

**UN Human Rights Council meeting**  
**Another Farce<sup>1</sup>**

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*This is not a document for easy reading, nor is it meant to be. It is a reasonably comprehensive record of the abysmal record of the UN and the UN Human Rights Council (UNHRC) in addressing human rights violations. It is being submitted to the UNHRC and will probably end up in a dustbin. So be it.*

The 19<sup>th</sup> Session of this talk-shop started on 27 February 2012 and will go on till 23 March 2012. While people concerned with the serious violations of human rights of the Tamil people by the murderous politico-military junta led by President Mahinda Rajapaksa are hoping that this Meeting will demand an international investigation into war crimes (as suggested by the UN Secretary General's Advisory Panel of Experts<sup>2</sup>), I am highly sceptical that it will. The track record of the UN and the UNHRC is such that to believe otherwise is ignorance, if not plain stupidity.

The bombshell has just been dropped, the (UK) Channel 4 News documentary "*Sri Lanka's Killing Fields: War Crimes Unpunished*", a follow-up to the shocking video "*Sri Lanka's Killing Fields*" aired in June 2011. The latter was screened at a special showing in the UN Human Rights Council meeting soon after it was released. It shocked the world and even the hardened diplomats in the UNHRC, some of whom were unable to continue watching the ghastly scenes and turned their heads away (I saw this on a recording of the showing).

The Channel 4 "*Sri Lanka's Killing Fields: War Crimes Unpunished*" was shown to a packed audience on 11 March 2012, during the International Human Rights Film Festival in Geneva. It ends with, "*Can the cries of thousands of Tamils continue to fall upon deaf ears?*"

This latest video could be even more damaging for the GoSL, not only because it shows the cold-blooded execution of the 12 year old son of the Tamil Tiger Leader, Velupillai Prabakaran, executed point-blank, with a gun held not more than a few feet from his bare chest, but also involves the UN itself. The last UN overland food convoy was targeted and subjected to a massive sustained shelling by the Sri Lankan Armed Forces. Two of the UN staff were foreigners, one an Australian, Peter Mackay, who in a sworn statement describes how the shelling was re-targeted after the GPS co-ordinates of the site had been given to the Government of Sri Lanka (GoSL). The resulting carnage was photographed by the UN workers.

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<sup>1</sup> This paper was written well before the Human Rights Council meeting started on 27 February, 2012, but I decided to hold it back till I was able to be sure it was yet another farce. There is now overwhelming evidence that it is a farce.

<sup>2</sup> "**Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka**". Marzuki Darusman (Indonesia), Chair; Steven Ratner (United States); Yasmin Sooka (South Africa). Appointed 22 June 2010, started work on 16 September 2010. A 124 page Report submitted 31 March 2011.

The Panel were lawyers of international repute:-

**Marzuki Darusman** (Indonesia) former Attorney General and past Chairman of Indonesia's National Human Rights Commission and Founding Director of the Human Rights Resource Centre for ASEAN, **Steven Ratner** (US), Professor of Law, University of Michigan Law School, an authority on Law of War, and **Yasmin Sooka** (South Africa), Executive Director of the Desmond Tutu Peace Centre, and formerly

Gotabaya Rajapaksa, the President's brother and Defence Secretary, and General Sarath Fonseka, Army Commander, now in jail essentially for contesting Mahinda Rajapaksa for the Presidency, seem to be in trouble, or rather, in more trouble than they already are in. I will detail this later.

The timing of this latest release could not be better. Whether the UNHRC will arrange a special showing of this documentary to the delegates (as it did with the earlier one), I do not know. For sure, the Sri Lankan delegation, all 90 of them(!), will be hell-bent on blocking this. Whether or not *realpolitik* will prevail, as it usually does, and a decision made not to show it, I have no doubt that it will be in the minds of the delegates as they vote next week on the (weak) Resolution that has been tabled by the USA to 'censure' Sri Lanka ('a gentle rap on Sri Lanka's knuckles' will be a better description of the US-backed Motion.)

A second bombshell has just exploded. The internationally acclaimed International Commission of Jurists (ICJ) has just made an Oral Intervention (on 13 March 2012). delivered a stinging blow that will leave Sri Lanka reeling.

### **The ICJ Intervention**

International Statement by ICJ at the UN Human Rights Council March 13, 2012

United Nations Human Rights Council 19th Regular Session, 27 February- 23 March 2012 Agenda Item 4

*Sri Lanka: ICJ Oral Intervention in the General Debate under Item 4 Concerning Human Rights Situations that Require the Council's Attention*

*13 March 2012*

"Madam President,

The International Commission of Jurists (ICJ) welcomes the initiative of the United States of America to introduce a draft resolution on promoting reconciliation and accountability in Sri Lanka. The time for assurances, commitments, plans and intentions has long passed. The time now is for action by the Government of Sri Lanka, and time for this Council to take responsibility in the face of a Government that is clearly unwilling to comply with its international obligations to undertake prompt, independent and effective investigations into serious and credible allegations of gross violations of international. Human rights law and serious violations of international humanitarian law, including torture, unlawful killings and other crimes under international law.

The key to this initiative must be to treat it as a first step. The Council must remain actively seized of the matter to ensure action, not just words. It is almost three years now since President Rajapaksa undertook to ensure accountability for violations of international humanitarian law and human rights. The Government of Sri Lanka has a long history – since 1977- of using national commissions of inquiry as a means of circumventing the criminal justice system and of not implementing commission of inquiry recommendations. This is compounded by the very recent examination of Sri Lanka by the Committee Against Torture, where the Committee referred to information from the Government of Sri Lanka that over 100 police and intelligence personnel had been indicted or were being investigated on allegations of torture. It transpires, however, that there have been only four convictions under Sri Lanka's

It is therefore critical that this initiative receive wide support by Council members, and that it be treated as a first step. The credibility of the Human Rights Council depends on this. Words must be translated into action.

I thank you.”

Statement delivered by: Mr. Alex Conte, ICJ Representative to the United Nations

Whether any of this will make the slightest difference to the voting, I do not know. The delegates might have already decided how to vote, a decision made in back-room deals done with the GoSL, than on the absolute need for the UNHRC to demand an international investigation into war-crimes committed during the closing stages of the war (January – May 2011).

### The failure of the UN and its bodies

One of the features of the UN has been its abysmal failure to develop any effective systems for the protection of human rights following the Universal Declaration of Human Rights in 1948. What has been striking is the sheer hypocrisy that has attended diplomatic conferences and covenants on the subject. It has resulted in multiple and massive breaches of human rights which seem to be increasing. Over a hundred international treaties, conventions and declarations have been promulgated, taking diplomats to the world's most pleasant and expensive cities: Geneva (incessantly), the Hague, Vienna, Rome and New York.

The result has been to define human rights on paper – endless reams of paper, and endless talk-fests, but never to seriously discomfit murderous or even genocidal regimes that commit massive violations of human rights with impunity.

What little progress has been made is by the moral force of the principles themselves, promulgated by hundreds of non-government organisations (NGOs) like Amnesty International (AI), Human Rights Watch (HRW), and the Brussels-based International Crisis Group (ICG), led by some truly outstanding people.

The UN Human Rights Council is not an exception. A Council to ‘Restore Hope’ has become a Council to ‘Abandon Hope’. That is *realpolitik* where geopolitics is far more powerful than the need to address the violation of human rights. Those who believe otherwise are not in the real world.

This paper was ready for publication before the current meeting even started, but I decided to wait to see what was happening before I released it. There is now enough evidence from what has already been presented, that *nothing* of any consequence will happen. I hope I am proved wrong, but I doubt if I will be. The new Channel 4 video *might*, just might, make a difference.

### The absolute need for an International Investigation into war crimes in Sri Lanka

There is obviously an imperative need for an independent, international investigation into what has gone on (and is still going on), given that there was a slaughter of at least 40,000 Tamil civilians in the North and East from January to May 2009, with another 160,000 unaccounted for – an atrocity committed with international observers and humanitarian groups (including those affiliated to the UN) excluded from the war-zone by the GoSL.

The UNSG's Expert Panel's Report stated clearly:

*“In the light of the allegations found credible by the Panel.....The Secretary General should immediately proceed to establish an independent international mechanism, whose mandate should include the following concurrent factors....Conduct investigations independently into the alleged violations.....”*

It cannot be more forcefully put than that.

UN Secretary General, Ban ki-Moon, who had this Report on 31 March 2011, has done nothing in the past year. He says that he does not have the power to act. If so, the question is why he appointed the Panel in the first place, if he cannot act on its recommendations. What was he hoping for? Glowing praise for Sri Lanka and a complete exoneration of having committed war crimes and crimes against humanity? What he got was a damning Report, with a bald statement that the GoSL was lying:

*“The Panel’s determination of credible allegations reveals a very different version of the final stages of the war than that maintained to this day by the Government of Sri Lanka. The Government says it pursued a “humanitarian rescue operation” with a policy of “zero civilian casualties”. In stark contrast, the Panel found credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed by the Government of Sri Lanka and the LTTE, some of which would amount to war crimes and crimes against humanity. Indeed, the conduct of the war represents a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace.”<sup>3</sup>*

Well may we question the UN Secretary General's agenda.

If the UN Secretary General cannot act, then some other body will have to act. A comprehensive and serious Report by people of international standing cannot be shelved (which is what Ban ki-Moon has done for the past year). He cannot get away with it, nor can the UN and its various bodies such as the UN Human Rights Council.

If they do not act, their credibility will be on the line as was spelt out by Archbishop Desmond Tutu (a Nobel Prize winner) and Mary Robinson (the former Irish President<sup>4</sup> and the UN High Commissioner for Human Rights<sup>5</sup>). In an article **“Our duty to Sri Lanka, and human rights”** published by the *Guardian* in the UK on 26 February 2012 (the day before the UNHRC meeting) they pointed out that it is not just the Sri Lankan people that the UN Human Rights Council must serve this week, but the cause of International Law. They ended their article setting out the ramifications of a failure of the UNHRC to act:-

*“Finally we want to emphasise that Sri Lanka's recent history is an issue that concerns all of us. Whether or not the Human Rights Council is able to summon the will to act on one of the most serious cases of human rights violations to have occurred since it was founded in 2006 could have ramifications for the global standing of human rights and international humanitarian law – and for the prestige and authority of the council.*

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<sup>3</sup> Page ii of the Executive Summary of the 124 page Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka. 31 March 2011

<sup>4</sup> December 1990 to September 1997, when she stepped down before her term of office was complete

Their letter is in Appendix 1.

This was followed by a devastating Report from the Brussels-based International Crisis Group, headed by the distinguished Louise Arbour, another former High Commissioner for Human Rights<sup>6</sup> (Appendix 2).

After the Meeting started, the UN Secretary General's Panel of Experts expressed their concerns at the lack of any action so far, nearly a year after their Report.

Here is what they wrote on 2 March 2012<sup>7</sup>:

*“Revisiting Sri Lanka’s Bloody War”*

Marzuki Darusman, Steven Ratner and Yasmin Sooka

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*“Even as attention is riveted on the bloodshed in Syria, another conflict, far more deadly, is belatedly attracting the notice it deserves.*

*Beginning this week, the U.N. Human Rights Council in Geneva has returned to an issue that has haunted it since 2009 — the bloody finish to Sri Lanka’s civil war. That conflict ended on a stretch of beach in the country’s northeast, as the remaining fighters of the Tamil Tigers and tens of thousands of traumatized civilians were surrounded by and surrendered to the Sri Lankan Army.*

*Sri Lankans and many abroad rejoiced at the defeat of a force that had routinely deployed terrorist tactics. But even as the government’s military campaign was under way, it became clear that the cost in civilian lives from its attacks on the Tigers was enormous. Right after the war, the Human Rights Council, to the shock of many observers, passed a resolution praising Sri Lanka’s conduct of the war. Sri Lanka’s president, Mahinda Rajapaksa, promised Secretary General Ban Ki-moon at the time that he would address the question of accountability for violations against civilians.*

*When, a year later, the government had done nothing to carry out Rajapaksa’s commitment, the Secretary General asked the three of us to study the allegations of atrocities during the last stages of the war and Sri Lanka’s response. In our report, we found credible evidence that both sides had systematically flouted the laws of war, leading to as many as 40,000 deaths — many multiples more than caused by the strife in Libya or Syria.*

*The bulk of that total was attributable to deliberate, indiscriminate, or disproportionate governmental attacks on civilians, through massive shelling and aerial bombardment, including on clearly marked hospitals.*

*Rather than tackling these allegations head-on through a truth commission or criminal investigations, Sri Lanka created a “Lessons Learnt and Reconciliation Commission,” whose mandate, composition and methods all cast serious doubt on its willingness to uncover what really happened in those fateful months.*

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<sup>6</sup> Former UN High Commissioner for Human Rights, a former Puisne Judge of the Supreme Court of Canada and the Court of Appeal for Ontario, and a former Chief Prosecutor in the International Criminal Tribunals for the Former Yugoslavia and Rwanda. Since July 2009, she has been the President and CEO of International Crisis Group.

