

## **Full Report of the Army Board on LLRC Observations Released**

The Full Report of the Army Board on Implementation of the Recommendations of the Lessons Learnt & Reconciliation Commission (LLRC) delivered by the Commander of the Army Lieutenant General Jagath Jayasuriya to Mr Gotabaya Rajapaksa, Secretary Defence and Urban Development is as follows;

### **PREAMBLE**

1. Sri Lanka being a sovereign state has an inherent right to self-defence which includes maintaining and restoring the law and order within the state. Therefore in the event of deterioration of law and order situation in the country, Sri Lanka has an absolute right to take all **legal measures** that are necessary to restore the law and order.
2. Where the law and order situation has been deteriorated due to acts of violence arising out of rebellion, armed insurrection, terrorism, insurgency etc, the President of the Republic is under a mandatory legal duty to restore the law and order and for that purpose, he is empowered to call out the Armed Forces in terms of Articles 3, 4(b), 4(d), 27(4) and 30(1) of the Constitution, read with the Section 18 of the Army Act, Section 15 of the Navy Act and Section 19 of the Air Force Act. It is to be noted that should the President neglects to restore the law and order as required under the Constitution, **he is liable to be impeached** on that score in terms of Article 38(2)(a)(i), for **Intentional Violation of the Constitution**.
3. Where the Army is called out for active service to quell a rebellion, insurrection, insurgency etc, it has the common law power to take all military measures that are legal to counter such threat and restore order. This legal position is supported by the legal maxim **Quando Aliquid mandatur – Mandatur et omne per quod preventer ad illud.** (When a law commands a thing to be done, it authorizes the performance of whatever may be necessary for executing its command).
4. Under the said principle, the Army is empowered to employ all military measures that are proportionate to the threat. Such measures may range from patrols, ambushes, attacks, raids to air strikes, artillery fire and naval gun fire; **vide US V Pacific Railroad Co (1887) 120 US 149; Burma Oil Co V Lord Advocate (1964) 2 AER 348 (HOL)**.
5. The above view is reflected in the British and US Army Training Manuals on Counter Insurgency/Counter Terrorism which are presently used by the Sri Lanka Army. Therefore once the Army is called out on Active Service, it acquires the common law powers and it is permitted to do all such acts permitted under the common law, subject **only to the limitations imposed by Law of War**.

6. By Feb 2007, LTTE had been designated as a terrorist organization worldwide and it was banned in 36 countries including USA, UK, EU and India. LTTE had been committing several International Crimes including **Forced recruitment of minors for military service, Slavery** (forced recruitment for military purposes), **bombing** etc. Hence the Government of Sri Lanka was duty bound to take action under **Article 27(15) of the Constitution; (Article 27 (5); the state shall foster respect for the International Law and Treaty Obligations).**

7. Under International Law, Sri Lanka was entitled to take military action to stop terrorist attacks that had killed or wounded a large number of Sri Lankan citizens, Sri Lanka is a Sovereign State with a moral and legal obligation and has **an inherent right under International Law** to protect its citizens from terrorism. **No nation is required to submit to terrorist attacks.** Every nation has a right and an obligation to stop them. **A sovereign state has the right to take all legitimate measures to maintain or re-establish law, the national unity and territorial integrity of the state (Article 3 GP II).**

8. Against this backdrop His Excellency the President had an imperative legal duty arising out of International Law and Domestic Law to call out armed forces to liberate the people of the North and East from the clutches of the LTTE and to eradicate terrorism from the soil of Sri Lanka. For 30 years the entire Sri Lankan nation consisting of 20 million people had been subjugated by LTTE terrorism. **Therefore employment of armed forces to eradicate LTTE terrorism is legally justifiable.** Hence for the reasons articulated above there is no question that our humanitarian operation conformed to **jus ad bellum** principle.

9. The Humanitarian Operation was launched on a “Zero Civilian Casualty” footing. Troops were consistently reminded of the fact that the aim of the Humanitarian Operation was to liberate the oppressed Tamil people from the yoke of the LTTE. Various preventive and reactive measures taken by the Army to prevent collateral damages and to observe IHL/HR standards which are more fully described in this Report.

10. For a state like Sri Lanka that recognizes its obligation to minimize harm to civilians responding to LTTE terrorist attacks posed operational, legal and moral challenges. LTTE amplified those challenges by using the civilian population in Wanni to shield its military operations. Confronted with those tactics by the LTTE, GOSL took extraordinary steps to avoid harming civilians in Wanni while protecting its soldiers from hostile fire.

11. LTTE deliberately and systematically exploited Tamil civilians in Wanni as human shields to cover their military targets. With the intent of exploiting the civilians population, LTTE stored explosives and weapons in and around populated areas, NFZs and even hospitals. It used medical facilities and ambulances for military purposes, exploiting the protected status of medical sites and restricting effective care for civilians. It repeatedly fired Artillery and other weapons from locations adjacent to NFZs and medical facilities. In short, LTTE made the likelihood of harm to the civilians in Wanni the centerpiece of its defensive strategy, to inhibit SL Army operations and to score propaganda coups and vilify GOSL when the SL Army tried to attack legitimate military objectives.

12. LTTE tactics however could not legally prevent GOSL from liberating the civilians held in captivity nor bar the SL Army from protecting its soldiers under fire. GOSL obligations under International Humanitarian Law were *inter alia*, to direct attacks against combatants and military objects, to take precautions that were feasible and that would still allow the SL Army to achieve its legitimate military objectives and not to carry out attacks which were likely to cause collateral damage **excessive in relation to the military advantage anticipated**. SL Army chose its targets against LTTE terrorists, material and facilities in accordance with international law and as carefully as possible despite a rapidly unfolding situation.

13. Humanitarian Operation reflected the extensive training of its soldiers to respect the obligations imposed under international law and to adhere to the IHL as well as domestic law. Further, the conduct of the SL Army in the Wanni Operation evidenced the longstanding efforts in the SL Army to reinforce awareness of these obligations among commanders and soldiers, to investigate alleged infringements and to punish violations. SL Army procedures are very similar to those of the British Army and the US Army.

14. Compliance with applicable international law norms is a cornerstone in the SL Army rules and policies. As an organ of the state, SL Army is fully committed to observe IHL/HR law in its engagements and Commanders at levels have a Zero Tolerance Policy viz HR violations by the members of the SL Army.

15. Precision however is elusive in military conflicts and in the heat of battle, commanders must make complex and hazardous decisions affecting the lives of their soldiers for the achievement of their military mission whilst taking precautions to ensure the safety of civilians. Experience including the NATO bombings of the former Yugoslavia and operations in Afghanistan and Iraq by the United States, the United Kingdom and others has shown that even the most sophisticated systems and the most rigorous training cannot prevent all civilians casualties and damage to public and

private property. LTTE's cynical choice of tactics including the unlawful strategy of deliberately shielding their operatives and munitions in populated areas NFZs and other protected sites made decisions by SL Army even more difficult more complex and more hazardous.

16. However against heavy odds and many times at the expense of our own soldiers the SL Army carried out the Humanitarian Operation observing IHL/HR Law and Law of War. Hence Wanni Operations was confirmed to **Jus-in-bella Principle**.

17. Sri Lanka Army was called upon to liberate the North and East of Sri Lanka when the LTTE was virtually running a de-facto state which almost had all the attributes of a state and had the full backing of certain Western Powers. However against heavy odds, Sri Lankan Armed Forces liberated the North and East preserving the unitary state concept.

18. In the report the Committee has conceded that LTTE had violated the International Law by doing such acts as amassing arms/ ammunition in the NFZs, placing heavy weapons amongst the civilians in the NFZs and also by using civilians as human shields; vide P 140 Para 4.350.

19. International Law poses lot of obligations on the defender even if he happens to be a non-state actor. In **Nicaragua v US (1984)**, ICJ held that Contras rebels in Nicaragua were responsible for various violations under International Law. In this context Geneva Protocol I and II (which are basically re-statements of Customary International Law) are relevant; Defence shall be organized primarily outside populated areas. Civilian persons and objects shall be removed from military objectives (**G.P.I. 58**) the Defence positions shall cause the least danger to civilian persons and objects (**GP I 57, 58**) the removal of civilian persons from the vicinity of military objectives shall take place to location which presents no danger to them: (**GPI 58**). The defender has an imperative duty to refrain from siting his Defences in or close to hospitals; (**GPI 8**).

20. The LLRC in its Final Report has made a number of recommendations with regard to the institutional, administrative and legislative measures which need to be taken in order to prevent any recurrence of terrorism and to promote national unity and reconciliation among all communities.

