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Excerpts from the Amnesty International report *When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission*

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VIOLATIONS REPORTED BY WITNESSES TO THE LLRC

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

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

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

What is clear is that claims made by Sri Lankan authorities that the LLRC proceedings have not brought to light the identities of individuals alleged to have been involved in violations are untrue.

Shelling by the Sri Lankan Armed Forces and the LTTE

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

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

Testimony of Witness 3, Chavakachcheri Cultural Hall, 13 November, 2010

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

Chairman: When was that?

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

Chairman: What she wants is financial assistance (or compensation)? Yes we will try to explore the possibility of getting you some financial assistance.

Application form she has filled it and brought.

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

Excerpt of Testimony of Witness 5, Poonagari Common Hall, 19 September 2010

After the liberation of the Eastern Province [in 2007] they started the war in the North and called it a humanitarian operation. Gradually we were displaced from Mukaman area and we moved towards Kilinochchi. People who were displaced in Mannar came to Jayapuram area and then through Wanneri they too came to Kilinochchi. While we were in Kilinochchi there were enough attacks, aerial attacks, aerial bombing as well as shelling. After that we were displaced to Pullaiyanpokuna, Wanneri and Watakachchi areas. At this point of time the LTTE supporters and their families were given safe passage to the South of Sri Lanka as well as to India. The other people who were non supporters of the LTTE and those families who have lost their children to the LTTE we were confined to this area. At the outset the LTTE categorically said that it was the duty of each and every family to provide at least one member of the family as a fighter to the LTTE movement.

At this point the people tried to escape the grip of the LTTE. Some people managed to travel with great difficulty through the jungles in order to escape from the LTTE but when they arrived at those areas were controlled by the Army. The Army also attacked them.

At this time the people could not decide whether to stay here or got to Vavuniya but at the same time they were expecting the arrival of the Army as well. Even before the arrival of the Army, the aerial bombing and the shelling activities caused frustrations amongst our people because many of their people died as well as they lost their limbs.

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

The Sri Lankan army has been accused of knowingly shelling Puthukudiyiruppu Hospital in February 2009. When an eyewitness to that incident, Dr. T. Vartharajah – one of the Tamil government doctors who was detained by the army at the end of the conflict was questioned about this incident, LLRC members repeatedly asked about the position of LTTE artillery, the presence of LTTE members inside the hospital and LTTE imposed restrictions on freedom of movement. Dr. Vartharajah was never asked whether government forces shelled the hospital. (After some time in detention, Dr. Vartharajah publicly recanted reports of civilian war casualties at a government-sponsored press conference, leading to charges that he had been compelled to contradict his earlier statements.)

Excerpt of exchange between Commissioners and Dr. Thurairajah Vartharajah, Colombo

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

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

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

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

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

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

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

Enforced Disappearances/Missing Persons

The LLRC received numerous complaints from people searching for missing family members, including some that appeared to be victims of enforced disappearances. But in the cases publicly available the Commissioners demonstrated a lack of interest in pursuing the details of these allegations. In particular, the Commissioners repeatedly failed to ask for information that could be used to identify individual perpetrators, or initiate an investigation that would lead to locating the missing person.

Enforced disappearances are a gross violation of human rights and a particularly persistent form of abuse in Sri Lanka – where tens of thousands from earlier periods of conflict still remain unresolved and unpunished – but enforced disappearance is not specified as a crime under Sri Lankan law (instead authorities apply laws governing abductions and related offenses), and the LLRC made little effort to address accountability for such cases.

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

Alleged enforced disappearance of surrendered LTTE leaders

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

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

Evidence of the LLRC's Pro-Government Bias

Failure to fully scrutinize government actions when interviewing government witnesses

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

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

Mr. Rajapaksa: ...The President told that this is not a military campaign but this is a military operation conducting to liberate the people in that area, so he said, just call it humanitarian operation. The practice [sic] that we have followed for so many long years, you know, somebody might think it is minor thing but it is a very important fact you know from the top to the bottom of the military that the message from the President himself that they have to remember that the liberation of the people in that area so that we named it the Humanitarian Operation.

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

Strong challenging of experts and witnesses who criticize the state

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

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

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

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

Failure to treat victims and their families with dignity and respect

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

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

Chairman: Did you give particulars about a missing person?

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

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

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

Chairman: We will try to do that.

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

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

LACK OF INDEPENDENCE OF LLRC - INFORMATION ON COMMISSIONERS

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

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

Public Document

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