<sup>7</sup> *The New York Times*. 2.3.2012 <http://www.nytimes.com/2012/03/03/opinion/revisiting-sri-lankas->

*When the commission issued its final report last November, it ignored or played down our report's conclusions and characterized civilian deaths as stemming from the army's response to Tamil Tiger shelling or cross-fire — as sporadic, exceptional and mostly inevitable in the heat of battle.*

*When it came time to proposing next steps for the government, it called for investigations by the same entities — the army and the attorney general — who have a track record of ignoring governmental abuses for decades.*

*The report had some welcome elements, too. It recognized some of the root causes of the war, as well as the responsibility of both the government and Tigers for civilian casualties. And it endorsed our view that Sri Lanka had a duty to provide truth, justice and reparations to victims; release detainees; and protect the state's besieged journalists.*

*Yet the fact is that numerous recommendations of prior commissions of inquiry have not been implemented by the government.*

*The Human Rights Council's members are currently looking at a draft resolution, circulating at the initiative of the United States, to demand action from Sri Lanka on uncovering the truth and achieving some real accountability. The United States deserves a great deal of credit for trying to get the council to move on this issue. It is time for the council to correct its embarrassing decision from 2009.*

*Yet such a demand is not enough. Given Sri Lanka's unwillingness to take concrete steps, the best way to get to the truth is for the council to create an independent investigative body to determine the facts and identify those responsible, as we recommended in our report.*

*For Sri Lanka to experience a true peace, rather than simply the peace of the victor, truth and accountability are essential. This is the lesson from states as varied as South Africa, Sierra Leone and Argentina. The lack of much outside interest in the bloodshed while it happened cannot be an excuse for continuing to ignore the situation. The international community must now assume its duty to ensure that Sri Lanka fulfils its responsibilities to all its people and to the rest of the world”.*

**Marzuki Darusman** is a former attorney-general of Indonesia, **Steven Ratner** is a Law Professor at the University of Michigan, **Yasmin Sooka** is the Executive Director of the Foundation for Human Rights in South Africa.

It is obvious that these three distinguished people feel that the enormous time and effort they expended, putting together an outstanding Report, despite every possible obstacle put in their way by the GoSL, was a waste of time, given that there has been no action. This sense of frustration is shared by many.

### My experience with the UNHRC

Having been to these UNHRC meetings, I know exactly what goes on and what will happen— in a word “nothing”. Will a Resolution be passed demanding an independent International Investigation into war crimes and crimes against humanity be passed? I would say an emphatic ‘No’. Despite the demands by the UN Secretary General's Advisory Panel of Experts to look into accountability for the crimes that occurred, will any effective action be taken? Answer: “No”. I hope I am wrong, but I doubt that I will be.

## The UNHRC meeting in Geneva

Let me set out what happens at the UNHRC meeting. There is the main Auditorium where whoever is picked to present a problem, or has a case to answer in human rights, speaks. The allocated time is about 10 minutes, 30 minutes at the very most. (Amazingly, the Sri Lankan Representative, Mahinda Samarasinghe spoke for nearly an hour on 27 February 2012 – and got away with it! No one, not even “Madam President’ (presumably Navanethem Pillay), thought it necessary to tell the Sri Lankan representative that his time had run out and that he must stop).

In addition to the day’s Program in the Auditorium, there are a number of ‘side-shows’. These are actually more important and certainly more productive than what goes on in the Auditorium. You can take your pick as to which ‘side-show’ you decide to listen to (and ask questions). I will later set out my experience in one of these ‘side-shows’ at the Council meeting I attended in 2007, because it is very relevant to what is going on today.

Then there is the canteen and the corridors where most of the lobbying and ‘friendly chats’ occur. It might be a diplomat from one of the countries, a clerk pretending to be a VIP, or some pompous ass strutting around as if he is the most powerful person on earth. I have seen many of them, almost all from Sri Lanka.

You find a table, try and find one of the VIPs, or someone pretending to be one, get him/her to your table, buy him/her a cup of coffee, and tell your story (the version that he/she will not hear from the Government).

In the evening there is much more lavish ‘entertainment’ arranged by the Government at some of the most expensive hotels in Geneva. The food is the best, the wine is the best, and cost is not a problem. It is all met by the struggling taxpayers back home.

Deals are done, if they have not been done already (in the weeks and months leading up to the meeting). Needless to say, only the select few (or many) are invited. On one occasion when I was there, the Sri Lankan delegation invited some 50 delegates and VIPs (real or imaginary) from other countries. Disappointingly, only three turned up! This is, of course, not a problem because the Government brings its own ‘cheer squad’ (I gather that for the current meeting the Sri Lanka contingent was about 90).

They are not only wined and dined in style, but promised various perks, a free holiday, trade concessions, a vote in their favour if any adverse motion is brought against their country (on a *‘you scratch my back and I will scratch yours’* basis) etc. All concerned have a good time. It is all good fun and paid for by the taxpayers back home who are told that this is what their Government is doing *for them*, and if they grumble about, or even question, the extravagance and cost, they must, by definition, be Tamil Tiger Terrorists or traitors to the Sinhala Nation). *This* is what patriotism is all about, say the President and his stooges).

They all go home to return in three months, for more of the same.

## A Talk-shop

As for UN HRC being a ‘talk-shop’, you do not need to rely on my opinion. Here is what Geoffrev Robertson QC, a world expert on Human Rights, who was interviewed

He not only set out what a useless talk-shop the UN Human Rights Council is, but dealt with what could be done in a more productive forum. His full interview is in a dvd recorded by me, "Sri Lanka. Genocide, Crimes against Humanity, Violation of International Law". Here is what he said about the UNHRC:-

*"The Human Rights Council is a highly politicised body. It is made up, not of experts on human rights, but of paltering diplomats. Europe is allocated only 7 of the 47 seats and we have countries like Russia and China obviously concerned to keep their own internal problems down and away from international oversight.*

*So the decision (to commend Sri Lanka – which the UNHCR did) is not really surprising. Sri Lanka is a member of this highly politicised Council, despite the efforts of Desmond Tutu and Jimmy Carter last year to stop them gaining membership and they passed this rather self-congratulatory motion.*

*So, although the Human Rights Council has set up an important investigation into the Israeli-Palestinian conflict over Gaza looking at both sides, they weren't prepared to look at both sides (in the Sri Lankan conflict).*

*However that's not the end of the story in the UN sense. UN officials can still look into it. Sir John Holmes is concerned. Judge Navi Pillay wants to conduct an investigation.*

*More importantly, there is the UN Human Rights Committee which sits in Geneva. It is a kind of Court and individuals can complain to it. Unusually, Sri Lanka has actually signed up to the International Convention on Human Rights which has this body that investigates complaints. So any individual can complain against Sri Lanka.*

*So there is certainly going to be an inquiry, I would have thought, by Human Rights Committee.*

*And there are other possibilities - the Convention on Torture, the Convention on Rights of the Child, even the Genocide Convention, could all be applied in due course,*

*So there are ways and means of finding out – fact-finding in effect - as to whether there have been breaches of the Geneva Convention, the targeting of civilians, the bombing of hospitals, and so forth, as has been alleged."*

Concerned people, in particular the expatriate Tamil community, waiting for the UN 'to do something', are living in a dream world. The UN and its bodies do not act this way. They never have – an abysmal record of failure, which is not about to change.

My experience at a 'side-show'. Useful and Useless.

It was early 2007. I was at the UNHRC meeting, floating around. I went to the Auditorium and finding nothing of great interest, retired to the canteen for a cup of coffee. A friend of mine was scouting around trying to find someone 'of importance' for me to do what I had gone there to do – to focus on the human rights violations in Sri Lanka.

He found one, a 'VIP' (supposedly), a Member of the House of Lords, part of the UK delegation (so I was told). Within a few minutes I realised that he knew nothing of Sri Lanka's past history and Britain's thoroughly irresponsible act of handing the country



price – which we were there at the UNHCR to address. He either did not know, or did not *want* to know. I realised that I was wasting my time.

Many cups of coffee later, I decided to ‘walk the corridors’ trying to find something interesting to listen to, and even contribute to, if the opportunity arose.

There it was – a ‘side-show’ on torture. With Sri Lanka specialising in this dreadful violation of human rights, I decided to duck in, accompanied by a couple of seasoned hands, ‘trouble makers’ (those who ask difficult questions). The Chairperson was a young Australian, with four speakers. I was advised by a well-experienced friend, to sit in the front row, directly opposite the Chairperson, so that as soon as questions were allowed, I could raise my hand and ‘be seen’.

We listened and listened. The word “Sri Lanka” was not even mentioned. The four spoke, and the Chairman invited questions. Up went my hand and I asked why Sri Lanka, where torture was at epidemic levels, was not even mentioned, let alone discussed. I will omit the verbal dual that followed – the ‘who are you, what organisation do you represent etc’. I simply said, “No organisation, just here to ask why Sri Lanka was not even mentioned this last hour”. With no explanation from the Chair or the Panel, I left in search of more coffee.

Half an hour later, a lass (who described herself as an ‘Intern’, tracked me down, “*Sir, the Chairman wants me to inform you that someone from the UN will visit Sri Lanka*”. I said, “*Great.*”

When I heard that Manfred Nowak had been picked by the UN, I knew that Sri Lanka was in trouble. He was the Professor of Constitutional Law and Human Rights, University of Vienna, who from 2004 (to October 2010) was the ‘UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment’. He has a vast experience in this area.

He arrived in Sri Lanka on 1 October 2007 for just a week (till 8 October). Despite the short visit, I knew he would ‘deliver the goods’.

He did, submitting a devastating Report to the UN General Assembly committee dealing with social, humanitarian and cultural issues (the “Third Committee”). Here are just a couple of paragraphs:-

*“The high number of indictments for torture filed by the Attorney General’s Office, the number of successful fundamental rights cases decided by the Supreme Court of Sri Lanka, as well as the high number of complaints that the National Human Rights Commission continues to receive on an almost daily basis indicates that torture is widely practiced in Sri Lanka....*

*“This practice is prone to become routine in the context of counter-terrorism operations.”*

He said that he had received “*numerous consistent and credible allegations*” from detainees who reported that they were ill-treated by the police to extract confessions, or to obtain information in relation to other criminal offences. Similar allegations were received with respect to the army.

This was expectedly refuted by the then Sri Lanka’s Ambassador, Prasad Karivawasam, who addressed the Committee, saying that Nowak had got it all

On 1 November 2007, Mahinda Samarasinghe, Sri Lanka's Minister of Human Rights(!) claimed that Sri Lanka had a "zero-tolerance" policy on torture. This is the same man who addressed the 19<sup>th</sup> UNHCR on 27<sup>th</sup> February 2012, effectively saying that the UNSG's Expert Committee had got it all wrong, and boasted of all the achievements of the GoSL.

A leopard does not change his spots, and Samarasinghe's rambling speech to the 19<sup>th</sup> UNHRC meeting has to be seen in this light.

The failure of the UN to address concerns raised in these Reports, and the failure to follow it up or do anything about a serious problem, was shown by Amnesty International publishing two Reports on torture in Sri Lanka in 2011, three years after Manfred Nowak's Report. One of them is a 31 page detailed Submission to the Committee Against Torture (CAT) in October 2011:- "*Sri Lanka: Briefing to the Committee Against Torture*"<sup>8</sup>, and, in November 2011, another, "*Sri Lanka: Urgent need to prosecute security agents involved in torture*"<sup>9</sup>

In May 2010, Manfred Nowak stepped down from his UN position, saying that torture and secret prisons was a "*global phenomenon*" and, importantly, that they are not being taken seriously by the UNHCR.

I doubt if any violations of human rights, let alone torture, are being taken seriously by this talk-shop.

There were a couple of 'side-shows' in the current February-March 2012 UNHCR meeting.