21. Having taken cognizance of the recommendations of the committee, the Commander of the Army has appointed the Present Board to study the report and formulate a viable action plan to implement the said recommendations.

22. The Board has studied each and every chapter including the final chapter entitled, “**Principal Observations and Recommendations**” and identified certain implied recommendations made by the LLRC, in addition to the expressed recommendations made therein.

23. In formulating its recommendations, the Board took into account inter alia the following;

- a. The obligation to educate the members of the Armed Forces in HR Law and IHL.
- b. Measures to safeguard civilians and to avoid civilians casualties during Military Operations.
- c. The importance of the Tamil Language not only as a medium of communication but also as part of Counter Terrorist / Counter Insurgency Doctrine.
- d. The need to produce quality soldiers in the post-war scenario.
- e. Recommendations made by the LLRC to investigate the specific instances referred to at Chapter 4 of the LLRC Report.
- f. Recommendations made by LLRC to establish the truth or otherwise of the allegations arising out of Channel 4 Video footage referred to at Chapter 4 of the LLRC Report.

24. The Board has restricted its recommendations to those areas which the Armed Forces alone could implement leaving the other areas to relevant state agencies concerned.

## **CHAPTER 1 (CHAPTER 3 & 4 OF LLRC)**

### **HUMANITARIAN LAW ISSUE**

#### **OBSERVATIONS, RECOMMENDATIONS, AND ACTION PLAN FOR MEASURES TO SAFEGUARD CIVILIANS AND AVOID CIVILIAN CASUALTIES**

1. Observation. The Commission is satisfied that the military strategy that was adopted to secure the LTTE held areas was one that was carefully conceived, in which the protection of the civilian population was given the highest priority. The

Commission also notes in this regard that the movement of the Security Forces in conducting their operations was deliberately slow during the final stages of the conflict.

2. Recommendation. These factors are consistent with the position that protection of civilian life was a key factor in the formulation of a policy for carrying out military operations. They militate against any proposition that deliberate targeting of civilians was part and parcel of a policy, although specific episodes which warrant further investigation are referred to above in Chapter 4 Section 11 - vide paragraphs 4.106, 4.107, 4.109, 4.110 and 4.111.

### NO FIRE ZONES (NFZs)

3. Observation. Commission concludes that the Security Forces had not deliberately targeted the civilians in the NFZs, although civilian casualties had in fact occurred in the course of crossfire. Further, the LTTE targeting and killing of civilians who attempted to flee the conflict into safe areas, the LTTE threat posed by land mines and resultant death and injuries to civilians, and the perils inherent in crossing the Nanthi Kadal Lagoon, had all collectively contributed to civilian casualties.

4. Recommendation. The Commission considers whether the action of the Security Forces of returning fire into the NFZs was excessive in the context of the Principle of Proportionality. Given the complexity of the situation that presented itself as described above, the Commission is of the view that the Security Forces were confronted with an unprecedented situation when no other choice was possible and all "feasible precautions".

5. It would also be pertinent in this context to recall that, in determining questions of State responsibility in respect of death, injury or property damage in the course of military operations, international tribunals referring to doctrinal authorities, have described as "next to impossible", the obtaining of a re-construction in front of a tribunal conditions under which the "combat action" took place with an adequate reporting of all accompanying circumstances.

6. Observation. The Commission is faced with similar difficulties in attempting a re-construction of certain incidents involving the loss of civilian lives which have been brought to the attention of the Commission.

7. Recommendation. The Commission finds it difficult to determine the precise circumstances under which such incidents occurred (as described in Chapter 4 Sec 11, Para 4.106, 4.107, 4.109, 4.110, and 4.111) the material nevertheless points

towards possible implication of the Security Forces for the resulting death or injury to civilians, even though this may not have been with an intent to cause harm.

8. The Commission stresses that there is a duty on the part of the State to ascertain more fully, the circumstances under which such incidents could have occurred, and if such investigations disclose wrongful conduct, to prosecute and punish the wrong doers.

9. The consideration should also be given to providing appropriate redress to the next of kin of those killed and those injured as a humanitarian gesture that would help the victims to come to terms with personal tragedy, both in relation to the incidents referred to above and any other incidents which further investigations may reveal.

10. Observation. The Commission is satisfied, on a careful consideration of all the circumstances that shells had in fact fallen on hospitals causing damage and resulting in casualties.

11. However, the material placed before the Commission points to a somewhat confused picture as to the precise nature of events, from the perspective of time, exact location and direction of fire.

12. The challenge faced by the Commission is the determination of responsibility for the acts in question, on the basis of concrete evidence.

13. No immediate investigation in the nature of a crater analysis had been undertaken, presumably given the intensity of the conflict, in the areas in question.

14. None of the persons making representations was able to state with certainty they were in a position to definitely confirm that the shells which fell on the hospitals, originated exclusively from the side of the Sri Lanka Army or from the LTTE.

15. One civilian stated that when a shell lands, the general anticipation was that it was the Army.

16. Puthumathalan hospital was in fact accidentally shelled by the LTTE for which they had subsequently apologized.

17. Thus the Commission's task of reaching a definite conclusion as to who was responsible for the shelling of hospitals and loss of lives / damage to property is made extremely difficult by the non - availability of primary evidence of a technical nature and also the fact that supportive civilian evidence is equivocal in nature and does not warrant a definitive conclusion that one party or the other was responsible for the shelling.

18. Recommendation. Although the Commission is not in a position to come to a definitive conclusion in determining responsibility that one party or the other was responsible for the shelling, nevertheless given the number of representations made by civilians that shells had in fact fallen on hospitals causing damage to the hospitals and in some instances loss or injury to civilian lives, consideration should be given to the expeditious grant of appropriate redress to those affected after due inquiry as a humanitarian gesture which would instill confidence in the reconciliation process.

19. Observation. Number of people stated that they had directly witnessed certain persons surrendering to the custody of the Army.

20. Recommendation. It is the clear duty of the State to cause necessary investigations into such specific allegations and where such investigations produce evidence of any unlawful act on the part of individual members of the Army, to prosecute and punish the wrongdoers.

21. The Commission must also stress in this regard that if a case is established of a disappearance after surrender to official custody, this would constitute an offence entailing penal consequences.

22. Thus the launching of a full investigation into these incidents and where necessary, instituting prosecutions are an imperative also to clear the good name of the Army.

23. Observation. Integration of 'Safety Zones' into combat strategy and the use of civilians as human shields, leave grey areas in the existing legal framework applicable to internal conflicts involving States and non-state armed groups.

24. The resulting position is that the civilian is placed in jeopardy when the State is compelled to resort to counter measures to deal with the combat strategy of the non-state armed groups, situations which require neutralizing military positions established within civilian 'Safety Zones'.

25. The non-state armed group has no intention whatsoever of agreeing to a negotiated declaration of such Zones providing for civilian protection and once unilaterally declared by the State. Utilize them to advance its combat strategy and operations (for example, using civilians within the Zone as human shields).

26. The State and Field Commanders are faced with the dilemma of protecting civilians on the one hand and neutralizing the enemy fire power emanating from within the NFZ, on the other.

27. The Sri Lankan experience has in fact given rise to a debate as to whether, by unilateral declaration of a No Fire Zone.

28. The Government unwittingly provided the LTTE an opportunity to consolidate itself amongst the civilian enclave for strategic purposes.

29. Recommendation. The development of appropriate standards and procedures to deal with such situations becomes an imperative need in addressing contemporary challenges to the existing IHL regime in internal conflict situations.

30. These complex issues of contemporary relevance to the application of IHL must engage the immediate attention of the international community of States and relevant international organizations such as the UN and the ICRC, so that appropriate legal instruments are put in place to fill the existing lacunae in IHL in its application to internal conflicts.

31. Formulating an effective legal framework drawing from these experiences is a clear obligation that the International Community owes to all victims of conflict.

32. Observation. Despite the efforts by the Security Forces to avoid harm to people, there have been instances of exchanges of fire over the civilian areas including NFZs causing death and injury to civilians.

33. It also appreciates that the priority and indeed the natural instinct of the security forces and other authorities was to 'Save lives rather than count bodies'. However it is noted with regret that there is no official record or a post conflict estimate of civilian casualties either by the civilian administrative authorities in the area or by the defence authorities. Whilst the Security Forces had their own casualty figures and an estimate of the LTTE casualties, the absence of authoritative civilian casualty records, with the exception of the limited data from the Ministry of Health, has led to varying figures of civilian casualty estimates by different entities, media organizations and authorities.

