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**Statement by the spokesperson of the EU High Representative  
Catherine Ashton  
on the publication of the report of Sri Lanka's Lessons Learnt  
and Reconciliation Commission**

The spokesperson of Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy and Vice President of the Commission, issued the following statement today:

*"The High Representative takes note of the presentation of the Lessons Learnt and Reconciliation Commission report to the Sri Lankan Parliament. She hopes that the report will contribute to the process of reconciliation in Sri Lanka. A detailed and careful study of the measures proposed to implement the recommendations in the report is needed, including on the issue of accountability. We continue to encourage the Government of Sri Lanka to engage with the UN Secretary General and relevant UN bodies on these matters."*

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Tuesday, January 24, 2012

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### **"Security Forces had not deliberately targeted civilians in the NFZs" - LLRC**

The final report of the Lessons Learnt and Reconciliation Commission (LLRC) was tabled in Parliament by Leader of the House Nimal Siripala de Silva 16th December 2011.

"In evaluating the Sri Lanka experience in the context of allegations of violations of International Humanitarian Law (IHL), the Commission is satisfied that the military strategy that was adopted to secure the LTTE held areas was one that was carefully conceived, in which the protection of the civilian population was given the highest priority. The Commission also notes in this regard that the movement of the Security Forces in conducting their operations was deliberately slow during the final stages of the conflict, thereby evidencing a carefully worked out strategy of avoiding civilian casualties or minimizing them," the report stated in its Principal Observations and Recommendations.

#### **Final LLRC Report :**

Among the conclusions of the Commission is that "On consideration of all facts and circumstances before it, the Commission concludes that the Security Forces had not deliberately targeted the civilians in the NFZs, although civilian casualties had in fact occurred in the cause of crossfire. Further, the LTTE targeting and killing of civilians who attempted to flee the conflict into safe areas, the threat posed by landmines and resultant death and injuries to civilians, and the perils inherent in crossing the Nanthi Kadal Lagoon, had all collectively contributed to civilian casualties. It would also be reasonable to conclude that there appears to have been a bona fide expectation that and attack on LTTE gun positions would make a relevant and proportional contribution to the objective of the military attack involved."

"Having reached the above conclusions, it is also incumbent on the Commission to consider the question, while there was no deliberate targeting of civilians by the Security Forces, whether the action of the Security Forces of returning fire into the NFZs was excessive in the context of the Principal of Proportionality. Given the complexity of the situation that presented itself as described above, the Commission after most careful consideration of all aspects, is of the view that the Security Forces were confronted with an unprecedented situation when no other choice was possible and all "feasible precautions" that were practicable in the circumstances had been taken," it further said.

The report also states the process of reconciliation requires a full acknowledgement of the tragedy of the conflict and a collective act of contrition by the political leaders and civil society, of both Sinhala and Tamil communities. The conflict could have been avoided had the southern political leaders of the two main political parties acted in the national interest and forged a consensus between them to offer an acceptable solution to the Tamil people. The Tamil political leaders were equally responsible for this conflict which could have been avoided had the Tamil leaders refrain from promoting an armed campaign towards secession, acquiescing in the violence and terrorist methods used by the LTTE against both the Sinhala and Tamil people, and failing to come out strongly and fearlessly against the LTTE, and their atrocities practices.

In May 2010, President Rajapaksa appointed the eight-member Commission to report on the lessons to be learnt from the events in the period, Feb 2002 to May 2009, their attendant concerns and to recommend measures to ensure that there will be no recurrence of such a situation.

The LLRC held its first sittings on August 11, 2010. In November 2010, the President extended its mandate till May 15, 2011.

The Commission had regular public hearings in Colombo and in the former conflict affected areas of Vavuniya, Batticaloa and Kilinochchi. This included field visits to meet people directly affected by the conflict. It has received over 1,000 oral submissions and over 5,000 written submissions.

