

Testimony before the Lessons Learnt and Reconciliation Commission
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I was not certain as to which aspects of the work of the Commission I should address, so I thought it best to prepare some points in writing, to be expanded on further as the Commission sees fit. It seems that **the work of the Commission can be divided into three components as follows –**

- a) Consideration of what should be done now to promote reconciliation**
- b) Examination of the Peace Process and what led to negotiations proving unsuccessful so that other options had to be followed to achieve Peace**
- c) Inquiry into incidents during the process which might prove barriers to reconciliation**

a) Reconciliation

I believe the first of these is the most important. It is also the easiest to achieve. In fact we have done much in this respect already, inasmuch as inequitable development in the country was one of the principal reasons for resentment and the gradual move to separatism. **Rapid infrastructural development, accompanied by strategies for targeted investment, has made clear the commitment of government to ensuring better opportunities for all.**

At the same time **we need to ensure that human resource development parallels the tremendous achievements with regard to physical development. We need also to ensure greater integration of people in the context of equity. Finally we need to develop confidence in government through ensuring constant consultation and respect for different perspectives.** I have already proposed some simple initiatives that will help in this respect, viz

- i) Establishment of 6th form colleges functioning in the English medium for talented students of all races and religions (Ministry of Education)
- ii) Encouragement of a culture of synergy and entrepreneurship, through fine tuning curricula at Vocational Training and other educational Institutes (Ministries of Youth Affairs, Education and Higher Education)
- iii) Institutionalization of mechanisms to ensure that talented young people not only meet regularly, but also learn and create together in the fields of culture and sports (Ministries of Cultural Affairs and Sports)

- iv) Expansion of recruitment of minorities to government positions, in particular to the police and the armed forces (Ministries of Public Administration and of Defence)
- v) Enhancing training for officials, including language training, to ensure sensitivity to the needs of particular groups (Ministry of National Languages and Social Integration)
- vi) Improvement of non-formal mechanisms for redress of grievances, in particular for the vulnerable, through Consultation Committees, Women and Children's Desks at police stations, School-based local welfare associations etc (Ministry of Child Development and Women's Affairs)

Coordination of such initiatives and others should be done through the Presidential Secretariat. The Peace Secretariat had begun some work in this regard, but this had been overshadowed by its other work in the last couple of years of its existence, which led to the view that it had fulfilled its role and could be closed down in 2009. No single Ministry however can provide the overall conceptualization that a long-term programme of reconciliation needs.

It should be noted that the importance of this aspect of reconciliation, which is forward looking, has been comparatively ignored, given the pressures to dwell on the past. These pressures are understandable on the part of the remaining supporters of the LTTE, so as to revive tensions, but all those truly concerned with peace and reconciliation should remember that the future must take precedence over the past.

b) The failure of efforts at a negotiated peace

This area is of importance not only for the Sri Lankan state, so that it can prevent the recurrence of past mistakes, but also for the world since it is vital that international terrorism must be dealt with firmly even while attention is paid to the grievances of those who might be tempted into terror.

The cardinal mistake in the process in Sri Lanka was the confusion of those who had grievances which needed to be addressed with those who had turned to terrorism to redress those grievances and refused to move away from terrorist practices and absolute aims.

Though it is essential to combat terrorism, any state must be sensitive to what might have made people turn to terrorism. Therefore it must be ready and willing to engage in discussions. **Remedial action with regard to grievances should however be on the basis of general principles and should benefit all those affected, not just the proponents of terror.**

Sri Lanka removed the institutional reasons for grievances in 1987 with the Indo-Lankan Accord. Much practical work however remained to be done to restore a sense of equity. This is not the place to discuss whether inadequacies were due to lethargy on the part

of the state or distractions arising from the continuation of terrorism on the part of the LTTE. **What is important is that, following the destruction of the LTTE in Sri Lanka, practical work should proceed apace. It should also be noted that this government actually began some practical work that should have occurred long ago,** through for instance measures instituted by the Ministry of Constitutional Reform and National Integration to ensure bilingualism amongst new recruits to the public service. The targeted recruiting of Tamil policemen is also an example of the positive approach of this government.

Unfortunately the intransigence of the LTTE, which refused unlike all other former terrorist groups to accept the provisions of the Accord, was encouraged by domestic politics. Whether out of genuine belief that the LTTE had been badly treated, or simply to score brownie points against political opponents, Presidents Premadasa and Kumaratunga and Prime Minister Wickremesinghe gave the impression that peace remained elusive because of the inadequacies of previous governments, and that they would succeed in negotiating peace with the LTTE.

The first two soon recognized their mistakes, but either because of greater naivete or greater ambition (or perhaps the greater skills of the LTTE) **Mr Wickremesinghe found himself totally in thrall to the LTTE. Though he consoled himself with the idea that the international community, by which he meant the West, would bail him out if the LTTE went too far, this showed complete ignorance of the way the world works. Indeed, given that he had been part of the government which failed to get British and American assistance against Indian interference, despite its belief that commitment to the West during the Cold War had created a security blanket, his naivete seems culpable.**

I need not however dwell here on the follies of the CeaseFire Agreement, or rather on the manner in which Mr Wickremesinghe allowed it to be interpreted. His failure to be firm when there was clear evidence of continuing belligerence, indeed his continuation of lavish subsidies to the LTTE, suggest a man blind to what was happening around him. I should also note, in passing since I believe the principle is well understood, that **the terms of the CFA were a betrayal of all Tamils who were opposed to the LTTE. The decimation of all groups opposed to the LTTE that took place over the next few years was appalling, and the failure of the government of 2002-2003 to do anything about this remains a blot on the Sri Lankan state.**