34. There was no proper verification process; either by civilian administration or by the Military and this has contributed to the unverified sweeping generalizations of a highly speculative nature as regards casualty figures. Considerable civilian casualties had in fact occurred during the final phase of the conflict.

35. Recommendation. Investigate the specific instances referred to in observation 4.359 vi. (a) and (b) and any reported cases of deliberate attacks on civilians. If investigations disclose the commission of any offences, appropriate legal action should be taken.

36. Conduct a professionally designed household survey covering all affected families in all parts of the island to ascertain firsthand the scale and the circumstances of death and injury to civilians, as well as damage to property during the period of the conflict.

37. Observation. The images contained in the video footage are truly gruesome and shocking, irrespective of whether the incidents are 'real' or 'staged' ones.

38. Emphasize that the video provides *prima facie* material on possible summary executions and sexual assault involving people who appear to be - in captivity.

39. Both the Government as well as the Reporter's experts, however point to several technical ambiguities in the video which remain un-clarified.

40. Prof. E. A. Yfantis cast significant doubts about the authenticity of the video, especially the probability of electronic tampering and the artificial construction of the 'blood effect' in the video.

41. The non-availability of a copy of the broadcast footage has not helped in finding conclusive clarification of such technical ambiguities.

42. The Commission finds that there are troubling technical and forensic questions of a serious nature that cast significant doubts about the authenticity of this video and the credibility of its contents.

43. It is also observed that trauma evident on the bodies of victims does not appear to be consistent with the type of weapon used and the close range at which the firing is seen to have taken place.

44. The commission wishes also to note however that someone had recorded or otherwise produced these images and the video and made it available to the Broadcaster concerned.

45. One expert enlisted by the Commission observes that "The segments of the footage appear to have been recorded in a natural environment" and that some of the bodies of alleged victims show no artifacts of manipulation either physically or by digital means.

46. Broadcaster did not respond positively to the request made by the Commission to provide more comprehensive information.

47. Recommendation. The Government should initiate an independent investigation into this matter to establish the truth or otherwise of the allegations arising from the video footage.

48. Firstly, if as claimed by the informants who supplied the images and by the experts enlisted by Messrs Alston and Heyns, the footage reflects evidence of real incidents of summary execution of persons in captivity and of possible rape victims it would be necessary to investigate and prosecute offenders, as these are clearly illegal acts.

49. It is also the obligation of the Government to clear the good name and protect the honor and professional reputation of soldiers who defended the territorial integrity of Sri Lanka and particularly the many thousands of soldiers who perished carrying out

their combat duties cleanly and professionally against a widely condemned terrorist group who used most inhumane tactics in combat.

50. Secondly, if on the other hand footage is artificially constructed or the incidents are staged as contended by several experts, the issue becomes even more serious and the need to establish facts of this case, equally compelling.

51. The Commission shares some of the significant doubts expressed on the integrity of the video and feels strongly that if that were to be the case, whoever constructed the video and the organization that broadcast it should be held responsible for a serious instance of gross disinformation.

52. The Commission is also concerned that such acts would seriously prejudice and place major obstacles in the way of the ongoing efforts, both national and international to promote and consolidate a viable process of reconciliation, healing and reconstruction in Sri Lanka.

53. Government of Sri Lanka should institute an independent investigation into this issue with a view to establishing the truth or otherwise of these allegations and take action in accordance with the laws of the land.

54. Equally, the Commission feels that arrangements should be made to ensure and facilitate the confidentiality and protection of information and informants.

55. The Commission strongly urges all those concerned, especially the organizations that provided the original images and the broadcasting organization, to extend fullest cooperation by providing the necessary information to facilitate this work.

#### **ACTION PLAN PROPOSED BY THE ARMY BOARD**

56. LLRC has conceded (at Paragraph 4.262) that the military strategy that was adopted by the Army to secure the LTTE held areas to be one that was carefully conceived, in which the protection of the civilian population has given the highest priority. In reaching this conclusion the LLRC has taken account of the various steps taken by the Army to identify precise targets such as deployment of Long Range Reconnaissance Patrols, procedures followed in carrying out air strikes, utilization of UAVs etc. The LLRC has also conceded that the movement of the Army was deliberately slow during the final stage of the conflict, thereby evidencing a carefully worked out strategy of avoiding civilian casualties or minimizing them. In this backdrop, the questions whether civilian casualties in fact occurred or whether such incidents were collateral or incidental damages that are inherent with the vagaries of war have not been answered affirmatively by the LLRC. Furthermore, the details given in Chapter 4 on various instances of civilian casualties are not sufficient for this Board

to come to a firm conclusion with regard to the said matter. Nevertheless, this Board recommends to appoint a Board of Inquiry to investigate fully with regard the instances referred to in Chapter 4.

57. It is a common practice by LTTE to classify LTTE cadres killed in combat, civilians killed by LTTE for various reasons (such as for their anti –LTTE beliefs), civilians killed by LTTE whilst fleeing to the Government areas, civilians died during their flight to freedom for reasons such as drowning, exhaustion, land mines etc and LTTE cadres and civilian illegally left Sri Lanka and presently domiciled abroad as **Missing persons** to evoke international sympathy. LLRC Report itself (at Paragraph 4.321) observes that LTTE had committed grave violations of core principles of IHL inter alia using of civilians as Human Shields, the practice of placing military equipment in NFZs, firing at civilians trying to escape into safe areas, use of suicide attacks causing loss to civilian lives etc. LLRC also observes (at Paragraph 4.359 (xii)) that considerable civilian casualties may have occurred due to cross-fire, deliberate firing at civilians by LTTE, dynamics of the conflict situations, the perils of geographical terrain, using civilians as human shields by LTTE and the LTTE's refusal to let the hostages get out of harm's way. In this backdrop, doubts exit as to the alleged incidents of abductions and disappearances submitted to LLRC by various persons and the numbers indicated as disappeared. In any event the details with regard to alleged disappearances and abductions mentioned in chapter 4 are insufficient to identify the locations and Units/ Formations. However, the Board recommends to appoint a Board of Inquiry to investigate fully the instances referred to in Chapter 4.

58. LLRC has noted the fact that certain technical experts have taken the view that the Channel 4 video footages have extensive technical and forensic ambiguities suggesting that the video tapes are fakes. LLRC has found as a matter of fact that there are strongly argued points opposing the integrity of the video and the authenticity of the events recorded (paragraphs 4.369 and 4.370). The LLRC had taken steps to obtain an independent opinion from Professor EA Yfantis, professor of computer science at the University of Navada, USA and based on the extensive video graphic and mathematical analysis of the videos, Professor Yfantis has concluded that the video footage in questions were orchestrated videos: (paragraph 4.372). The LLRC has shared significant doubts expressed in the integrity of the video and concluded that such disinformation would constitute grave damage and injustice to those soldiers who fought professionally and sacrificed their lives to save other innocent lives from LTTE stronghold (paragraph 4.3766). In the premises, this Board recommends to appoint a Board of Inquiry to investigate the matter fully in order to clear the good name of the Sri Lanka Army and also to bring any offenders, to justice.

59. The Board concludes that the Armed Forces had taken every precaution to minimize civilian casualties. However in order to eliminate/minimize civilian casualties and co-lateral damage in future operations, the Board recommends that;

- a. To appoint Army Boards on all disciplines such as infantry tactics, special operations, arty fire, Armour employment, joint operations etc in MOUT / FIBUA environments to formulate new doctrines on these aspects.
- b. To appoint a Tri Service Board to design military doctrines incorporating new tactical and technical methodologies and utilization of high tech equipment.

60. At present IHL principles applicable in internal war situations have not adequately addressed the various complex issues. The existing rules are seemingly applied to state actors only. Further there is no specific guidelines with regard to the role of International Humanitarian Agencies in internal war situations. Therefore it is recommended that

- a. Tri Service Board consisting of legal officers to research and formulate new principles / ROEs for internal war situations incorporating aspects such as unilateral designation of NFZs, imposing mandatory legal obligations on non-state actors to observe Rules of War, the role of International Humanitarian Agencies (ICRC, MSF etc) in Internal war situations etc.
- b. To enhance the present IHL/HR Law dissemination programmes to reach all members of the armed forces and to re-design the courses to cover basic, middle level and advanced training on IHL / HR with the help of International Organizations.