One was a day or two after Samarasinghe's rambling speech. The meeting was chaired by Samarasinghe with eight of his Ministerial colleagues, the former Attorney General, Mohan Peiris and others.

The Tamil 'troublemakers' – the Global Tamil Forum, British Tamil Forum, the UK Tamil Coordinating Committee, Canadian Tamil Congress, the Transnational Government of Tamil Eelam, the Tamil Centre for Human Rights (TCHR) were there in full force. (Tamil National Alliance (TNA) – the elected representatives of the Tamil people in Sri Lanka were 'missing in action'!)

Samarasinghe gave his usual sermon for 15 minutes explaining the so-called "Action Plan". This was followed by more time-wasting with another sermon from Samarasinghe. He then reluctantly allowed questions. Up went the hands of the Tamils and others. The first to be allowed to speak was a Western person from Paris – a clear plant of the GoSL. That pleased Samarasinghe and his colleagues on the podium.

The hands of the Tamils remained up. Samarasinghe carefully avoided seeing them – especially that of S.V. Kirubahran (TCHR). He held up his hand for so long that it was beginning to sag. Then a retired Swiss lady told Kirubahran "*We are watching how you are being prevented from talking*". An embarrassed Samarasinghe gave him

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<sup>8</sup> <http://www.amnesty.org/en/news/sri-lanka-urgent-need-prosecute-security-agents-involved-torture-2011-11-07>

<sup>9</sup> <http://www.amnesty.org/en/library/asset/ASA37/016/2011/en/2bb1bbe4-8ba5-4f37-82d0-70cbfec5bb2d/asa370162011en.pdf>

the floor with an apology. That resulted in a verbal dual between Kirubharan and 'patriotic Sinhalese' and even Tamils, specially sent there from as far away as Australia, to defend Sri Lanka's indefensible position. There were other clowns from the UK, people I have met, who have disrupted meetings I have addressed, one even in the EU Parliamentary complex (to which he was not invited – but came, nonetheless). The heated 'debate' got going. Personal abuse replaced meaningful discussion. The meeting ended in chaos. That is 'discussion' Sri Lanka style, much the same as goes on in the Sri Lankan parliament regularly.

It was unfortunate that I was not there – not that I would have been allowed to speak. Had I been, I would have asked one single question. *"If your Government is doing the wonderful things you say it is, why do you not allow Amnesty International, Human Rights Watch and International Crisis Group to visit the North and East and talk to the people?"* I have no doubt that it would have been ruled *"An irrelevant question which we, on the Panel, do not need to answer"*, or, as happened to me in the 1980s when I asked this from the then President J.R.Jayawardene in a BBC Foreign Service program, a down right lie. When I asked him why AI was not allowed into his country, he shocked even Nick Worrell, the BBC man in London, by saying, *"Amnesty International can go anywhere in Sri Lanka except to the gallows"*. In reality, AI could not get anywhere near the place. The GoSL has never had any hesitation in uttering the most blatant lies.

With this lengthy, but important, background of the way the UN and the UNHRC work, I will deal with the 19<sup>th</sup> Session of the Human Rights Council, currently in session.

### **The US Draft Resolution**

In January 2012, US Secretary of State Hillary Clinton wrote to her Sri Lankan counterpart that the LLRC recommendations were not being implemented. In February, 2012, US Undersecretary of State, Maria Otero and Assistant Secretary of State, Robert Blake visited Colombo. Otero announced that President Rajapaksa had been informed that Washington planned to bring a Resolution to the UNHRC session. (I will deal with the geopolitics of this later).

The US was looking for a country in Europe, Latin America or Africa, to sponsor and co-sponsor the Resolution. I gathered that the Cameroon was likely to sponsor it.

The US Resolution is just a gentle tap over the Sri Lankan knuckles, if that. Here it is:-

- *"Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, and other relevant instruments,*
- *Reaffirming that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law, as applicable,*
- *Noting the Report of Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC) and its findings and recommendations, and acknowledging its possible contribution to Sri Lanka's national reconciliation process,*
- *Welcoming the constructive recommendations contained in the LLRC report, including the need to credibly investigate widespread allegations of extra judicial killings and enforced disappearances, de-militarize the north of Sri*

*detention policies, strengthen formerly independent civil institutions, reach a political settlement involving devolution of power to the provinces, promote and protect the right of freedom of expression for all, and enact rule of law reforms,*

- *Expressing concern that the LLRC report does not adequately address serious allegations of violations of international law, and expressing serious disappointment that the Government of Sri Lanka has not fulfilled its relevant legal obligations and stated commitment to initiate credible and independent investigations and prosecutions of those responsible for such violations,*

*1. Calls on the Government of Sri Lanka to implement the constructive recommendations in the LLRC report and additionally to take immediate steps to fulfill its relevant legal obligations and stated commitment to address serious allegations of violations of international law by initiating credible and independent investigations and prosecutions of those responsible for such violations,*

*2. Requests that the Government of Sri Lanka present a comprehensive action plan before the 20th session of the Human Rights Council detailing the steps the Government has taken and will take to implement the LLRC recommendations and also to address alleged violations of international law,*

*3. Encourages the Office of the High Commissioner for Human Rights and relevant special mandate holders to provide, and the Government of Sri Lanka to accept, advice and technical assistance on implantation.”*

Removing the introductory clap-trap, what it essentially says is that Sri Lanka should implement the LLRC report. That was it!

US Ambassador Donahoe said that an earlier version of the resolution had sought an action plan from Sri Lanka by June (2012), but as tabled now, the resolution calls for the U.N. Human Rights Commissioner to report to the council a year from now (!) on the steps Sri Lanka has taken.

What was done was that an already weak Resolution was being watered down further. The time frame of “*a comprehensive action plan before the 20th session of the Human Rights Council*” was altered to “*an year from now*”

It calls on the Sri Lankan government to “*accept advise and technical assistance*” in implementing these steps and present a “*concrete and comprehensive action plan*” before the next UNHCR sessions in June 2012 (now extended to a year from now i.e. March 2013). This despite the US Ambassador’s own words that “*time is slipping by for the people of Sri Lanka*” (see below).

Any fool will know that the GoSL is not short of “*advise*” or “*technical assistance*”. To call on the GoSL to “*accept*” these is just nonsense.

It effectively offers Rajapaksa a way of ending international criticism and the danger of government leaders and its Armed Forces facing war crimes charges.

Here are the “Opening Remarks of US Ambassador Eileen Chamberlain Donahoe at Informal Consultations on a Draft Resolution on Promoting Reconciliation and Accountability in Sri Lanka at the Human Rights Council”:

*“Yesterday (7 March 2012), after consultation with partners including those who will*

*the Human Rights Council (HRC) at its 19<sup>th</sup> Session. We have taken this step upon careful reflection and after extensive dialogue and bilateral engagement at the highest levels of the U.S. government. Three years since the end of the conflict, it is our belief that the government of Sri Lanka must take concerted actions on the ground to foster national reconciliation and accountability. The U.S. Government has provided humanitarian and development assistance to facilitate post-war reconciliation, and we believe that HRC action can further assist in this aim.*

*After consulting broadly with delegations from all regions and incorporating many helpful suggestions to the initial draft, we have introduced a moderate, reasonable, and balanced resolution text as a basis for further discussion and collaboration with our many partners in the Human Rights Council. In this regard, we reiterate our long-expressed willingness to work in partnership with the government of Sri Lanka on this resolution, and on the broader issues of reconciliation and accountability.*

*This resolution is not intended to condemn; indeed, it acknowledges the contributions of the Lessons Learnt and Reconciliation Commission (LLRC), which has made many constructive recommendations to the Sri Lankan government. However, many international and domestic observers share our conclusion that the government has not yet promulgated a credible action plan for implementation of those recommendations, nor has it taken the additional needed steps since the war to foster national reconciliation.*

*Our intention is clear: we want the countries of the world to join in encouraging the government of Sri Lanka to take the steps needed to ensure meaningful and lasting national reconciliation after a long conflict, to reach out sincerely to the Tamil population and bring them back in to the national life of Sri Lanka, and to ensure accountability for actions taken during the war.*

*Time is slipping by for the people of Sri Lanka. Together with the international community we want to work with Sri Lanka in order to bring lasting peace to the island. We firmly believe that action now in this Council reflects the international community's ongoing interest in and support for action on the ground in Sri Lanka. Numerous international and domestic observers have echoed our concern that the government of Sri Lanka must now establish domestic processes that will sow the seeds of lasting peace on the ground. With this resolution, the countries of the world can extend their hand of cooperation to help all the people of Sri Lanka achieve that goal."*

Donahoe said Colombo was keeping open its channels of communication with Washington, and Secretary of State Hillary Clinton has invited Sri Lanka Foreign Minister G.L. Peiris for talks in Washington in April (2012). This is clearly for more backroom deals, if necessary.

The US Resolution is just nonsense. It has more to do with geopolitics than human rights.

#### The geopolitics of the US Resolution

Not enough attention has been paid to the geopolitics of all this. The US administration is pushing the Resolution as a means of pressuring the Rajapaksa government to accommodate US interests and those of India, which has also been demanding the implementation of the LLRC recommendations.

Washington, which backed Rajapaksa's war against the Tamils, is no more concerned about human rights in Sri Lanka than on Iraq, Afghanistan and Libya. For the US administration, the issue is a convenient device to put pressure on Colombo to shift away from the close diplomatic and economic ties established with China. *That* is the agenda, not human rights.

In May 2009, after the murder of thousands of Tamil men, women and children by the GoSL and its Armed Forces, the US supported European countries in putting a Resolution to the UNHRC expressing concerns on human rights violations in Sri Lanka. The Resolution was defeated after Sri Lanka obtained the support of China, Russia and India, as well as other countries.

Sri Lanka moving into the arms of China is of far greater importance to the US than human rights. A US diplomat recently said that the US could not afford "to lose" Sri Lanka. Such is the geopolitical importance of Sri Lanka, astride the economically crucial Indian Ocean.

#### What was needed

What was needed was not a fluffy Resolution but one that addressed the critical problem(s) faced by the Tamil people in the North and East: a Resolution that-

- demanded the immediate admission of internationally credible human rights groups such as Amnesty International, Human Rights Watch and the Brussels-based International Crisis Group, to the Tamil North and East to look into the human rights and humanitarian problems faced by the civilians in this area who have suffered indescribable misery as a consequence of the 25 year war, and who continue to suffer under what is essentially an Army of Occupation – the Sri Lankan military that runs the area.
- Stated in no uncertain terms, that an international independent inquiry into what has gone on (and continues to go on) in this area. This is what the UN Secretary General's Panel of Experts recommended.
- An internationally supervised rehabilitation of the people in the former conflict zone, the Tamil North and East.
- Stated in clear unequivocal terms, the cost to Sri Lanka of non-compliance – a stopping of all aid, international isolation, and the application of the 'R2P' (Responsibility to Protect) which included armed intervention by the UN on humanitarian grounds which the R2P permits.

With none of these even remotely stated, the Resolution is nothing but a joke. Sri Lanka's External Affairs Minister, G.L.Peiris has told the media in Geneva that the US has called the Resolution "*harmless*" i.e Sri Lanka should not worry about it!

Making the appropriate noises a few days earlier, US Ambassador Donahoe, said:

*"We believe that real reconciliation must be based on accountability, not impunity."*

She went on: *"There cannot be impunity for large scale civilian casualties. If there is to be real reconciliation, it must be based on accounting of the truth and serious implementation of changes".*

Interestingly, none of this was in the US Resolution.

Soon after, Ambassador Donahoe chaired an informal session to introduce their Resolution on Reconciliation in Sri Lanka (as she claimed it was). She chaired the meeting.

During one of the most dramatic informal consultations –with a UN security guard by the doors– the Sri Lankan Attorney-General challenged the premise and necessity of this draft, which he categorically rejected and refused to engage in a dialogue on it.

He called the consultation a “farce,” adding that “might is not right.” He was supported by Egypt on behalf of Non-Aligned Movement (NAM), Russia, China, Cuba, Zimbabwe, Philippines, Algeria and other NAM countries. They all stressed that they oppose country-specific resolution and that the text will have no effect without the consent of the concerned country. Cuba challenged the US Ambassador by asking her to submit a resolution on Guantanamo if they are so concerned with accountability issues.

Denmark for the EU, France, the UK, Canada, Australia, Sweden, Switzerland, Hungary, Poland, Germany, Norway and others supported the US initiative, calling it timely and necessary. The EU also said they would like to see a reference in the text to the report of the Secretary-General’s Panel of Experts on Sri Lanka. One of their recommendations is for the Council to reverse its resolution praising Sri Lanka for its actions during the 2009 civil war that left thousands of civilians dead.