More significant to my mind, because less well understood, is the role of the International Community in supporting his myopic approach and thus benefiting the LTTE. I myself do not believe that many of those who ended up giving financial and moral support to terrorism were actually supporters of the LTTE. Rather I believe that the indulgence the LTTE received during the period from 2002 until in fact 2006 sprang from three different mindsets, viz

- i) Those who felt sympathy for the Tamils, largely because of what they knew about the manner in which Tamils had been treated by government in the

Perhaps the most important of those who felt like this was the Norwegian Ambassador at the time the CFA was signed, Jan Westborg. He had been in Sri Lanka with an NGO during the early eighties, and he felt tremendous sympathy for the abused Tamils, a factor that contributed to his promoting colonization of the Vanni by Tamils of Indian origin who had been treated badly three times during President Jayewardene's first government.

- ii) Those who saw themselves as holding the balance between two hostile but equal entities, viz the Tigers and the elected government. The manner in which the CFA was drafted allowed what are termed international aid workers to believe that they had to sit in judgment on conflicting claims. Naturally, since this allowed people with limited skills and capacity an inflated idea of their own importance, they clung to this interpretation.

Some understood in time that such an approach was mistaken, as for instance the OCHA official who told me shortly before leaving that they had misunderstood Sri Lanka when they got here, having thought it was a country like those African ones in which they had cut their teeth, in which the writ of government did not run in vast areas.

Unfortunately the distrust of its own officials on the part of the Wickremesinghe government contributed to the notion of the international community that they controlled decisions as well as finances. The most distasteful example occurred when the Head of European Union Aid tried to dragoon through a document on Modes of Operation for Assistance which specified that international agencies would hold the balance between the parties in conflict. When, having taken over as Secretary to the Ministry that coordinated humanitarian aid, I noted that that clause would have to be amended, the response was that it had been already agreed. When I made it clear that this was not a subject for negotiation, the EU lost interest in the Modes of Operation document.

- iii) Finally there were those who actively sought positions of self-importance. Chief amongst these was Gareth Evans of the International Crisis Group, who kept offering himself as a mediator and guarantor of the CFA. He was deeply critical of the Norwegians and disappointed to find that I held the Scandinavian Monitoring Mission in high regard.

So too Louise Arbour, as UN High Commissioner for Human Rights, wanted an enhanced role, argued for by her chief advisor on Sri Lanka who was again critical of the Scandinavians, and tried to persuade me that one reason for a UN Human Rights office was to take on the monitoring role of the Scandinavians.

The final result of all these approaches however, even if it was not intended, was **parity for the LTTE**. This was actively promoted by some of Mr Wickremesinghe's advisers, in particular Mr Bradman Weerakoon, who initiated funding projects for the LTTE that allowed them to build up their image. Both the Head of UNDP and the last Norwegian ambassador, Tore Hattrem, when I asked them about funds given to the LTTE Peace Secretariat, claimed that this was with the full permission of the government, a point I did not contest. My point was that they had not monitored what was done with the money, and that they should upbraid the LTTE for using the equipment and funds provided to glorify suicide bombers. Mr Hattrem, I am happy to say, reported that he had requested the LTTE to remove the offending items, though of course they ignored him.

The general lack of monitoring allowed the LTTE in effect to run riot. I should note that I believe we too were at fault in not following up ourselves on funds that were given to the LTTE with our consent. The worst example I came across, which I constantly urged our Foreign Ministry to investigate, was the \$1 million dollars given to the LTTE by UNICEF for rehabilitation of former child combatants.

My attention was drawn to the disastrous nature of the UNICEF relationship with the LTTE by a conversation with **the Head of UNICEF until 2007, a lady called Joanna van Gerpen round whom the LTTE clearly ran rings**. At her first meeting with me, she said brightly that the LTTE was being very good, and would shortly be releasing all combatants under 17. I pointed out that I thought this was what they had agreed to do five years previously, but she said that they had tried, but would now really fulfil the promise.

I then asked why they were stopping at 17, since I thought those under 18 were also child combatants. Her answer was that they had some difficulties with their legislation, but would amend this shortly. When I pointed out that the word legislation was inappropriate, she realized her mistake and apologized, but I told her that I would complain officially to the UN, as I did in the letter given in the appendix¹. She **sent me an apologetic letter that confirmed the actual UN position, but I believe her approach with the LTTE was symptomatic of the advantage they took of those without an actual understanding of terrorism.**

I should note that this mealy-mouthed approach was symptomatic of many UN officials in 2007, since they seemed in general to share the views of the Wickremesinghe government and to assume that there was something wrong with the newly elected government in its determination, having made an attempt to negotiate, to deal firmly with terrorism when the LTTE proved intransigent and withdrew from negotiations and engaged in terrorist activity.

As noted in the letter I cite, I had problems too with OCHA, which seemed to indicate in its weekly reports that all was sweetness and light in Kilinochchi, while tensions continued elsewhere. I complained about this to Sir John Holmes, the Head of OCHA,

during his visit in Sri Lanka, and he did at least instruct that there should be balance. While balance between an elected government and terrorists did not seem to me desirable, it was even worse that previously even such balance had not been there. Sure enough, for the first time the following week, it was reported that tensions continued in Kilinochchi, a place that had been singularly free of such tensions in UN reports previously.

Not entirely surprisingly, this was happening at a time when the LTTE had stepped up its recruitment, and was insisting on at least one recruit per family, even from the families of NGO workers. This was reported to us by the Norwegian ambassador Mr Bratskar after his final visit to Kilinochchi, soon after Ms van Gerpen's sanguine report about her own visit.

