

## **Chapter 9 - Principal Observations and Recommendations**

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## **Chapter 9 – Summary of the Principal Observations and Recommendations**

Set out below is a summary of the principal observations and recommendations contained in the Report

### ***Chapter Two: Observations on the Ceasefire Agreement***

9.1 The CFA brought about a short lived respite to a country and people who had suffered decades of terrorism and counter violence. However unstable and eventually unproductive, the CFA gave an opportunity, albeit without necessarily providing a sound political or security framework, for all parties concerned to make an effort to lay a foundation for a process leading to a negotiated solution. However, as the events unfolded it was clear that none of this materialized.

9.2 Conceptual flaws and implementational deficits of the CFA process including the untenable dual roles Norway took on as facilitator of the peace process on the one hand and the Head of the SLMM on the other, and the CFA's failure to provide locomotion to a sustainable peace process indicate that it was not proven to be a successful model for peace making between State and non-State actors. The clearly manifest LTTE disinterest in any negotiated solution other than its declared goal of Eelam and the absence of

consensual approaches to vital national issues among different political parties including Tamil political parties within the 'mainstream' democratic system of the country, too contributed to this unhappy and damaging experience.

9.3 The LTTE clearly capitalized on the CFA deficiencies both conceptual and implementational, and consolidated the territorial rewards, and recognition accorded to them; benefited from the parity of status and the lack of reciprocity; exploited the absence of any provisions to start political negotiations, let alone decommissioning of weapons; abused the provisions of the CFA to exclude legitimate maritime activity by the Sri Lanka Navy thus facilitating illicit arms trafficking in contravention of national and international law, including UNSC *Res. 1373 of 2001*; benefited from the absence of any credible verification regime to deter violations; insidiously abused the total absence of any human rights obligations, let alone an effective regime against the abhorrent practice of employing child soldiers.

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***Chapter Three: Narration of Events only.***

***Chapter Four: Observations and Recommendations IHL Issues relevant to the final phase of the conflict***

#### **Measures to safeguard civilians and avoid civilian casualties**

9.4 In evaluating the Sri Lanka experience in the context of allegations of violations of IHL, 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, thereby evidencing a carefully worked out strategy of avoiding civilian casualties or minimizing them.

9.5 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 II – vide paragraphs 4.106, 4.107, 4.109, 4.110 and 4.111.

#### **No Fire Zones (NFZs)**

9.6 On consideration of all facts and circumstances before it, the 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 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. It would also be reasonable to conclude that there appears to have been a *bona fide* expectation that an attack on LTTE gun positions would make a relevant and proportional contribution to the objective of the military attack involved.

9.7 Having reached the above conclusions, it is also incumbent on the Commission to consider the question, while there was no deliberate targeting of civilians by the Security Forces, 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 after most careful consideration of all aspects, is of the view that the Security Forces were

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confronted with an unprecedented situation when no other choice was possible and all “feasible precautions” that were practicable in the circumstances had been taken.

9.8 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 of all the conditions under which the “combat action” took place with an adequate reporting of all accompanying circumstances.

### **Specific Instances of Death or Injury to Civilians**

9.

9 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. While the Commission finds it difficult to determine the precise circumstances under which such incidents occurred (as described in Chapter 4 Section II above, vide paragraphs 4.106, 4.107, 4.10

9, 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. In these circumstances 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. 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.

### **Hospitals/Makeshift Hospitals**

9.10 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.

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.

9.11 In this backdrop, the challenge faced by the Commission is the determination of responsibility for the acts in question, on the basis of concrete evidence.

9.12 In making its determination, the difficulty faced by the Commission is twofold;

a. It is evident to the Commission that 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.

b. None of the persons making representations was able to state with certainty that 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. Civilians who appeared before the Commission stated that there had been shelling from both sides. One civilian stated that 'when a shell lands, the general anticipation was that it was the Army – cannot state exactly'. Another ex LTTE cadre in the course of his representations had stated that the Puthumatthalan hospital was in fact accidentally shelled by the LTTE for which they had subsequently apologized.

9.13 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.

9.14 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.

### **Supply of humanitarian relief, including food and medicine to civilians in conflict areas**

9.15 The Commission notes that the supply of food to the civilians held by the LTTE up to early 200

9 was at reasonably adequate levels approximating by and large to the internationally accepted nutrition intake for refugees. This was possible through the food convoys sent by land up to January 200

9. However, these adequacy levels appear to have declined during the months of February, March, April and the first half of May 200

9 as the conflict intensified and the Government was compelled to resort to a sea supply route to provide essential supplies to a large number of people held by the LTTE in the narrow stretch of land in Puthumatthalan area across the Nanthi Kadal lagoon. It becomes evident to the Commission from the material before it that these supplies had

been taken despite enormous logistical difficulties of sustaining a continuous flow of humanitarian supplies amidst an ongoing conflict.

9.16 It must be acknowledged that the maximum quantities of food supplies, that were possible under the prevailing circumstances had been delivered by the sea route to

ameliorate the conditions confronting the affected civilians mainly due to the collective efforts of the Government of Sri Lanka, in particular the GAs and the Security Forces as well as international agencies such as the ICRC and WFP, and other volunteers who had provided selfless service on the spot in the final No Fire Zones.

9.17 Despite the unprecedented constraints imposed by the dynamics of the conflict and the deficiencies in the distribution system evident under those circumstances, the practices of the LTTE to appropriate food supplies that restricted a reasonable and equitable distribution of the limited supplies available, the Government of Sri Lanka, especially the CGES, the international agencies such as those referred to above and other volunteer organizations, provided praiseworthy services and assistance in ensuring the maximum possible supplies to those affected persons during the last several weeks of the conflict.

9.18 However, notwithstanding these efforts the fact remains that the civilians had been affected in terms of the adequacy of readily available food supplies to meet their nutritional needs particularly with the intensification of the conflict. The extreme conditions which appear to have prevailed after February 2009 are set out in detail in Chapter 4 Section II above.

9.1

9 Having examined the material before it, the Commission is of the view that the Government of Sri Lanka with the co-operation of the international community, in particular the agencies referred to above as well as civil society groups had, in a spirit of international co-operation and solidarity, taken 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.

9.20 The Commission also wishes to refer to the fact that it had before it material giving varying estimates of the number of civilians who were held hostage by the LTTE in the NFZs. Despite the Commission's best efforts to verify the estimates with documentary evidence from relevant civilian authorities, it has not been possible to secure any original documentation. However, the non availability of such documentation does not have a decisive bearing on the fact that what was practically feasible under the circumstances was undertaken. The strenuous efforts taken by the Government of Sri Lanka in co-ordination with international agencies such as the ICRC and WFP, as

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described above, does not warrant any possible inference that there was a deliberate intention to downplay the number of civilians in the NFZs for the purpose of starving the civilian population as a method of combat.

## **Medical Supplies**

9.21 The only possible conclusion that the Commission could arrive at on a consideration of all the factors (as described in Chapter 4 Section II) is that by objective standards applicable under normal circumstances, there appears to have been a paucity of medicines and the medical facilities appear to have been inadequate. However this factor has to be placed in the context of the extraordinary conditions which prevailed

amidst the intensity of the conflict and the proximity of the hospitals to the theatre of conflict.

9.22 The Commission also recognizes that given the inconclusive nature of the material before it, the issue of medical supplies to civilians in the conflict areas during the final days of the conflict is a matter that requires further examination given the humanitarian considerations involved. Such an examination should take into consideration all relevant factors such as the number of civilians injured, the types of injuries, the number of LTTE cadres injured and treated, and the capacity to treat the injured in the makeshift hospitals, against which the actual supplies could be assessed.

### **Alleged disappearances after surrender/arrest**

9.23 The Commission must emphasize that in respect of the representations (as set out in Chapter 4 Section II paragraphs 4.242 to 4.258) from a number of people who stated that they had directly witnessed certain persons surrendering to the custody of the Army, 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. 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. Thus the launching of a full investigation into these incidents and where necessary instituting prosecutions is an imperative also to clear the good name of the Army who have by and large conducted themselves in an exemplary manner in the surrender process and when civilians were crossing over to cleared areas, which conduct should not be tarnished by the actions of a few.

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### **The Conduct of the LTTE**

9.24 The grave violations of Human Rights by the LTTE have been dealt with in detail in the Chapter on Human Rights and in the accompanying Annexes.

9.25 The grave violations of core Principles of IHL by the LTTE are referred to in Chapter 4 Section II, particularly with regard to the NFZs. However by way of concluding observations, it is incumbent on the Commission to advert to the following:

- a. the very fact of using civilians as human shields to advance their military strategy, together with;
- b. the practice of placing and using military equipment in civilian centres,
- c. the shooting at civilians trying to escape into safe areas,
- d. the conscription of young children to engage in combat even in the final stages of the conflict,
- e. the laying of landmines and Improvised Explosive Devices (IEDs) knowing that civilians would be exposed to danger even outside the conflict zone,
- f. the forcible use of civilians to provide support services to them to carry out their military objectives – thereby making the identification of civilians and combatants an almost impossible task particularly in the congested final NFZs, and
- g. the continued use of suicide attacks causing loss of innocent civilian lives, underpins not only the blatant disregard of Principles of IHL by the LTTE, but also

highlights the task that the Security Forces were faced with in securing a military advantage while combating an enemy which had no respect for civilian life.

9.26 In framing charges against LLTE cadres against whom investigations reveal prima facie material for prosecution, due account must be taken of the violation of core Human Rights and International Humanitarian Law Principles so that appropriate punishment, commensurate with the grave nature of such crimes could be meted out.

### **Observations on the IHL Regime in its application to Internal Conflicts**

9.27 Given the rudimentary nature of the legal framework regulating internal conflicts involving non state armed groups, issues which constantly arise in such situations such as, the cynical disregard by the non state armed groups to the traditional protection afforded to the civilian – e.g. 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. The resulting position is that the civilian is placed in jeopardy when the State is compelled to

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resort to counter measures to deal with the combat strategy of the non state armed groups, such as in situations which require neutralizing military positions established within civilian ‘Safety Zones’.

9.28 As the unprecedented Sri Lankan experience has demonstrated, where 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), 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.

9.2

9 The Sri Lankan experience has in fact given rise to a debate as to whether, by unilateral declaration of a No Fire Zone, the Government unwittingly provided the LTTE an opportunity to consolidate itself amongst the civilian enclave for strategic purposes.

9.30 A host of such difficult issues arise, including the question of verification of actions of non state armed groups in relation to compliance with IHL requirements relating to the preservation of the sanctity of No Fire Zones. 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.

9.31 The careful construction of a legal framework governing conflicts between States and non state armed groups as in the case of general principles of international law governing inter- state conflicts taking into account all the complexities and challenges posed by internal conflicts as described in Chapter 4 could provide the answer in ensuring greater compliance with IHL principles by the non state armed groups. 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.

9.32 This is a clear lesson that could be learnt from the Sri Lanka conflict spanning 30 years causing the tragic loss of innocent human lives. Formulating an effective legal framework drawing from these experiences is a clear obligation that the International Community owes to all victims of conflict.

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### **Observations and Recommendations on the issue of Casualties**

9.33 Based on the firsthand accounts and other material placed before it by the affected civilians and detainees, it was clear to the Commission that 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.

9.34 The Commission recognizes the complex challenge faced by the Security Forces in neutralizing a suicide cult based terrorist group seeking security behind a human shield. 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.' The Commission however notes 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 defense 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 widely varying figures of civilian casualty estimates by different entities, media organizations and authorities..

9.35 The fact that there was no proper verification process, either by the civilian administration or by the military has contributed to the unverified sweeping generalizations, of a highly speculative nature as regards casualty figures.

