douglas Devananda as being responsible for alleged abductions and impunity in the eastern and northern parts of Sri Lanka.

## Brief Summary of the Report

Below is a brief summary of issues of critical importance in answering the allegations directed at the GoSL and the security forces, as mentioned in the Report.

### Security Forces Operations and Humanitarian Law Issues

Debunking allegations of the use of disproportionate force by the security forces and deliberate targeting of civilians, the Committee concludes that the "military strategy [...] was carefully conceived, in which the protection of the civilian population was given the highest priority [and] the movement of the Security Forces [...] was deliberately slow during the final stages of the conflict" (pp. 115). While the Report fails to come up with an estimate of the civilian casualties, it attributes the "considerable [number of] civilian casualties [that occurred during the final phase of the conflict]" (pp. 145) to "crossfire, the LTTE targeting, LTTE's use of civilians as a human shield, land mines, [and] perils inherent in crossing the Nanthi Kadal Lagoon" (pp. 145). Moreover, the Report states that the GoSL took "all possible steps in getting food and medical supplies and other essential items across to the entrapped civilians despite enormous logistical difficulties of the operation" (pp. 331). Accounts by eyewitnesses suggest that there were a series of disappearances after the surrender or arrest by the security forces (pp. 332).

### The Channel 4 Video

Irrespective of the incidents being 'real' or 'staged', the "images contained in the footage are truly gruesome and shocking" (pp. 150). However, the points of 'technical ambiguities

in the video remain un-clarified.’ (pp. p150). The Report states: “Technical issues and forensic questions brought out by the independent experts [...] cast significant doubt about the authenticity of the video and credibility of its contents.” At the same time, “segments of the footage appear to have been recorded in a natural environment and some of the bodies of alleged victims show no artefacts of manipulation either physically or by digital means” (pp. 150–151).

### **Human Rights**

A “large number of representations [were] made alleging the violation of fundamental rights [abductions, enforced or involuntary disappearances and arbitrary detention, arrest without any official record] and freedoms of people affected by the conflict” (pp. 156). The public were concerned that “criminal investigations, law enforcement, and the police administration have been adversely affected due to political interference resulting in an erosion of confidence in the criminal justice system” (pp. 162).

### **Illegal Armed Groups**

The Report states: “Activities of illegal armed groups are of serious concern. According to a number of representations made, it appeared that the dominating presence and activities of such groups have created fear among the general public, contributing to an environment of impunity. Some of their illegal activities have affected the basic rights of people such as the right to life as there have been a number of alleged incidents of abduction, wrongful confinement and extortion by these groups. The whereabouts of most abductees are still unknown while some others have since been found dead” (pp. 172). These groups are identified as the ‘Karuna group’ and the ‘TMVP’ (pp. 173) in the east, and the ‘EPDP’ (pp. 174) in northern Sri Lanka.

### **Freedom of Expression and the Right to Information**

There are many “reports concerning attacks and obstacles placed on journalists and media institutions including news websites and killing of journalists”, and these “incidents remain to be conclusively investigated and perpetrators brought to justice” (pp. 197).

### **Devolution**

“[A] political settlement based on devolution must address the ethnic problem as well as other serious problems that threaten democratic institutions” (pp.377). Devolution ought to be “people-centric” and “[non-]discriminatory” (pp. 377). The government should pay attention to “empower the Local Government institutions to ensure greater people’s participation at the grass roots level” and to “lessons learnt from the shortcomings in the functioning of the Provincial Councils system [...] in devising an appropriate system of devolution”. As an “additional mechanism”, the government may consider “the possibility of establishing a Second Chamber comprising Representatives from the Provinces” (pp. 378). In order “to ensure the success of any process of lasting and sustainable

reconciliation”, it is of “critical importance” to “[make] a visible progress on the devolution issue” (pp. 379).