In fact I brought up this deafening silence in my first meeting with the new UNDP representative, Neil Buhne, and he told me that he thought the UN had mentioned such recruitment in its reports. I asked him to show an instance of this to me, but he was unable to do so, and had to acknowledge that this appeared only in confidential reports. Indeed he practically confessed to me the reason for all this, when I upbraided him more than a year later about the silence of the UN on the failure of the LTTE to release the international UN staff who had gone into LTTE controlled territory in January 2009. When I noted that a much less serious breach on our part would have been highlighted by the UN, he said, 'But you guys wouldn't.....'. He paused then, but I could finish the sentence for him – obviously what he meant was that we would not harm the UN whereas the LTTE would.

I should however note here that we should acknowledge the tremendous change in attitude achieved by Mr Buhne, as well as the Heads of OCHA and UNICEF who came to Sri Lanka in 2007. They were of a different mindset, and did their best to work together with government, sometimes despite opposition from some of their staff who still saw the LTTE as innocent victims. At the latter's farewell party, Mr Buhne testified to the achievement of Mr Duamelle, the recently departed Head of UNICEF, in winning the trust of the Sri Lankans, and I can vouch for this, since by 2008 he and the TMVP were working together to ensure that there were no child soldiers still in the custody of the latter.

In 2007, when my staff at the Peace Secretariat got the TMVP to agree to release some youngsters whom they said they had taken in for protection because of renewed LTTE recruitment after they had been initially released in 2004, the TMVP refused at first to hand them over to UNICEF, They claimed that was the surest way of the LTTE taking them over. My reading of reports on what had happened after the first agreements to release child soldiers suggested that this was not entirely an exaggeration, and Ms van Gerpen certainly would not have been able to prevent such abuse.

Incidentally a continuation of intrigue on the part of some elements in UNICEF could be seen even last year, with reports that were subsequently denied. The UNICEF report on casualties from landmines was another example of this trend, with an attempt later to

shift the blame to others for the report. I have urged thorough investigation of both these matters, and I believe we need to continue vigilant. **We should note too the insidious manner in which UN reports on children in armed conflict suggested that government and the LTTE were on a par. Condemnation of bombs in Colombo that killed children were equated with unconfirmed reports from TamilNet about child casualties from air force raids on civilian targets.** Ms Coomaraswamy who wrote such reports would not take responsibility for the allegations but referred to a Committee in Sri Lanka, which had not fulfilled its initial responsibility of working with government before dispatching such reports.

Let me add too that the Sri Lankan failure to monitor properly also had other adverse consequences in that it led to blanket condemnation of international agencies when deficiencies were discovered, with increasing tensions between Sri Lankans and international agencies and individuals. My own experience was that firmness prevented many problems, and we needed to engage in constant interaction, because often the inadequacies were due to ignorance. In that regard we need to ensure better training for our public servants, so they can deal on the basis of equality (and authority too, since they represent the elected government) with what is termed the international community.

This does not mean that we should blindly trust everyone. After all, though most people working in this field have ideals we should respect, their first allegiances are to their own careers, the institutions for which they work, and the countries they come from, rather than Sri Lanka and its people. At the same time, we should be able to show them how our common interests are more important than any differences we might have. However we cannot ignore the fact that, for various reasons, some individuals do not have our interests at heart. We should be careful about these, but not tar all their associates with the same brush. For instance, my own view is that Eric Solheim had his own agenda, and was not someone who could be trusted. It was also clear that his successor as Facilitator, Mr Hansen-Bauer, was a cipher, who sat like an attentive schoolboy when Mr Solheim was in the room, and could not be expected to react independently, even when circumstances changed. On the other hand, I believe Mr Westborg was an idealist of sorts, even though his mindset was outdated. His successor, Mr Bratskar, did a good job under difficult circumstances, and I think tried to promote an equitable peace. His successor, Mr Hattrem, was even more ready to move forward. Of course there was interference from Mr Solheim, who was still pursuing his own agenda, but I believe we could have taken greater advantage of the shifting perceptions even amongst the Norwegians.

Again, with the UN, as noted we had a much more open-minded leadership in the last couple of years, while the old traditional agencies such as ILO and WHO – and also those with more experience such as WFP and UNHCR – had excellent and very positive leadership during this period. At the same time we must insist on more recruitment of Sri Lankans to senior positions, as happens currently in UNDP. This will reduce the atmosphere of patronage that now dogs some agencies, which contributes to decisions made without understanding of the ground situation. We should also

ensure capable and articulate counterparts at all levels, and prompt written questioning of any abuses that might take place on the part of youngsters anxious to make their mark.

In short, while I believe that government could have been more firm from the start with regard to the CFA, we must also ensure for the future that government ensures that, as the elected representatives of the Sri Lankan people, it makes the decisions, albeit with full consultation of all interested parties, including members of the international community who are well briefed about the ground situation.

Failure to make these ground rules clear led to the LTTE believing that they could get away with anything, hence their total intransigence during negotiations, their high-handed withdrawals, their refusals to return despite the restraint of the government in refraining from active responses to their provocation, in particular at the very end of 2005 and the beginning of 2006. Mr Wickremesinghe's willingness to concede to them an Interim Self-Governing Agency, and also the terms of the so-called PTOMS agreement, all based on the assumption that the LTTE had a right to govern the areas they controlled, also contributed to their dogmatic approach.