### The LLRC

It is important to know the *reason* for the setting up of the LLRC by the Rajapaksa regime. It was appointed as a foil for the devastating “*Report of the UN Secretary-General’s Panel of Experts on Accountability*” published in April 2011. The main purpose of the LLRC was to absolve the Sri Lankan Forces (and thereby the Rajapaksa brothers) of all blame in the conduct of the ‘Fourth Eelam War’. The LLRC fulfilled this obligation and gave the requisite ‘clean bill of health’ to the GoSL and its Armed Forces.

The LLRC was a sham inquiry designed to cover up human rights abuses and deflect demands for an independent international investigation into war crimes. President Rajapaksa’s handpicked the Commissioners to ensure that no genuine inquiry took place.

With overwhelming evidence available internationally, the LLRC could not endorse the blatant government lie that no civilians had been killed by the military. The LLRC concluded that any civilian deaths were ‘accidental’ and blamed the Tamil Tigers for preventing people from leaving territory under their control.

The LLRC findings contradicted international reports, including from an Expert Committee appointed by UN Secretary General Ban ki-Moon. The UN panel found “*credible evidence*” of war crimes that implicated the government, senior State officials, and top military commanders. It concluded that the Sri Lankan military had killed tens of thousands of Tamil civilians in the final months of the war to May 2009, including by deliberate attacks in hospitals.

Unfortunately for the Government, in the interests of credibility, the LLRC had to make a few valid criticisms and some positive recommendations – which were totally unacceptable to the Rajapaksa regime. I will deal with these after I deal with the *validity of the LLRC*

## The Validity of the LLRC

In September 2011, Amnesty International, in a detailed report “*When will they get Justice? Failures of Sri Lanka’s Lessons Learnt and Reconciliation Commission*”, decimated the LLRC<sup>10</sup>.

A year earlier Amnesty International, Human Rights Watch, and International Crisis Group, were invited to testify before this Commission, mainly to give it the credibility it sorely lacked. In a joint letter to the Commission (14.10.10), they refused to accept the invitation because it lacked the ability to advance accountability for war crimes.

They said that they would welcome an opportunity to appear before a genuine, credible effort to pursue political reconciliation and accountability in Sri Lanka, but that the Commission does not meet the minimum international standards for Commissions of Inquiry.

Kenneth Roth, Executive Director, HRW, wrote,

*“There is little to be gained by appearing before such a fundamentally flawed commission. Accountability for war crimes in Sri Lanka demands an independent international investigation. Thousands of civilians were killed in the last few months of the war as a result of gross violations of international law by both the government and the LTTE forces. The Commission is nothing more than a cynical attempt by Sri Lanka to avoid serious inquiry that would bring genuine accountability”.*

(<http://www.hrw.org/node/93600>)

It is this “fundamentally flawed” Commission Report that the US, and others, want the Sri Lankan government to implement!

## The LLRC Report

While most of the LLRC’s recommendations were platitudes, it did go further than the government wanted. It called for “*a political solution*” that would involve devolving limited powers to sections of the Tamil elites in the North and East, the demilitarization of civilian affairs in the former war zones and an investigation into extrajudicial killings and enforced disappearances.

### The Positives

These were some absolute minimums needed to achieve reconciliation, peace building and safeguarding democracy. They included some ‘questionable’(!) episodes of the war, appointing a Special Commissioner to investigate ‘disappearances’, adhere to the law in making arrests, enacting laws to ‘specifically criminalise enforced or involuntary disappearances’, issue death certificates expeditiously, and forming a Task Force to address the needs of women, children, elderly and disabled, providing counseling for traumatized children, ensuring media freedom and disarming illegal armed groups.

There was nothing extraordinary or controversial in these suggestions.

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<sup>10</sup> <http://www.amnesty.org/en/library/asset/ASA37/008/2011/en/76ea6500-a9f5-4946-bf2b-7fc08bc5e37a/asa370082011en.pdf>.



Had these straightforward LLRC recommendations been implemented, and a roadmap for the implementation of the others set out, there would have been less of a case for an international investigation and the current fracas in the UNHRC in Geneva. It would also have enabled Sri Lanka to face the upcoming Universal Periodic Review (UPR) on a better footing.

### 'The problem'

The 'problem' for the Rajapaksa regime is that the LLRC was just another exercise in duplicity, like the All Party Representative Committee (APRC) and the International Independent Group of Eminent People (IIGEP). Its recommendations were there for show and not for implementation. In a word they are bogus commissions.

Although unobjectionable from the Sri Lankan perspective, the LLRC recommendations were utterly inadmissible to the Rajapaksa junta. The Rajapaksas are completely opposed to any limits on their own power, *de facto* or *de jure*; complete power and total impunity which are essential to strengthen Familial Rule and ensure Dynastic Succession.

As such, any suggestion by anyone, that the LLRC recommendations be implemented was completely unacceptable – hence the hysteria to block the US Resolution.

### Bogus Commissions in Sri Lanka

In passing, I will draw attention to the bogus Commissions of Inquiry in Sri Lanka. Amnesty International published a crucial document in 2009. *"Twenty years of make-believe. Sri Lanka's Commissions of Inquiry"*<sup>11</sup>

Sri Lanka's own "Centre for Policy Alternatives" has reminded us of the outcome of some of the showcase Commissions in Sri Lanka. A list of Commissions of Inquiry and Committees appointed by the Government of Sri Lanka (2006-2012) since the Rajapaksa government came into power in November 2005<sup>12</sup>.

It is in this well-documented setting that yet another Commission – the Lessons Learnt Reconciliation Commission (LLRC), must be evaluated. The international community and others, including those who are currently involved in the UNHRC are not doing this. Hence the arrant nonsense that is being formulated and presented.

### The Sri Lankan government action

Instead of doing the obvious – implementing the LLRC recommendations (completely unacceptable to the Rajapaksa regime), the GoSL lobbied heavily behind the scene for months against the US backed Resolution, spending millions of Sri Lanka taxpayers money.

The GoSL also mounted a hysterical campaign at home and abroad at the supposed "international conspiracy" to tarnish the country's name. The propaganda barrage at

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<sup>11</sup> AI Index 37/005/2009.

[http://www.observatori.org/paises/pais\\_75docuentos/srilanka.pdf](http://www.observatori.org/paises/pais_75docuentos/srilanka.pdf)

<sup>12</sup> [http://www.globalpeacesupport.com/globalpeacesupport.com/post/2012/03/12/A-List-of-Commissions-of-Inquiry-and-Committees-Appointed-by-the-Government-of-Sri-Lanka-\(2006-e28093-2012\).aspx](http://www.globalpeacesupport.com/globalpeacesupport.com/post/2012/03/12/A-List-of-Commissions-of-Inquiry-and-Committees-Appointed-by-the-Government-of-Sri-Lanka-(2006-e28093-2012).aspx)

home in Sri Lanka is aimed at silencing any opposition, including mounting strikes and protests by workers, branding it as part of the so-called 'conspiracy'.

Nishantha Warnasinghe, leader of the Sinhalese extremist Jathika Hela Urumaya (JHU), told the BBC that his party opposed any 'concessions' to Washington and opposed the establishment of the military court of inquiry. The JHU is part of Rajapaksa's ruling junta.

Housing Minister, Wimal Weerawansa, leader of the equally rabid anti-Tamil party, the Janatha Vimukthi Peramuna (JVP), called for a boycott of U.S. products. He told a protest meeting that the resolution amounts to calling for the revival of the Tamil Tigers.

The opposition United National Party, which backed Rajapaksa's war against the Tamils and defended the military's crimes, is seeking accommodation with Washington. The UNP leader, Ranil Wickremasinghe has called for consensus between the government and the opposition on the implementation of the LLRC recommendations.

The Tamil National Alliance (TNA), who are there to safeguard the rights of the Tamil people, is likewise manoeuvring. It previously condemned the LLRC report, but now calls for its implementation! As for its contribution (or lack of it) at the UNHRC meeting will be dealt with next.

They are all playing the same game – to hell with the suffering of the Tamil people in the North and East.

### **The Tamil National Alliance (TNA)**

The TNA is a political party in Sri Lanka that represents the Tamil people, particularly in the North and East, where the most serious violations of human rights have occurred (and continue to occur). They are Members of Parliament in the Sri Lankan Parliament who are there to look after the interests of those who elected them.

With the 19<sup>th</sup> Session of UNHRC focused on Sri Lanka and the need to set up an independent international investigation into war crimes and crimes against humanity committed in the Tamil North and East, one would have expected the TNA to be there 'leading the charge' in Geneva. Amazingly, they were nowhere to be seen – 'missing in action'.

They thought it sufficient to submit a single page document on 25 February, 2012<sup>13</sup>. It had a strange title, "*TNA won't accentuate tensions by attending the UNHCR 19<sup>th</sup> Sessions*". I am not a member of the TNA, indeed I am not even a Tamil. I found this title and the contents puzzling, to say the least.

Referring to the two Reports, the UN Secretary General's Panel of Experts Report, and the GoSL 'Lessons Learnt Reconciliation Commission' Report, the leader of the TNA had this to say:

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13 [http://www.unhcr.org/refugees/2012/2/20120225\\_tna\\_statement.html](http://www.unhcr.org/refugees/2012/2/20120225_tna_statement.html)

*“The Sri Lankan State has a notorious reputation for failure to fulfil commitments it makes, and for not making public reports of processes which could hold it accountable.*

*The Tamil National Alliance genuinely fears that if the present unstable situation continues, violence could recur and the civilian population could again be the victims.*

*The Tamil National Alliance considers it imperative that in the present situation calm should be maintained, and that nothing should be done which could exacerbate tensions.*

*In these circumstances The Tamil National Alliance has decided not to be present in Geneva.”*

With mounting criticism, nationally and internationally, the TNA changed its position. On 27<sup>th</sup> February, 2012 (the day the Meeting commenced!), the TNA leader wrote a letter to all the 47 member countries of the UNHRC<sup>14</sup>.

This was even more confusing. He now asked for an International Investigation! If this is what he wanted, then why were he and his fellow MPs not in Geneva to put the case forward? (I have no doubt that time would have been given for this, if only to hear the other side of the story to what the GoSL had given. In the unlikely event of being given no time, they could most certainly have booked a ‘side-show’ room.

I am not going to repeat here what was in this letter, but it is on the net (reference already cited). All I can say is that I do not think that the TNA is being entirely truthful, or to put it differently, is not telling the UNHCR (and the international community) *all* the reasons – the facts.

When the facts are not known, fiction takes over. Of the many floating around, one is that the TNA were told in no uncertain terms by President Rajapaksa that if they went to Geneva for the UNHCR meeting, there would be a blood-bath in Colombo *a la* the 1983 massacre of Tamils in Colombo and the South. The Rajapaksas are more than capable of doing this, just as a previous President, J.R.Jayawardene did in 1983 which resulted in the murder of some 3,000 Tamil men, women and children in Colombo and the South, and extensive destruction of their homes, businesses and property. President Rajapaksa and his (very) violent brother, Gotabaya, the Defence Secretary (in effect the *de facto* President) is more than capable of organizing and conducting it on a *grand* scale.

However, this is not 1983. The world is watching Sri Lanka closely, especially after the dreadful (UK) Channel 4 News video *Sri Lanka’s Killing Fields*. The Rajapaksas will be very foolish to try this again in Colombo and the South (or for that matter, anywhere else).

As for the LLRC the TNA leader’s letter says,

*“We submitted that the LLRC failed the victims of the war, and that its composition, mandate, process and findings fell dramatically short of international standards..... The government of Sri Lanka continues to demonstrate a lack of commitment to implement even the LLRC’s recommendations within a specific time-frame.*

*We believe that it is our duty – as representatives of the Tamil people – to communicate their profound desire for truth and justice. We ourselves have been struck by the intensity of this desire, and the determination with which it is expressed to us. We have maintained that accountability remains an urgent and important need to help victim communities overcome trauma and rebuild their lives; to bring clout to our collective and personal grief; to ensure genuine reconciliation; to break the cycle of impunity in Sri Lanka and most importantly, to insure against a return to violence. For these reasons we have urged the international community to take steps to institute an international investigation into the credible allegations of war crimes committed by both sides during the last stages of the war.*

It did not end there. After the Meeting started and the Head of the Sri Lankan delegation Mahinda Samarasinghe gave his long-winded speech, the TNA issued yet another document titled, *“BROKEN PROMISES: TNA response to the position of the Government of Sri Lanka at the 19th session of the UN Human Rights Council”* on 14 March 2012<sup>15</sup>.