The government appointed an Inter-Agency Advisory Committee (IIAC) headed by the Attorney General of Sri Lanka to facilitate the implementation of the recommendations made by the LLRC during its inquiry.

The LLRC had made recommendations on action to be taken with regard to detention of suspects, land issues, law and order, administrative and language issues and socio-economic and livelihood issues.

Following recommendations by the Commission a special committee was appointed in January 2011, to study the cases of detained LTTE suspects and expedite legal action where necessary.

Implementing reconciliation measures suggested by the IIAC the government is gradually releasing lands occupied by the military as High Security Zones (HSZs) in the country, especially in the North.

The Sri Lanka Army officially handed over Subash Hotel on Victoria Road in Jaffna town in which the 52 Division Headquarters was established since December 1995, to its owner in March this year.

256 houses surrounding the Palaly HSZ have already been returned to civilians and another 2392 houses have been identified for civilian occupation in more than 2500 hectares of the land that was set apart for HSZs.

The Lessons Learnt and Reconciliation Commission comprised Mr. Chitta Ranjan de Silva PC (Chair), Mr. Chandirapal Chanmugam , Prof. Karunaratne Hangawatte, M. T. M. Bafiq, Mr. Maxwell Paranagama, Mr. HMGS Paliakkara, Dr. Amrith Rohan Perera PC and Mrs Mano Ramanathan.



# Statement on the Report of Sri Lanka's Lessons Learnt and Reconciliation Commission

**Brussels** | 22 Dec 2011

The International Crisis Group welcomes the public release of the report of Sri Lanka's "Lessons Learnt and Reconciliation Commission" (LLRC), presented to the Sri Lankan parliament on 16 December 2011. The report acknowledges important events and grievances that have contributed to decades of political violence and civil war in Sri Lanka and makes sensible recommendations on governance, land issues and the need for a political solution. But it fails in a crucial task – providing the thorough and independent investigation of alleged violations of international humanitarian and human rights law that the UN and other partners of Sri Lanka have been asking for. It is now incumbent on the international community, through the UN Human Rights Council, to establish an independent international investigation in 2012. Without such an investigation, accountability for the crimes committed at the end of the civil war is highly unlikely; without accountability, and a full understanding of the nature of the violations which took place on all sides, the seeds of future conflict will grow.

Appointed by President Rajapaksa in May 2010, the LLRC has been the government's primary means of deflecting pressure for an international investigation into credible allegations of grave violations of international humanitarian and human rights law by both government forces and fighters of the Liberation Tigers of Tamil Eelam (LTTE) in the final stages of the long civil war. The government has pledged that the commission's report would fully address the international community's demands for accountability, as President Rajapaksa promised UN Secretary-General Ban Ki-moon after the government's declaration of victory over the LTTE in May 2009.

Despite the Sri Lankan government's two and half years of propaganda that their brutal campaign against the LTTE was conducted with little or no damage to civilians, the evidence of shelling of civilians and mass deaths was too much for the commission to ignore. Breaking with years of government claims to the contrary, the LLRC has accepted that "considerable civilian casualties had in fact occurred during the final phase of the conflict" and "that shells had in fact fallen on hospitals causing damage and resulting in casualties". It also recognised the "possible implication of the Security Forces for the resulting death or injury to civilians" but in only three incidents "brought to the attention of the Commission". It calls on the government "to ascertain more fully, the circumstances under which such incidents could have occurred, and if such investigations disclose wrongful conduct, to prosecute and punish the wrongdoers".

Yet the 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. It "concludes", for example, "that the military strategy that was adopted to secure the LTTE-held areas was one that was



carefully conceived, in which the protection of the civilian population was given the highest priority"; "that the Security Forces had not deliberately targeted the civilians in the [no-fire zones] NFZs"; and that their actions did not violate the principle of proportionality because they "were confronted with an unprecedented situation when no other choice was possible and all 'feasible precautions' that were practicable in the circumstances had been taken". At the same time, it claims that it is unable to determine which side was responsible for many of the reported incidents and chooses, with little explanation, to blame most deaths on the LTTE and unexplained "cross-fire".