9.36 It is the considered view of the Commission however, that eye witness accounts and other material available to it indicate that considerable civilian casualties had in fact occurred during the final phase of the conflict. This appears to be due to cross fire, the LTTE's targeted and deliberate firing at civilians, as well as due to the dynamics of the conflict situation, the perils of the geographical terrain, the LTTE using civilians as human shields and the LTTEs refusal to let the hostages get out of harm's way.

9.37 The Commission therefore recommends that action be taken to;

a. Investigate the specific instances referred to in observation 4.35

9 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 to prosecute/punish the offenders.

b. 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

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and injury to civilians, as well as damage to property during the period of the

conflict.

### **Observations and Recommendations on ‘the Channel 4 Video’**

9.38 With reference to the considerations contained in Section V – Chapter 4 concerning the Channel 4 video, the Commission, has the following observations/ recommendations to make:

- a. The images contained in the footage are truly gruesome and shocking, irrespective of whether the incidents are ‘real’ or ‘staged’ ones.
- b. While the Government of Sri Lanka emphatically stated that the video seeks to artificially construct the incidents, the technical experts commissioned by the UN Special Rapporteurs emphasize that the video provides prima facie material on possible summary executions and sexual assault involving people who appear to be in captivity. Both the Government as well as the Rapporteurs’ experts, however point to several technical ambiguities in the video which remain un-clarified.
- c. There are further technical issues and forensic questions brought out by independent experts, Dr. Chathura de Silva and Prof. E. A. Yfantis that 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.
- d. The non-availability of a copy of the broadcast footage has not helped in finding conclusive clarification of such technical ambiguities.
- e. Consequently, 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. 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. 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. 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.

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- f. The Commission regrets the fact that the Broadcaster did not respond positively to the request made by the Commission to provide more comprehensive information. Greater cooperation by the organization that provided to the television stations these video images and by the Producer/Broadcaster that aired this footage is essential to establish facts of this case.

9.3

9 Based on the available material and taking into account the above considerations, the Commission wishes to recommend that the Government initiate an independent investigation into this matter to establish the truth or otherwise of the allegations arising from the video footage.

9.40 The Commission considers this course of action as necessary and urgent for two reasons:

- a. 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. It is also the obligation of the Government to clear the good name and protect the honour 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. Offences if any, of a few cannot be allowed to tarnish the honour of the many who upheld the finest traditions of service.

b. 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. 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. Such conduct would constitute grave damage and injustice to the people of Sri Lanka and to those soldiers who fought professionally and sacrificed their lives in order to save other innocent lives from the LTTE stranglehold. Equally, it would also represent a body blow to the notion of the Freedom of Expression. From the perspective of its Warrant, the Commission is also concerned that such acts would seriously prejudice and place major obstacles in the way of the

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ongoing efforts, both national and international, to promote and consolidate a viable process of reconciliation, healing and reconstruction in Sri Lanka.

9.41 The Commission therefore recommends that the Government of Sri Lanka 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. Equally, the Commission feels that arrangements should be made to ensure and facilitate the confidentiality and protection of information and informants. 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.

## ***Chapter Five: Observations and Recommendations on Human Rights***

### **General**

9.42 During the public sittings and its field visits to conflict affected areas, a large number of representations were made before the Commission alleging the violation of fundamental rights and freedoms of people affected by the conflict. These include abductions, enforced or involuntary disappearances, arbitrary detention, conscription of underage children, extrajudicial, summary or arbitrary executions, violation of the freedom of expression, movement, association, freedom of religion and the independence of the media etc. Representations were also made on issues pertaining to the rights of IDPs, and other vulnerable groups such as women, children and disabled. The Commission considers that its recommendations on these human rights issues are critically relevant to the process of reconciliation.

## **Allegations concerning missing Persons, disappearances and abductions**

9.43 During the public sittings and its field visits to conflict-affected areas, the Commission was alarmed by a large number of representations made alleging the violations of fundamental rights and freedoms of people affected by the conflict. The Commission also heard a substantial number of allegations of abductions and disappearances by the LTTE. A large number of representations were made with regard to those whose whereabouts are unknown, sometimes for years, as a result of abductions, unlawful arrests, arbitrary detention, and involuntary disappearances.

9.44 Many persons who made representations impressed upon the Commission that definitive action against alleged cases of disappearances as well as preventive measures

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would have a significant impact on the reconciliation process. Repeated reminders were also made during the course of representations on the fundamental need to ensure that lessons from past experiences be learnt so as to prevent any recurrence.

9.45 There were strong concerns among members of public who made representations 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.

9.46 During the public sittings and its field visits, including to the conflict-affected areas, 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 kin 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.

9.47 The Commission wishes to emphasize 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.

9.48 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 give rise to

understandable criticism and skepticism regarding Government appointed Commissions from which the LLRC has not been spared.

9.4

9 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.

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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.

9.50 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.

9.51 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.

9.52 The issuance of death certificates and monetary recompense where necessary should be addressed as a matter of priority, taking into account applicable international standards. In this regard, the Commission notes the recent amendment to the Registration of Deaths Act, which provides for the next of kin to apply for a Certificate of Death in respect for a person who is reported missing and not been heard of for a period exceeding one year by those who would naturally have heard of him/her, and his/her disappearance is attributable to any terrorist or subversive activity or civil commotion which has taken place in Sri Lanka. All measures necessary for the effective implementation of this law must be taken at the administrative level within a published timeframe. In particular, adequate publicity should be given to the relevant provisions of this Act through the media, Grama Niladhari etc., especially in the conflict affected areas, in order to facilitate access to the procedures and remedies provided under this Act.

9.53 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

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persons into their custody, such as issuing of a formal receipt regarding the arrest and providing details of the place of detention etc. 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.

9.54 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:

- a. An arrested person should be promptly produced before a Magistrate to be dealt with in accordance with the law.
- b. 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.
- c. Magistrates should visit the places of detention every month.
- d. Release from detention should be done through courts.

9.55 The failure or refusal by the Police to record an arrest, detention and transfer or to record complaints of abductions and failure to investigate the same would constitute a criminal offence and steps should be taken to prosecute such wrongdoers.

9.56 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.

9.57 The Commission has observed instances of persons being detained in custody for a long period of time 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.

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9.58 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.

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9 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.

9.60 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 programmes targeting the school children, youth, members of the Security Forces, and the Police etc.

### **Treatment of detainees**

9.61 The Commission visited several rehabilitation centers and was impressed by the professional and caring manner in which the programmes are being conducted. The goodwill and confidence generated and the vocational capacity building resulting from these programmes will certainly contribute towards reconciliation.

9.62 The Commission also visited a number of places of detention and had discussions with inmates as well as relevant officials. Among the representations made by the detainees at the Boossa Detention Center where hardcore LTTE suspects have been detained, were those narrated by several young inmates of the circumstances under which they were forcibly conscripted by the LTTE, their attempts to escape from the LTTE's clutches and how they were re-recruited. They have spent long periods in detention without charges being preferred and consequently their educational prospects have been severely affected. This matter has already been dealt with under the Interim Recommendations of the Commission where it recommended that a special mechanism be created to examine such cases on a case-by-case basis and recommend a course of action in regard to disposal of each case, as appropriate.

9.63 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

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to the next of kin with names, place of detention as well as record of transfers so that families have access to such information.

9.64 The Commission wishes to urge that the Government direct the relevant authorities to ensure the full implementation of all Interim Recommendations pertaining to detainees.

9.65 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 kin 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.

9.66 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.

9.67 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.

9.68 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.

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9 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.

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There may also be cases where some inmates require counseling due to long periods of detention and lack of access to relatives.

9.70 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.

9.71 With regard to those who have been rehabilitated, the Government must implement programmes to ensure that they are integrated into the mainstream of civilian life. For this purpose, the Commission is of the view that the Government should actively encourage a greater role for the civil society organizations that could provide both financial and human resources towards that end.

## **Illegal Armed Groups**

9.72 Activities of illegal armed groups, especially during the period under review are of serious concern to the Commission. According to a number of representations made before the Commission during its field visits to conflict affected areas, 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. These acts, if proven to be true, constitute a violation of basic freedoms and fundamental rights of people.

9.73 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.

9.74 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 on-going process of reconciliation. In this regard, the Commission strongly reiterates its Interim Recommendation seeking to disarm all illegal armed groups. While the Commission

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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.

### **Conscription of Children**

9.75 During its field visits to the conflict affected areas, a number of representations were made with regard to child conscription and, according to the parents, the whereabouts of many of these children are still unknown. Conscription of children was one of the worst forms of crimes committed by the LTTE during the time of the conflict.

9.76 There were also concerns about recruitment of underage children in the East by groups other than the LTTE. In this context, the Commission wishes to note the Tripartite Action Plan between the TMVP, Commissioner General of Rehabilitation, and the UNICEF signed in December 2008 to "ensure that the practice of child recruitment by the TMVP is stopped and that all children recruited or used by the armed group are released and provided with reintegration assistance."

9.77 The rehabilitation of the ex - child combatants should be the utmost priority of the Government in the immediate post-conflict phase. The Commission was pleased to note the rehabilitation programme of the Government, which has resulted in the rehabilitation, and reintegration of hundreds of former child combatants, and in particular the approach of the community based correctional programme of the Commissioner General of Childcare and Probation. The Commission recommends that the same community based approach be adopted for the rehabilitation of the former child combatants in cooperation with NGOs and civil society organizations.

9.78 In the process of rehabilitation, the Commission calls on the relevant rehabilitation authorities to ensure that the children be allowed to live with their families no sooner they complete the rehabilitation programme, and help them earn a living and to assist them to continue their formal or informal studies. In this regard, the Commission stresses the importance of children staying with parents and/or extended family members within their own communities, which is an integral part of cultural traditions that need to be respected. This would also help their long-term reintegration with their own families and communities.

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9 In instances where there is *prima facie* evidence of conscription of children as combatants, any such alleged cases should be investigated and offenders must be brought to justice. In this regard, the complaints of alleged recruitment of children by illegal armed groups/groups affiliated with the LTTE or any political party should be investigated with a view to prosecuting the offenders to ensure that the practice would not occur in the future. The Commission calls for the full implementation of the Action Plan between the TMVP, Commissioner General of Rehabilitation, and the UNICEF with immediate effect so that the practice of child recruitment by the TMVP ceases, children recruited are released and reintegrated with their families and communities after rehabilitation.

9.80 The Commission urges the relevant authorities in consultation with the private sector to provide increased employment opportunities in the former conflict affected areas. Some element of flexibility should be given in respect of child combatants who have missed school. Further, these former child combatants should be encouraged and facilitated to complete their formal education requirements while engaging in gainful employment.

9.81 The Government should also explore the possibility of securing assistance from relevant UN agencies, ICRC, INGOs, NGOs and civil society organizations who have knowledge and experience in dealing with children exposed to armed conflict, especially the UNICEF. In this context, the Commission notes as a positive step the establishment of the Family Tracing and Reunification (FTR) Unit with UNICEF assistance, and the progress it has achieved in matching data on children. The Government should actively encourage and support this initiative and all agencies, especially the security agencies should cooperate in this process so that matching could lead to actual reunification of the children with their families. The Government must also consider establishing a national, Government led, multidisciplinary task force to develop and implement a comprehensive child-tracing programme.

9.82 Priority should be given to examining on a case-by-case basis, the cases relating to young LTTE suspects with a view to either instituting legal action without delay or rehabilitating and/or releasing them.

### **Vulnerable Groups**

#### **General**

9.83 The conflict has given rise to many problems concerning vulnerable groups such as women, children, IDPs and disabled. The Commission heard several accounts of these

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groups who have suffered considerably. The meeting of basic needs of these groups should be a matter of priority for the Government in the current post-conflict environment, while durable solutions should be found in the medium and long-term, without which a sustainable and all inclusive reconciliation process cannot be achieved.