We were also too indulgent in allowing them to refuse to have elections at any stage. In this regard the failure of our media to investigate as to why Prof Peiris' very proper announcement around 2003 that local elections would be held soon was countermanded by higher authority shows a lack of careful scrutiny by the press and other public interest groups during that period. The absence of any concern for democracy amongst otherwise generally vociferous advocacy groups also testifies to the double standards which the LTTE had succeeded in imposing amongst even well meaning idealists.

c) Investigation of incidents that might seem barriers to reconciliation

This is the area about which most concerns are expressed, though it seems to me less important than proactive measures to promote reconciliation, through ensuring the future well-being, prosperity and integration of those who suffered in the past. At the same time remedial measures are desirable in cases in which there is clear evidence of violation by the state of laws. Whilst it is not incumbent on the state to look for such evidence, it should certainly investigate instances in which a prima facie case seems to have been established.

My own view is that in hardly any instance has such a case been established. However I believe there is at least one instance in which the state should have taken legal action, and our failure to do this has prompted blanket criticism which is not warranted, and distrust which, if not warranted, is understandable. I refer to the case of the killing of five youngsters in Trincomalee in 2006. I have long urged that indictments should be issued in that case. I respect the response of the Attorney

General at the time, that a prosecution would not be successful because the evidence was incomplete, but my point was that there was need of a clear message that such conduct was not acceptable. Given the standards of proof required by our courts, there would have been no reflection on the Attorney General's Department had the case failed, just as there has been no reflection on say British justice even though there was only one conviction in the Abu Ghraib case. The point is, **the state has made its position clear, and indicated that individual aberrations will not be condoned. If the state does not do this, there is danger that such aberrations might appear systemic, and indeed become so. Fortunately there is no evidence of this occurring in Sri Lanka.**

I say this with some confidence, because I made it my business, as Head of the Peace Secretariat, to monitor events during the war, and to ask for explanations when there were reports, on TamilNet and elsewhere, of what might have seemed aberrations. I received prompt responses from the airforce on all occasions, and from the army on most, though obviously, with the field of action more widespread, these answers were less thorough.

I have kept with me copies of the schedules that my staff drew up based on the allegations that appeared in various places. The first point to make is that, upto the end of 2008, the allegations of civilian deaths made altogether by TamilNet amounted to less than one hundred. The air force, in over 400 bombing raids, was accused of causing civilian casualties in under 30 cases, and of these over 20 were of one or two deaths. These may be one or two deaths too many in an ideal world, but in an ideal world you do not have terrorists who force civilians to fight and to labour at military installations. Certainly this suggests nothing but slight collateral damage, a much better record than any other country engaging in a struggle against terror. And yet, despite this record, agencies such as Human Rights Watch kept making claims of indiscriminate attacks on civilians, without any effort to substantiate their claims, even when challenged.

In 2009 there were more allegations of civilian deaths, beginning with January 26th on which there were allegations of 300 deaths. This related to the No-Fire Zone, and that morning the UNDP head called up my Minister at the time with the allegation that our forces were firing on civilians in the Zone. However later that day the Bishop of Jaffna called us to ask whether the No-Fire Zone could be extended, and issued a press release calling on the LTTE not to bring their heavy weapons into the Zone. Later that day the UN Coordinator sent us a message to say 'For info we believe that firing this morning most likely was from an LTTE position'.

In short the LTTE was now doing what it had planned all along, using civilians as human shields, firing from their midst with scant regard to casualties, indeed even inflicting such casualties deliberately sometimes in order to get the international reactions it wanted. It was obvious that this had been planned for a long time, but sadly they were encouraged in this ploy by the failure of the so-

called international community to roundly condemn the herding of the displaced into smaller and smaller spaces. The NGOs who claimed to have been working on behalf of the people of the Wannai said nothing when the LTTE held people back, including the families of their workers. Instead condemnation was reserved for the centres the government had set up for the displaced who sought refuge. Indeed agencies such as Human Rights Watch, in what was in effect an apology for the LTTE's strategy, tried to suggest that people actually preferred to stay with the LTTE rather than escape to government areas – even while there was clear evidence of the LTTE actually shooting people who tried to escape².

Given the plethora of shrill allegations against the Sri Lankan forces, it is understandable that they have not been taken seriously. This however was a mistake, because at least some were made in good faith by those who have otherwise been categorical in their condemnation of the LTTE. Thus **I believe we should have gone into the reports of the Jaffna University Teachers for Human Rights. Though they often get things wrong, given the manner in which they collect information, they are balanced, and I believe they make clear the generally humane way in which the forces behaved. Thus, in their last report, they describe an incident in which the LTTE fired from amidst civilians, obviously trying to provoke the army to fire back, and the army desisted from doing so.**

This does not mean that we can claim government forces did not inflict any civilian casualties. Sometimes soldiers may have responded to provocation such as the above, especially in the heat of battle, when in fear of their own lives, and civilians would have died. Yet the fact that they did not so respond on occasion suggests that that was what their battle orders were. It is orders to the contrary that would constitute crimes, whereas individual responses in the context of enemy attacks are not issues that should lead to smouldering animosity and inhibit reconciliation. Certainly there is no indication at any stage of responses being disproportionate.

I regret therefore that we did not also respond promptly to the schedule submitted by the American State Department late last year. Since they noted that these were simply allegations, and since we already had material on several of those allegations, we should have immediately assuaged concerns where possible. Sadly the political games that were played over the next month, with the individual who had claimed responsibility for a grave aberration turning a full somersault and seeming to make a totally contrary claim, led to a belief that the queries were political in character. This should not have happened, and instead what is generally a positive story should have been very simply told.