The LLRC's conclusions are untenable for several reasons. First, it is obvious throughout the report that it considered only the materials the government chose to place before it. There was no independent assessment of the full scope of information in the government's possession – including all communications with the UN, ICRC and sources in the conflict zone, as well as other evidence from government and international sources, such as uncensored satellite images and footage from the military's unmanned drones. Similarly, the record before the LLRC is inadequate to draw conclusions ruling out unlawful attacks when there are thousands of witnesses who did not come forward, partly because of the lack of witness protection, and when there is no indication that the LLRC had physical access to the final war zone where most of the civilian casualties occurred. Those areas have been off limits to everyone but the military since the end of hostilities.

An equally worrying deficiency in the LLRC's conclusions is the fundamental misstatement or misapplication of principles of international law. This is most evident in its failure to present a fair exposition of the principle of distinction under international humanitarian law. Indeed, even though the LLRC claimed to have considered the April 2011 report of the UN Secretary-General's panel of experts, it did not engage the panel's legal or factual analysis in any meaningful way. Allowing the LLRC's regressive statement of international law to stand could have consequences beyond Sri Lanka.

The LLRC's exculpation of government and military leaders also depends on accepting without question testimony from Tamil government administrators and doctors who had served in the war zone. The report makes no mention of the fact that the doctors were detained under anti-terrorism laws at the end of the war and forced to recant publicly their earlier claims that thousands of civilians died from government shelling. To accept at face value their statements to a government-appointed body requires ignoring the evidence of physical attacks and threats to government critics that the LLRC discusses at length elsewhere in its report. Indeed, as predicted by many in advance of the LLRC's hearings, numerous witnesses who testified to the commission about government violations have since been questioned and harassed by the military and the police.

In the most compelling sections of its report, the LLRC recognises what Crisis Group, human rights organisations and civil society activists have argued for years: that Sri Lanka is suffering from a crisis of institutionalised impunity for human rights violations by state forces and those working in collaboration with the state. Unfortunately, the commission makes no effort to apply these facts to its analysis of alleged violations of international humanitarian law or to analyse how they would likely distort much of the testimony it received.



The LLRC's own accounts of large-scale civilian deaths, repeated shelling by the government of "no-fire zones" packed with civilians, attacks on medical centres, and disappearances and possible executions of captured combatants and civilians – actions long denied by the Sri Lankan government – demand an impartial and thorough investigation. The LLRC's request that the government conduct a series of further, limited inquiries into some of these issues is far from an adequate response. The Sri Lankan government's past three years of denial, dissimulation and intimidation of critics has proven it is neither willing nor able to carry out impartial and effective investigations.

The responsibility now falls on the international community to take up the task of ensuring post-war accountability, beginning with a formal discussion of the LLRC report and the UN Secretary-General's panel report at the March 2012 session of the UN Human Rights Council, leading to an independent international mechanism to investigate all credible allegations and to monitor domestic efforts at accountability.

The Human Rights Council should also take note of the LLRC's recommendations that the government investigate and hold to account those responsible for abductions, disappearances and attacks on journalists – including those committed by armed pro-government Tamil parties. These issues should be addressed on an urgent basis by the Sri Lankan government and its implementation of the commission's recommendations should be monitored on an ongoing basis by the HRC. As the LLRC itself points out, such recommendations have been made many times by previous domestic commissions of inquiry and almost always ignored, as has been the case with most of the LLRC's own interim recommendations. There is little chance that the LLRC's final recommendations will fare any better, unless there is sustained international attention and pressure from the UN Secretary-General, the Human Rights Council, and influential governments, most importantly China, India, Japan, the United States, Canada, Britain, France and the European Union. Sri Lanka's friends in the non-aligned movement, especially South Africa, Brazil, Indonesia and Mexico, have a particularly important role in reminding Sri Lanka of the importance of accountability and demilitarisation to lasting peace and reconciliation.