## Responses to the LLRC Report

Given the degree of sensitivity of the allegations directed at the Sri Lankan Government, and given the interest in knowing the detailed contents of the Report, there was considerable criticism from all quarters once it was released to the public. Tabling the Report in the Parliament, the Leader of the House, Minister Nimal Siriripala de Silva, stated that the government is ready to investigate “specific situations” and that “it is a matter of the greatest importance to the Government to have the truth relating to each of these matters established in a manner that puts controversy to rest for all time.”<sup>3</sup> However, Douglas Devananda, a Cabinet Minister and the leader of EPDP, said that his organisation believes that the LLRC had “ulterior motives regarding the EPDP”; as mentioned earlier, the report contains allegations made against the EPDP. Devananda also claimed that there had been a misrepresentation of his submissions to the Commission.<sup>4</sup> Another Minister in the Government, Patali Champika Ranawaka, the General Secretary of the Jathika Hela Urumaya (JHU), said that “the LLRC had exceeded its mandate by recommending devolution of power.”<sup>5</sup> The United National Party (UNP), the main opposition party, claimed that the Report has “somewhat endorsed”<sup>6</sup> the UN Advisory Panel report regarding civilian casualties. It further said that the Government should come up with a mechanism to implement the recommendations made by the commission.<sup>7</sup>

The Tamil National Alliance (TNA), the main political party which represents the Sri Lankan Tamil community, claimed that the report is “a serious assault on the dignity of the victims of the war in Sri Lanka”<sup>8</sup>, and that the report “does not do justice to the victims who were largely very many thousands of Tamil civilians.”<sup>9</sup> It also came up with a 70-

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<sup>3</sup> Saman Indrajith, ‘Government Agrees to Probe Specific Situations’, available at <http://pdfs.island.lk/2011/12/17/p1.pdf>, accessed on January 14, 2012.

<sup>4</sup> ‘Government Rejects Internal Criticisms over LLRC’, *The Sunday Leader*, January 01, 2012, available at <http://www.thesundayleader.lk/2012/01/01/government-rejects-internal-criticism-over-llrc/>, accessed on January 14, 2012.

<sup>5</sup> Ibid.

<sup>6</sup> Lakshman Kiriella in a press briefing, *Ada Derana*, January 06, 2012, available at <http://www.adaderana.lk/news.php?nid=16416>, accessed on January 26, 2012.

<sup>7</sup> As mentioned in the “Editorial”, *The Sunday Times*, December 25, 2011, available at <http://sundaytimes.lk/111225/Editorial.html>, accessed on January 26, 2011.

<sup>8</sup> “Disappointed and Unhappy: The TNA over LLRC Report”, *The Sunday Leader*, December 25, 2011, available at <http://www.thesundayleader.lk/2011/12/25/disappointed-and-unhappy-the-tna-on-the-llrc-report/>, accessed on January 14, 2012.

<sup>9</sup> Ibid.

page document titled *Response to the Lessons Learnt and Reconciliation Commission Report*.<sup>10</sup> In this document, the TNA raises issues about the credibility of the “processes and practices” of the committee, its composition, competence in specific areas such as International Humanitarian Law and International Human Rights Law, and the methodology adopted in investigations and analyses. Moreover, the Commission had only spent 22 days in the North and East during its proceedings whereas the hearings in Colombo lasted 56 days. The TNA also accuses the Commission of failing to ensure witness protection and cites one instance in which a witness from Kalmunai was summoned to the Criminal Investigation Department following complaints “of being tortured and sexually assaulted” (pp. iii).<sup>11</sup> The TNA also brings in several deficiencies in the Report such as its failure to “seek video testimony of witnesses [...] living overseas”, the disregard to “credible allegations made against the government with respect to violations of IHL” (pp. iii), the “credibility of the evidence provided to the LLRC by [the government doctors who were taken into custody]” (pp. iv) and its failure “to call for crucial evidence in terms of Unmanned Aerial Vehicle (UAV) footage, videos of aerial attacks and military logs”, and the “significance of population estimates provided by” (pp. iv) government agents and statements issued by the Ministry of Defence on the Vanni population. The TNA’s response also includes an analysis of the LLRC’s declarations on the limitations of the IHL regime in circumstances as the ones which occurred in Sri Lanka. As a counter-report produced by the representatives of the Tamil community in the North and East, the TNA’s response poses a huge challenge to the LLRC’s Report and, consequently, to the GoSL in ensuring truth, justice, and reparation to the victims of the war.