In particular we should have nailed the canard, initially floated by the Times of London, that over 20,000 civilians had been killed. I give in a footnote my own comments about this figure³, but should also stress here that the Times gave three different explanations of how it had made its calculations, each more preposterous than the last. The conclusion was inescapable that they wanted to

propagate a particular viewpoint, and did not care about facts or evidence in pushing this.

What was the reason for this? I go back to the listing of different motivations for pursuit of what amounts to the same destructive agenda. Amongst these are

- i) Anger amongst Tamils who suffered in the eighties and who therefore believe that all recent suffering must also be entirely the fault of the government
- ii) Support for Tamils who propagate the above view, either through sympathy for their suffering or through a desire for their support for electoral reasons
- iii) Desire to assert control, whether for personal or for political reasons

I believe we should do all in our power to convince Tamils who suffered in the past that government is committed to reconciliation. For this we need to move quickly on the types of initiatives described at the beginning of this paper. Such actions would also win over those who support them for altruistic reasons. It is also necessary in promoting such actions to ensure consultation and explication as comprehensively as possible.

This needs to be accompanied, as noted, by actions that make it clear government rejects all aberrations and will try to ensure they are not repeated. Measures that institutionalize the rule of law should also be enacted, and in particular to make clear the commitment of the state to fundamental rights and equity.

In all this there is need of a good communications strategy, that lays down the tremendous progress made in the last year, in particular in areas in which we were under grave suspicion. The manner in which the government lived up to its commitments regarding Resettlement should have led to greater acknowledgment that previous negative pronouncements were misplaced. Similarly, the work being done on Rehabilitation also deserves more recognition.

Dealing with those who are less altruistic may be less easy, but progress on the above will make it clear that mutual interests can be served through consultation rather than confrontation. **With the British election out of the way, the worst examples of hypocrisy (sadly also brought to bear on the Americans too) are over, and a positive approach to the new government should prove successful.**

At the same time it is necessary to pinpoint instances of hypocrisy where the predilections of individuals could have damaged relations between countries. For instance the readiness of individuals to fall in with the plans of opposition politicians must be changed. The response to the claim of the Leader of the Opposition, that GSP+ would be maintained were General Fonseka elected President, led to a pronouncement on the suitability of military men to take to politics which seemed designed to give an inappropriate message. The impact of such behaviour should be pointed out clearly, instead of being left to fester. The

EU should for instance be asked to explain various pronouncements, such as the effort to prevent democracy taking route in the East, and encouraged to study their own approach to relations with Sri Lanka, since they have contributed, perhaps unwittingly, to the view that they are not interested at all in human rights, but rather in increasing their political influence.

We should also make it clear that continuing persecution will be addressed systematically by drawing attention to the efforts of a few individuals to fulfil their personal agendas at the expense of the Sri Lankan people. **It is no coincidence that Louise Arbour has now joined up with the Gareth Evans ICG to fulminate against Sri Lanka, and seek justification for their previous excesses. It is also noteworthy that elements in the Arbour stable, for instance the Iranian Canadian Prof Payam Akhavan, had asked the Canadian government to support his claims to sit on the tribunal to go into Sri Lankan war crimes, which he had assumed was being set up in Geneva on the infamous occasion when some Western countries tried to put Sri Lanka in the dock.**

Contrary to the presumably genuine assertion of for instance the British High Commission representative in Colombo, that this was simply to ensure decent treatment for the displaced, the British Foreign Minister was announcing, doubtless as part of his election campaign, that the Western initiative was designed to ensure accountability for war crimes. This approach was encouraged by Ms Arbour's successor as UN Human Rights Commissioner, and it is important that Sri Lanka seek explanations for this insidious uniformity of interest, given too the pronouncement of the most senior Sri Lankan working for the UN that the vote favouring us in the Human Rights Council meant total disaster.

We need then to continue vigilant about the actions and motives of those who engage in insidious and inaccurate criticism of our forces. Their sudden affection for the former army commander serves only to confirm that their agenda was political rather than moral. Whilst we pursue equity and justice for all, we must also ensure that we monitor those who sought for so long to prevent us dealing firmly with terrorism, who did nothing to moderate the excesses of the LTTE but continued to ignore the wishes (and the suffering) of the vast majority of the Sri Lankan people, Sinhala and Tamil and Muslim, in their pursuit of personal goals.

APPENDICES

Letter to UNDP Representative re UNICEF and other improprieties

¹ July 30th 2007

Dear Mr Buhne

When I met the UNICEF Representative last week, to be briefed on her visit to Kilinochchi, I was startled by her mention of the LTTE requiring to pass new legislation

in order to fulfil particular obligations. As far as I could understand, they felt they could not otherwise change their current practice of recruiting children who are 17.

Though Ms van Gerpen was only reporting what had been told to her, she appreciated the point that it was quite inappropriate to talk of legislation on the part of the LTTE. She has agreed to think of different terminology to express what they put to her.

Though I appreciate her difficulty, in terms of continuing diffidence on the part of international organizations to deal with increasing lawlessness on the part of the LTTE, I believe it would be in the interests of not only the country in which you work, but also the poor suffering people of the Wannu, to be categorical in your condemnation of such practices. There should be zero tolerance of child recruitment. Though this may be difficult for some of your officers who come from countries such as Britain which still I believe engages in under age recruitment, UN officials should work to UN standards. The British army is in any case a voluntary army like ours, and what we are dealing with here is enforced servitude, whether through abductions, or the practice of demanding at least one member of each family.