9.84 During the Commission's field visits, it became evident that women, children and elderly are the segments that have taken the brunt of the conflict, seriously disrupting their lives. Many women have either lost their husbands or their whereabouts are unknown. Despite such trauma and hardship, they continue to support their families with young children and aging parents. In these efforts, women need to feel that they live in a secure environment and their human dignity is safeguarded and protected.

9.85 The Commission wishes to specifically highlight an observation made by a large number of individuals who stated that all that a family wishes is to have confirmation whether their loved ones are either alive or deceased so that they can perform their cultural and religious rites accordingly and get on with their lives. The Commission sympathizes with those observations and recognizes that there is a need to bring about a sense of closure, which would be an important contributory factor for any meaningful process of healing and reconciliation.

#### **Women**

9.86 Having listened to many women headed households and organizations who represented them, and given the fact that there is a large number of such women (over 5 9,000 - according to the Government sources) in the country in the aftermath of the conflict, the Commission recognizes the welfare of these women and the women-headed households as a major post-conflict challenge that needs to be addressed as a matter of priority by the Government and all other stakeholders, in a collective effort towards reconciliation.

9.87 Many women have either lost their husbands or do not know their whereabouts. In some cases, their husbands have been kept in detention camps for long and unspecified periods. Despite such trauma, women are expected to support their families. Many such families have young children and aging parents. In view of the above, immediate needs of women, especially widows who most often have become heads of their households must be met. These immediate needs include economic assistance by way of providing them with means of livelihood and other income generating means so that they could reduce the immense economic hardships and poverty under which they and their families are living at present.

9.88 The Government should make greater and sustained efforts to enlist and engage the services of relevant international organizations and civil society groups who have expertise and resources in these areas to assist in this task. Most importantly, the community level associations and support groups who help the communities through supporting the families and villages can play a significant role in this regard. Through such associations, single mothers, those recently resettled, and those who are disabled

could make collective efforts to address the issues they confront and bring them to the attention of local governmental institutions, political leadership and other support structures such as NGOs and civil society organizations. Such community level support groups can also address emotional and spiritual needs of people who have been under trauma due to difficult conditions and personal tragedies under which they have lived through the conflict. The Commission strongly recommends that the Government should encourage and facilitate such cooperation.

9.8

9 There are many women who, due to the protracted conflict and the fact that men in the family have gone missing, have not been able to continue with their formal education. The Commission recommends that in a post-conflict environment, opportunities and options should be provided to such women to continue with their formal education or pursue other forms of informal education and/or vocational training that may facilitate in finding employment and/or engaging in other livelihood activities.

9.

90 Women also need to feel that they live in a secure environment and their basic human dignity is safeguarded and protected. The Commission is of the view that the Government has a responsibility to create such a conducive environment in all areas of the country, especially the conflict affected areas as an essential prerequisite for the reconciliation process.

9.

91 The issues pertaining to missing persons, abductions, arbitrary detentions, long and indefinite detentions, and disappearances have a direct bearing on women as the victims are most often their husbands, sons, fathers and brothers etc. who play a vital role in a traditional household as breadwinners as well as providers of security. As such, these issues need to be addressed as a matter of priority recognizing that these women have a right to know the whereabouts of their loved ones, have the right to the truth and legal remedies as equal citizens of the country. These are prerequisites for any successful, durable and all inclusive reconciliation process.

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92 The Commission is of the view that this enormous challenge can be met and durable solutions found only by a coordinated inter-agency effort, dealing with many

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crosscutting issues and needs. Accordingly, an Inter-Agency Task Force mandated to addressing in a comprehensive manner, the needs of women, children, elderly and other vulnerable groups such as disabled affected by conflict, and providing necessary relief, must be established without delay.

## **Children**

9.93 The Commission strongly recommends that support for children especially in their education should remain a key priority. Providing schools, teachers, school supplies, financial and other forms of support such as scholarships should be considered in this regard. The provision of better educational and health facilities, and the continued support, financial and material, for children's homes and orphanages are also vital in

this endeavor.

9.94 The Commission notes that there are children who suffer from trauma and other psychological disorders as they have been exposed to violent conflict and the loss of their loved ones - sometimes their own father, mother etc. This could severely hamper their growth and education. The Commission strongly recommends that the Government should identify such children who need special attention as a matter of priority through the formal education system as well as other community, civil society groups who work in such areas. Special attention and care should be provided to these children, including professional counseling where necessary. The identification of children who live in women headed households can be one way of addressing this problem.

9.95 The Commission strongly encourages the Government, local authorities and other stakeholders, including community and civil society organizations to pay special attention to create child-friendly environments in the areas affected by the conflict, including easy access to schools, better healthcare facilities, recreation facilities such as play grounds, and children's parks.

### **Elderly**

9.96 The Commission recognizes that elderly in the conflict affected areas have suffered immensely, and sometimes left to provide for their extended families for many years throughout the conflict as their children and grandchildren have become direct victims of the conflict. Physical difficulties, psychological trauma and economic hardships that this segment of the society has undergone needs more recognition. Therefore, the Commission strongly recommends that:

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- a. Programmes aimed at improving the conditions of families who have been affected by the conflict must include provisions to reduce the burden on elderly in maintaining and taking care of their extended families.
- b. The Government and other stakeholders pay attention to the special needs of the elderly due to disability and other long-neglected health issues, including conflict-related trauma.

9.97 The Commission is of the view that the facilitation of easy and unhindered access to spiritual and cultural activities will help the elderly deal with trauma. In that regard, the Commission encourages the community and civil society organizations, especially those with expertise and resources, to play a key role in assisting the elderly. The Commission calls on the local religious bodies and the places of worship and the clergy also to play an active role in this regard. The Government should facilitate such efforts.

### **Disabled Persons**

9.98 The Commission recognizes that there is an urgent need to support the disabled people in conflict affected areas who in many cases had been breadwinners for their families. Assistance should be obtained from international organizations and civil society organizations that have experience and expertise in assisting people with disabilities. The Government must also, as a matter of priority, address the economic needs of the

families with disabled members as in many instances, disability has a serious economic impact on the survival of the family. The social, cultural and spiritual needs of the disabled also require special and urgent attention of the authorities.

9.99 The authorities should encourage people with disabilities to organize themselves as community groups that will help facilitate mutual support and obtain necessary assistance for them through international organizations and civil society groups who have expertise and resources in this area.

9.100 The Commission recommends that necessary national legislation be put in place to realize the rights of persons with disabilities in line with the UN Convention on Rights of Persons with Disabilities. Such action would have a positive impact, including obtaining international assistance, on matters affecting a large number of disabled persons, especially in the conflict affected areas.

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### **Internally Displaced Persons**

9.101 The Commission received a number of representations on the issues pertaining to IDPs.

At the time of writing the report, the Commission was pleased to note that most of the IDPs who were displaced during the final stage of the conflict have been resettled. However, it is still necessary to pay attention to the continuing needs of people who have been resettled and are in the process of making efforts to rebuild their lives.

9.102 The process of returning the IDPs who were displaced during the final stage of the conflict has been largely completed for which the Government and all stakeholders should be commended. However, attention should be paid to the continuing needs of the re-settled people.

9.103 Assistance should be provided for returnees to repair or build permanent houses as many people still live in makeshift structures. In this regard, self-help and mutual assistance programmes such as “Shramadana” must be encouraged. Adequate provisions should be made to provide infrastructure needs such as roads, schools and hospitals in the areas where people have been resettled. The Commission notes with satisfaction the ongoing programmes and urges the authorities to continue to attach priority to this area in cooperation with other stakeholders, including the NGOs and the donor community. The Commission is of the view that assistance and cooperation of voluntary groups such as the civil society should also be encouraged particularly in the field of housing.

9.104 There is a need to grant the legal ownership of land to those who have been resettled.

9.105 The civil society should be encouraged to engage in community development at the grass roots level to help communities who are making a collective effort to reconstruct and rebuild their lives.

9.106 There is a need to respect a person’s freedom of movement to re-settle in their places of origin, in accordance with internationally accepted principles governing voluntary

return. In this regard, the Government must be clear in its policy with regard to the areas that are available for people to resettle and more awareness should be created among people about such policies and the options available to them. Such clear-cut and well thought-out policy on options available for people to resettle would help address some of the misunderstandings and misgivings related to the resettlement programme.

9.107 Needs of people including the security needs should be approached in such a manner that it does not lead to an environment of fear, apprehension or mistrust. It is only in

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such an environment of security and confidence that the benefits of resettlement could be harnessed towards a genuine process of reconciliation.

9.108 Displaced persons living in India who wish to return to Sri Lanka and resettle on their own volition should be facilitated and encouraged by the Government. In this regard, essential facilities will have to be made available if they are to return to Sri Lanka. The Commission notes that the flow of returnees from India has continued at the time of writing this report. It is also important to ensure that there is no room for a feeling of discrimination in facilities available to the returnees from India and to the local IDPs returning to their lands. It is also recommended that a formal bilateral consultation process, take place between Sri Lanka and India to enable the displaced persons to take considered decisions with regard to their return to Sri Lanka.

### **Concerns relating to the Muslim Community in North and East**

9.109 The issue of Muslim IDPs who were displaced from five districts (Jaffna, Mannar, Kilinochchi, Mullaittivu and Vavuniya) due to LTTE threats as far back as October 1990 remains one of the key post-conflict challenges, which also has a significant impact on the process of reconciliation. A large number of representations were made before the Commission on the plight of these IDPs who have been living under dire conditions for more than two decades.

9.110 The Commission is of the view that durable solutions should be found to address this long-standing IDP issue concerning the Muslims evicted from the North, which contains the seeds of disharmony and dissension if it remains unaddressed.

9.111 Solutions should be found to address the plight of the Muslim Community as one of the long-standing IDP issues arising out of the protracted conflict in Sri Lanka. This could be achieved through the creation of a uniform State policy aimed at resettlement of these IDPs and/or integrating them into the host community. This policy needs to be communicated to the IDPs so that they could take considered decisions with regard to the resettlement options available to them either in their original places of habitat or in the host communities.

9.112 Such State policy should also include an assistance package including financial assistance and other material support such as support for housing construction.

9.113 A special committee should be appointed to examine durable solutions and to formulate a comprehensive State policy on the issue, after having extensive consultations with the IDPs and the host communities.

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

9.114 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.

9.115 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 on-going reconciliation process. The Commission strongly recommends that:

- a) All steps should be taken to prevent harassment and attacks on media personnel and institutions.
- b) 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.
- c) 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. Therefore, the Commission recommends that steps should be taken to expeditiously conclude investigations so that offenders are brought to book without delay.
- d) 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.
- e) Legislation should be enacted to ensure the right to information.

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### **Freedom of Religion, Association and Movement**

9.116 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. This is particularly important in the case of people living in conflict affected

areas as these freedoms enhance their confidence and trust in the on-going reconciliation process as a genuine and inclusive process. 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. The Commission strongly feels that such agencies must work as agents of change in assisting people to fully harness and enjoy these rights ensuring a sustainable process of reconciliation. 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.

9.117 The Government should take immediate steps to remove any remaining restrictions on visiting places of worship with the only exception being made in respect of the restrictions necessitated by mine-clearance activities. This should also include access to places of religious worship within the HSZs. Assistance of the Police could be provided where security arrangements are required.

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

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9 Visitors from overseas should be allowed to visit their friends and relatives in recently resettled areas without any undue restrictions.