Minister Wimal Weerawansa, leader of Jathika Nidahas Peramuna (JNP), a breakaway party from the Janata Vimukthi Peramuna (JVP) and a representative of Sinhalese nationalism, stated that the approach of the LLRC report is important “to carry out the Government’s reconciliation process,” even though he does not agree with the contents of the document. According to Weerawansa, “the LLRC Report has not laid adequate emphasis on the damage caused to the Sinhala and Tamil community by Tamil separatism.”<sup>12</sup>

The international community, including the UN, the US, the UK, Canada, and Russia welcomed the Report for its constructive recommendations. India also welcomed the LLRC

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<sup>10</sup> Tamil National Alliance, *Response to the Lessons Learnt and Reconciliation Commission Report*, available at <http://www.scribd.com/doc/78323337/RESPONSE-TO-THE-LESSONS-LEARNT-AND-RECONCILIATION-COMMISSION-REPORT-TAMIL-NATIONAL-ALLIANCE-January-2012>, accessed on January 16, 2012.

<sup>11</sup> Ibid.

<sup>12</sup> ‘LLRC Report Vital in Reconciliation Process – Minister Wimal Weerawansa’, *Sunday Observer*, January 1, 2012, available at <http://www.sundayobserver.lk/2012/01/01/pol01.asp/>, accessed on January 15, 2012.



Report. Expressing the Indian Government's initial comments on the Report, the official spokesperson of India's External Affairs Ministry, Vishnu Prakash, "underscored the need to put in place an independent and credible mechanism to investigate allegations of human rights violations in a time-bound manner."<sup>13</sup>

## An Analysis of the Report

The Report, as a whole, dwells significantly in substantiating the acts of violence committed by the LTTE. The bulk of the evidence on civilian casualties is in favour of projecting the LTTE as the sole perpetrator of the civilian deaths. It also makes obvious attempts to distance the security forces and the GoSL from the allegations of deliberate targeting and disproportionate use of force and other forms of human rights violations. Moreover, the Report lacks adequate focus on issues of accountability. These aspects of the Report question the impartiality of the Commission, which is an indispensable quality attributed to any commission on reconciliation, and explain many criticisms directed at the Report reducing it to a document whitewashing the actions of the government.<sup>14</sup> They also reflect the lack of autonomy and the limited mandate given to the Commission. Furthermore, by failing to come up with a mechanism to implement its recommendations and directing the State to assume responsibility in this regard, the Commission's Report has engendered fear that these recommendations may be shelved and forgotten, a fate met by many other reports such as the one produced by the APRC.

On the other hand, the Report also comes up with several exposures on a number of issues that were portrayed as false by the government, following the claims made by various civil society bodies and Tamil political parties in the North. Apart from falsifying the "zero casualties" claim of the government, the Report also brings in evidence on the intrusiveness of the army in civilian life (pp. 254) and shortcomings in the provision of relief and post-conflict assistance. The actual status of the Internally Displaced Peoples' (IDPs) resettlement appears to be different from the proclaimed success of the government-conducted resettlement programme. The accelerated resettlement programme has fallen short of meeting quality needs. According to the Report, people were living in "cadjan

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<sup>13</sup> 'India takes note of Lankan claim to heal wounds', *Express buzz*, December 25, 2011, available at <http://expressbuzz.com/nation/india-takes-note-of-lankan-claim-to-heal-wounds/346933.html>, accessed on January 18, 2012.