In other respects, too, there is much of value in the LLRC report that the international community should pay attention to and can learn from. This includes the commission's criticisms of the overly centralised and militarised way in which the government is ruling the Tamil-majority northern province and the top-down, non-participatory approach to reconstruction and development of the former war zones. Also worth noting are the commission's suggestions for better managing the sensitive issue of land and its support for the prompt and effective devolution of power to the north and east. Many of these issues have been covered in Crisis Group reports, including its most recent "Sri Lanka: Women's Insecurity in the North and East", released on 20 December 2011.

Without accepting the flaws of the LLRC's approach to allegations of war crimes and of its analysis of the government's conduct of the war, Sri Lanka's international partners should nonetheless attempt to support the openings that the LLRC makes possible in public discussions about human rights and reconciliation within Sri Lanka. The inadequacies in the LLRC's treatment of violations of international humanitarian and human rights law as well as its more useful and critical arguments about the need for serious reforms in how



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AMNESTY INTERNATIONAL  
PRESS RELEASE

16 December 2011

Sri Lanka Report Falls Short

The final report of Sri Lanka's Lesson Learnt and Reconciliation Commission (LLRC), released publicly today, acknowledges serious human rights problems in Sri Lanka but falls short of fully addressing the war crimes and crimes against humanity committed during the final phases of the conflict between the government and the Liberation Tigers of Tamil Eelam, Amnesty International said today.

"A preliminary review of the report suggests that it acknowledges the very serious human rights problems in Sri Lanka. But where it appears to really falter is in ignoring the serious evidence of war crimes, crimes against humanity and other violations of the laws of war by government forces, even though the report highlights the serious and systematic violations committed by the LTTE," said Sam Zarifi, Amnesty International's Asia-Pacific director.

"There is a clear sign of the bias we had feared and already detected in the LLRC's composition and conduct. It does however offer some interesting recommendations about how to improve the overall human rights situation in Sri Lanka that the government needs to take seriously," said Sam Zarifi,

"The Sri Lankan government must now address the findings included in this report. It should report to the UN Human Rights Council at its next session in March 2012 on its measures to implement the report's recommendations, including the need for further investigation of alleged violations of the laws of war, taking account of the findings and recommendations of the report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka."

The LLRC received numerous testimonies about enforced disappearances, illegal or abusive detention and extrajudicial executions. It has called on the Sri Lankan government to investigate these reports and prosecute violators.

Importantly the report notes that many people stressed that "definitive action against alleged cases of disappearances as well as preventive measure would have a significant impact on the reconciliation process."

Amnesty International has long held that accountability is essential to reconciliation in Sri Lanka. Although the Sri Lankan authorities should take seriously the LLRC's recommendations, Amnesty International believes that given Sri Lanka's long history of impunity, lack of apparent political will to address ongoing violations and enormous backlog of unresolved cases of violations, effective investigation and prosecution of all wrongdoers (including commanding officers) is very unlikely without the active support of the international community.

The report's major shortcoming is in addressing alleged violations of the laws of war, where the LLRC appears to have taken the government's responses uncritically. The LLRC admits what the Government of Sri Lanka has assiduously denied - that civilians, including those in hospitals, suffered directly as a result of LTTE and government shelling, but the LLRC's blanket rejection of government targeting of civilians and its deliberate downplaying of the numbers of civilians caught in the final

phase of the conflict is not warranted by the evidence, including that presented to the LLRC.

"The LLRC has admitted its own inability to establish the facts about the conduct of the fighting, and points out legal complexities beyond its abilities. This is why the international community must now follow up with an investigation, bringing to bear the full resources and assistance of the UN and the international community," Sam Zarifi said.

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