61. The Board notes that so called civilian casualties are mainly consisted of LTTE cadres killed in combat, civilians killed by LTTE for political and other reasons and civilians killed by LTTE whilst attempting to flee LTTE held areas. However in the spirit of reconciliation, the board recommends that the Government should implement a system to compensate the Next of Kins of all those killed and injured in the entire Island irrespective of their ethnicities or political affiliations.

62. As outlined in the previous paragraph, the death toll has been highly exaggerated by LTTE and western powers in order to bring discredit to the GOSL. Therefore it is recommended to conduct a professionally designed household survey covering the North & East to ascertain first-hand the scale and the circumstances of death and injury to civilians, as well as damage to property during the period of conflict. At present a census is in progress to cover all households in the North & East.

## **CHAPTER 2 (CHAPTER 5 OF LLRC)**

### **HUMAN RIGHTS**

#### **OBSERVATIONS, RECOMMENDATIONS, AND ACTION PLAN FOR ALLEGED DISAPPEARANCES AND ABDUCTIONS**

1. **Observations.** The commission was alarmed by a large number of representations made alleging “ABDUCTIONS”, enforced or involuntary disappearances, and arbitrary detention. In many instances, it was revealed that formal complaints have been made to police stations, the Human Rights Commission of Sri Lanka and the ICRC. In some cases, submissions had also been made to the previous Commissions of Investigation. Yet, the next of kins continue to complain that the whereabouts of many of those missing persons are still unknown. The Government therefore is duty bound to direct the law enforcement authorities to take immediate steps to ensure that these allegations are properly investigated into and perpetrators brought to justice.

2. The Commission also emphasizes that the relatives of missing persons shall have the right to know the whereabouts of their loved ones. They also have the right to know the truth about what happened to such persons, and to bring the matter to closure. Reconciliation is a process. Closure is the first difficult emotive step in that long and complex journey irrespective of whether they are victims of conflict or victims of LTTE terrorism. This will also enable them to seek appropriate legal remedies including compensation.

3. **Recommendations.** The Commission emphasizes that it is the responsibility of the State to ensure the security and safety of any person who is taken into custody by governmental authorities through surrender or an arrest.

4. A comprehensive approach to address the issue of missing persons should be found as a matter of urgency as it would otherwise present a serious obstacle to any inclusive and long term process of reconciliation. It is noted that given the past incidents of disappearances from different parts of the country and investigative efforts thereon, the past Commissions have recommended, *inter alia*, a special mechanism to address this issue and deter future occurrences. These recommendations warrant immediate implementation, as these will help address this serious issue, which has arisen in the human rights context and left unimplemented by successive Governments. Continued failure to give effect to such critical recommendations of past commissions gives rise to understandable criticism and skepticism regarding Government appointed Commissions from which the LLRC has not been spared.

5. All efforts should be made by the law enforcement authorities, in cooperation with relevant agencies, especially the ICRC, to trace the whereabouts of the missing persons and ensure reunification with their families. The families should be kept informed of the progress being made in that regard.

6. The Commission heard a number of allegations concerning persons taken into custody without any official record. The Commission therefore recommends that applicable legal provisions should be adhered to by the law enforcement authorities when taking persons into their custody, such as issuing of a formal receipt regarding the arrest and providing details of the place of detention. Such persons should be detained only at formal places of detention declared under the law. Adequate publicity should be given to such authorized places of detention, with access to next of kin

7. In keeping with the obligations Sri Lanka has undertaken in applicable international human rights instruments, and in accordance with the requirements of its national laws, the following measures should be taken:

8. An arrested person should be promptly produced before a Magistrate to be dealt with in accordance with the law.

9. Any change of the place of detention should be promptly notified to the family of the arrested person and the Human Rights Commission of Sri Lanka.

10. Magistrates should visit the places of detention every month.

11. Release from detention should be done through courts.

12. The Commission also heard allegations that a number of persons have been taken into custody and detained under the Emergency Regulations although the facts of some cases do not disclose any offence related to public security. In this regard, the Commission takes note of the Government's decision to lift the Emergency Regulations as a significant and a positive step towards reconciliation and restoration of normalcy. Many representations made before the Commission gave a clear impression that with the ending of the LTTE terrorism, the people's preference was that the governance be carried out under the normal laws of the land that will uphold the supremacy of the Rule of Law. The Commission also expresses the hope that the civilian life will receive the fullest benefit of the lifting of the Emergency Regulations and that any further regulations would not impair the full enjoyment of such benefits.

13. The Commission has observed instances of persons being detained in custody for a long period under the Prevention of Terrorism Act (PTA). In this regard, the Commission recommends that an Independent Advisory Committee be appointed to monitor and examine detention and arrest of persons taken into custody under any regulations made under the Public Security Ordinance or the PTA.

14. The families need to be assisted to deal with the trauma of not knowing the whereabouts of their family members, in some cases for years. They could also be assisted financially in situations where the missing persons had been the breadwinners. Legal aid should also be provided as and when necessary.

15. In order to address this issue comprehensively and to eliminate this phenomenon in the future as well as to fill an existing lacuna, the Commission strongly recommends

that domestic legislation be framed to specifically criminalize enforced or involuntary disappearances.

16. There is also a fundamental need to ensure that lessons from these past incidents be learnt in a manner that they will never be repeated again. In this regard, the Commission also stresses the need for comprehensive, island wide human rights education programmers targeting the schoolchildren, youth, members of the Security Forces, and the Police.

17. Given the complexity and magnitude of the problem and considering the number of persons alleged to have disappeared, and the time consuming nature of the investigations involved, the Commission recommends that a Special Commissioner of Investigation be appointed to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings as appropriate. The Office of the Commissioner should be provided with experienced investigators to collect and process information necessary for investigations and prosecutions. This mechanism should also devise a centralized system of data collection at the national level, integrating all information with regard to missing persons currently being maintained by different agencies.

## **TREATMENT OF DETAINEES**

18. The next of kin of the detainees have the fundamental right to know the whereabouts of their family members who are in detention. Therefore there is a need for a centralized comprehensive database containing a list of detainees, which should be made available to the next of kin with names, place of detention as well as record of transfers so that families have access to such information.

19. The next of kin have the right of access to detainees. Therefore, any practices that violate this principle should be removed. The Commission has observed that some next of kins are only provided information verbally. Moreover, having travelled very far, some family members have not been allowed to see the detainees in person. The Commission recommends that the relevant authorities in cooperation with the ICRC and voluntary organizations enhance current facilities for the transportation of the next of kin to visit their family members at the places of detention.

20. A proper screening process should be in place to identify special cases such as those with young children, physically disabled and those who are recovering from injury, and medical interventions. They must be provided special assistance that they may require. There may also be cases where some inmates require counseling due to long periods of detention and lack of access to relatives.

## **RECOMMENDATIONS**

21. The Commission visited several places of detention, especially the high security facilities at Omanthai and Boossa. It notes that the Omanthai center has since been closed. The Commission notes with appreciation the caring attitude of the authorities towards the inmates at these centers and the fact that the ICRC has access to these

places of detention, including for private meetings with detainees. The Commission welcomes this policy of cooperation with the ICRC and strongly recommends that the Government expands this policy of cooperation and constructive engagement with the ICRC and other similar humanitarian organizations to ensure the welfare of the detainees.

22. All places of detention should be those, which are formally designated as authorized places of detention and no person should be detained in any place other than such authorized places of detention. Strict legal provisions should be followed by the law enforcement authorities in taking persons into custody, such as issuing of a formal receipt of arrest and providing details of the place of detention.

23. The Commission recommends that special attention be given to young detainees, in particular those whose education has been disrupted due to conscription by the LTTE and who expect to complete their formal education. Priority should be given to investigation and the speedy disposal of their cases. In this regard, the Commission notes with appreciation that the rehabilitation programme has enabled many detainees to sit for the national examinations.

24. The Commission notes with appreciation the action taken by the Government to process the cases relating to a significant number of detainees based on the Interim Recommendations of the Commission. However, the Commission expresses concern over some detainees who have been incarcerated over a long period of time without charges being preferred. The Commission stresses again that conclusive action should be taken to dispose of these cases by bringing charges or releasing them where there is no evidence of any criminal offence having been committed.

## ILLEGAL ARMED GROUPS

25. Observation. The Commission is of the view that proper investigations should be conducted in respect of the allegations against the illegal armed groups with a view to ascertain the truth and the institution of criminal proceedings against offenders in cases where sufficient evidence can be found.