<sup>14</sup> Amnesty International, the Human Rights Watch and the Sri Lanka Campaign for Peace and Justice accused the commission of being biased and its report of being an attempt at whitewash. Read the statement issued by the Sri Lanka Campaign in *Sri Lanka Guardian*, December 17, 2011. <http://www.srilankaguardian.org/2011/12/llrc-on-first-read-its-whitewash-we-all.html>. Accessed on January 23, 2012. and 'Rights Watch dogs slam LLRC report' in *BBC Sinhala. Com*, December 17, 2011. [http://www.bbc.co.uk/sinhala/news/story/2011/12/111217\\_hrw\\_amnesty\\_llrc.shtml](http://www.bbc.co.uk/sinhala/news/story/2011/12/111217_hrw_amnesty_llrc.shtml). Accessed on January 23, 2012.

huts and tarpaulin dwellings” and they were resettled with “very little assistance and development” (pp. 260). Even though NGOs were “ready to provide assistance”, such attempts “were being restricted by Government bodies such as the Presidential Task Force and Ministry of Defence” (pp. 260). In addition, the Report also deals with the post-war challenges associated with widowed women, female-headed households and children as well as the complex situation that has arisen due to multiple displacements. Most interestingly, the Commission does not reject the Channel 4 video. Instead, it recommends that the government institute “an independent investigation into this issue with a view to establishing the truth” (pp. 171).

However, the Report as a whole might fall short of demands made internationally on the need to assure accountability on human rights violations. As mentioned above, the Report proves to be a clear case of limited mandate and autonomy. Therefore, it will be difficult to reconcile the demands of the Tamil community in Sri Lanka, elsewhere and the international community. Meeting the demands of the victims of the war, be it Tamil, Sinhalese, or Muslim, is much more complex than preventing an international intervention through diplomatic means. However, the gravity of the situation has failed to make any impact on the minds of the politicians in Sri Lanka. They still continue to turn a blind eye to the real issue by trying to determine the real needs of the people in the North and East, and undermine the demands of the Tamil political parties like TNA. The same debate continues without reaching any depth or breadth.

Although the discourse on Human Security has progressed resulting in a number of platforms and mechanisms to ensure the safety and security of the civilians, the conditions are such that the aggrieved in an intra-state conflict like in Sri Lanka find that there is a very little help. In circumstances where the State is a party to human rights violations and proves incapable and unwilling to formulate a mechanism to deliver justice, the victims plunge into a difficult situation. Supra-national bodies like the UN or the multilateral frameworks to ensure human security also fail to produce positive results due to practical issues. The complications and the dangers involved in seeking assistance from these international bodies owing to their inherent power politics and hidden agendas leave no alternatives to the victims. In such a situation, it is the duty and the responsibility of the fellow citizens to mobilise progressive forces in order to overcome the negative elements in the society, including the state.

To this end, the LLRC Report makes a substantial contribution in strengthening and empowering the silent majority. The Report can be commended for giving space to different kinds of narratives from a wide public forum, particularly from the civilians in the North and East whose grievances are otherwise mostly unheard due to insufficient space and voice within Sri Lanka. The fact that the Report was able to bring out these voices, making them available to the public, makes it binding and obligatory on the State to listen and look into them. The Report as an end product might prove futile if the State chooses to



ignore its findings and recommendations. It remains that the process of making the Report, the discourse it created among the individuals of all ethnic groups, civil society organisations, and the international community have contributed to increasing awareness, by different degrees of deliberation, rethinking, and questioning. It is one of the biggest contributions this Report makes towards reconciliation in Sri Lanka.

In addition, the Report also testifies for the constraints posed by the dearth of witnesses to the last phase of the conflict in Sri Lanka, in delivering justice. Lack of third-party presence in the conflict arena intensifies the difficulties in cross-checking the allegations, guaranteeing accountability, and ensuring that the parties involved in the conflict abide by the rules of war and international humanitarian law, as mentioned in the Report several times. Therefore, the need to guarantee third-party presence in active conflicts – as witnesses to minimise violence directed at the civilians – to ensure that the International Humanitarian laws are abided by the conflicting parties is another lesson to be learnt from the Sri Lankan conflict.