### **Follow up Action on the Reports of Past Commissions of Inquiry**

9.120 The Commission strongly recommends the implementation of the recommendations of the Report of the Presidential Commission of Inquiry Appointed to Investigate and Inquire into Alleged Serious Violations of Human Rights Arising Since August 2005, particularly those relating to further investigation and prosecution of offenders involved in the incidents of the death of 5 students in Trincomalee in January 2006 and 17 aid workers of the ACF in August 2006. Such action would send a strong signal in ensuring respect for the Rule of Law, which in turn tends to contribute to the healing process.

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## ***Chapter Six: Observations and Recommendations on Land Issues: Return and Resettlement***

9.121 The Commission recognizes the fact that although it is not an easy task to restore the pre-conflict status quo in a country immediately after a prolonged conflict, it is important to ensure that illegal land transfers and alienation triggered by violence, intimidation and ethnic cleansing are not allowed to be perpetuated or institutionalized. This is critical for nurturing ethnic harmony and national reconciliation, for if left unsolved this would transform into trigger points for future conflict.

9.122 To those reviewing the return and resettlement programmes in Sri Lanka, the research

done by Sarah Pantuliano on return and resettlement of IDPs in varying socio-political-cultural contexts may be enlightening ..... " Land issues often come to the fore in the post-conflict periods as populations seek to claim and reclaim land ..... Even in supposedly "post conflict" environment, it is not a simple process for refugees to return home ..... This is a complex issue and every situation is different, conflict is a highly transformative process and pre-war status quo can never be established completely, even if that were desirable" – Sarah Pantuliano, Unchartered Territory, Land Conflict and Humanitarian Action Overseas Development Institute, November 2009.

9.123 The above reasoning applies with equal force to the post conflict situation in Sri Lanka and the Commission's recommendations take into account this reality.

9.124 Any citizen of Sri Lanka has the inalienable right to acquire land in any part of the country, in accordance with its laws and regulations, and reside in any area of his/her choice without any restrictions or limitations imposed in any manner whatsoever. The land policy of the Governments should not be an instrument to effect unnatural changes in the demographic pattern of a given Province. In the case of inter provincial irrigation or land settlement schemes, distribution of State land should continue to be as provided for in the Constitution of Sri Lanka.

9.125 The Commission appreciates the Government's land policy concerning return and resettlement of displaced persons and the associated Programme proposed in July 2011, titled 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' designed to resolve problems relating to land documentation and disputes in ownership and user-rights of the displaced persons. The Commission notes that the Programme is innovative, and seeks to utilize where appropriate, mechanisms that are less bureaucratic mainly informal and designed to release the vast majority of

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the displaced persons from having to use the formal court system which would be complex, time-consuming and expensive for litigants.

9.126 The Commission would however like to strongly recommend to the authorities concerned to make it quite clear and assure the people, through an appropriate publicity effort, that this programme and associated mechanisms are not a substitute for recourse to the Courts of Law where people are in possession of valid legal proof of their claim to the land/s in question and that it seeks to make available land to all returning IDPs as expeditiously as possible, especially to those who do not have documentary proof due to conflict related reasons. This is necessary to allay the understandable concerns of the people about the paucity of information on the objectives of this programme.

9.127 The Commission offers the following recommendations to ensure implementation effectiveness and outcomes.

9.128 The Commission recommends that an apolitical approach be adopted in the implementation of the Programme, combined with a strong political will to ensure that it is completed as planned and any problems and constraints that arise are resolved

effectively and promptly. The Commission recommends that the Government provides the needed human and financial resources for the successful implementation of the Programme.

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9 A strong administrative will on the part of the civil administration beginning at the highest levels of officialdom to ensure impartiality and justice in implementation will also be critical. The Commission recommends effective supervision of civil administration officers tasked with the implementation of the Programme, by the respective Government Agents, and the monitoring of implementation quality by the Land Commissioner General at the national level to ensure impartiality and transparency.

9.130 The Commission believes that the success of the Programme would substantially depend on a clear and unambiguous understanding of the principles, the purpose, the objectives, and the methodology of the Programme by political leaders, the implementers, in this case the public officers and community leaders who would be the members of the various implementing Committees, and the beneficiaries, i.e. the heads of the households of the returned/resettled displaced persons. In this regard the Commission wishes to make the following observations and recommendations. (i) Although in the main done with good intentions, the public information so far

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disseminated on the proposed new Programme has resulted in insufficient clarity regarding the purpose and the methodology of the proposed Programme. The following factors may have contributed to this state of affairs - (a) un-researched or inadequately researched information on the new Programme disseminated by the Media as well as various political personalities; and (b) inadvertent mix-up of the content and the methods of the proposed new Programme with some other land titling and user-right consolidation programmes currently under implementation by the Ministry of Lands. Although the recent advertisement on the proposed new Programme inserted by the Land Commissioner General in all three languages in the print media, provided some coherence, it may not be adequate to remove mixed messages and sometimes confusing information coming through the Media, the web pages, and political pronouncements.

9.131 The Commission recommends that a well planned media seminar on the proposed new programme could be organized by the Land Commissioner General's Department to enable the Media to project an accurate and clear view of the new Programme, devoid of political posturing.

9.132 The Commission recommends that the Land Commissioner Generals Department and the respective Governments Agents conduct well designed training programmes for all officers and community leaders selected for various Committees. The training should be based on a short and simple but written training manual in order to ensure that all training is identical and similar messages are delivered through the training activities in all Divisions and Districts. Short case studies of various possible scenarios on problems that are anticipated in the field can be developed with role plays or similar training

methods used to simulate problem solving. This would enhance the skills and self confidence of the officers and community leaders in coming to terms with real problems in the field. A specialized training Institute such as the Sri Lanka Institute of Development Administration could be commissioned to partner the Land Commissioner General and the Government Agents in organizing the training, as they have expertise and experience in training public officers in a variety of disciplines. These would incur additional expenditure as well as time, but would definitely improve the effectiveness and the outcome of the Programme.

9.133 The Commission also recommends the launching of a well designed, settler centered communication campaign primarily in simple Tamil language, as well as in Sinhala language, incorporating information on what specific action the displaced persons should take with regard to different services provided by the Programme. The  
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communication campaign design should take into consideration clients' knowledge and understanding levels, as well as their existing communication networks; and should include 'how to do' and 'what to do' information in clear and simple language. This would help displaced persons to come forward to benefit from the Programme with confidence.

9.134 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 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.

9.135 The Commission notes that the new Programme has introduced a measure of community consultation through the Observation Committees linked to the First (Investigation) Committee and the Second (Investigation) Committee. The Observation Committees constituting community members are expected to monitor the investigation decision process and provide locality specific information to the two Committees as necessary. While appreciating the opportunity provided for some measure of community consultations, the Commission recommends that the First Committees in each of the District Secretariat areas organize and hold a well publicized 'Community Consultation Meeting' prior to the launch of the First Committee investigation process. This would provide an opportunity for the returned /resettled communities in the respective areas to air their problems and constraints, as well as make useful and constructive suggestions to improve the investigation process. The First Committee could also use this forum to explain to the community how the

investigations regarding land problems would be conducted, and what specific action and procedures each category of prospective applicants should adopt to facilitate reasonably quick resolution of their problems. This will give a sense of confidence to the people that they were also listened to. The First Committee will also get a preview of

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what type of problems to expect in their respective areas. The Commission recommends that the planning and conduct of such Community Consultation Meetings be based on the experiences of the traditional Land Kachcheri system.

9.136 The Commission also recommends that the Land Commissioner General establishes a mechanism to rapidly consider the constructive suggestions made through the 'Community Consultation Meetings', and to consider using these suggestions as appropriate to further improve the field level methodology of the Programme.

9.137 The Commission recommends that arrangements be made to strengthen the human resource teams at all levels of implementation, through temporary secondment, and /or contracting qualified and skilled retired staff, and assignment of additional administrative service staff to the Land Commissioner General's Department through new recruitment and/ or secondment for a stipulated period of time to support effective and efficient implementation of the Programme.

9.138 The Commission realizes that implementation of some of the aforementioned recommendations would require additional financial allocations and lead-time. The Commission is of view that the proposed additional activities would, nevertheless, strengthen Programme implementation, and increase benefits to the community.

9.139 The Commission notes that the new Programme also envisages the granting of land to genuine landless families in the North and the East. The Commission recommends that all families who have been secondary occupants, whether at the behest of LTTE or not, be given land, if the lands they are currently in occupation are awarded to the genuine original permit holders on the results of the Investigating Committee decisions. However, the Investigating Committees should clarify, without any doubt, whether the secondary occupiers are genuinely landless, as some unscrupulous persons would use secondary occupation to gain more land in times of transition.

9.140 The Commission also recommends that strict controls be applied to prevent any alienation of State land other than for IDPs, except where State land is required for other approved purposes, until the proposed Programme is implemented. As there is information regarding alienation of State land through spurious deeds, legal provision should be made to enable relevant authorities to investigate and institute legal action in appropriate cases against any public officer, Attorney-at-Law, or Notary Public who commits such illegal acts or any other person aiding and abetting such acts.

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9.141 The Commission believes that international financial assistance geared to supplement national counterpart funding through multilateral or bilateral development partners could help in the implementation of the Programme. Such an arrangement could prevent any possible slowing down of Programme implementation, as competing

demands for the development of the Northern and Eastern provinces could negatively affect financial disbursements to the land sector. The Commission recommends that the Government of Sri Lanka actively seeks the cooperation of a development partner to support the Programme, based on the understanding that Government of Sri Lanka will be responsible for Programme policy, decision making, and implementation.

9.142 The Commission appreciates the fact that the two HSZs in Palaly and Trincomalee-Sampoor 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-Sampoor, 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.

9.143 The Commission recommends that the Government with the assistance of the development partners extend livelihood assistance to ‘new IDP’ families as needed, on an area by area basis for a longer period of time than planned, to ensure family sustenance. The Commission is pleased to note that in some areas of the Northern Province, the livelihood support initiative has been extended from the original period of 6 months to 9 months. The Commission recommends further extension of livelihood assistance including schemes for providing micro-credit for peasant farmer groups, tractors for farmer cooperatives, as well as extension advise and other support such as for introducing possible pilot projects on application of dry-farming methods for cultivation of upland crops in un-irrigated areas in the North. The Commission notes (according to data submitted by the Government Agents in the Northern districts) that a substantial proportion of irrigation tanks in the Northern Province are now in operation. The Commission recommends that the current momentum of renovating irrigation tanks

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in the Province be continued till all the remaining small irrigation tanks are brought back into operation, possibly with UN System assistance.

9.144 The Commission recommends that the land issues of Muslim families who were forcibly ejected by the LTTE from their agricultural land in the Eastern province, and whose living conditions have drastically deteriorated as a result, be effectively and expeditiously resolved, as very little progress has been made in the East, especially in the Batticaloa district, even though about 04 years have elapsed since the end of the conflict in the East.

9.145 The Commission notes that the available official data with regard to the eviction of Sinhalese families from the Jaffna district appears to be inaccurate and recommends that this aspect be reviewed in a dispassionate and low-key but methodical manner without arousing any communal passion or tensions, in order to arrive at more precise

data. The Commission also recommends that the Sinhalese families who were evicted from Jaffna and the rest of the Northern Province, and who volunteer to go back, be returned to own land or resettled in alternate land as expeditiously as possible, as the progress in this regard has been unsatisfactory.

9.146 The Commission notes that with respect to Muslim families evicted from Jaffna and the Northern Province, good progress has been made in return and resettlement as per information provided by the Government Agents of Jaffna, Mannar, and Mullaittivu. The Commission recommends that the return and resettlement of the remaining Muslim families who volunteer to return to Jaffna and the Northern Province be expedited.