26. Recommendation. Action should also be taken to disarm and put an end to illegal activities of these groups, as it would otherwise present a serious obstacle to the ongoing process of reconciliation. In this regard, the Commission strongly reiterates its Interim Recommendation seeking to disarm all illegal armed groups. While the Commission notes that some action has been taken in this regard, it regrets that no conclusive action has been taken. It is essential that conclusive action should be taken to address this issue as part of a time bound and verifiable process. The Commission is of the view that had timely action been taken with regard to the Commission's Interim

Recommendations, serious incidents such as the recent attack on the Editor of the Uthayan Newspaper may have been averted.

## FREEDOM OF EXPRESSION AND THE RIGHT TO INFORMATION

27. Observation. The Commission was deeply disturbed by persistent reports concerning attacks on journalists and media institutions and killing of journalists and the fact that these incidents remain to be conclusively investigated and perpetrators brought to justice. The Commission was also alarmed by the deplorable attack on the Editor of the Uthayan newspaper in Jaffna, which occurred while the Commission's sittings were still in progress. The Commission condemns this attack. Such actions clearly place great obstacles in the way of any reconciliation efforts. Any failure to investigate and prosecute offenders would undermine the process of reconciliation and the Rule of Law.

28. Recommendation. Freedom of expression and right to information, which are universally regarded as basic human rights play a pivotal role in any reconciliation process. It is therefore essential that media freedom be enhanced in keeping with democratic principles and relevant fundamental rights obligations, since any restrictions placed on media freedom would only contribute to an environment of distrust and fear within and among ethnic groups. This would only prevent a constructive exchange of information and opinion placing severe constraints on the ongoing reconciliation process.

29. The Commission strongly recommends that all steps should be taken to prevent harassment and attacks on media personnel and institutions.

30. Action must be taken to impose deterrent punishment on such offences, and also priority should be given to the investigation, prosecution and disposal of such cases to build up public confidence in the criminal justice system.

31. Past incidents of such illegal action should be properly investigated. The Commission observes with concern that a number of journalists and media institutions have been attacked in the recent past. Such offences erode the public confidence in the system of justice.

32. Therefore, the Commission recommends that steps should be taken to expeditiously conclude investigations so that offenders are brought to book without delay.

33. The Government should ensure the freedom of movement of media personnel in the North and East, as it would help in the exchange of information contributing to the process of reconciliation.

34. Legislation be enacted to ensure the right to information.

## FREEDOM OF RELIGION, ASSOCIATION AND MOVEMENT

35. Observation. Any credible and sustainable process of reconciliation requires the creation of an environment, which respects, promotes and protects people's right to freely engage in observing their religion, and other freedoms such as freedom of association and movement.

36. Therefore, the Government must ensure that such rights are not arbitrarily restricted or violated by any State institution, especially by the Security Forces and the Police.

37. People, community leaders and religious leaders should be free to organize peaceful events and meetings without restrictions.

38. The Commission emphasizes the need to bring to a closure the sense of uncertainty among victims by facilitating their attendance at religious ceremonies, without placing any hindrance to such activities.

## ACTION PLAN PROPOSED BY THE ARMY BOARD

39. The Board observes that despite the lifting of Emergency and all restrictions in the N & E, LTTE and Tamil Diaspora are conducting a relentless campaign to discredit the GOSL and if foreigners themselves could see the prevailing situation in the North & East that will be an ante-dote to this adverse propaganda. Therefore, in order to counter the negative image portrayed with regard to the condition in the North and East the following actions are proposed;

a. The relevant state agencies (Tourist Board, Government Information Department etc) must conduct a rigorous propaganda campaign to boost up foreign travel and trade in the North and East.

b. The manpower and machinery of the Armed Forces should be utilized to assist the relevant state agencies to develop tourism and hotel industry in the North and East.

40. The Board observes that the S.L. Constitution and the existing legal framework are adequate to safeguard the HRs of the people including the religious and language rights. The board recommends that armed forces should implement policies and programs to foster communal and religious harmony in the forces and conduct programmes to improve PR.

41. The Board observes that during the 30 year old war non-proficiency in Tamil and English languages had placed the SL Army officers/soldiers at a great disadvantage. Therefore the Board recommends that Armed Forces should develop proficiency in two or more languages. Tamil language and English language teaching programmes should be given priority and incentives to be given for those acquiring two or more languages.

42. The Board observes that the Government has already disarmed/rehabilitated ex-militants groups. In this context the Board proposes that;

- a. The police should continue with their present operations to eradicate the proliferation of illegal weapons.
- b. An amnesty period should be offered and rewards should be given to persons surrendering arms and ammunition.
- c. Ex militants may be absorbed into the police after proper security checks and giving special training.
- d. All Ex militants should be given jobs and land in order to absorb them into the normal civil society.

### **CHAPTER 3 (CHAPTER 6 OF LLRC)**

#### **LAND ISSUES RETURN AND RESETTLEMENT**

#### **OBSERVATIONS, RECOMMENDATIONS, AND ACTION PLAN**

1. Observations. The Commission is pleased to note that HSZs in both Tricomalee - Sampoore in the Eastern Province and Palaly in the Northern Province have been reduced and land released to original owners and permit holders as applicable. The ‘unofficial HSZs’ in Mannar too has been withdrawn. However, an estimated 26,755 persons still continue to be displaced due to the Trincomalee – Sampoore and Palaly HSZs, while a proposed naval establishment has displaced an estimated 1,320 persons in the Mannar district.

2. The Commission was informed that people in Jaffna area who were displaced due to HSZs are living in adjacent village camps, with relatives and friends, or at the Ramavil welfare camp. The Security Forces, additionally, occupied some private houses as well as commercial establishments in Jaffna, for some of which rents have been paid. In the Mannar district’s Mullikulam village, (Musali DS Area) 150 families have been displaced due to a newly created Navy installation. The Bishop of Mannar informed the Commission that occupation of land by the military should be an act of last resort, and in each such case of land loss, alternative lands should be given in consultation with the affected families. With the establishment of peace, most people yearn to return to their land. In the East, the Trincomalee Sampoore HSZ established in May 2007, displaced about 10,000 people.

3. In this regard the Commission notes that it is desirable to formalize all HSZs according to existing legal provisions so that maximum benefits and compensation

could be paid to affected persons promptly. It is also desirable to continue to review the HSZs with a view to reducing the areas of the HSZs further, while being alert to national security needs. The necessity to use small plots of private land for security purposes (e.g. for as cantonment areas, etc) in the districts should also be assessed jointly with the respective Government Agents and lands that are not vitally important for security purposes released to owners as urgently as possible. Land that is identified to be vitally required for security purposes based on this joint assessment should be either taken on lease at market rates if the owners so wishes, or legally acquired so that the owners can claim alternate land and or compensation as per legal provisions, within a specified reasonable time-frame.

4. Recommendations. The Commission appreciates the fact that the two HSZs in Palaly and Trincomalee - Sampooor respectively have been reduced and that an estimated 21,491 persons have been returned to land. However, in the two reduced HSZ areas an estimated 26,755 persons are still displaced. The Commission recommends that the two existing HSZs in Palaly and Trincomalee - Sampooor, as well as small extents of private land currently utilized for security purposes in the districts be subject to review with a view to releasing more land while keeping national security needs in perspective. The Commission also recommends that all families who have lost lands and or houses due to formal HSZs or to other informal or *ad hoc* security related needs be given alternate lands and or compensation be paid according to applicable laws. The Commission further recommends that provision of alternate lands and or payment of compensation be completed within a specific time - frame.

5. Observations. Land mine contamination was a key impediment in moving the displaced back to the Wanni. “Ten districts located in the North and East of Sri Lanka were contaminated with landmines and unexploded ordnance (UXO): Ampara, Anuradhapura, Batticaloa, Jaffna, Kilinochchi, Mannar, Mullaitivu, Polonnaruwa, Trincomalee, and Vavuniya.

6. As the Government’s decision was to expedite safe resettlement of the displaced persons, the Sri Lanka Army (SLA) was requested to establish a Humanitarian Demining Unit (HDU). Additionally a Sri Lanka Mine Action programme was established, and UNDP, UNICEF, and a number of international and national mine clearing organizations partnered the Government in mine clearing. Mine education for the returnees was conducted by UNICEF, Sarvodaya, and SLA. The UNDP issued ‘demining certificates’ for areas successfully demined.

7. According to information made available to the Commission, the SLA demined about 75 percent of the total demined area in the Northern Province. By May 2011, all demining partners acting together had cleared 3,942 sq. k.ms of land, removing 354,237 mines in the Process. The Commission recognizes this achievement by the SLA in collaboration with the UN and other Mine Action partners in overcoming a key obstacle for return and resettlement of IDPs.

