

## **Accountability in Sri Lanka**

### **Report of Panel of Experts appointed by UN Secretary-General and Interview with IMADR President**

The 30-year armed conflict between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) ended in May 2009 through arguable usage of heavy armed forces by the government. However, many human rights issues still remain unresolved. One is the issue of accountability. As a reaction from the UN side, UN Secretary-General Ban Ki Moon visited the country and on March 23, 2009, issued a statement with the President of Sri Lanka that included a joint commitment. In the statement, the Secretary-General underlined the importance of an accountability process and the government of Sri Lanka agreed that it would take measures to address grievances. On June 22, 2010, the Secretary-General then appointed a Panel of Experts to advise him on the implementation of the joint commitment and the issue of accountability with regard to any alleged violations of international human rights and humanitarian law during the final stages of the conflict. The members of the Panel are: Marzuki Darusman (Indonesia, Chair of the Panel), Yasmin Sooka (South Africa) and Steven Ratner (United States).

The Panel undertook an assessment of the “nature and scope of alleged violations” by analysing information from various sources, but its mandate does not extend to fact-finding or investigation. An allegation is determined credible if there is reasonable basis to believe that the underlying act or event occurred.

In its report, the Panel states that its “*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*”. While the Government of Sri Lanka says it pursued a “humanitarian rescue operation” with a policy of “zero civilian casualties,” “*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 both by the Government of Sri Lanka and the LTTE.*”

In conclusion, the Panel reports that it “*found credible allegations that comprise five core categories of potential serious violations committed by the Government of Sri Lanka: (i) killing of civilians through widespread shelling; (ii) shelling of hospitals and*

*humanitarian objects; (iii) denial of humanitarian assistance; (iv) human rights violations suffered by victims and survivors of the conflict, including both IDPs and suspected LTTE cadre; and (v) human rights violations outside the conflict zone including against the media and other critics of the Government.”*

At the same time the Panel also found credible allegations against the LTTE that include: “(i) using civilians as a human buffer; (ii) killing civilians attempting to flee LTTE control; (iii) using military equipment in the proximity of civilians; (iv) forced recruitment of children; (v) forced labour; and (vi) killing of civilians through suicide attacks.”

Regarding accountability, the Panel states that “*it is a duty under domestic and international law. These credibly alleged violations demand a serious investigation and the prosecution of those responsible. If proven, those most responsible, including Sri Lanka Army commanders and senior Government officials, as well as military and civilian LTTE leaders, would bear criminal liability for international crimes.*” The Panel further “*concluded that the Government’s notion of accountability is not in accordance with international standards. Unless the Government genuinely addresses the allegations of violations committed by both sides and places the rights and dignity of the victims of the conflict at the centre of its approach to accountability, its measures will fall dramatically short of international expectations.*”

The Panel also analysed existing domestic mechanisms which “could” address the accountability. Among others, it found that from the ceasefire agreement in 2002 to the end of the conflict, the Lessons Learnt and Reconciliation Commission, established by the Government as the cornerstone of its policy to address the past, “*is deeply flawed, does not meet international standards for an effective accountability mechanism and, therefore, does not and cannot satisfy the joint commitment of the President of Sri Lanka and the Secretary-General to an accountability process.*”

In addition, the Panel observed five obstacles to accountability, which if left unaddressed, will deter efforts towards genuine accountability and may undermine prospects for durable peace in consequence. These obstacles are: (i) triumphalism on the part of the Government, expressed through its discourse on having developed the means and will to defeat “terrorism”, thus ending Tamil aspirations for political autonomy and recognition, and its denial regarding the human cost of its military strategy; (ii)

on-going exclusionary policies, which are particularly deleterious as political, social and economic exclusion based on ethnicity, perceived or real, have been at the heart of the conflict; (iii) the continuation of wartime measures, including not only the Emergency Regulations and the Prevention of Terrorism Act, but also the continued militarization of the former conflict zone and the use of paramilitary proxies, all of which perpetuate a climate of fear, intimidation and violence; (iv) restrictions on the media, which are contrary to democratic governance and limit basic citizens' rights; and (v) the role of the Tamil diaspora.