Ms van Gerpen indicated that the family then decided who would serve, which seems to me a strange use of the term decision. Sadly, through its failure to make clear what I am sure is its abhorrence of such practices, the international community seems to have condoned this, and to be more concerned about ensuring that the families of its own workers are spared.

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In urging you to make sure that all members of your staff are careful about appearing to condone LTTE pretensions as to sovereignty and its right to make laws, I should draw your attention to the document promulgated by the LTTE entitled '**Judicial Administration of Tamil Eelam**'. I assume your office would have obtained a copy of this in the days when even some elements in the Sri Lankan government seemed to believe that this so-called Administration might be permitted to hold sway over our citizens.

The first clause of that document is –

'1. It functions on the basis of the direct approval of His Excellency Mr V Prabakaran, the National Leader.'

Then, after enumeration of the different sorts of judges,

'2. Only he has the authority to reduce or increase the sentences of the Courts wherever the need arises.'

3. All laws are made with his approval.'

The Supreme Court **'consists of three judges, appointed by the National Leader.'**

Given the caveat made to Ms van Gerpen, you should perhaps know that the section on Legislation specifies

'1. Making of Laws.

Drafting new Laws in accordance with the needs of the time, and in terms of the attitude and conduct of the people.

2. Approving:

Whenever the need arises for new laws, in terms of the needs of the judiciary, adopting the appropriate laws of other nations.

The committee for the review of legislation consists of

'1. Official in Charge of Political Field.

2. Official in Charge of intelligence. and six others in charge of **Finance, Police, Judicial Administration, Research Organization of women, "Chencholai", Refuges Rehabilitation.**

This committee for review after having discussed and reviewed the Legal drafts drawn by the legislation submits the final form of draft to the National Leader for approval. This Committee will meet as and when needed.

You should also note that the head of the judiciary seems to be someone called **'Official in Charge (all)** whose first duty is **'Implementing the views of National Leader in respect of Judicial Administration Informing him'**

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I should also mention here other instances in which terminology used by the UN is inappropriate, and may seem to support an unelected authoritarian regime. The last IRIN report says that 'The LTTE allows the government's civil administration to function in areas under its control but keeps a watchful eye on their activities'. The UN should not seem to condone the idea of LTTE indulgence, accompanied by due caution. A more appropriate way of describing the situation would have been,

'The government continues to function in areas under LTTE control, through legally appointed representatives such as Mr Vedanayagam. It fund numerous services, including health and education, many aspects of which the LTTE does not disrupt, though ensuring that its own priorities are fulfilled.'

I would not expect you to record that amongst services disrupted is the education of some children. I hope however that you and your staff will work more purposefully to

minimize this. Accepting the argument that so-called 'legislation' is necessary to stop abuse is not conducive to the ends we all seek. I believe that, even if intended as tactful and gracious, this will be seen as appeasement, and history has shown us that appeasement does not work.

Yours sincerely,

Rajiva Wijesinha

² Release regarding the excesses of Human Rights Watch

Bring back the Clowns - Human Rights Watch returns to the Ring

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Human Rights Watch has once again dropped a beautifully timed cluster bomb on Sri Lanka. Often these explosives coincide with the sessions of the Human Rights Council in Geneva, and this year is no exception, though we can also detect a tendency to try to prevent the Sri Lankan forces from dealing conclusively with a terrorist threat.

This practice commenced in 2007 when, following the quick and effective operation to liberate the East from the Tigers, HRW delivered a diatribe in which it accused the government of conducting a Dirty War (a phrase successfully calculated to hit the headlines), of indiscriminately attacking civilians, of ruthlessly displacing people and also of forcibly resettling them.

We gave the lie to all these allegations, using evidence gathered not only from the actual Human Rights report (which recorded for instance only one instance of allegations of civilian deaths, which HRW itself granted occurred in a place where the LTTE was present and where bunkers had been dug), but also from the UNHCR certification that 'the returns are voluntary and in line with international protection standards'. HRW failed to respond to our letters, sent direct to their plenipotentiaries in the capitals, as well as to the delightful Ms Zulueta, who could not respond to our queries at the meeting to which we had invited her, as she was new to the job.

Her promise to look into the matter and get back to us seems to have been yet another of those placatory falsehoods that HRW uses when in a tight corner, as when they cancelled the meeting in the British House of Commons after they heard that I would be there to respond to their allegations. I will not be so presumptuous as to assert that

there was a causal connection, even though the representative of the High Commission who had secured my attendance after the Foreign Minister requested it thought the cancellation was not entirely a coincidence.

Despite running away then, HRW like the Tigers came back to fight another day, and renewed its charges, without any evidence, of 'indiscriminate bombing and shelling'. We were able to show that this was arrant nonsense since, even adding up all the allegations on Tamilnet, obviously not the most objective of sources, the figure cited of civilian casualties was not more than a hundred in the last six months of last year.

Perhaps as a result of our citation of this fact, there have been many more allegations of civilian deaths this year, and the Tamilnet allegations amount to 2000 over January and February. The figure HRW cites is exactly that and, though they claim they have independent sources, it would require excessive credulity to believe that the two sets of figures were entirely unconnected.

HRW sadly seems to believe that, apart from the LTTE, they are the only people concerned about these civilians. They forget that these are Sri Lankan citizens, who are the responsibility of the Sri Lankan government, which has fed and educated them over several years, and kept them healthy with medical services provided with a dedication that all international observers have commended.