8. The Commission, nevertheless, notes that while some persons praised the SLA for assistance in resettlement, some have underscored the importance of reducing the

military presence in resettled areas, after completion of their responsibilities such as in demining, so that the civil administration could progressively assume responsibility for local level administration. These sentiments have also been echoed in the East.

9. Recommendations. The programme envisages the nomination of the area civil coordination officer, who is a Security Forces officer, into the two committees proposed to be established to review land documentation and user right issues. The Commission notes that the two committees will be chaired by senior civil administration officers, and that the majority of the members are drawn from the civil administration. The commission, as a policy, strongly advocates and recommends to the Government that the Security Forces should disengage itself from all civil administration related activities as rapidly as possible. With regard to the participation of Security Forces officers in the proposed land restitution process, the Commission being cognizant of the fact that some lands are currently being utilized for security purposes recommends that such participation be confined to and used optimally to expedite releasing maximum extents of such land, while taking account of security considerations, but according primacy to the policy objective of allowing people to settle in areas convenient to them.

10. Armed Forces to appoint special boards to find out the extent of HSZs occupied and other formal or informal/adhoc lands/houses occupied by each force. The same board to review them and forward recommendations to release as much area of HSZs and formal and informal/adhoc, lands/houses as possible having considered the present national security needs in perspective. The board should give priority to private houses/lands and religious places when making recommendations.

11. Each Force to ensure that either an appropriate rental or alternative lands/compensations are given immediately, for the owners of lands/houses which are required to be retained due to security reasons.

12. The same board shall identify the critical areas which are essential for the national security and strategy and formulate a comprehensive plan on permanent military bases with minimum inconvenience to the people. The affected people (whose land will be acquired) to be paid compensation at the market value and they should be provided lands elsewhere.

### **ACTION PLAN PROPOSED BY THE ARMY BOARD**

13. The Govt has already taken measures to normalize the life in the North and East. The Emergency has been lifted and people can go about their day to day activities without hindrance. Most of the restrictions which had been previously imposed due to security reasons are no longer imposed except in near vicinities of harbours, naval bases and cantonments and these restrictions generally apply to the entire Island. However even in security sensitive areas local inhabitants are permitted to engage in their day to day activities. The Board recommends that the existing limited restrictions too should be lifted by the end of year 2012.

14. At the conclusion of the humanitarian operation, the civil administration in the North was not in a position to conduct development activities immediately. Hence the Army had to fill the vacuum. Unlike other countries (including occupied Germany and Japan aftermath of WWII) Sri Lanka did not wait for a stabilization period. At a very early stage Sri Lanka initiated rebuilding the North. As the only organized body in the field, the Army gave the impetus to the rehabilitation process. With the re-establishment of Government Writ in the North the Army has totally handed over the civil administration to the civil authorities headed by the Governor and the District Secretaries. The Board recommends that Civil Affairs Officers attached to formation headquarters should continue to function as liaison officers to assist the civil authorities to implement Nation Building Projects.

15. With regard to the presence of Military bases in the North and East, the Board observes that the Government has an absolute right to maintain its armed forces anywhere in the Island according to the strategic and security needs. At present Tamil Diaspora operating from foreign countries are trying to de-stabilize Sri Lanka and so long as foreign governments give them a free hand their activities would pose a clear and present danger to the national security of Sri Lanka. Hence there is an absolute need to locate our armed forces at strategically important locations. However the Board recommends that Military bases should be located in such a manner so as to cause minimum inconvenience to the public.

16. The Army has a huge responsibility in completing demining in the newly resettled areas for the civil population to conduct day to day activities without any mine risk. Therefore the presence of the SLA is very vital until this task is completed and declared the whole area as mine free.

17. LLRC has observed that certain coastal areas in the North and East have been occupied by the Navy. For any insurgency or terrorist movement to sustain in Sri Lanka such groups must be able to obtain their logistical needs from the outside. The Board also notes that in view of trans-border nature of the present day terrorism and increase of piracy in the Indian Ocean, the Navy will be called upon to play a bigger role not only in Brown Waters, but also in Blue Waters, even beyond our territorial limits. Further it is imperative that Air Force must augment the surveillance capabilities of the Navy. In this context it is imperative that doctrines with regard to joint services operations should be developed to meet the future threats. Therefore the Board recommends that

a. A Tri Service Board should be appointed to formulate doctrines on maritime warfare and costal protection.

b. In order to expand the present Blue water and Brown water capabilities of the Navy, a Board of Officers should be appointed by the Navy to formulate new doctrines on Naval warfare.

c. Air patrolling and maritime surveillance capabilities of the Air Force should be upgraded and in this regard a Board of Officers should be appointed by the Air Force to formulate new doctrines on these aspects.

18. Although some NGOs who had testified before the LLRC wanted to stop the Government from monitoring NGO activities it must be noted that throughout the three decades of war, the LTTE was supported by certain IOs/INGOs/NGOs. Therefore for security reasons it is imperative to monitor their activities. However it is observed that there is no restriction whatsoever on the activities of bona fide organizations. The committee recommends that screening and control of all IOs/INGOs/NGOs should be done under the supervision of the Ministry of Defence to ensure that undesirable elements will not jeopardize the national security.

19. The Board notes that even at present there is a well-coordinated mechanism in place to ensure the welfare of war heroes' families and the disabled war heroes. These programmes are personally supervised by H.E. the President, Secretary Defence and Service Commanders and the First Lady and Chairpersons of Seva Vanitha Units of Armed Forces. The board recommends to establish a separate Directorate at the AHQ called Directorate of Veteran Affairs (Dte of VA) along the lines of the US VA programme to coordinate civil military agencies handling welfare of War Hero Families and disabled war heroes. It is proposed that the activities presently handled by Directorate of Additional Welfare with regard to the welfare activities of War Heroes including the administration of Ranaviru villages should be entrusted to this Directorate. It is also recommended that the Director of VA should be an Infantry or Support Arm officer.

## **CHAPTER 4 (CHAPTER 7 & 8 OF LLRC)**

### **RESTITUTION/COMPENSATORY RELIEF AND RECONCILIATION**

### **OBSERVATIONS, RECOMMENDATIONS, AND ACTION PLAN**

1. **Observation :** Representations were made before the Commission, during its sittings in Colombo and particularly during its field visits, regarding issues that were of concern to persons who have been either directly or indirectly affected due to the conflict. The areas of concern that emerged from these representations included the following:

a. Resettlement and livelihood issues.

b. The difficulties experienced by the public due to the long period of displacement during the conflict.

- c. Shelter, education, problems of children without formal education in the North and East, particularly in the rural areas.
- d. Numerous land issues arising due to the protracted conflict.
- e. Medical facilities and transportation related issues, in rural areas.
- f. The law and order situation in the North and East and the continued existence of illegal armed groups.
- g. Compensation.
- h. Alleged disappearances and abductions, robberies and extortions.
- i. Alleged disappearance of family members during surrender.
- j. The conduct of the LTTE during the conflict; incidents which had taken place during the conduct of the Security Forces operations which had allegedly resulted in death or injury to civilians and damage to property.
- k. Concerns of vulnerable persons such as widows, disabled persons, children and elderly persons.
- l. The status of development in the Northern and Eastern Province.
- m. The need for People's participation in Governance.
- n. The re-establishment of civilian administration in the Northern and Eastern Provinces.
- o. The role of Provincial Authorities.
- p. The intrusiveness of the presence of the Security Forces in the North and East, including the engagement of Security Forces in civil administration matters, business activities and their use of State buildings and private properties.
- q. Apprehensions regarding changes to the demographic composition of the North and East.
- r. Concerns of persons in Sinhalese villages adjacent to the former conflict affected areas.
- s. Concerns of the displaced Muslim population.
- t. The existence of High Security Zones and their impact on re-settlement;

- u. Mine clearance and related issues; and
  - v. Post conflict diaspora issues.
- w. The Commission further notes from the responses received from the civilian administrators and others that, while the Security Forces have worked and are continuing to contribute to reconstruction and development, there were concerns that they also continue to be engaged in small businesses and farming on private lands in some districts. Moreover it appears that the permission of the Security Forces is required in some districts for various activities, including in some instances, for selecting beneficiaries for housing assistance. The responses also indicate that certain State buildings and private land/buildings in the North and East continue to be used by the Security Forces. The Commission recommends the phasing out of the involvement of the Security Forces in civilian activities and use of private lands by the Security Forces with reasonable time lines being given.