9.147 The Commission notes with regret that the land issues and livelihood issues of some families living in the former Threatened Villages, especially families whose breadwinners were killed in LTTE attacks or were forced to be 'night-displaced' for family security, remains largely forgotten and unaddressed. Up to the time of compiling the Report, the Commission did not receive adequate information on the current situation of these families, a considerable proportion of whom are presumed to be headed by females, grandparents, older siblings, and single fathers. The Commission recommends that a focal agency be designated to study the special nature of problems and displacement of families in former Threatened Villages, with a view to designing a special mechanism to resolve their current problems expeditiously, as they lack the political patronage or power to influence the existing governmental administrative machinery as well as the evolving national post-conflict development agenda.

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9.148 The Commission is of view that in order to prevent legitimizing of forced eviction and secondary occupation of private lands in the North and the East, the law pertaining to prescription should be amended in its application to land transfers/occupation effected during the period of conflict.

9.149 The Commission is concerned with the situation faced by so called 'old IDPs' - persons displaced prior to April 2008, with a considerable proportion of them being displaced since 1980s. The old IDPs feel that they have suffered discrimination by non-action or slow-action of the State and other stakeholders. This recommendation is linked to recommendations

[9.151,  
9.153,  
9.154,  
9.155 and  
9.156],

being the umbrella recommendation that advocates for the return and resettlement of 'old IDPs'. The

Commission is of view that the Government should ascertain the magnitude of the problems of the 'old IDPs' and with the assistance of the United Nations, begin a Programme to return or resettle these displaced persons who wish to return voluntarily.

The proposed project described in [9.138 above could also be utilized to assist the voluntary return or resettlement of old IDPs and restoration of their homestead and agricultural lands. Any sense of injustice and discrimination welling up in their hearts and mind would adversely affect the nurturing of ethnic harmony and national reconciliation. It is also pertinent to note that the United Nations Guiding Principles on Displacement as well as the United Nations Guiding Principles on Restitution of Land of Displaced do not qualify displaced persons by period of displacement or reasons of displacement. All displaced persons enjoy equal rights, notwithstanding convenient administrative definitions coined to restrict benefits due to financial limitations, political concerns or international pressure.

9.150 The Commission is of view that the Government should expedite action on the establishment of a National Land Commission (NLC) in order to propose appropriate future national land policy guidelines. In formulating land policy the proposed NLC should include Guidelines for the equitable distribution of State land. The Commission regrets to note that although this is a requirement under the 13<sup>th</sup> Amendment, and a draft Bill has been framed, successive Governments have failed to get it passed through the Parliament.

9.151 The Commission is of view that a land use plan for each district in the North and East should be developed with the participation of district and national experts drawn from various relevant disciplines to guide the district administration in land conservation and alienation in order to ensure protection of environment and bio-diversity; sustainable economic development; leisure and recreational standards; religious, cultural, and

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archeological sites with a view to improving the quality of life of the present and future generations.

9.152 The Commission appeals and recommends to all political parties to arrive at a bipartisan understanding that 'restitution of land to displaced persons in Wannai and Jaffna and persons who lost agricultural land in the Northern Province, and in the Eastern Province and homes in the Threatened Villages', (i.e. to both the 'new' and 'old') is recognized as a national issue and would not be used as a tool by political parties in the Government and the Opposition to gain narrow political advantage. The Commission is strongly of the view that such a bi-partisan approach is an imperative in promoting national reconciliation.

## ***Chapter Seven: Observations and Recommendations on Restitution /Compensatory Relief***

9.153 It is well recognized that while restitution enjoys primacy as a legal principle other forms of relief such as compensation and monetary relief is commonly sought. The Commission has considered, in particular, the role of compensatory relief in facilitating resettlement and reconciliation, the structures in place and the current status of payment. The Commission's recommendations seek to ensure that those who are eligible for payments have access to it within a reasonable timeframe.

9.154 REPPIA (Rehabilitation of Persons, Properties and Industries Authority) is the specialized institution responsible for implementing the Government of Sri Lanka policy on compensatory relief for the person/s who has suffered loss/damage due to terrorist violence and operations of the Government Security Forces. Chairman REPPIA conceptualized compensatory relief provided by REPPIA as 'consolation and relief.' Its purpose is to complement the variety of relief and reconstruction programmes in operation.

9.155 Based on representations made before the Commission and in the light of Commission's consideration of relevant norms and standards of compensatory relief, the Commission recommends that the state should review the role and capacity of REPPIA with a view to streamlining and augmenting its role and resources in undertaking post-conflict requirements.

9.156 The severe lack of funds to meet eligible payments is the single most critical issue in providing relief to affected persons. Providing an urgent solution to this problem is essential for any progress to be made. Other administrative constraints appear to be at a manageable level.

9.157 The Government needs to take responsibility for prioritizing payments in full, and in time. Funding has to be procured to clear the backlog of cases as well as to prevent lack of funds being the reason for delays and non-payment in the future.

9.158 The responsibility of ensuring payments needs to be taken on by REPPIA. It should not be the responsibility of the individual to obtain their entitlements. REPPIA needs to set itself a target time frame to ensure that all entitlements are met.

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9 A time limit should be set for completion of payments for losses suffered up to the end of the conflict. This needs to be done for two reasons: 1) for those who are entitled to payments to obtain it while the financial need is most acute. 2) for REPPIA to bring its responsibilities towards those affected by the conflict to a close.

9.160 In setting a time limit for payments to be completed, the following need to be considered: 1) Reasonable time needed for those making applications. The particular circumstances of IDPs and those who had been living in areas dominated by the LTTE should be taken into account when deciding on a time limit. 2) A reasonable minimum and maximum time taken for processing applications and payments given REPPIA's capacity and other relevant factors. Extensive publicity needs to be given to ensure all entitled persons to apply.

9.161 While the Commission acknowledges that the education and livelihood projects are critical to the needs of people of affected areas, the primary focus of REPPIA should be in providing compensatory relief for persons affected by the conflict. As such, the

supplementary projects should be taken over by other relevant state authorities.

9.162 REPPIA should urgently priorities the 'General Public' and 'Public Servant' payment of death, injury and housing entitlements. The problem of public servants being disqualified from NGO assistance programmes, particularly housing assistance, needs to be revisited.

9.163 Requests to increase the compensation amount have been made to REPPIA. However, given the financial commitment needed to clear the backlog of cases and pending applications, the Commission does not consider an increase in amount as a viable step. Further, given the principles of reparation the more reasonable strategy would be for Government to provide for complementary schemes to ensure rebuilding and resettlement.

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9.164 A decision has to be taken on compensatory relief for death and injury for those involved with the LTTE. From the broad reconciliatory perspective, the Commission takes the view that in principle, ex-combatants and next of kin should also be considered eligible for compensatory relief. However, the priority of REPPIA should be with the affected civilians who are most in need.

9.165 Housing needs have to be addressed urgently. Housing is a fundamental issue for returning IDPs, that needs special assistance, beyond the scope of compensatory relief and the mandate of REPPIA. Given the number of houses required and the extensive costs, the Government should access all possible sources of assistance from institutions and individuals both national and international.

9.166 In conclusion, the Commission observes that providing compensatory relief cannot be considered in isolation. The specific role of compensatory relief has to be seen against the overall resettlement and development strategy that is being operationalised in the areas that had been the centre of conflict. These include the operation of the basic national welfare services such as health, education, food, water and agriculture, infrastructure, as well as the complementary State programmes such as livelihood development and village development programmes.

### ***Chapter Eight: Reconciliation - Section I: Observations on issues impacting on Post Conflict Reconciliation***

9.167 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.

9.168 The Commission deemed it necessary to consider these issues in the context of reconciliation and building amity and national harmony. With regard to several of the issues highlighted which are directly relevant to day to day living, the Commission sought updates from civilian administrators (Government Agents) and the Security Forces, and the Commission also took cognizance of the Report of the Presidential Task

Force for Resettlement, Development and Security in the Northern Province issued in the year 2011, the Reports of the Central Bank and the Ministry of Economic Development as well as the Joint Humanitarian and Early Recovery Update Reports prepared by OCHA, all of which indicate that by and large significant progress has been made and is continuing to be made on the issues raised.

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9.16

9 The Commission notes from the material examined by it, including the responses of the GAs that :

- concerted efforts are being made in all affected districts to address re-settlement, livelihood, education, medical, transportation and permanent shelter needs of the people and much progress has been made (including through the grant of financial and other assistance packages). Agriculture which is the mainstay of most of the affected districts has seen increased production and fisheries production has also shown improvement. Infrastructure development is well underway. However, there continue to be needs which are still unmet in these areas. Certain fishing grounds are still inaccessible and in some districts permits are required from the Navy for fishing. While a significant number of irrigation tanks have been rehabilitated and are being used, an accelerated program with regard to the rehabilitation of the remaining tanks would further assist the Agriculture production. Resettlement assistance is still pending in some cases and there appear to be difficulties in providing the requisite documentation for eligibility. Teacher accommodation appears to be a common problem across districts.
- land related issues continue to be a challenge.
- permanent shelter requirements as against actual commitments and delivery is a matter of serious concern.
- the needs of certain vulnerable groups of persons requires a more focused approach.
- the re-establishment of civilian administration is still lagging in certain districts. Many vacancies exist in GN positions – The Commission is of the view that filling these vacancies should be a priority given the fact that the GN is the focal point of civilian administration at the grass roots level.

9.170 The Commission however recognizes the fact that considering the protracted nature of

the conflict spanning a period of thirty years, resolving all such issues would naturally take time and require significant resources and financing. The Commission also notes that the Government of Sri Lanka has in fact committed considerable funding and resources to the North and East and Sri Lanka's development partners are contributing to these efforts and working in co-operation with the Government agencies. These actions of the Government of Sri Lanka demonstrate an acknowledgement and commitment on its part to ensure that citizens throughout the country are assisted with

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their basic needs and can share equally in economic dividends. At the same time the Commission takes the view that the Government of Sri Lanka must adopt a more engaged and constructive policy towards its development partners at home and abroad in order to realize the full potential of the latter towards mobilizing the resources,

knowhow and experience. Such a policy will stand in good stead in meeting the remaining challenges of reconstruction, development and in reconciliation.

9.171 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 re-construction 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.

9.172 When analyzing the data, particularly those provided by the civilian administrators, there **is** a need for a uniform and transparent approach to reporting progress/issues by each district, together with a gap analysis of needs as against progress achieved, through a standard reporting mechanism. Considering the multidisciplinary nature of the issues involved this may be a difficult task but it would go a long way in enabling a broader understanding of the key issues, at a macro as well as micro level, which still need to be addressed.

### ***Chapter Eight: Reconciliation - Section II: Observations and Recommendations on Reconciliation***

9.173 The ending of a nearly three decades of protracted and bloody conflict has opened many opportunities for bringing about reconciliation between the different communities, especially among the Sinhalese, Tamils and the Muslims. It becomes necessary to articulate a common vision of an interdependent, just, equitable, open and diverse society. The development of a vision of a shared future requires the involvement of the whole of society. Acknowledging the losses and suffering of the past and providing mechanisms for recompense, social justice and for restoration of normalcy and expressions of empathy and solidarity, are steps aimed at redress. Relationship

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building following violent conflict, addressing issues of lack of trust, prejudice, and intolerance whilst accepting commonalities and differences, is the essence of reconciliation.

9.174 The culture of suspicion, fear, mistrust and violence needs to be removed and opportunities and space opened up in which people can hear each other and be heard.

9.175 Hundreds of persons who appeared before the Commission or otherwise communicated with it have conveyed a near unanimous and unmistakable message. That message is twofold.

9.176 Firstly, having emerged from a painful and debilitating conflict that lasted for nearly

three decades, people of all communities now yearn for lasting peace, security, amity and harmony. They have been equally emphatic that we must do all we can to ensure, that never again should there be blood-letting on this blessed land in order to find solutions to problems that political leaders of this country were either unable or unwilling to resolve.