At the Peace Secretariat we monitor all allegations of civilian casualties, and seek explanations of what happened. The reasons for allegations may not always be clear, but we have had the utmost cooperation, for instance receiving a detailed explanation of the allegations of civilian deaths in just the one air raid in November out of a total of forty that took place in that month. We were told what the target was and, while there could be no guarantee that there had been no collateral damage, it was explained that this was because the LTTE sometimes forced civilians into close proximity to military installations. Certainly the inconsistencies in the Tamilnet account of the incident, bombs from planes turning over a couple of days into cluster bombs made in Russia dropped from Russian planes shows very clearly how cleverly the LTTE tries to manipulate the Western opinion whose indulgence it craves.

After we had published our detailed analysis of figures last December, the LTTE evidently decided that it had to make more dramatic allegations. So the numbers have increased by leaps and bounds, to be dutifully taken up by HRW. They also evidently decided that, since the Sri Lankan forces were careful about such casualties, they had better contribute to this themselves. **Thus we see that, on the day, January 26th, on which Tamilnet claimed the largest amount of civilians casualties, 300, the UN finally decided that the firing had come from the LTTE. Just in case this sounds incredible - and a reporter I was explaining it to was actually convinced only when he saw the message, with sign off (from the UN Resident Coordinator Neil Buhne) that had been forwarded to me on my telephone - the exact words used were 'For**

info we believe that firing this morning most likely was from an LTTE position'.

Earlier in the day the UN had wondered whether the firing had been by the Sri Lankan army. But we have got used to this. When it is clear the LTTE has fired, the claim is that nothing can be said for certain. When nothing can be said for certain, the claim is that the Sri Lankan forces did it. Fortunately, as clear evidence mounts that the LTTE is not only quite happy for civilians to die, but actually unashamedly promotes this through suicide bombing and grenades and direct firing aimed at those trying to get away, that particular canard is being slowly but surely laid to rest.

Hence the second canard that was first assiduously pushed by HRW, which introduced the term internment camps to describe the centres in which civilians who escape from the LTTE into government controlled territory are kept. HRW started this several months ago, in an obvious attempt to justify the LTTE claim that no one really wanted to get away, and thousands of people were actually delighted to be herded into ever smaller spaces under LTTE control.

Surely HRW must realise that this is not a question of internment, which is what the British did to the Boers, the Germans to the Jews, the Americans to the Japanese (though this last without the starvation and death the British and Germans had inflicted, as the London Times so graphically described it), collecting people from their homes and herding them together against their will.

We are talking here of people who have of their own volition, and with incredible courage, got away from the LTTE. But we also know that amongst them there could be suicide bombers and snipers so, as in the case of all refugees, there needs to be checking and careful attention to security requirements. These after all are our people, and as we have seen the bombs are aimed at civilians too. We will not take the chance of further mayhem, but meanwhile we will ensure that, subject to security needs, these are people will have all comforts possible, not only the basics that are the norm by international standards, but even more - so much so that the UN has told us that they cannot provide funding for conditions that are better than what they are mandated to provide.

The latest Human Rights Watch is replete with insinuations that Orwell's Ministry of Truth could have studied to refine its Doublespeak. The displaced persons who 'escape to what they hope is safety' are 'instead put in internment centres masquerading as "welfare villages"'. That 'instead', aided and abetted by the HRW masquerade, does yeoman service for the LTTE as well as HRW, since it implies that the people might as well stay in Mullaitivu. However, in spite of HRW assiduously making such a point for months now, 35,000 of the displaced finally managed to make their way to safety, in spite too of the LTTE even murdering some to try to stop this.

HRW claims that the government is 'secretly taking away apparent LTTE suspects to arbitrary detention or possible enforced disappearances'. This too is arrant nonsense,

based as it is on what Tamilnet is claiming. Again the use of doublespeak - 'apparent .. suspects' and 'secretly...possible enforced disappearances' - is designed to denigrate a perfectly decent procedure whereby, even of those who confess to being cadres, only a few have been committed formally to rehabilitation centres, the others being allowed to stay with their families in the welfare villages. This may not be entirely wise but it is the humane thing to do, since doubtless many of these have been forcibly conscripted - but it also reinforces the need for constant vigilance, since the chances are that one of them may be a sleeper waiting to commit mayhem. The majority should not suffer because of worries about one but, if that one succeeds, it will be one disaster and many deaths too many.

Human Rights Watch describes a visit to a hospital, without explaining who had made the visit, and whether it was another case of the false pretences under which it had produced its previous report. Not unsurprisingly, where Human Rights Watch can see only problems, a lack of materials such as sheets and a paucity of personnel, more responsible international observers such as the ICRC and the UN have remarked on the dedication of those who are working and the quality of the care bestowed under difficult circumstances. HRW, which was conspicuously silent last March, when other Human Rights organizations issued a joint statement on an earlier incursion into Gaza, is obviously incapable of giving credit to a country which is so dedicated, despite limited resources, to looking after its own.

The care taken of these patients gives the lie to the HRW assertion that the government has claimed that those who were trapped in the war zone 'can be presumed to be siding with the LTTE and treated as combatants'. What prompted this perverse interpretation should be examined in detail, but it must be noted that the government has continued to provide food for these people with the assistance of the ICRC, and to get them away for required medical treatment, prompting a recent acknowledgment by the ICRC, that it 'is supporting the Ministry of Health in Trincomalee district as it provides care for this exceptional influx of patients'.