## RESETTLEMENT – LIVELIHOOD AND SHELTER

2. With regard to the Mannar district it was pointed out that resettled people lacked assistance to restart their livelihood, fishing, farming, shops etc. It was further stated that the number of shops run by the military and businesses started by people from other parts of the country were negatively affecting the ability of the local people to earn a living through small shops and restaurants. Furthermore it was mentioned that NGOs who were ready to provide assistance were being restricted by Government bodies such as the Presidential Task Force and the Ministry of Defence.

## FISHERIES

3. A lawyer speaking before the Commission stated that there is a Fisheries Co-operative Society functioning in Mullaitivu which is a registered society under the Provincial Commissioner of Co-operatives. However, the military has formed a fisheries society of their own which functions separately. This causes problems for the original society as the military is distributing boats and engines only to the people who belong to the society formed by the military.

4. An Army officer explained to the Commission that the Army had initiated the setting up of 12 fishing Societies. All members of these societies are registered and all details are documented to ensure that only fishermen affiliated to the societies are allowed to fish in the area. He said that the Army was protecting the local fishermen of the Societies in order to prevent fish mudalalis from encroaching, thereby depriving the fishermen of their livelihood.

5. He also said that the military is providing assistance to the fishermen engaged in maritime fishing. He said that in association with Census they are taking steps to repair boats. So far 82 fiber glass boats and 103 outboard motors are under repair. 62 fishermen have been selected for distribution of boats, and it is expected that the

distribution of these boats and other fishing gear would be distributed amongst the fishermen in a month's time. He also said that the fishing societies were formed as a part of the re-settlement process.

6. It is the Fisheries Department that takes decisions with regard to fishing rights. However, now in the Northern areas it is being decided by the military. In the map of Sri Lanka the areas with the highest concentration of fish is the KKS area which is known as Kandamadu, but the Army is not allowing local fishermen into these seas for reasons of security.

#### LAW AND ORDER – CONTINUED PRESENCE OF ILLEGAL ARMED GROUPS

7. During its field visits the Commission heard representations made by individuals, as well as groups, regarding family members who were abducted by unknown persons, or allegedly arrested by the Security Forces or the LTTE or other political parties. Their whereabouts were not known to date despite complaints (some incidents dating back to the 1980s as well) having been made at Police Stations, Human Rights Organizations both local and international. Representations were also made regarding extortion of monies by individuals from family members on the promise of returning loved ones to their respective families.

#### FAMILIES OF SOLDIERS

8. Representations were also made regarding the need not to forget the soldiers and their families. While it was stated that the State was doing whatever possible, it was also stated that the public of the country should be blamed for having forgotten them. He added that the families of soldiers were undergoing the same hardships as displaced people. Another member of the public making representations before the Commission stated that; ‘we owe a duty to the families of the soldiers who sacrificed their lives to save our country. We should think first about them; how do we look after them; how do we settle them and their families and those injured soldiers from all the armed forces’

#### DEVELOPMENT ISSUES AND PEOPLE'S PARTICIPATION IN GOVERNANCE

9. A member of the public who came before the Commission during its sittings in Vavuniya commented on the fact that she sees lorries with big posters of “Uthuru Wasanthaya” – prosperity to the North - going up North; but it meant little to her as her son, she alleged, had been shot by the Army in August 2006, and she was living with a disabled husband and daughter in a backward village. She had no money to educate her daughter for further studies. She further added that Vavuniya was not war torn but people were living in abject poverty with no employment.

## CIVILIAN ADMINISTRATION IN THE NORTH AND EAST

10. Several representations were made before the Commission identifying the need to re-establish civilian administration and reduce the Security Forces, profile in the North.

11. A lawyer residing in Vavuniya appearing before the Commission stated that although resettlement was taking place, the resettlement programmes were not brought under the purview of the civilian officers. He said that it was still under the control of the military authorities – the Army. In response to a question posed by the Commission he stated that for the transportation of goods to the cleared area - one had to get permission from the GA as well as the Army. It was further stated that while there was a Fisheries Co-operative Society functioning in Mullaitivu which was a registered society, the Army had also formed some societies on their own which were functioning separately, and there was no equality in the allocation of resources between the people of the different societies.

## INTRUSIVENESS OF THE PRESENCE OF THE ARMY IN THE NORTHERN PROVINCE

12. Representations were made before the Commission that there remained a sense of unease in the Northern Province owing to the overt presence of the Army there. A leading public figure stated that he had been told that there was a need to get Ministry of Defence clearance even for private civil functions like weddings which he stated denied the people of the North the freedom enjoyed by other citizens in the country. He also commented that the Army was running civilian businesses.

13. Representations were also heard where the conduct of the Army was praised – ‘their conduct is exemplary’ but at the same time it was stated that there was no civilian rule as such. ‘For everything and anything the people have to go to the Army camp. Even the GA has to listen to the Army even the Police officers have to listen to the Army. So civilian rule must be brought back. I accept the Army’s conduct is good. This is not the 80’s Army. This is a professional Army but it is bad because we feel that civilian administration must be brought back. Even if I have a wedding in my house which is in recently cleared areas or the earlier LTTE controlled areas, I have to inform the camp. These things must be changed.’

14. The Commission heard that for this purpose steps had been taken to establish a Tamil Training School for Police Officers. It was also stated that while there was a large number of troops positioned in the conflict areas during the period of operations this had totally changed with large numbers moving to other areas. It was further stated that the new thinking for the Army was that there would be one battalion of about 600

troops in every district with the ultimate objective of giving the Police the total control of the district with the Army being kept in reserve.

15. An academic appearing before the Commission stated that the Army had played a very admirable role in the North and East, particularly in building roads, in developing the North and East, and that they should remain there until these areas stabilize. This fact was also acknowledged by several civilians during the Commission's sittings in the Provinces.

### RESETTLEMENT OF NORTHERN MUSLIMS

16. High Security Zones/Land and Buildings used by the Security Forces and its impact on Resettlement.

17. Representations were made both during its sittings in Colombo and during field visits regarding a number of issues involving High Security Zones, including the restitution of original lands, and the difficulties in doing that due to the existence of High Security Zones. It was acknowledged that HSZs were a narrow strip of land at the outset, and that the expansion of the HSZs was done in the light of the enhanced long range power of the LTTE and the need to push the LTTE especially from the Jaffna Peninsula.

18. Referring to the existence of HSZs in the Eastern Province it was stated that people in Sampur, had led a peaceful life with their livelihood of fishing. As the fighting extended towards the Sampur area the local population was pushed from their original lands, and they were now accommodated in the Kiliveddi Camp. Sampur had been declared a HSZ. It was contended that fishermen can find their living only through fishing and there is an urgent need to resettle the people of Sampur in their original lands. It was stated before the Commission that about 5,000 acres of land had been taken for the HSZ in Sampur and as such about 1,600 people were **still in welfare** camps in various parts of the Eastern Province.

19. It was also mentioned that due to the fact that Palaly had been declared a HSZ for many years, large tracts of land were occupied by the military aggravating the limited availability of land for housing and cultivation etc,

a. A leading lawyer making representations before the Commission said that he was aware that one of the issues that had troubled people in the North was the security zones. He welcomed the Government's decision to reduce the extent of the HSZs and to give back the land to lawful holders of title. He also acknowledged that if land was still being retained it was important to pay compensation. He did however recognize that the situation does not warrant completely doing away with HSZs at this stage. He stated that HSZs are

necessary for the security of the country and although they should probably be reduced, some areas should be retained.

b. During its field visits the Commission heard representations from several civilians who had been unable to return to their original lands due to the existence of the HSZs and were therefore scattered all over outside and facing hardships.

c. Reference was also made in the course of representations to a Supreme Court Judgment where it was held that people should be resettled in the HSZs and permitted to do their cultivation; but it was contended that this judgment was never put into practice.

d. During its sittings in Kilinochchi, representations were made by the Chief Trustee of the Battapalai Kannahi Amman Temple who stated that he was a resident from Batapalai and that the people of the area had no cemetery as it was in the High Security Zone. He also stated that since the Pillayar temple also was within the HSZ the people had no access to it.

e. A senior Defence Official stated that during the conflict the Security Forces had occupied certain Government buildings and even schools, but most of these had been or were in the process of being released.

f. However, it was acknowledged that there was a long standing problem with regard to the Palaly HSZ and the KKS HSZ. In 2000, the Government had taken a lot of land owned by private individuals surrounding Palaly for security reasons, and they were in the process of identifying exactly what was needed now. He stated that surveys were being done, and if private properties are acquired compensation would be paid and alternative land and a house would be given. He also stated that in Mullaittivu some lands which housed the LTTE leader's bunkers and the LTTE headquarters had been acquired.

g. The Commission inquired from a Senior Public Official responsible for the Kilinochchi District whether military families were being settled in the Kilinochchi district, to which she responded that it was not the case. However she stated that there were some areas which were occupied by the LTTE which had now been taken over by the Security Forces, and residents had not been able to re-settle in these areas. She added that this affected only a few families, and until the Government decided what to do, these people had been provided alternative places.

h. A civilian in Jaffna made representations that about 548 acres of land in Myliddy and Palaly area had been taken over for airport extension, and the people whose lands had been acquired had not received compensation nor had they been given alternative lands. It was confirmed that the acquisition had been gazetted. The Commission brought it to the attention of the GA Jaffna who agreed to rectify the position.

i. A Senior Military Official stated that there were some private lands being utilized by the Army but they would be vacating them.