*“The Government of Sri Lanka has serious issues with regard to telling the truth and keeping its promises*

*In response to Minister Mahinda Samarasinghe’s statement to the 18th Session of the United Nations Human Rights Council [UNHRC] on 12 September 2011, the Tamil National Alliance [TNA] issued a statement the very next day correcting the record and urging the Sri Lankan government “to be more forthright and honest in its representation of the situation in Sri Lanka to the international community.” Unfortunately, the government continues to mislead the international community at the ongoing 19th Session of the UNHRC sessions as well.”*

It is astonishing that veteran Tamil politicians have only just discovered that the Government of Sri Lanka has *“serious issues with telling the truth and keeping its promises”*. This has been going on from 1956, if not earlier.

All I would say is that the TNA seems to be part of the problem rather than part of the solution. If there is no international investigation passed by the UNHCR, the TNA will have a case to answer, not least to *their people*, the victims of these atrocities.

The TNA urges the international community to institute an international investigation, but is unwilling to go to Geneva and lobby the delegates! To repeat myself again, I find this astounding. To use a military term, the TNA was *“missing in action”*.

Although it may appear to be so, there does not seem to be any truth in the story that the TNA is now part of Rajapaksa’s Government. God only knows, stranger things have happened in Sri Lankan politics.

If, for whatever reason, the TNA decided not to go to Geneva, the very least they could have done was to circulate their crucial “Situation Report. North and East” which they tabled in the Sri Lankan Parliament on 21 October 2011. It was a factually correct Report of the dreadful plight of the Tamil people in the North and East.

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<sup>15</sup> <http://www.tamilcanadian.com/article/6232>

I guess that would have really put Sri Lanka on the mat, which was clearly not the intention of the TNA.

I thought twice about putting these highly critical comments on paper, but what has to be said has to be said. Having been involved in the struggle of the Tamil people for six decades (the Plantation Tamils since 1948, the Ethnic Tamils since 1956), I am not prepared to duck out now when the defenceless and now, voiceless, people in the Tamil North and East are being subjected to a 'slow genocide'. If I have trodden on some toes, they are toes that *need* to be trod on.

The original version of this paper did have all the TNA communications referred to above as Appendices. I decided to remove them since they are not worth reading. Those who disagree can download them from the net.

### **The Memorandum by the 'Walkers for Peace and Justice'**

In striking contrast to the position of the TNA and the Resolution backed by the US, is an important Memorandum of the *"Global Peace Support Group. Self-determination is the key to the World Peace"*.

A Memorandum carried by Tamils (youths, I suspect) they literally walked from London to Geneva – a 1000 km walk for the '*Plight of Tamils in Sri Lanka*'.

Leaving London (on foot) on 28<sup>th</sup> January 2012, braving subzero temperatures, they arrived at the UNHCR in Geneva on 27<sup>th</sup> February, completing the 1000 km walk in 30 days. (The TNA could have got there in hours, business class or even first class).

The 'walkers' carried a Memorandum to Navanethem Pillay, UN High Commissioner for Human Rights.

Having briefly outlined the problems faced by the Tamils, and the responsibility of the UNHRC in addressing them, the Memorandum set out some crucially important demands that put the US (and other UN countries), and the TNA to shame.

Let me quote this very important document, the full Memorandum is on the net<sup>16</sup>.

*"We therefore insist that a full comprehensive independent international investigation into war crimes, and crimes against humanity committed in Sri Lanka, be initiated and the perpetrators brought to **justice, and the genocide of the Tamils taking place in a massive scale be stopped immediately.** (emphasis theirs, not mine)*

*We request an immediate action by the UNHCR and are calling for:*

*:*

- 1) An Independent International Investigation into War Crimes and Crimes against Humanity in Sri Lanka.*
- 2) An Independent International Human Rights Watch Body to be set up in Sri Lanka by the UNHRC to safeguard and protect the Tamil people from structural genocide.*
- 3) Immediate action to be taken to provide the people in the IDP camps and all displaced people are allowed to return to their homes and farms and provided with all basic needs including*

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<sup>16</sup> <http://globalpeacesupport.com/globalpeacesupport.com/post/2012/02/28/Walkers-for-Peace-and->

sanitation and clean drinking water.

4) Demilitarization of the North and East of Sri Lanka.

5) Allow immediate access to international NGOs, international parliamentarians and other delegations to have full access to the affected areas.

6) Stop immediately the colonization of Tamil areas by the Sinhalese people.

7) A UN sponsored referendum on the Right to National Self-Determination of the Tamil people.

Had I only known that this march was taking place, I would almost certainly have gone to Geneva (from Australia) to welcome them and stand with them in their highly commendable and extraordinary act. What they showed was what 'commitment' is all about.

### **Other expressions of concern**

Other expressions of concern are in the Appendices.

1. Archbishop Desmond Tutu and Mary Robinson on 26 February 2012 - Appendix 1
2. International Crisis Group - Sri Lankan Government Promises. Ground realities. Appendix 2
3. Reporters Without Borders - media release 28 February 2012 - Appendix 3

### **The Sri Lankan Government action**

Panic-stricken by the fact that the situation in Sri Lanka was to be taken up at the February/March UNHCR Session, the GoSL has, for several months, been sending Ministers, Cabinet Ministers and others (including the President), all over the world, to countries, big and small, to block the Resolution, however 'harmless' it was (as assured by the US).

On the opening day (27<sup>th</sup> February), Mahinda Samarasinghe, President Rajapaksa's Special Envoy for Human Rights(!), addressed the UNHRC to inform the Council of the steps taken to address the concerns in human rights and respond to allegations against the country. What he said is on the net.

International Crisis Group immediately responded to Samarasinghe on 2 March 2012 in an outstanding publication, *Sri Lanka. Government Promises, Ground Realities.* (Appendix 3)

I will waste neither time or space repeating Samarasinghe's absolute untruths i.e. lies (or as more polite people and epistemologists would delicately put it – "*The speaker's claims do not correspond to the facts*"). When I read his speech to an Australian friend of mine who comes from a farming background, and knows the Sri Lankan situation well, his comment was - "*That sounds like utter bull-shit*". I did not disagree with him.

It is, of course, not possible to shout, "*Lies! Lies! Lies!*", every time Samarasinghe comes out with a whopper. For a start, one would be bodily removed from the main Hall where this farce was conducted. Even if it was possible, how many times can you shout "*Liar! Liar!*" without getting hoarse?

Much more dangerous than blatant lies are the more subtle ones – words that have been cunningly fashioned to sound like they mean something – something important and compelling – but on careful investigation can be revealed to be arrant nonsense.

These varnished lies are ultimately far more insidious and dangerous than outright lying, precisely because it is harder to detect

The field of logic – much of it rooted in the writings of early Greeks – sets out the rules that need to be followed to go from propositions to correct conclusions. To put it the other way round, it shows how one can be tricked by ‘logical fallacies’ – what logicians call “formal fallacies”.

What was presented was a mixture of lies, downright lies, varnished crap, and ‘formal fallacies’.

Samarasinghe clearly realized that what he was going to present would be a hard-sell. To make this easier, he came with a Report prepared by the Sri Lankan Census and Statistics Department (which he claims had Tamils on the staff), to disprove allegations that there were 40,000 civilian casualties in the final stages of the war. There are also some 140,000 people who are unaccounted for whose whereabouts are unknown.

Tamil people in the North and East under the (Sinhalese) Military and Police, are living in fear. They open their mouths only to eat, and not that often either. In Sri Lanka, there are three sets of lies in ascending ‘order of lying’. Ordinary lies, damned lies, and claims by the President and his accolades. To these can now be added ‘Reports from Government Departments’.

Like corruption, lies by the Government have reached astronomical heights. Whatever is claimed by the Sri Lankan delegation to Geneva, the opposite is likely to be true. This is not an opinion to be debated but a fact to be faced. It is to prevent this ‘fact-finding’ that Amnesty International, Human Rights Watch, International Crisis Groups and independent observers, are not allowed to visit the North and East unless accompanied by a soldier with a note book and a gun.

The Sri Lankan government has perfected the ‘Big Lie’ of Goebbels, Hitler’s Minister of Propaganda, that a lie, if outrageous enough and repeated enough times, will be believed by the masses. The UNHCR ‘masses’ might believe these downright lies, or might it might be politically convenient to believe them. That is *‘Realpolitik’* where to be ‘careless with the truth’ is the accepted norm.

Sri Lankan Government lying is so extensive that to report even a fraction of them will fill this paper. As correctly predicted by Hitler and Goebbels, these downright lies are believed in the Sinhalese South in Sri Lanka, and non-Sri Lankans abroad. The most recent example was Sri Lanka’s Ambassador in the US, Jaliya Wickremasuriya, one of President Rajapaksa’s many relatives. When he was challenged with the well-documented fact of an epidemic of rape of Tamil women and girls in the North and East by Sinhalese soldiers, he simply stated that there were no rape cases in Sri Lanka, claiming that Sri Lankans were disciplined as part of their culture. Realising the absurdity of what he had stated, he acknowledged that there *might* be a “*couple of cases*”, adding that this was the case in every country.

The Sri Lankan Police records document that a rape occurs every 51/2 hours in Sri

### A jumbo delegation

The Sri Lankan delegation to Geneva was the usual jumbo size (some 90 – I gather). It included a Tamil MP who runs a fiefdom in Jaffna, whose human rights record was such that the British government refused to give him a visa to enter the country when President Rajapaksa attempted to address the Oxford University Union in November 2010.

The jumbo delegation to Geneva will do some shopping and sight seeing, to hell with the UNHCR meeting. For further enjoyment, they will entertain members of the diplomatic community and delegates, to expensive wine and dine events. The travel costs of this jumbo delegation and the wining and dining will be at the expense of the Sri Lankan public, already struggling with waves of price hikes.

To address the potentially serious problem of a revolt in the Sinhalese South, several Ministers have been ordered by Rajapaksa to rally the struggling people, and get them to protest at what is going on in Geneva, and tell them that this suffering is what patriotism is all about. Those who object to this extravaganza, are Tamil Tiger terrorists, and if they are Sinhalese (as most of them are), then 'Sinhala-skinned Tamil Tigers', such as the writer of this paper!

### **Ms Tamara Kunanayakam, Sri Lanka's Permanent Representative at the UN Office in Geneva**

Kunanayakam is a Tamil woman, recently appointed as Sri Lanka's Permanent Representative at the UN Office in Geneva. She has been described by her predecessor as being a Tamil (which she is) and 'progressive'. I am not sure what 'progressive' is, unless it is a description of progress up the diplomatic ladder. This is certainly so. She expressed her (progressive) concerns thus:

*"the insidious attempt to selectively target Sri Lanka that seeks to set at nought our post conflict resurgence."* She said that *"a dangerous precedent is again sought to be established by way of a debate on the recommendations of a domestic process which Sri Lanka condemns as a retrogressive step that undermines the constitutional parameters of this Council (UNHRC)."*

I am not sure that I should waste my time commenting on this nonsense, but she is Sri Lanka's Permanent Representative in the UN and can sneak around doing immeasurable damage to the Tamil people (her people).

The Sri Lankan State expelling international human rights and humanitarian groups from the conflict zone and then embarking on crimes against humanity and a gross violation of Humanitarian Law (among others), should, according to Kunanayagam, be glossed over by the international community as if it was an internal matter for the State.

The insidious attempts by the Sri Lankan State to silence an political and human rights problem by resorting to crimes against humanity with witnesses excluded, should, according to Kunanayagam, be glossed over by the international community as if it was an internal matter for the State. I disagree. Human Rights violations are no longer an 'Internal Affair' which is why the world got involved in dismantling the apartheid regime, very definitely an 'internal affair' of South Africa. There are numerous other examples.



Let us get this straight. More than 40,000 civilians have been slaughtered and some 160,000 are unaccounted for. The UN Secretary General's Expert Panel to look into accountability for this outrage, has strongly recommended an international investigation. Is Kumanayagam setting herself up above all these internationally credible people and claiming that they are wrong? She will find this a hard-sell.

What does she (and others of her ilk) want the world to do? To stand up and cheer this State that committed this crime in violation of every International Convention and the Laws of War?