But the HRW technique is to ignore everything positive that those who actually work in the Vanni say, and instead assert abstract principles that go against the policies and practices of a government providing and coordinating more humanitarian assistance than any other country in such a conflict situation. So HRW talks of government efforts being insufficient, but it ignores the fact that food was supplied throughout in massive quantities, so that even the Americans have now realized that the LTTE used to help themselves liberally to what the UN took in. Significantly, though HRW talked constantly, in the days in which the LTTE was herding people along with them, of impending epidemics, it has not acknowledged the sterling work of the Ministry of Health in preventing this, through the dedication of its personnel and the constant supply of drugs.

Whilst the release is replete with false and malicious assertions about the Sri Lankan government and forces, HRW masks its dependence on Tiger propaganda for such

claims by expressing the usual reservations about the Tigers too. But these refer to diabolical actions that are well known, and ignore the more recent excesses of the Tigers in deliberately targeting civilians and humanitarian workers such as the nun who is now recovering in a government hospital from LTTE shooting.

Of the fourteen paragraphs in the release, eight are categorical condemnations of the government, three blame both 'sides' and three criticise the Tigers. The release is headlined 'Army Shells and Detains Displaced Persons, Tamil Tigers Prevent Their flight', a use of verbs that Orwell would have relished, since the army is presented as actively wicked, the Tigers only passively so. The first para of the release, which HRW is too skilful not to know is the most important one, reinforces this vituperation against now not just the army but the government, in saying that it 'should immediately cease its indiscriminate artillery attacks on civilians in the northern Vanni region and its policy of detaining displaced persons in internment camps'.

The only silver lining in this cloud is that HRW now seems to have realised that the 'indiscriminate bombing' it alleged in May is simply untrue. But, since it continues with its witch hunt with nary an apology for its errors, we can only assume that it will continue to use every trick in the book, including manipulation of words and repetition of figures parallel to those on LTTE websites, to denigrate a government that is on the verge of destroying one of the most powerful terrorist movements in the world, while providing unparalleled care for the civilians held hostage for so long by that movement.

³ Extract from a release regarding civilian casualties

The Australasian Federation of Tamil Associations (AFTA), which describes itself as the peak body representing the Tamil Diaspora living in Australia and New Zealand, has expressed deep concern over five Tamil doctors recanting the statistics they were 'dispatching to the outside world during the last stages of the war.'

The AFTA pronouncement, in throwing doubt on the statements of the doctors now made in public, privileges earlier reports of what they said when under the control of the LTTE. As to these, even the London Times, which has been consistently critical of the Sri Lankan government, said 'It would be surprising if the Tigers, who were no slouches when it came to the manipulation of the media, had not attempted to modify the doctors' testimonies'.

AFTA may not accept this. However, in accepting as gospel figures attributed to these gentlemen when they were under the control of the Tigers, AFTA has ignored logic as well as clear evidence. And to shore up their argument they cite me as well, but instead of quoting me direct they rely on a British newspaper report.

They assert that, in an interview with the Guardian, I said that I 'would estimate that the civilian death toll from the last stages of the war with the Tamil Tigers as 3,000 to

5,000'. They go on to claim that 'Therefore the doctors' statements are in contradiction to the accepted casualty figures of the government itself.'

This is nonsense. My estimate to the Guardian was of total deaths during the war, and was in line with what I had written in an earlier press release I had shared with them, which noted that, when TamilNet and others cited figures of casualties, there were three important questions that had to be asked, viz

First, are the figures of dead and injured accurate?

Second, are they all attributable to the Sri Lankan forces, or might some of them at least have been inflicted by the LTTE?

Third, are all those who died or were injured civilians?

Whilst we cannot provide definite answers to any of these questions, we can certainly dismiss outrageous claims through logic. Sadly AFTA blindly repeats the lunatic Times assertion of 20,000 deaths, even though the Times has used three different arguments to justify this figure, each more ridiculous than the last. The latest is that they made an estimate of beach graves, whereas earlier they had cited 20,000 for the entire period from January on, when the fighting was taking place far from the beach. Before that they claimed they worked on the basis of bodies they were told were brought in to various centres, but they multiplied these by about five to get the figure they wanted.

My own estimate was based on the figures of the ICRC for those they had brought away from the conflict zone to Sri Lankan hospitals. AFTA claims the ICRC 'evacuated almost 14,000 wounded or sick patients and accompanying caregivers' but fails to note that fewer than 6000 of these were wounded (and that includes some sick too). Since all claims with regard to the conflict, including those of TamilNet, never estimated the number of dead at more than half the wounded, that led to the conclusion that the total number of deaths would have been under 3000. This was the figure I first mentioned to the Guardian, in line with what I had written. They asked however for an estimated complete death count and, in including estimates for the final pitched battles the Tigers fought, outside the no fire zone before it was completely surrounded as well as inside at the end, I said it could have been 5000 at the outside.

That was a total which included combatants as well as civilians, almost wholly hard core combatants for the pitched battles. ICRC figures did not distinguish between wounded combatants and wounded civilians, and of course the Sri Lankan health service asked no questions but faithfully served all those brought into its care. Since obviously there would have been wounded combatants amongst the fewer than 6000 taken for care, any estimate of dead would also have included combatants. Though many combatants would have been young innocents forced to fight by the LTTE, unfortunately, if they were pushed into the front lines with guns, they had to be treated as combatants not civilians.

Given the techniques used by the LTTE it is quite likely that many of those killed were combatants of one sort or another, while we know from the testimony of many who tried to escape that the LTTE was ruthless about killing civilians. In this light the testimony of the doctors now, that 'only up to 750 civilians were killed between January and mid-May in the final days of the war' (whatever that timeline means), is quite plausible. The rest of the dead could very well have been combatants forced to fight by the LTTE.