9.177 Secondly, there was also a clear message that the ending of LTTE terrorism and the advent of a strong and broad based Government led by an executive President has provided a great window of opportunity – an opportunity to forge a consensual way forward to address a range of governance issues in a manner that will promote reconciliation, amity and cooperation among all communities, provide political solutions to the grievances of minorities and ensure the realization of the legitimate rights of all citizens.

9.178 What needs to be done for reconciliation and nation-building is that the State has to reach out to the minorities and the minorities, in turn must, re-position themselves in their role *vis a vis* the State and the country.

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9 There must be willingness on the part of all political parties to give up adversarial politics and have consensual decision-making on national issues. In order to meet the challenges of this opportunity there has to be courage and political will on the part of all political parties.

9.180 Many who appeared before the Commission emphasized that what had been achieved by the security forces should be invested in a political process that will usher in an era of sustainable peace and security for the Nation and lasting amity, friendship and harmony within and between communities. The Commission again found significant common ground among a broad spectrum of persons who made representations that this task

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can and should be achieved whilst upholding the territorial integrity and sovereignty of the nation and safeguarding the long-cherished Sri Lankan values of democracy, tolerance and power-sharing.

9.181 The Commission was also reminded that despite the lapse of two years since the ending

of the conflict, the violence, suspicion and sense of discrimination are still prevalent in social and political life. Delay in the implementation of a clearly focused post-conflict peace building agenda may have contributed to this situation.

9.182 The observations/recommendations appended below therefore represent the considered views of the Commission derived from these clear and present dangers as well as the opportunities outlined by a number of people who appeared before it. And they seek to foster a collective effort to be undertaken by all Sri Lankans at three levels: i.e. at the level of the political leadership; at the level of civil society and at the level of the individual citizens.

9.183 The Commission however wishes to emphasize that the responsibility for being the

prime mover of this process lies squarely with the Government. Since reconciliation is a process and not a one-time event, the efforts towards that objective should be continuous and broad-based whilst being fully supported by the elected Government.

9.184 The Commission takes the view that the root cause of the ethnic conflict in Sri Lanka lies in the failure of successive Governments to address the genuine grievances of the Tamil people.

9.185 A political solution is imperative to address the causes of the conflict. Everybody speaks about it, though there is no agreement about the diagnosis and the prescription.

### **Grievances of the Tamil Community**

9.186 The grievances of the Tamil community have figured prominently in the discourse on the ethnic conflict and its causes.

9.187 The articulation of grievances by the Tamil people continues to remain at the centre of the Sinhala – Tamil relationship and need to be recognized and addressed directly and fairly as the first step in the post-conflict process of reconciliation and peaceful coexistence. No doubt these grievances have changed over time and some of them have been dealt with, at least partially. However, many new grievances have been added as the conflict escalated. In that process the majority community and other minorities have also had their share of grievances.

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### **The Historical Background relating to Majority-Minority Relationships in Sri Lanka**

9.188 The Soulbury Commission report devoted considerable space to what it called the grievances of minorities.

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9 The Soulbury Commission concluded that while administrative and constitutional safeguards were necessary to deal with the problems that were caused, none of these are adequate without a fundamental change in the predispositions of both the majority and minority towards each other. These perceptions on both sides had a crucial impact on the relationships between the two communities and as Sri Lanka is in the process of reconciliation these observations, in the Commission's view, are most pertinent in trying to answer questions such as what caused the just-ended conflict.

9.190 The process of addressing the grievances was not managed smoothly and with goodwill by the political leaders of the day. It was not a process in which the Tamil speaking minorities and other disadvantaged communities were treated with dignity. The strong sense of grievance that prevails in the Tamil community arises from the travails and injustices of that process.

9.191 The decisive rift in the inter-ethnic relationship came first with the riots of 1958, then in 1977, and culminating in what is known as 'Black July' of 1983, and the heinous failure of the then Government to provide adequate protection to Tamil citizens. The problems

pertaining to the Tamil community and their grievances cannot be fully addressed without a fuller understanding of this culture of violence that marred the relationship between the Sinhala and Tamil communities.

The principal observations and recommendations on the grievances of the Tamil community and other post conflict grievances which are common to all communities are set out from paragraph 9.200 onwards.

### **Grievances of the Muslim Community**

9.192 The problem of Muslims living in the North began with the forcible expulsion of the Muslim community by the LTTE on the 30<sup>th</sup> of October 1990. The Muslims were the victims of ethnic cleansing in these areas, (North and East) done at gun point by the LTTE.

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93 The treatment leveled at the Muslim community of the Northern Province has led them to believe that they are at the bottom of the list of priorities of the Government, INGOs, NGOs and the international community.

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9.194 The Government should facilitate the early return of the displaced Muslims to return to their places of origin in the Northern Province.

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95 The Government should take immediate steps to assist in re-building of the mosques, houses and schools destroyed or damaged by the LTTE.

9.1 96 The national and international agencies implementing IDP welfare programs should bear

in mind the perception of discrimination that exists between the so called 'old IDPs' and other IDPs. The international and national attention brought upon the new IDPs and the resultant advocacy and programmatic initiatives implemented on their behalf which are undoubtedly needed, would perhaps have sharpened the sense of discrimination felt by the 'old IDPs'. The Commission is inclined to agree that the perceptions of the 'old IDPs' regarding inequity have some merit. Equity and non discrimination are key principles of all UN human rights instruments to which Sri Lanka has subscribed. Thus it is incumbent upon the Government of Sri Lanka with the cooperation of its development partners, to take into account the equity and non-discriminatory principles in dealing with the situation of the 'old IDPs'.

### **Grievances of Sinhalese in Villages Adjacent to Former Conflict Areas**

9.197 The perception of people in these areas was that the Government tended to overlook the civilians who lived in these villages, and who had survived the terror perpetrated by the LTTE. The people in these villages had continued to live under tremendous threats to

their lives without migrating to safe areas in the South. Apart from facing severe security risks, the people living in these villages have faced severe hardships in education, disrupted and fractured livelihoods, paucity of health care and transport facilities. These villagers articulated the need to be treated equally to enjoy the dividends of peace.

9.198 The Government should undertake an in-depth study to identify the needs of the people in these areas to address the question of improving their livelihood.

9.199 The Commission is of the view that the Government must ensure even-handed resource allocation and development of villages. If not, it could lead to frustration and communal tension in clusters of villages dominated by different ethnic communities, particularly in the Eastern Province.

### **Grievances of Tamils of Indian Origin**

9.200 There were representations made to the Commission by Tamils of Indian origin who expressed concern about the lack of educational and health facilities in areas where

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they live and they also brought to the notice of the Commission the difficult living conditions that prevailed on the estates. The Commission appreciates these concerns and recommends to the Government that necessary steps should be taken to improve the health and educational facilities and also provide better living conditions in the estate areas.

9.201 The Commission also recommends that a larger post conflict development agenda and the programmes for reconciliation should take account of the essential needs of the Tamils of Indian origin.

### **Issues relevant to addressing Grievances and Promoting Reconciliation FAILURE TO GIVE EFFECT TO THE RULE OF LAW**

9.202 Many persons who made representations before the Commission stated that a large number of persons having political patronage had committed offences, but the long arm of the law had not reached them because of the political pressure exerted on law enforcement authorities. Along with an independent Judiciary and a transparent legal process a strict adherence to the Rule of Law is a *sine qua non* for peace and stability which is of the essence, if there is to be any meaningful reconciliation. It was stated that lack of good governance, and non-observance of the Rule of Law coupled with a lack of meaningful devolution were causes for creating tension between communities.

9.203 Among the issues that emerged during the Commission's deliberations were the following:

- a. Failure on the part of the law enforcement officers to investigate offences and bring offenders to book, where the offences are committed by persons with political connections.
- b. Despite the end of the conflict significant issues of law and order still remain. There is apprehension in the minds of the people living in the North and the East, due to

continuing acts of extortion, and other criminal acts such as abductions, disappearances, robberies etc. by armed groups. It was alleged that a number of politicians operate on the fringes of the law. Due to their interaction with criminal elements in society they subvert the course of justice by the undue influence exerted on the police resulting in the politicization of the police.

c. The political violence accompanied by the use of firearms has caused much concern among the law abiding citizens of this country. The Commission views with concern

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the escalation of political violence and unlawful possession and use of firearms by politicians and their supporters.

9.204 The Commission strongly recommends that the Government should take immediate action to disarm persons in possession of unauthorized weapons and also prosecute such offenders.

9.205 At the time of writing this report the Commission became privy to a serious shooting incident where two politicians of the same political party were involved, following the recently concluded local government elections, resulting in a number of deaths and injuries. Such a deplorable lack of mutual accommodation by the politicians and resorting to such blatant violence to resolve issues, is hardly the example the peoples' representatives are called upon to set at this juncture of the national reconciliation process.

9.206 The Commission wishes to specifically highlight the following instances brought to its attention by a number of representers.

9.207 There were allegations made that one Bhareti is alleged to have committed several offences of abduction, extortion, robbery etc. in the Eastern province. This matter was brought to the notice of the relevant authorities by the Commission. The Commission regrets to note that no meaningful action has been taken against the alleged wrongdoer. Two senior retired police officers and two representers who had been victims of an abduction along with around six hundred police officers, referred to the alleged involvement of Karuna the then LTTE leader of the Eastern Province and several other members of the LTTE, regarding the murder of the police officers, who had been ordered to lay down arms and surrender to the LTTE.

Pursuant to the allegations made by the representers the Commission questioned Mr Muralidharan *alias* Karuna about the allegations leveled against him. He denied the allegations in respect of these murders.

However, this Commission regrets to note that up to date no investigation has been conducted in respect of the killing of six hundred policemen. The Commission is of the view that this matter warrants a full investigation because of the nature of the crime and the bearing it has on reconciliation.

9.208 Several representers complained about acts of extortion that were being committed by

members of the Eelam Peoples' Democratic Party. The Commission is of the view that since there are several complaints against the EPDP there should be a full investigation

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regarding these allegations. Absence of an investigation would create a sense of impunity.

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9 Many representers brought to the attention to the Commission illegal activities of a gang led by a person called Major Seelan, in connection with offences of abduction, extortion and robbery using the security forces facilities as a cover. The Commission brought this to the attention of the DIG of the area. Consequently, an accomplice of Major Seelan was apprehended. However the alleged principal offender still remains at large.

9.210 In this regard the Commission reiterates the importance of giving full effect to all of its Interim Recommendations concerning illegal armed groups.

9.211 The Commission regrets that full effect has not yet been given to its Interim Recommendations.

9.212 The Commission notes that Police officers serving in the provinces do not have adequate access to legal expertise regarding investigations and the conduct of prosecutions. In the circumstances the Commission strongly recommends setting up units of the Attorney General's Department in the Provinces to guide and advise the Police regarding criminal investigations, prosecutions and other matters touching upon the criminal justice system.

9.213 The Commission emphasizes that all allegations should be investigated and wrongdoers prosecuted and punished irrespective of their political links, so as to inspire confidence among the people in the administration of justice.

9.214 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.

9.215 The Commission is of the view that an independent permanent Police Commission is a pre-requisite to guarantee the effective functioning of the Police and to generate public confidence. Such a Commission should be empowered to monitor the performance of the Police Service and ensure that all Police officers act independently and maintain a high degree of professional conduct.

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#### **ISSUES OF GOVERNANCE**

9.216 The Commission heard submissions that some minority grievances stem from deficiencies in the system of administration and lack of good governance that affect all citizens regardless of ethnicity. These deficiencies require concerted action by all stakeholders. However specific action is needed where the system functions particularly to the disadvantage of the minorities.