### CLEARING OF LAND MINES

20. Commenting on the demining process, a Senior Defence Official stated that most of the IDPs had been resettled, and that it was only the Puthukudiyiruppu area that was still being cleared as there were a lot of mines in that area. He further stated that once an area is cleared of mines the UNHCR has to provide a certificate of clearance to resettle people. For issue of this certificate there has to be absolute security without land mines, and also basic requirements like water.... He further stated that the Army is working 24 hours clearing the land mines and INGOs were also carrying out demining activity. He added that the Army was doing everything possible to expedite the process and training its troops and engineers, and increasing the number of personnel and resources available for this purpose.

21. A senior Military Official when questioned by the Commission stated that demining activity in Kilinochchi West of A9 had been completed, and East of A9 was done up to Vishwamadu. He said they had not yet gone towards Puthukudiyiruppu area West of Nanthi Kadal lagoon. Mullaittivu South had been demined and people had been resettled.

22. The Commission during its visit to Mullaittivu was told by a military official that while de-mining is going on in the North, it is concentrated more in the areas where civilians are to be resettled, which would expedite the resettlement process. He said that there are 764 families (2,781 persons) to be settled in Maritimepattu and 5,737 families (18,592 persons) from Puthukudiyiruppu.

### RECOMMENDATIONS LISTED IN CH 8 PERTAINING TO SECURITY FORCES

23. The Police Department is a civilian institution which is entrusted with the maintenance of law and order. Therefore, it is desirable that the Police Department be de-linked from the institutions dealing with the armed forces which are responsible for the security of the State.

## **ACTION PLAN PROPOSED BY THE ARMY BOARD**

24. The LLRC has made observations with regard to the presence of Military bases in the North and East. The Board observes that the Government has an absolute right to maintain its armed forces anywhere in the Island according to its strategic and security needs. The Board also notes that of Military bases are located causing minimum inconvenience to the public. Aftermath of the Humanitarian operations many HSZs/lands previously occupied by the Armed Forces have been released to the public. However the Board recommends that;

- a. Armed Forces should appoint special boards to find out the extent of HSZs and other formal or informal occupation of properties by each force. The same board to review the need to occupy these properties and forward recommendations to release HSZs and other properties as much as possible having considered the present national security needs in perspective. The board should give priority to release private houses/lands and religious places when making recommendations.
- b. Land that is identified to be vitally required for security purposes based on this joint assessment are to be legally acquired at the market rates and in addition owners should be given alternative lands.

25. The Board observes that during the 30 years of war, LTTE terrorists had laid mines indiscriminately violating all International norms governing mine warfare. Therefore SLA has been entrusted with the daunting task of demining the liberated areas. Hence the presence of the SLA is very vital until this task is completed. It is noted that the Sri Lanka Army engineers have accounted for 90% of the demining effort. It is re-recommended to increase the number of humanitarian demining units (HDU) with sophisticated demining equipment. This will also enable the Sri Lanka Army to undertake demining operations worldwide in future.

26. LLRC has made observations to demilitarize the North and East as rapidly as possible and handover the administration to Civil authorities. However the Board observes that the civil administration has already been handed over to the civil authorities. It is also be noted that Tamil Diaspora domiciled in foreign countries and certain extremist political parties are trying to de-stabilize Sri Lanka. Hence as long as this threat exists, it is imperative that Armed Forces should closely monitor the security situation in the country and to this end they must be located in security sensitive areas. Hence the Government has an absolute right to station Armed Forces at places which are strategically important. However the board observes that at present the police are in total control and Armed Forces are confined to static duties at key points. The Board recommends a gradual withdrawal of armed forces from all public security duties.

27. The Board observe that the Government Civil Machinery is completely in control of the civil administration in the North and East. However with the rapid development programmes that are underway in the North and East the Armed Forces are required

to support the civil authorities in some of these tasks. The board recommends that in order to ensure the close coordination with the civil administration, Civil Affairs Officers attached to formation headquarters should be functioned as the principle liaison officers between the civil administration and the military. It is also proposed to establish a Directorate of Civil Affairs under the Director General Staff Branch to coordinate CIMIC programmes.

28. The committee agrees that in many countries the Police do come under the Home Ministry or Provincial Administration. However these countries do not face wide spread internal disorders. Police in countries that face such threats (example India during the Mumbai attack) have proved to be total failures. Therefore the committee recommends that the Police in Sri Lanka should be placed under the Ministry of Defence at all times. It is proposed that a Ministry of Defence Board should study and make recommendations with regard to the Role of Police as a Counter – terrorism agency.

## **CHAPTER 5**

### **CONCLUSION**

1. This Board has analyzed the LLRC Report in detail and notes that the Tamils who were the 1<sup>st</sup> and last victims of LTTE terrorism have paid glowing tribute to the Armed Forces for their exemplary conduct during the Humanitarian Operation.

2. The Armed Forces had been the unwitting actors in the 30 year old tragi-comedy which finally concluded on 19<sup>th</sup> May 2009. Although the Armed Forces are called upon to take actions on the LLRC recommendations (which they will do in their customary efficiency), it is the civil society who is required to do or undo most of the recommendations made by the LLRC. In the South Asian context, the Police, civil service and the judiciary who are the most vital elements in counter - insurgency/counter - terrorism operations had been most conspicuous by their lackluster performance during the 30 year old war.

3. When the war broke out in 1983 the Government in power or the Ministry of Defence had no coherent strategy to counter the LTTE. Hence a rag-tag terrorist group which started with revolvers and shotguns had developed into mini Army running a de-facto state until the able political leadership of H.E Mahinda Rajapaksa and the administrative leadership of Secretary Defence Gotabaya Rajapaksa had decided to wipe out the LTTE from the face of the Earth.

4. In the war of liberation the Armed Forces had made tremendous sacrifices. The casualties suffered by the Army alone would reveal the scene from July 2006 (Mavil Aru) to May 2009 (Nanthi Kadal) 5275 were KIA, 28,189 were WIA, and 140 were MIA. This is for the whole operation. In nearly two and a half years the Army captured

13,787 sq km, traversing 97km West to East and 93 km South to North. During the period March to May 2009, the final phase, **Army casualties** were **1128 KIA**, **6166 WIA** and **10 MIA**. In brief, almost one-fourth of the Army losses that occurred during the entire two and a half year operation were sustained in the final stages.

5. Even prior to the LLRC Report the Army had initiated a complete re-evaluation of our doctrines, tactics and administrative aspects and it will definitely take cognizance of the recommendations made by LLRC Report and will initiate the necessary command and administrative measures that are required to implement them.

## **CHAPTER 6**

### **RECOMMENDED ACTION PLAN BY THE ARMY BOARD**

1. To appoint various Army and Tri Service Boards that have been referred to in chapters 1, 2 and 3 with regard to formulation of new Doctrines for MOUT/FIBUA environments.
2. To appoint an Army Board of Inquiry that has been referred to in Chapter 1 to investigate the Channel 4 video footages.
3. To appoint a Tri Service Legal Officers Board to formulate new principles and ROEs for Internal war situation.
4. To appoint Army and Tri Service Boards to formulate new Doctrines on various aspects that are referred to in Chapters 1, 2, 3 and 4.
5. To appoint a Tri Service Board to examine the existing HSZs/ lands occupied by Armed Forces as referred to in the Chapter 3 and make recommendations.
6. To establish a Directorate of Veteran Affairs at the AHQ. A Board to be appointed to submit its proposals outlining the role, tasks etc of this Directorate.
7. To implement all recommendations that have been made in previous Chapters.  
(Ends)