The UN is mandated to protect weaker sections of a population from being victimized in the way the Tamil people, citizens of Sri Lanka, have been treated.

I would draw the attention of Kumanayagam that it would be a dangerous precedent for the world to stand by and cheer a State that has tried to settle a political problem by murdering its citizens. Now there is a slim chance for one of its agencies to address this outrage, the errant State's representatives cry 'foul!' Just because some of Sri Lanka's allies with notorious track record on Human Rights are there to side with it for their own geopolitical and economic gains, the fact remains that the Sri Lankan State acted criminally and in violation of all that the UN and its bodies are there for.

International legalities and human rights norms notwithstanding, the world will pay a terrible price. Allowing Sri Lanka to get away with this has wider implications. Louis Arbour and other Human Rights experts with an unblemished record, have emphasized that Sri Lanka's example will be replicated as a model to contain dissent in other Democracies and pseudo Democracies, not unlike Sri Lanka.

Kumanayagam is out of touch with reality and should go back to Sri Lanka and live (just for a while) with her people in the North and East, and experience the reality of 'post-conflict resolution' of her Government. She would be advised to first read my up-coming paper (to be released in International Women's Day) (8 March), on the "*Epidemic of Rape of Tamil Women and Girls by the Sri Lankan Armed Forces in the North and East*". It would be most unfortunate if she learns it the hard way, as a fellow-Tamil woman, holding a senior Administrative Government position in the Mannar District in the North East found out.

I will now summarise some of what has been presented, more will follow in the days ahead before the final vote.

## **India**

India says it is concerned that the recent trend of country specific Resolutions may well end up weakening the constructive dialogue and cooperative approach which has prevailed so far in the UN Human Rights Council.

Without making any direct reference to any country against which a Resolution is to be presented at the ongoing session of the UNHRC, the Indian envoy said that the promise shown by the council since its inception as the premier organ of the UN dealing with human rights must be preserved.

(Sri Lanka is one of the countries against which a Resolution is to be presented at the ongoing UNHRC session. Minister Mahinda Samarasinghe had said that Sri Lanka is hopeful of India's support against the Resolution. He also said that already several African and Islamic countries have expressed support to Sri Lanka in the

New Delhi is pushing for a “*political solution*” – that is, a power-sharing arrangement between Sri Lanka’s Sinhala and Tamil elites – to contain the simmering anger in the southern Indian state of Tamil Nadu over the treatment of Tamils in Sri Lanka.

The Tamil Nadu government whose (new) leader is strongly supportive of the Sri Lankan Tamils, has sent letters to the central Government in Delhi, requesting India’s vote for the Resolution which India should have sponsored. Let alone sponsor it, the Government of India (i.e. Delhi) has already decided to oppose the Resolution and support the GoSL.

The decision has more to do with geopolitics and business deals than with human rights. India was deeply involved in assisting the GoSL in the war crimes and crimes against humanity by supplying weapons and logistical support. Any independent investigation into this will bring this out in the open, which will not enhance India’s standing. There will also be even more protests in Tamil Nadu.

India will not want to antagonise President Rajapaksa and miss out on the economic ‘spoils of war’. That is not ‘good for business’ – to hell with human rights.

There is the ‘China-factor’. A failure to support Rajapaksa will move him closer to China. That is not good for business or geopolitics of the Indian Ocean.

All of these are much more important than ‘doing the right thing’ – to support the Resolution which will put Sri Lanka in the dock. That is *realpolitik* which I referred to at the beginning of this paper.

India is in a ‘Catch 22’ situation. If India supports the Resolution, Sri Lanka might not allow the development it carries out in the North and East for the Tamils i.e. the 50,000 houses waiting to be built by India, the repair of the completely destroyed railway lines etc, to proceed. (This is, of course, assuming that the houses will be for the Tamil civilians who have lost everything. There is increasing evidence that the houses are being, or will be, given to Sinhalese from the South, especially ex-Armed Forces (99% Sinhalese), to settle in this area and make a Tamil area into a Sinhalese area – as has happened in the Tamil East).

In the international arena, if India is sidelined by the GoSL (which might happen if India supports the Resolution), no other country will get involved to improve the lot of the Tamil people in the North and East.

If India does not support the Resolution, the Tamil diaspora, and more importantly, the Tamils in Tamil Nadu in India’s South, will deservedly point the finger at Delhi. There might even be riots in South India where there are more than 75 million ethnic Tamils, emotionally linked with the Sri Lankan Tamils.

India, or rather, the central Government in Delhi, is losing the plot, a problem of its own making.

## **USA**

The US decided to also send Maria Otero, U.S Under Secretary of State for Civilian Security, Democracy, and Human Rights, to the UNHRC meeting in Geneva. She spoke on March 2, 2012.

She first outlined the US involvement in the UN HRC.

*“When the United States joined the UN Human Rights Council two years ago, we set forth four values that would guide our work in this body: universality, dialogue, principle, and truth. We knew then, as we know now, that the honest dialogue and dedicated effort of this Council will help all of our nations on the path to international peace and security.”*

Then came a brief reference to Sri Lanka.

*“We know from experience that there can be no lasting peace without reconciliation and accountability, but the United States is concerned that, in Sri Lanka, time is slipping away. The international community has waited nearly three years for action, and while we welcome the release of the LLRC report, the recommendations of the report should be implemented. We have engaged Sri Lanka bilaterally on these issues since the conflict ended in 2009, and stand ready to continue to work with them. Action now in this Council will sow the seeds of lasting peace on the ground.*

Not exactly a demand for an international investigation into war crimes! It was back to the LLRC, and ‘engagement’ with a brutal tyrannical regime that has more than a case to answer.

### **UN High Commissioner for Human Rights – Navanethem Pillay**

She spoke on March 2<sup>nd</sup>, 2012. Her reference to Sri Lanka:

*“I welcome the publication by the government of Sri Lanka last December of its Lessons Learned and Reconciliation Commission. While the report falls short of the comprehensive accountability process recommended by the Secretary-General’s Panel of Experts, it does make important recommendations. I encourage the Government to engage with the Special Procedures and with my Office on follow up to the report. I also hope the Council will discuss these important reports.*

That was it! I might remind you that this is the same person who, when the Sri Lankan problem came up earlier at the UNHRC, demanded an International Investigation. Not so now, or rather, it appears not to be. She ‘encourages’ the GoSL ‘to engage’. It reminds me of Neville Chamberlain trying to engage with Hitler in the 1940s. This is why I called the UNHRC a “talk-shop”. It is.

### **Will anything of value come out of this?**

I do not know but the chance of any serious international investigation being passed, is small, very small. This is based on my own experience of how this talk-shop works, and confirmed by a world expert on Human Rights, Geoffrey Robertson Q.C (whose interview with the BBC I have quoted earlier).

### **Is this the end of the road for the Tamils?**

Is there no way left to dry the eyes of the Tamils who have lost everything and now are non-people in the North and East? Is there any way to save the Tamils from a ‘slow death, which the UN Secretary Generals Expert Panel calls “extermination”?’ Will the GoSL get away with this atrocity, as seems likely.

I have already quoted Geoffrey Robertson Q.C as to what avenues are available to look into this atrocity. They must be acted on.

There are even bodies within the UNHRC talk-shop still available.

## Universal Periodic Review (UPR)

UPR is a mechanism of the UNHRC that emerged out of the 2005 UN 'reform process'. It was established by the UN General Assembly Resolution 60/251 on 3 April 2006.

## UNHCR 'Institution-Building package'

On 18 June 2007, one year after its first meeting, the UNHRC adopted its "*Institution-building package* to guide its future work. Among them are the '*Universal Periodic Review*' which I have just dealt with.

Another is an *Advisory Committee*, the UNHCR 'Think Tank' that provides expertise and advice to all parts of the world. This, the Rakapaksa junta, does not need and is most unlikely to seek 'advice' from.

There is the *Complaints Procedure*. This allows individuals and organizations to bring complaints about human rights violations to the Council.

Whether any of these are useful or are an extension of the UN HRC talk-shop, I do not know, but those who are concerned at what happens (or is unlikely to happen) in the 19<sup>th</sup> Human Rights Council meeting, can explore.

## The outcome of the US Submission on Sri Lanka

How will they vote? I do not know. What is worrying is the list of countries that have a vote (Appendix 4). Many of them are so obscure that I doubt if they know where Sri Lanka is, let alone what is going on there. The GoSL has probably contacted every one of them (personally – i.e. sending a Government Minister) to paint a totally false picture of what is going on. There are others who can be bought – readily.

My gut feeling is that the US Submission will succeed. Will it matter? Probably not. As the Sri Lankan Foreign Minister told reporters in Geneva, the US government has assured him that it is a 'mild motion', and that that there is nothing to worry about.

## What can the Tamils do in Geneva?

What can the Tamils do at the UNHRC meeting? Not much. The very least they can do is to circulate the devastating Report *Situation Report: North and East* tabled in the Sri Lankan Parliament on 21 October 2011 which clearly documents what is going on behind the closed and censored door of Sri Lanka. Will this be done? I do not know, probably not.

I was scheduled to go to this meeting in Geneva, but was unable to afford the cost of finding someone to look after my patients in Brisbane while I was out of the country. There is no doubt that a Sinhalese campaigning for the right of the Tamil people to live with equality, dignity and now, to live at all, would have been powerful, but it was not to be.

All that the Tamils can do is to rely on the outstanding work of Amnesty International and others, who have an Information booth in the building to tell those who really want to know, the dreadful things that are going on in the Tamil North and East. If all is as rosy as the Government says it is, and the Tamil people are happy and smiling

why prevent Amnesty International, Human Rights Watch and the International Crisis Group free and unrestricted access to the North and East? I am sure the Rajapaksa junta has an answer for this. They always have.

So we wait for the next carnival in the UNHRC Geneva from May 30 - June 17, while the Tamils in the North and East slowly perish and the murderous Rajapaksa regime gets away with it – yet again.

### An expression of thanks

I would be 'failing in my duty' if I do not express my thanks to many people and groups, some of whom I have worked with, for all they have done for the Tamil people over decades, both in the UNHRC and elsewhere.

1. The Nobel Prize winning Amnesty International that has focussed on Sri Lanka for decades, writing invaluable Reports (AI was there in the UNHRC in Geneva, as always).
2. The Nobel Prize-deserving Human Rights Watch and the International Crisis Group whose publications are so important.
3. (UK) Channel 4 News, another Nobel Prize-deserving media organisation that has spent so much time, energy and money putting together two invaluable documentaries that have shown the world the atrocities that have been committed in Sri Lanka.
4. The Nobel Prize winning Archbishop Desmond Tutu of South Africa, small in stature but massive in courage and integrity. He continues to be an inspiration to us all.
5. The expatriate Tamils who have spent their own money, challenging the disinformation campaign of the GoSL (including getting to the UNHRC).
6. Karen Parker JD, a Los Angeles attorney and human rights lawyer, who has struggled almost single-handed to address the suffering of the Tamil people. She has been in the UNHRC meetings for years and has made submission after submission.
7. Bishop Rayappu Joseph, a Tamil, the Roman Catholic Bishop of Mannar, North East Sri Lanka, the lone voice for the Tamil people. His courage, determination and dedication in a dangerous country where so many Christian clergy have been slaughtered by the GoSL, restores our faith, not only in Christianity, but in human beings.
8. Finally, the miniscule number of members of my ethnic group, the Sinhalese, in Sri Lanka, living, working and protesting in a country that is now a Totalitarian State that does not tolerate dissent. Most of them are from the political Left – Wije Dias, Siritunga Jayasuriya and Dr Vickremabahu Karnaratne in particular. Some are journalists, such as Tissaranee Gunasekera, an outstandingly brave lawyer cum journalist, who carries her life in her hands. The risks they face to life and limb are obvious. Others have paid for their stance with their lives – the Founder-Editor of *the Sunday Leader* newspaper, Lasantha Wickrematunga, being one (of many). Their courage and commitment to challenge a rapidly evolving tyrannical dictatorship, deserves enormous praise.

The suffering Tamil people in the Tamil North and East of Sri Lanka cannot thank these people and organisations who have been fighting for their right to live without a violation of their basic human rights, and now to live at all. I do so on their behalf.

Appendix 1.

## **Statement by Archbishop Desmond Tutu and Mary Robinson**

### **Our duty to Sri Lanka, and human rights**

#### **Desmond Tutu and Mary Robinson**

(Archbishop Desmond Tutu and former Irish President Mary Robinson are members of The Elders, global leaders working for peace and human rights).