Furthermore, the Panel observed the failure of UN organs and bodies. It states that during *“the final stages of the war, the United Nations political organs and bodies failed to take actions that might have protected civilians. ... the public use of casualty figures would have strengthened the call for the protection of civilians”* and *“following the end of the war, the Human Rights Council may have been acting on incomplete information when it passed its May 2009 resolution on Sri Lanka.”*

Based on such analysis, recommendations were made by the Panel regarding: 1. Investigations, 2. Other immediate measures to advance accountability, 3. Longer term accountability measures, and 4. United Nations. The Panel delivered its report to the Secretary-General during their meeting on April 12 and the report was officially made public on April 25.

Concerning the meaning of this report, roles to be played by the Secretary-General as well as other stakeholders, and issues involved in the whole process of accountability, IMADR president, Nimalka Fernando, gave an interview to the Sunday RAVAYA, a Sri Lankan Newspaper on April 24. Below are some of her observations.

The main challenge before this committee (the Panel) was to arrive at an understanding regarding the incidents that took place during the last stages of the war in Sri Lanka since there were confusing reports and information. Both the government and the LTTE had declared war. It was no longer guerilla warfare - both parties were engaged in a conventional war.

During this period, allegations were brought against the government by members of the Sri Lankan diaspora, as well as several humanitarian agencies. Many spoke about efforts related to humanitarian work being hampered, hospitals being bombed, and areas

inhabited by civilians being shelled and/or bombed. There were many reports of such incidents. Since this is now a conventional war, it has to come under rules like the Geneva Convention. Therefore, if such an inquiry is being held as to whether there was compliance with the Geneva Convention, this is not interference into sovereignty.

Such laws were passed after the 2<sup>nd</sup> World War. This arose with initiatives taken to give a commitment to the people of the world that nobody will be allowed to repeat what happened during the 2<sup>nd</sup> World War. In other words, it was a commitment given that the world will not see such a barbaric and genocidal war again.

There is also the issue of one's conscience. The UN Secretary General is primarily responsible for keeping up international commitments, and upholding such principles. If those who are tasked with high responsibilities fail to respond effectively, the very existence of such institutions comes under question. The very essence of the existence of the United Nations is so linked to the accountability and responsibility of its members. It creates civilized standards of behavior both within governments and inside member states. This is that forum for not only member states but also for the people of member states.

I do not wish to whitewash the UN. It is situated in New York in the United States of America. Maybe most decisions taken by the UN has the shadow of American interests at large. But those who are in the government like Mahinda and Vasudeva now criticizing the UN as a forum of imperialists took their complaint against the disappearances in 1989 to this same forum. We should not forget that history.

The Ministry of Defense ordered all humanitarian agencies to move out of the conflict zone. No media was allowed into this area. The war in Sri Lanka was widely discussed as a "War without witnesses." Not even the local and national media were permitted to enter these areas. Even though the war ended without witnesses, the government failed to address the many problems arising out of this conflict. When we asked the government how many inhabitants are living in Kilinochchi or Vanni, they stated that it is a small population amounting to about 70,000. But when the exodus took place, over 300,000 people left Vanni. The government went into crisis with this revelation. Issues arose as to why the government was hiding actual information, and why they gave wrong statistics also raised tremendous suspicion.

Then, those displaced started searching for their family members. Many who had surrendered their husbands or sons to various army check points started asking for their whereabouts. In addition, there was a big discussion about the killing of people who came to surrender carrying white flags. Of course, these renderings of incidents mainly come from the diaspora and IDPs. Maybe the LTTE would have killed those coming to surrender carrying white flags from behind. Even if this happened, the government of Sri Lanka has a responsibility to provide the necessary evidence to prove the truth of this, since they were present on the ground. But the government did not do so. In such circumstances, criticisms were also leveled against the UN system for not taking effective steps to address the violations. It is these circumstances, in my view, that have compelled the UN to take such measures now.

(Nimalka Fernando, IMADR President)