9.217 The political culture of the country has made the general public powerless and helpless to a point that they have become dependent on politicians to obtain many services and amenities they are entitled to.

*A Special Institution to deal with Citizen Grievances*

9.218 The present law that deals with the office of the Parliamentary Commissioner for Administration is inadequate to effectively deal with the grievances of citizens arising from state action, even though the amendment introduced by Act No 26 of 1994 has sought to improve the public petitions procedure. Therefore, the Commission recommends that the Government should establish an independent institution to address the grievances of all citizens, in particular the minorities, arising from the abuse of power of public officials and other individuals involved in the governance of the country. This mechanism should be invested with a strong investigative arm in order to enable it to effectively discharge its functions.

9.219 Any citizen of this country who has a grievance arising out of any executive or administrative act, particularly those based on ethnicity or religion, should have the right to seek redress before the independent institution.

9.220 There should also be provision to give effect to the decisions of this institution. Further in order to make the proposed institution effective, the law should provide for the imposition of sanctions in respect of persons who have abused power.

9.221 Interfaith Reconciliation and Peace Committees that may be established at District and Provincial levels could function as a feeder mechanism to support the functions of the Special Institution, in particular, by providing grass root level inputs in the implementation of measures aimed at inter - ethnic and inter - religious harmony.

*Other Measures*

9.222 Systems and procedures in the public service need to be guided by criteria, norms and codes of conduct that are sensitive to the concerns and apprehensions of all citizens in

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particular, the minorities. Full transparency and information regarding the rationale of government decisions should be available to the people to prevent misperceptions that could give rise to a sense of grievance. Towards this end existing procedures and practices should be reviewed.

9.223 The Government should ensure that development activities should be carried out in consultation and with the participation of the local people. Such a transparent approach in administration would make the people feel an ownership to the development activities, as well as give them a sense of participation in nation building.

9.224 The Commission recommends that a specific programme be conceived and implemented to bring about attitudinal changes including, through training programmes to enhance the work ethic of the Public Service.

9.225 An alarming phenomenon that was brought to the notice of the Commission was the high level of interference by politicians of the ruling party with regard to appointments, transfers etc of public officials. This is the very antithesis of good governance.

9.226 The Commission strongly recommends the establishment of an Independent Public Service Commission without delay to ensure that there is no political interference in the public service and that recruitment and promotions in the public service are in conformity with the equality provisions in the Constitution.

9.227 It is important that the Northern Province reverts to civilian administration in matters relating to the day-to-day life of the people, and in particular with regard to matters pertaining to economic activities such as agriculture, fisheries land etc. The military presence must progressively recede to the background to enable the people to return to normal civilian life and enjoy the benefits of peace.

9.228 The Commission notes the representations made regarding the absence of constitutional provisions for judicial review of legislation. There should be adequate legal provisions for the members of public and other organizations to effectively canvass before the Supreme Court the constitutionality of any proposed legislation. The time frame provided in the Constitution for canvassing constitutionality of proposed legislation before the Supreme Court, in particular of urgent bills, is grossly inadequate. The Supreme Court is called upon to make a determination in respect of urgent bills within a period of 24 hours or on a date not later than three days as specified by His Excellency the President (Article 122(1) of the Constitution). Public intervention regarding proposed legislation is an integral part of a vibrant democracy. Therefore, the

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Commission recommends, that the Government and the Opposition make all endeavours to reach a consensus on an appropriate constitutional amendment, to provide for an adequate timeframe to challenge proposed legislation.

#### **THE NEED FOR DEVOLUTION OF POWER**

9.229 Many persons who appeared before the Commission stated in clear terms that reaching a political consensus that will facilitate devolution of power to be of critical importance, to further the process of reconciliation after the ending of LTTE terrorism, which was the main obstacle against achieving such a consensus for a long time.

9.230 It is vital that the Government should provide leadership to a political process which must be pursued for the purpose of establishing a framework for ensuring sustainable peace and security in the post-conflict environment. In this endeavour the rights of all communities, including those who have been members of the LTTE, must be ensured. To this end a political settlement based on devolution must address the ethnic problem as well as other serious problems that threaten the democratic institutions. This political process should culminate in a constitutional foundation and mechanisms that provide opportunities for development and implementation of necessary socioeconomic policies.

9.231 Devolution should necessarily be people-centric in nature and the following considerations should be borne in mind –

- a. Devolution should essentially promote greater harmony and unity and not disharmony and disunity among the people of the country. The promotion of this ‘oneness’ and a common identity should be the principal aim of any form of devolution while protecting and appreciating rich diversity.
- b. The focus should be to ensure that the people belonging to all communities are empowered at every level especially in all tiers of Government. Devolution of power should not privilege or disadvantage any ethnic community, and in this sense, should not be discriminatory or seen to be discriminatory by the people belonging to any ethnic community within the country.
- c. The democratic empowerment of the people should take place within the broader framework of the promotion and protection of human rights which is a fundamental obligation of the elected government deriving from specific provisions of the Constitution and the Treaty obligations the country has voluntarily undertaken.

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d. In addressing the question of devolution two matters require the attention of the government. Firstly, empowering the Local Government institutions to ensure greater peoples’ participation at the grass roots level. Secondly, it is also imperative that the lessons learnt from the shortcomings in the functioning of the Provincial Councils system be taken into account in devising an appropriate system of devolution that addresses the needs of the people. It should at the same time provide for safeguarding the territorial integrity and unity of Sri Lanka whilst fostering its rich diversity.

9.232 An additional mechanism that may be considered is the possibility of establishing a Second Chamber comprising Representatives from the Provinces. Such a mechanism is likely to generate a sense of confidence among the political leadership and among the people in the Provinces, that they too have a vital role to play in the legislative decision making process, *inter alia*, by examining legislative measures that may have a bearing on issues of particular relevance to the Provinces.

9.233 All parties should recognize that the real issue of sharing power and participating in government is the empowerment of the people and making the political leaders accountable to the people. This applies to Sri Lanka as a whole and includes the needs of citizens of all communities, Sinhala, Tamil, Muslim and others. The effective functioning of the democratic system which fulfils these needs, together with a consensual framework of devolution will, by virtue of attributes and institutions intrinsic to it, also provide the answer to the grievances of minorities.

9.234 All parties must commit themselves to finding solutions internally through negotiation with each other. The Tamil leaders should take account of the unnecessary internationalization of the ethnic issue and the external pressures exercised by the Diaspora and its impact on the negotiations for a political settlement. The perceptions of external threat and intervention can create a sense of insecurity that can seriously impede the progress towards an acceptable solution.

9.235 The Commission is of the view that it is an imperative that any devolutionary or power

sharing mechanism should be realized within the broad framework of a sovereign, politically independent and multi-ethnic Sri Lankan State. While the distribution of meaningful powers to the periphery is essential, there are powers which form the core responsibilities of the State and which cannot be so devolved, and need to be retained and exercised by the Government at the centre. It is also important to ensure that any power sharing arrangement has inbuilt mechanisms that would effectively address and

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discourage secessionist tendencies and safeguard the sovereignty and integrity of the State.

9.236 The Commission wishes to underline the critical importance of making visible progress on the devolution issue, in order to ensure the success of any process of lasting and sustainable reconciliation. The Commission therefore recommends that the present opportunity be utilized to launch a good-faith effort to develop a consensus on devolution, building on what exists – both, for maximum possible devolution to the periphery especially at the grass roots level, as well as power sharing at the centre. This consensus should be one that will enable peoples' participation in governance decisions affecting them and avoid costly and unnecessary duplication of political, bureaucratic and other institutional structures that hamper efficient, cost-effective and transparent governance.

9.237 To this end, the Government must take the initiative to have a serious and structured dialogue with all political parties, and those representing the minorities in particular, based on a proposal containing the Government's own thinking on the form and content of the dialogue process envisaged. That dialogue must take place at a high political level and with adequate technical back-stopping.

#### **THE LANGUAGE POLICY**

9.238 The Commission heard from many Tamil persons and noted the sense of marginalization expressed by them due to the language policy and the deficiencies in its implementation followed by successive Governments.

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9 The Commission during its visits to the affected areas witnessed firsthand, that even today many persons of the minority communities are made to transact business not in the language of their choice.

9.240 Whilst acknowledging the work in progress for recruiting Tamil-speaking Police officers, the Commission notes with regret that recommendations on urgent measures made by the Commission in its interim communication to the President on these matters have yet to be implemented.

9.241 The official bodies for executing the language policies and monitoring performance should have adequate representation of the Tamil speaking people and Tamil speaking regions. The full implementation of the language policy should include action plans broken down to the community level, and appropriately covering the Divisions and Local

Bodies with targets that can be monitored with citizen participation.

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9.242 The people of the North and East are separated from the people of the South due to communication barriers. Every attempt must be made to create a sense of belonging among all the citizens irrespective of race, religion or social status. It is language that unifies and binds a nation. Therefore, it is essential that policies relating to language are formulated towards this end. It is imperative that the official languages policy is implemented in an effective manner to promote understanding, diversity and national integration.

9.243 The learning of each others' languages should be made a compulsory part of the school curriculum. This would be a primary tool to ensure attitudinal changes amongst the two communities. Teaching Tamil to Sinhala children and Sinhala to Tamil children will result in greater understanding of each other's cultures.

9.244 The proper implementation of the language policy and ensuring trilingual (Sinhala, Tamil and English) fluency of future generations becomes vitally important. A tri-lingual education will allow children from very young days to get to understand each other.

9.245 The Commission welcomes the government initiative for a trilingual nation by the year 2020. To this end the necessary budgetary provisions must be made available on a priority basis for teacher training and staffing.

9.246 No district or province should be categorized in terms of language. Officers in Government service should possess language skills to serve in any part of the country.

9.247 It should be made compulsory that all Government offices have Tamil-speaking officers at all times. In the case of Police Stations they should have bi-lingual officers on a 24-hour basis. A complainant should have the right to have his/her statement taken down in the language of their choice.

9.248 The Official Languages Commission is centralized and based in Colombo and not easily accessible to rural citizenry. The Language Commission should be an authority with effective powers of implementation, and also with branches in every province.

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9 Greater attention should be given to information technology which can be utilized as an instrument to overcome the language barrier. For this purpose, as a temporary measure, software programs can be used for translation from one language to another until long term policies and measures take effect.

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9.250 In this regard, the Commission also wishes to invite attention to its Interim

Recommendation to station interpreters at Police Stations using retired police officers with bilingual fluency.

## **EDUCATION**

### ***Equal Opportunities***

9.251 The removal of the feeling of discrimination is a prerequisite for reconciliation between the Sinhalese and Tamils in a united Sri Lanka. Much water has flowed since the introduction of standardization as a means of affirmative action by the State to mitigate the imbalance in educational opportunities afforded to different communities. Therefore, in the best interest of future generations a careful review of this quota system would be timely, with a view to introducing a merit based admission system. The Commission recommends that such a review should be undertaken by a committee of experts in education.

9.252 The Government must pursue with renewed vigour a programme of equitable distribution of educational facilities so that it will contribute towards a concerted effort to minimize any feeling of discrimination felt by the minorities. At present the proposed plan to upgrade one thousand secondary schools island wide from 2011, will provide another opportunity to minimize and eventually eliminate imbalances. This policy should be implemented without creating tensions and fissures in society. It is only if these schools are identified on the basis of objective criteria and on an apolitical selection process that this endeavour will prove to be a success. The Commission recommends that the inequality in the availability of educational facilities in different areas of the country should be reduced and eventually eliminated.