[guardian.co.uk](http://guardian.co.uk), Sunday 26 February 2012

*"This week the UN Human Rights Council has an opportunity and a duty to help Sri Lanka advance its own efforts on accountability and reconciliation. Both are essential if a lasting peace is to be achieved. In doing so, the council will not only be serving Sri Lanka, but those worldwide who believe there are universal rights and international legal obligations we all share.*

*Nearly three years since the defeat of the Liberation Tigers of Tamil Eelam (LTTE) by the Sri Lankan government there has still been no serious domestic investigation of the many allegations of war crimes and crimes against humanity committed by both sides during the civil war's final stages. These tragic events cannot simply be ignored.*

*A report in April 2011 by a panel of experts appointed by the UN secretary general documented government forces' large-scale shelling in "no-fire zones" where civilians had been encouraged to gather. Government forces also shelled a UN hub and food distribution lines. The same report says the LTTE used civilians as human shields, refused to allow people to leave conflict areas and forcibly recruited adults and children as young as 14 to fight. Credible sources cited in the UN report have estimated that around 40,000 civilians may have perished in the final months of the conflict. This tremendous civilian toll covers thousands of stories of suffering and strength, the vast majority of which are untold. One verified story chronicles the experiences of a family who were forcibly displaced more than seven times in eight months between September 2008 and May 2009. They repeatedly sought shelter in government-declared "safe zones" (which were then shelled), buried five relatives, including a six-year-old girl, in unmarked graves, and saw many of their fellow civilians killed and injured.*

*While the Sri Lankan government's own report from its Lessons Learned and Reconciliation Commission, published last December, includes important findings on reconciliation, and represents a potentially useful opportunity to begin a national dialogue on the conflict, it is disappointing in its failure to address seriously accountability issues. The recent announcement that the army intends to investigate its own actions during the conflict is not the kind of independent inquiry that is required.*

*In the absence of a credible and independent investigation into what happened in Sri Lanka, the Human Rights Council has an obligation to uphold human rights law and international humanitarian law during its upcoming 2012 sessions. As the UN report said: "The conduct of the war by both sides represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and*

*peace. The victory of one side has emboldened some to believe that these rules may now be disregarded in the cause of fighting terrorism."*

*Against this background, and continuing reports of human rights violations by the authorities, we urge the council to support a resolution that seeks accountability for the terrible violations of international law that have taken place, and establishes mechanisms to monitor progress on the steps the government is taking on accountability. If there is insufficient progress by the government in establishing a credible accountability process in the near future, we urge council members to support the establishment of an independent investigation.*

*At the same time, the council should support efforts to achieve meaningful reconciliation, human rights and democratic freedom for all Sri Lankans. Their country is a beautiful jewel of an island, rich in culture, history, resources and human talent. But we fear that if nothing changes, the crimes that remain unaddressed will continue to haunt Sri Lanka's people and could ignite violence once again.*

*Finally we want to emphasise that Sri Lanka's recent history is an issue that concerns all of us. Whether or not the Human Rights Council is able to summon the will to act on one of the most serious cases of human rights violations to have occurred since it was founded in 2006 could have ramifications for the global standing of human rights and international humanitarian law – and for the prestige and authority of the council."*

## Appendix 2

### **Reporters Without Borders (RSF) – media release 28 February 2012**

#### **Media rights violations**

Reporters Without Borders calls on all members of the Geneva-based United Nations Human Rights Council, which began its 19th session yesterday, to pass a resolution condemning the Sri Lankan government's violations of freedom of information and to demand an end to threats and violence against news media and human rights defenders in Sri Lanka.

“For more than a year we have been seeing new forms of censorship and a deterioration in journalists' ability to work although the war with the Liberation Tigers of Tamil Eelam (LTTE) officially ended in 2009,” Reporters Without Borders said. “Rather than wait until the Universal Periodic Review to make recommendations, the Human Rights Council's members should adopt a resolution now urging the government to take measures to improve freedom of information.

“The number of cases of physical attacks, death threats and imprisonment may have fallen in 2010 and 2011, but the authorities continue to prevent the media from enjoying real editorial freedom and many journalists are still in exile. Sri Lankan and foreign media are still unable to cover the issue of war crimes, which will be at the centre of the Human Rights Council's discussions during the 19th session.

“An immediate reaction is needed to the obstruction of journalists who want to cover the activities of the Lessons Learned and Reconciliation Commission (LLRC) and to self-censorship on this subject for fear of reprisals. The Human Rights Council must remind the Sri Lankan government of the importance of the media's role as a critic and urge it to respect freedom of information. We call on the government to accept constructive questions from civil society and to stop branding its critics as ‘conspirators’ and ‘LTTE accomplices’.”

#### January - February 2012 timeline

Journalists and media defenders have been the constant targets of violence, threats and propaganda. The censorship of websites, especially those based abroad, has increased since the beginning of 2011. The events of the past two months amply illustrate the way the government is treating journalists.

Since 25 February: Distributed Denial-of-Service Attacks (DDoS) have been disrupting web traffic of TamilNet.com. The service provider is struggling to keep the website online.

23 February: The supreme court held its third hearing on the blocking of news websites. Access to four leading independent news websites – Sri Lanka Mirror, Sri Lanka Guardian, Paparacigossip9 and Lanka WayNews – has been blocked since 6 November on the orders of the information ministry, which announced on 5 November that all news websites with “any content relating to Sri Lanka” needed to register with the ministry.

16 February: The defence ministry posted an article on its website accusing Journalists for Democracy in Sri Lanka (JDS), an exile organization, of “treachery



Rights Council's 19th session.

15 February: Prasad Purnimal Jayamanne, a freelance journalist working for the BBC's Sinhalese service and a member of the South Asian Free Media Association (SAFMA), was attacked and badly beaten while filming a demonstration by fishermen in Chilaw, 100 km north of Colombo, in protest against the death of a fisherman at the hands of the police and the injuries sustained by others. Jayamanne had to be hospitalized.

8 February: The state-owned daily Dinamina accused the Free Media Movement of obstructing democracy and freedom in Sri Lanka, giving the country a bad image, and inciting separatism and terrorism.

26-27 January: Media Minister Keheliya Rambukwella accused journalists of collaborating with the LTTE and with foreign media and NGOs in order to smear Sri Lanka's image. He said he had a list of journalists working against the government, including the organisers of the "Black January" campaign, which was based on the fact that there were major press freedom violations every January during the past three years. They included Sunday Leader editor Lasantha Wickrematunge's murder in January 2009 and political cartoonist Prageeth Ekneligoda's disappearance in January 2010, which have become symbols of violence against the media and the impunity enjoyed by those responsible.

25 January (and following days): After the Alliance of Media Organizations in Sri Lanka held a "Black January" demonstration (which had to be moved to a different location because of a counter-demonstration by government supporters), some of the demonstration's organizers were followed by unidentified individuals for several days.

10 January: The government accused the Free Media Movement of collaborating with the political opposition and organizing a campaign to get the European Union to suspend Sri Lanka's preferential trade status under the GSP+ accord.

5 January: The start of the trial of a man accused of the April 2005 murder of journalist Dharmaratnam Sivaram was postponed by Colombo high court judge P. Surasena after the prosecutor said he was unable to proceed because six prosecution witnesses, including two policemen, had failed to show up. The judge also dissolved the jury. Sivaram was kidnapped in Colombo and his body was found near the parliament building the next day.

January (start of the month): When state-controlled Independent Television Network (ITN) broadcast footage of media freedom activists demonstrating during the September 2011 session of the UN Human Rights Council, it accused them of being LTTE members.

**International Crisis Group 1<sup>st</sup> March 2012**  
**Sri Lanka: Government Promises, Ground Realities**

Brussels, 1 March 2012:

Sri Lanka's post-war course is threatening future violence. As its 19th session in Geneva begins this week, the UN Human Rights Council has a chance to do something about it.

Nearly three years since declaring victory over the Liberation Tigers of Tamil Eelam (LTTE), the government has weakened democratic institutions, deepened ethnic polarisation and aggravated the country's long-standing impunity for human rights violations. The former warzones in the north and east are heavily militarised and controlled from Colombo, while disappearances, killings, torture, gender-based violence and other abuses continue with impunity throughout the island. Sri Lankans who speak out about the situation risk reprisal.

There has been no progress on accountability for alleged war crimes and crimes against humanity committed by both the LTTE and government forces during the final stages of fighting in 2009, which the UN Secretary-General's panel of experts found left as many as 40,000 civilians dead. While the government's Lessons Learnt and Reconciliation Commission (LLRC) is to be commended for its forthright criticisms of certain government policies – including continuing assaults on media freedom, the militarisation of the north and the failure to implement recommendations of earlier domestic inquiries into disappearances and political killings – it fails to provide the thorough and independent investigation of the full range of alleged atrocities at the end of the war that is needed for a sustainable peace. Nor does the government's "road map for implementation" of the LLRC's recommendations, presented in its opening statement this week, promise to do so.

The government claims to need additional time to pursue accountability. Yet its narrow promises, past three years of denial, dissimulation and intimidation of critics, and decades of failure to implement the recommendations of past domestic commissions of inquiry show that what is actually needed is a dramatic change of course. The responsibility now falls on the international community to take up the issue, starting with a resolution in Geneva demanding progress on both reconciliation and accountability according to a strict timetable and with independent monitoring. While the international community should press for real change under that resolution, it should also be prepared – should comprehensive investigations and prosecutions, again fail to materialise – to establish the independent international inquiry that so many domestic and international actors, including the Secretary-General's panel of experts, have long been calling for.

**At the current session, members of the Human Rights Council should:**

**1) Support a resolution on Sri Lanka that at a minimum:**

a. calls on the government to implement immediately the recommendations of the LLRC report and, separately, to put in place a credible accountability process to investigate all of the grave allegations of war crimes and crimes against humanity detailed in the report of the Secretary-General's panel of experts, and to prosecute those responsible;

b. requires that the Council remain seized of the matter in its 20<sup>th</sup> session and thereafter by requesting the Secretary-General, the High Commissioner for Human Rights or another appropriate UN office to assess and to report back to the Council on the government's progress in implementing the LLRC's recommendations and carrying out investigations and prosecutions;

and by requesting the government to report back to the Council on those same matters;

c. calls on the government to invite relevant special procedures to visit the country, including the Special Rapporteurs on extrajudicial, summary or arbitrary executions; on torture and other cruel, inhuman or degrading treatment or punishment; on violence against women, its causes and consequences; on the situation of human rights defenders; on the promotion and protection of the right to freedom of opinion and expression; as well as the Working Groups on enforced or involuntary disappearances and on arbitrary detention; and the new Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence of serious crimes and gross violations of human rights.

**2) Commit to assess the government's progress at the Council's 20<sup>th</sup> session** and thereafter and, if the government's efforts with respect to accountability still fall short of international standards, to establish an independent international investigation.

**3) Make it clear to the government that promises of progress on human rights, reconciliation and accountability are insufficient to meet its international obligations**, and that tangible, verifiable changes on the ground are what matters. Council members should seek clarification and detailed corroboration from the government on various claims of progress, including on the issues outlined below.

**4) Finally, urge the Secretary-General to establish without delay the review of the UN's own actions during the final stages of the war**, as recommended by the panel of experts and agreed by the Secretary-General, now nearly one year ago.

### **Assessing government claims and promises:**

#### *Accountability for war crimes and crimes against humanity*

Government claim: In his statement at the opening of the Council's session, Mahinda Samarasinghe, the leader of the government's delegation to Geneva remarked that the LLRC "offers detailed observations and recommendations on International Humanitarian Law issues relating to the final phases of the conflict" and "endorses the position that the protection of civilian life was a key factor in the formulation of policy for carrying out military operations, and that the deliberate targeting of civilians formed no part of it", which "was and remains the position of the Government". He also claimed that:

- An "enumeration" of the number of people killed in the conflict in the north "is now complete and a detailed analysis will be made known in the near future"; while the government will "further analyse and verify the data gathered in order to arrive at definite conclusions as to civilian mortalities and casualties", a key question is closed: "the story of 'tens of thousands' of civilian deaths that supposedly occurred during the final phase of the humanitarian operation, is very clearly proved to be a gross exaggeration and a deliberate misrepresentation of fact".

- The government "is committed to a mechanism for gathering and assessing factual evidence" regarding the "several specific episodes" the LLRC viewed as warranting further investigation; and the findings of this mechanism "will be placed before the Attorney-General for a decision in respect of instituting criminal proceedings".