9.253 The Commission also recommends that the Government should have a proactive policy to encourage mixed schools serving children from different ethnic and religious backgrounds. In this regard the Government should develop a carefully conceived policy facilitating the admission of children from different ethnic and religious groups to these schools. In respect of admissions to schools, disqualifying students on ethnic or religious grounds does not augur well for reconciliation. Any such practice should be discouraged.

9.254 Mutual understanding and appreciation of the rich cultural diversity of different communities should be inculcated in the minds of school children and youth so that the process of reconciliation takes firm root in the social fabric of the country. The Commission therefore recommends that every encouragement be given to create

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greater interaction among students, through mechanisms such as twinning of schools from the different provinces, student exchange programmes and formation of Reconciliation Clubs in schools. In addition the National Youth Council should adopt more intensive exchange programmes at the youth level.

### ***Peace Education***

9.255 An eminent international jurist, giving evidence before the Commission underlined the vital importance of peace education in promoting unity and reconciliation. Comments of

the Commission on possible curriculum changes are reflected in the body of the Report.

9.256 In giving effect to a trilingual policy, measures should be taken to ensure, as far as possible, that students of different communities have every opportunity to interact. Interaction in the same class room should be encouraged, as far as practicable. However, for subjects taught in different languages they could be streamed into different class rooms.

9.257 Steps must be taken to ensure public universities have ethnically mixed student populations with a choice of courses offered in all three languages. Until recently, it appears that most Tamil-speaking undergraduates were confined to the North and the East, and the Sinhala-speaking undergraduates in the South.

9.258 The Commission is of the view that sports builds up inter-personal contacts amongst people of different communities which is essential in the process of reconciliation. With this in view, the Commission recommends that sports tournaments should be conducted at inter-provincial levels and important national sports competitions should be conducted throughout the island, especially, in the North and East.

#### **DIASPORA**

9.259 The Commission noted that while some 'Tamil diaspora groups' seek to contribute constructively to broad based reconciliation efforts, some other diaspora groups, especially, those described by some as supporting the LTTE, seem to adopt an adversarial approach.

9.260 It is clear to the Commission that these 'hostile diaspora groups' can potentially undermine the genuine efforts in Sri Lanka towards reconciliation. The Commission therefore feels that the Government together with the relevant stakeholders, especially civil society, should develop a comprehensive approach to harness the potential of the expatriate community.

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9.261 The main elements of such an approach should be to:

- a. engage the elected representatives of the minority parties in a meaningful dialogue on devolution and other grievances. The most efficacious way to make the 'hostile diaspora groups' irrelevant will be to make the local minority parties relevant through a structured dialogue that has visibility and recognition at a high political level;
- b. take action to constructively engage those groups that still harbour adversarial attitudes and the LTTE approach of separation, and find space for those groups to contribute to the local reconciliation and development efforts.
- c. engage in a proactive diplomatic initiative with the international community, especially those countries that host these diaspora groups. The purpose of this initiative should be to brief those countries on the meaningful dialogue referred to above and the effective and visible action being taken to address the post-conflict issues, including the implementation of recommendations of the present Commission. It is by doing so that the Government can persuade the host countries to listen less to these hostile diaspora groups, while being more receptive to the

information provided by the Government. In addition, the Government must also be proactive in encouraging and supporting the work of the expatriates who do not advocate the discarded LTTE ideology of violence and separation and who espouse the democratic principles of ethnic harmony and consensual politics.

d. The Government must also have more liberal policies and attitudes towards those expatriates who wish to invest and work in Sri Lanka, for instance by making it easier to obtain dual nationality status, effect remittances and be able to travel throughout the country without undue restrictions.

e. These elements require a carefully worked out programme of action on a broad front here in Sri Lanka and through the Sri Lanka diplomatic missions and with civil society groups here and abroad.

9.262 It is imperative that the Government take the initiative to constructively engage its development partners in Sri Lanka and abroad in order to develop a self-reliant, future oriented community in the Wannu, with open minds to build on and sustain reconciliatory community relationships. This is an area where the Sri Lankan 'diaspora' can support the Government of Sri Lanka, working in cooperation with the development partners in areas such as housing, schooling, healthcare and livelihood activities.

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9.263 The Commission, recommends that the Government constitute a Multi - Disciplinary Task Force that will include representatives from the Presidential Secretariat, External Affairs, Defense, Foreign Employment, the Private Sector, and Academia, to propose a programme of action to harness the untapped potential of the expatriate community, and to respond to the concerns of the so-called 'hostile diaspora groups,' and to engage them constructively with the Government and other stakeholders involved in the reconciliation process. If such a comprehensive approach is not adopted urgently, the Commission feels that the current momentum towards creating a hostile external atmosphere could grow, and those groups that advocate such a process would continue to promote polarization that will significantly impair the genuine efforts of others who espouse reconciliation back home in Sri Lanka.

#### **INTERFAITH ACTIVITIES – ROLE OF RELIGION IN RECONCILIATION**

9.264 Several religious delegations making representations before the Commission emphasized that Sri Lanka is enriched by the traditions of four world religions, Buddhism, Hinduism, Islam and Christianity.

9.265 It was stated that reconciliation following a prolonged conflict is difficult to achieve in the short term. It should, therefore, become part of a long term rebuilding exercise. Institutional arrangements will be required in order to keep reconciliation in focus, anticipate potential breaches of social harmony, and diffuse them before they reach dangerous proportions.

9.266 The Commission was deeply concerned to hear of several recent incidents where places of worship have been vandalized by unknown mobs.

9.267 The continuation of these incidents would certainly be inimical to the reconciliation

process. Strong deterrent action should be taken to prevent such incidents. The Commission notes with regret that law enforcement agencies have hitherto failed to investigate and prosecute persons responsible for such unlawful action. The Government should make every endeavour to arrest the occurrence of such incidents. Such action would instill a sense of security and confidence among the affected groups.

9.268 All religious leaders must unitedly provide leadership, encouraging people of all faiths to act with wisdom and understanding, and to view the conflict and its aftermath from a perspective of tolerance and mutual accommodation. This should be achieved by emphasizing religious commonalities, and focusing on factors that contribute to a shared vision and unity of action.

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9 In this context the Commission wishes to emphasize the constructive role that interfaith religious groups could play in promoting ethnic and religious harmony, by planning and executing such united and collective action.

9.270 There was general acceptance by different inter-faith and religious representatives who appeared before the Commission that a mechanism to serve as an early warning system could be a useful preventive measure to ensure that communal or religious tension or friction does not lead to conflict, undermining law and order and efforts towards reconciliation and peace building. The Commission recommends that the Government should facilitate the establishment of such a mechanism in consultation with inter-faith groups, with a mandate to serve as an early warning and early diffusing procedure.

#### **ART AND CULTURE**

##### ***Linguistic and Cultural Affinities as Instruments for Promoting Reconciliation***

9.271 In the course of representations before the Commission, the need to identify the linguistic and cultural commonalities and affinities in establishing a Sri Lankan identity was particularly emphasized. It was also pointed out that both the Government and the public had failed to utilize the potential of the promotion of the creativity of arts, for the betterment of society, and that there was also a failure to realize that arts could contribute substantially to bring about understanding among the communities.

9.272 Representations made before the Commission underlined the importance of cultural affiliations in the process of national reconciliation, and emphasized the fact that Sinhalese and Tamil cultures had very rich roots, and that there must be a cultural renaissance through art, drama, and music “like what happened in 1956.”

9.273 The Commission was gratified to note the emergence of common ground among the most venerable religious leaders, artists and many other right thinking citizens of the country as these profound commonalities will certainly provide good augury for a viable process of reconciliation and peace building, if only the politicians on all sides shed parochial interests and provide consensual leadership to bring that process to fruition.

9.274 The Commission is of the view that creating greater awareness of linguistic and cultural affinities among the different communities would be an effective instrument for promoting greater reconciliation. This must be given the highest priority by the State and made part and parcel of a proactive State policy and program.

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9.275 Special attention must be given to translation and publication of major literary works in Tamil into Sinhala, and similarly Sinhala literary works into Tamil. Dissemination of such publications particularly among school children and youth would be of critical importance to foster a greater sense of understanding of and sensitivity to each other's cultures.

9.276 Cinema, TV and stage drama, productions that highlight commonalities and mutual understanding between communities should be encouraged and disseminated specially for the benefit of the younger generation.

9.277 On the question of the National Anthem, the practice of the National Anthem being sung simultaneously in two languages to the same tune must be maintained and supported. Any change in this practice at the present time would only create a major irritant which would not be conducive to fostering post-conflict reconciliation.

#### **PEOPLE TO PEOPLE CONTACT**

9.278 During its sittings, especially during the field visits, the Commission heard a clear call from the people of all communities regarding the importance of people-to-people contact in promoting understanding, amity and reconciliation. The Commission strongly endorses this view, not least because face-to-face interaction is a proven instrument for building consensus and promoting harmony.

9.279 In this regard the youth can play a special role, particularly since they have been the worst affected by the conflict. The youth from all communities had to bear the brunt of the conflict and its consequences. Throughout the conflict, they did not have the time and space to meet each other and understand each other, except in situations of bloodletting.

9.280 In this context, the Commission is pleased to note certain initiatives taken by the Government and civil society groups, particularly the Ministry of Youth Affairs, which has an ongoing programme to have a "Youth Parliament" and an exchange programme called "From Palmyrah Grove to Coconut Grove."

9.281 The Commission encourages such initiatives and strongly recommends that all the Government Ministries and other agencies in the relevant fields initiate such creative programmes falling within the purview of their responsibilities. This must be done in cooperation with civil society groups, so that such exchange programmes can be supported, expanded and broad-based. Care must be taken, however, that such

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programmes are carried out with due respect to the cultural and language sensitivities of the visiting community as well as the host community.

#### **NEED FOR POLITICAL CONSENSUS**

9.282 One of the dominant factors obstructing reconciliation in Sri Lanka is the lack of political consensus and a multi-party approach on critical national issues, such as the issue of devolution.

9.283 The Commission observes that during the last four to five decades there have been instances where 'hate speech' had contributed to major communal disharmony. Since 'hate speech' relating to ethnicity, religion and literature exacerbate ethnic and religious tension, creating disunity and conflict, deterrent laws must be enacted to deal with such practices, and these laws should be strictly enforced.

9.284 The process of reconciliation requires a full acknowledgement of the tragedy of the conflict and a collective act of contrition by the political leaders and civil society, of both Sinhala and Tamil communities. The conflict could have been avoided had the southern political leaders of the two main political parties acted in the national interest and forged a consensus between them to offer an acceptable solution to the Tamil people. The Tamil political leaders were equally responsible for this conflict which could have been avoided had the Tamil leaders refrained from promoting an armed campaign towards secession, acquiescing in the violence and terrorist methods used by the LTTE against both the Sinhala and Tamil people, and failing to come out strongly and fearlessly against the LTTE, and their atrocious practices. A collective act of contrition for what happened would not come easily to either party. It would come only if they are ready to make a profound moral self appraisal in the light of the human tragedy that has occurred. Seeds of reconciliation can take root only if there is forgiveness and compassion. Leaders of all sides should reach out to each other in humility and make a joint declaration, extending an apology to innocent citizens who fell victim to this conflict, as a result of the collective failure of the political leadership on all sides to prevent such a conflict from emerging. Religious leaders and civil society should work towards it and emphasize the healing impact it would have on the entire process of reconciliation.

9.285 The Commission, strongly recommends that a separate event be set apart on the National Day to express solidarity and empathy with all victims of the tragic conflict and pledge our collective commitment to ensure that there should never be such bloodletting in the country again. Based on testimonies it received the Commission feels that this commemorative gesture, on such a solemn occasion, and at a high political level, will provide the necessary impetus to the reconciliation process the nation as a whole is now poised to undertake.