- Military courts of inquiry – convened by the army and the navy – "have commenced investigations into specific incidents identified by the LLRC", including "the Channel 4 video footages" and "whether any deliberate and intentional attacks were made by the Army on civilians ... or on any hospitals or no-fire zones": and those courts of inquiry will make

responsible.

Reality: These claims and promises place only a thin veil over the government's unwillingness to conduct genuine investigations into the many credible allegations of wrongdoing by both sides at the end of the war. They also ignore the fact that, as Crisis Group has previously noted, the LLRC report works to exonerate the government and undermine its own limited calls for further inquiry – mostly by accepting at face value the largely unexamined claims of the senior government and military officials who planned and executed the war, and by rolling back well-established principles of international law.

Regarding the government's "enumeration" of those killed and missing in the north, Crisis Group's recent blog post shows how that exercise raises more questions than it answers about the final civilian toll. The government's argument that the story tens of thousands of civilians deaths is "very clearly proved" wrong, when it has not examined the many sources of information suggesting it may be right, underlines the hollowness of its approach.

Similarly, the investigative mechanism and military courts of inquiry promised are limited and devoid of independence. Both efforts appear to be focused on three specific incidents identified by the LLRC and the Channel 4 video footage, not on other critical issues highlighted by the LLRC such as the alleged disappearances of suspected LTTE cadres who had surrendered to or had been arrested by the army, or on the dozens of other allegations deemed credible by the UN panel of experts.

In terms of independence, the military is hardly the right body to examine such serious allegations against its own forces - especially when the members of the army court of inquiry are appointed by one of the senior commanders involved in planning and carrying out many of the policies whose legality has been questioned. This virtually guarantees that no senior officer or anyone in a commanding position will be found responsible for serious crimes. If the Sri Lankan military is to win back its good name, only a truly independent investigation, able to investigate all the way up the chain of command, will do.

At a minimum, a credible domestic accountability process would include: (1) unqualified public commitments to accountability – expressly from the president and the defence ministry, given the power they wield – including for all allegations deemed credible by the panel of experts; (2) establishment of a new investigative body, independent of the attorney-general, military and president, composed of non-political appointees nominated by both the government and opposition parties, and fully empowered and resourced to investigate and prosecute alleged violations; and (3) substantial progress by the government in investigating specific alleged crimes, including all instances of hospital shelling mentioned by either the LLRC or the panel of experts, as well as the many alleged executions or disappearances of individuals who reportedly surrendered to government forces at the end of the war but were killed or are still missing.

### *Life after the lifting of the emergency*

Government claim: The government routinely highlights the August 2011 lifting of the emergency regulations, which had been in force for much of the prior 30 years, as evidence of compliance with international human rights law and normalisation of life after the end of the war. Defence Secretary Gotabaya Rajapaksa recently claimed: "Even when it comes to the upholding of law and order, the role of the military has been drastically curtailed with the lifting of the emergency regulations. Day-to-day law and order activities have been completely entrusted to the police. The claim that the military is involved in every aspect of day-to-day life in the current context is a gross misrepresentation of reality".

which emergency regulations were issued – the president continues to give police powers to the military in all districts of the country. The military's day-to-day involvement in making decisions about civilians' political and economic futures, especially in the north and east, is confirmed by Crisis Group's own field research and reports from local civil society groups. Despite recent promises that the "government is committed to withdrawing the security forces from all aspects of community life", there is no sign on the ground of that happening.

The defence secretary's claim about the effect of the lifting of the emergency regulations is particularly ironic given the decision several years ago to place the police department under his own Ministry of Defence. Indeed, the LLRC took up this point specifically, noting: "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".

More generally, the lifting of the emergency has had little practical effect on life for most Sri Lankans for three reasons: (1) equally draconian and exceptional legislation remains on the books, most notably the Prevention of Terrorism Act (PTA); (2) the passage of the 18<sup>th</sup> Amendment to the Constitution in 2010 and other moves such as placing the attorney general's department under the direct control of the president have removed all checks on presidential power and abolished any remaining independence of the police, judiciary and human rights commissions; and (3) the present government has few qualms about operating extra-legally, illustrated by the continuance of "high-security zones" without any apparent legal basis and reports of "secret detention centres run by the Sri Lankan military intelligence and paramilitary groups where enforced disappearances, torture and extrajudicial killings have allegedly been perpetrated" as recently noted by the UN Committee against Torture. As a prominent commentator has said, many of the LLRC's recommendations are simply "a reiteration of the basic duty on the part of the Government to implement the existing law and the Constitution".

### *Continuing human rights abuses*

Government claim: On the question of ongoing human rights abuses, the government's primary response is to ignore them or to point to its long-awaited National Action Plan for the Protection and Promotion of Human Rights, which it is presenting to the Human Rights Council this session.

Reality: The National Action Plan is wholly inadequate to deal with the scale and severity of human rights abuses since the end of the war. With no provisions to respond to the culture of impunity that perpetuates violations, the plan is part and parcel of the government's strategy of denial. Since the Human Rights Council last met, Sri Lankan civil society organisations have documented dozens of extrajudicial killings, abductions, disappearances and acts of torture – carried out throughout the island. Abductions and disappearances were one of the government's main instruments of counter-insurgency in the final years of the war, targeting Tamils suspected of working with the LTTE, as well as Sinhala and Muslim critics of the government. After coming down in the aftermath of the war, the rate of abductions and disappearances has surged again in the past few months.

Political activists and perceived opponents of the government appear to be targets, such as in the 9 December 2011 disappearance of two activists associated with the dissident faction of the JVP (more sympathetic to the plight of Tamils in the northeast) who had travelled to the northern town of Jaffna to organise a protest against enforced disappearances. Individuals who challenge government abuse are also at risk – as demonstrated by the 11 February 2012 abduction of a Tamil businessman in Colombo just days before the supreme court was due to hear his fundamental rights petition alleging unlawful arrest and detention and torture, stemming from his

number of police shootings and cases of excessive use of force against peaceful protestors in the last eight months, including on 15 February 2012 when the police Special Task Force (STF) killed a fisherman protesting against rising fuel prices in Chilaw.

All of these abuses further erode the rule of law and stifle dissent. Attacks on the media and on human rights defenders, including in the lead up to the current Human Rights Council session, only reinforce fear and distrust – and make it even more difficult for victims to trust law enforcement institutions. The crippling flaws of the National Action Plan are no doubt in part due to the fact that civil society was largely excluded from drafting the final version despite government claims that it was developed through a collaborative process.

*The north and east: militarisation, displacement, detention, women's insecurity*

Government claim: The government insists that it is doing everything possible to restore normalcy in the former warzones in the north and east – ending displacement, releasing detainees and reconstructing damaged infrastructure. It also claims to be "committed to withdrawing the security forces from all aspects of community life" and to be "making every effort" to address the needs of women in those areas, who are overrepresented in the population and head tens of thousands of households.

Reality: Conditions for most of the hundreds of thousands of Tamils and Muslims resettled in the Northern Province remain poor, with limited rebuilding and few economic opportunities. Military installations – including large newly built permanent camps – continue to displace thousands. Nearly 19,000 IDPs remain in camps or transit centres, and more than 110,000 live with host families. Their difficulties are worsened by the heavy military presence: the estimated 150,000 military personnel deployed in the north (the government failed to respond to Crisis Group's request for the official figure) monitor all activities and military leaders have a veto power on all political and development issues. The military has established its own commercial enterprises and competes with northern farmers and businesses struggling to re-establish themselves. The local civilian administration has been deliberately undermined and stripped of any independence. Levels of fear and mistrust between Tamils and the military, between Tamils and Muslims, and within the Tamil community are dangerously high.

These conditions contribute to the desperate lack of security faced by women in the north and east, as detailed in Crisis Group's December 2011 report. Crisis Group continues to receive reports from the north and east that women released from "rehabilitation" camps for suspected LTTE members face harassment and sexual abuse from the police and military to whom they must regularly report. While the LLRC report does correctly identify many of the issues contributing to women's insecurity in the north and east – including that women "feel unsafe in the presence of the armed forces, and in most of the resettled areas such presence is not very reassuring to women" – it largely ignored the problem of sexual violence.

The government claims that fewer than 900 suspected LTTE cadres are still detained without charge or access to lawyers in military-run "rehabilitation centres". The government still refuses to release the names of those held in its custody, despite this being one of the LLRC's recommendations in its September 2010 interim report, following the many submissions to the LLRC about missing husbands, sons and daughters, many last seen in military custody. The government's own special census for the Northern Province reports 2,635 "untraceable" persons in 2009. Given Sri Lanka's well-documented history of enforced disappearances and extrajudicial killings, there are strong grounds to fear many of the missing are dead. The more than 10,000 "rehabilitated" former detainees who have been released are closely monitored and many are harassed by the military; few have any meaningful economic opportunities. Hundreds more Tamils – some held for years without charge – remain detained under the Prevention of

Terrorism Act or have now been transferred for "rehabilitation".

*A political settlement on devolution and minority rights*

Government claim: The government says it is pursuing a "democratic, pragmatic and home grown" approach to the "national question" following a "consensus formula". It also claims to be pursuing bilateral discussions with Tamil political parties and Muslim representatives in parallel.

Reality: After nearly a year of on-and-off discussions, government negotiators abruptly ended talks with the Tamil National Alliance (TNA) in mid-January 2012. The government refuses to meet with the TNA until it nominates representatives to the all-party parliamentary select committee (PSC) the government has established as its preferred method of devising a constitutional reforms to address long-standing grievances of ethnic minorities. The TNA has said it will appoint its nominees once the government abides by its promise to agree first on the basic structure of an agreement with the TNA before beginning talks with other parties. As its critics have charged from the start, the PSC has complicated negotiations with TNA, while allowing the president to avoid committing to any proposal for constitutional reform of his own, despite his having the two-thirds majority in parliament necessary to pass amendments.

In other ways, too, the government shows little willingness to move toward a negotiated political settlement that would devolve meaningful power to the north and east. On 17 January 2012, the Indian Foreign Minister announced that President Rajapaksa had assured him of his "commitment to move towards a political settlement based on the full implementation of the 13th Amendment to the Sri Lankan Constitution, and building on it, so as to achieve meaningful devolution of powers". Two weeks later, the president denied this was true, saying that only the PSC could decide the issue. Government spokesmen have also repeatedly stated that the Northern and Eastern Provincial Councils will never be allowed to use the land and police powers formally granted to them in the constitution.

Finally, despite promising for more than two years that elections to the Northern Provincial Council would soon take place, the president has still not announced a date. In the absence of an elected council, the north is governed by a retired general appointed directly by the president. The increased concentration of power in Colombo and in the president's own family seems to indicate the government's real attitude toward sharing power.

## Appendix 4

### UN HRC 19th session - Members with VOTING rights

#### Current Membership of the Human Rights Council

20 June 2011 - 31 December 2012

1. African States: 13 seats
2. Asian States: 13 seats
3. Latin American and Caribbean States: 8 seats
4. Western European and other States: 7 seats
5. Eastern European States: 6 seats

#### Current Membership of the Human Rights Council by regional groups

<b>AFRICAN STATES</b>	<b>LATIN AMERICAN &amp; CARIBBEAN STATES</b>
Angola 2013 Benin 2014 Botswana 2014 Burkina Faso 2014 Cameroon 2012 Congo 2014 Djibouti 2012 Libya 2013 Mauritania 2013 Mauritius 2012 Nigeria 2012 Senegal 2012 Uganda 2013	Chile 2014 Costa Rica 2014 Cuba 2012 Ecuador 2013 Guatemala 2013 Mexico 2012 Peru 2014 Uruguay 2012
<b>ASIAN STATES</b>	<b>WESTERN EUROPE &amp; OTHER STATES</b>
Bangladesh 2012 China 2012 India 2014 Indonesia 2014 Jordan 2012 Kuwait 2014 Kyrgyzstan 2012 Malaysia 2013 Maldives 2013 Philippines 2014 Qatar 2013 Saudi Arabia 2012 Thailand 2013	Austria 2014 Belgium 2012 Italy 2014 Norway 2012 Spain 2013 Switzerland 2013 United States 2012
<b>EASTERN EUROPEAN STATES</b>	
Czech Republic 2014 Hungary 2012 Poland 2013 Republic of Moldova 2013 Romania 2014 Russian Federation 2012	



