

Formation of a Provisional Transnational Government of Tamil Eelam

Final report based on the study by the
Advisory Committee

15 March 2010

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Summary

The report first provides the context in which the endeavour to form the Provisional Transnational Government of Tamil Eelam arose. The initiative for Transnational Government is rationalized on the lack of political space for the Tamils in the island of Sri Lanka to articulate their political aspirations and realize their right to self-determination and exercise their sovereignty. The theoretical underpinnings of Transnationalism under the proposed Transnational Government are discussed. The task envisioned for the Transnational Government, the procedure for the formation of the Transnational Government, the guiding principles, the shape of the Transnational Assembly and benefits of direct voting are discussed. The report emphasizes the participation of youth and women. In connection with the formation of the TGTE, the report deals with the establishment of election commission, country working groups, voter's eligibility, candidate's eligibility and the proposed mode of operation. The report also discusses the potential for the TGTE to emerge as a power centre, its relationship to existing and emerging organizations, and the strategy to engage the international community. Special emphasis is placed on the relationship with Muslim people. The changing dynamics of the geopolitical situation in South Asia is also addressed. The report concludes with a set of guiding principles which the Advisory Committee believes should be included in the Constitution and provide direction to the TGTE.

1. Background

The repression of the Tamil people since the granting of independence to Ceylon began with the disenfranchisement of the Indian Tamils, the enactment of the Sinhala Only Act that made Sinhalese the only official language of Sri Lanka, the denial of access of young Tamils to university education and the violent repression of peaceful protests of the Tamils. There were major organized riots (pogroms) against the Tamils in 1958, 1960, 1977 and 1983, in which there was government complicity. On winning the Kankesanthurai by-election in 1975, Mr S J V Chelvanayakam who is affectionately referred to as the 'Gandhi of Eelam' declared:

“We have for the last 25 years made every effort to secure our political rights on the basis of equality with the Sinhalese in a united Ceylon...It is a regrettable fact that successive Sinhalese governments have used the power that flows from independence to deny us our fundamental rights and reduce us to the position of a subject people...I wish to announce to my people and to the country that I consider the verdict at this election as a mandate that the Tamil Eelam nation should exercise the sovereignty already vested in the Tamil people and become free.”

Following Chelvanayakam’s election victory, all Tamil political parties convened in Vaddukoddai and unanimously adopted the Vaddukoddai Resolution. The Resolution was adopted at the first National Convention of the Tamil United Liberation Front (TULF) on 14 May 1976. The TULF's participation in the 1977 general elections was anchored in this Resolution. In this Resolution, the TULF declared its intent of forming a sovereign State of Tamil Eelam. S. J. V. Chelvanayakam presided over the Convention. The following is a translation of the Resolution, which was originally adopted in Tamil. “This convention resolves that restoration and reconstitution of the Free, Sovereign, Secular, Socialist State of Tamil Eelam, based on the right of self determination inherent to every nation, has become inevitable in order to safeguard the very existence of the Tamil Nation in this Country.”

The Resolution concluded by saying that the Convention called upon the Tamil nation in general and the Tamil youth in particular to come forward to throw them fully into the sacred fight for freedom and to flinch not until the goal of a sovereign state was realized. The 30-year long legitimate campaign of the Eelam Tamils to realize their right to self-determination led by the Liberation Tigers of Tamil Eelam (LTTE) has suffered a serious setback through military aggression by the Sri Lankan armed forces, during which these armed forces violated of humanitarian laws and all civilized norms. People all over the world were shocked and deeply saddened by the atrocities committed in the course of war and particularly during its final phase in the Vanni area.

Of particular note, banned weapons and heavy shelling by the Sinhalese military were responsible for the massacre of tens of thousands of Tamil civilians in the no fire zone in 2009. The government of Sri Lanka then incarcerated 300,000 Tamils, and herded them into

Sinhalese military-run internment camps. The UN, INGOS and other relief organizations and journalists have been barred from free access to these internment camps. These civilians are imprisoned as a collective punishment solely on account of their Tamil nationality. The conditions are dire in the camps. According to the UN, during the initial stage of the internment people have died due to starvation. According to Amnesty International, some women were forced to give birth in front of strangers. The UK's Channel 4 News reported that "shocking claims have emerged, shortages of food and water, dead bodies left where they have fallen, women separated from their families and even sexual abuse. Though a substantial number of people were allowed to go 'free' from the internment camps in the last weeks of 2009 following internal and external pressures, those released have been living under constant fear and without the basic facilities for human existence. They have not been meaningfully resettled or permitted to return to their original homes.

Those Tamils who live outside the camps hardly fare better in terms of their safety and well-being. The NorthEast, the traditional homeland of Tamils, is swarming with military personnel and camps and is effectively an occupied territory. The South of the island is under the control of a Sinhalese nationalist government, and the Tamils who live there are viewed as a security threat and live in constant fear of violence. Tamil civilians are being targeted solely on account of their Tamil ethnicity. Tamils are on the verge of being annihilated as a nation, a people and a community through deliberate killing and disappearance, forced assimilation, ethnic cleansing and colonization.

The illegal detention of Tamils in internment camps as well, as the violence perpetrated on Tamils living in the rest of the island by the Government of Sri Lanka is calculated to bring about their physical destruction in substantial part in violation of Article II (c) of the Genocide Convention. Not only is the very physical survival of Tamils in danger in the island of Sri Lanka, but Tamils also do not have any meaningful political space to articulate their legitimate political aspirations on the island. Politicians who articulate the voices of their people are in grave danger. Four Tamil Members of Parliament have been killed since President Rajapakse was elected in 2005. In addition, because of the systematic colonization of Tamil areas, the gerrymandering of electoral districts, the large numbers who have been driven from or fled the Tamil areas because of violence, and the lack of new voter registration, Tamil representation has decreased substantially in the legislature since independence. Moreover, the electoral process in the island of Sri Lanka is entrenched with

pervasive racism and has resulted in further marginalization and oppression of Tamil people at each and every election. Consequently, the Tamils are denied effective participation in the political process of the island.

The scenario outlined above amply demonstrates the continuing inhumanity of the Sri Lankan government against the Tamil people. It reinforces the Tamil demand for the realization of the right to self-determination and the exercise of their sovereignty in order to protect them from annihilation and thereby to ensure their safety and security as a distinct people in their own homeland. Every accepted tenet of international law recognizes that in such circumstance a right to self-determination and, with it, a right of secession arises in the affected people.

A symptom of the lack of political space for the Tamil people in Sri Lanka is the 1983 Sixth Amendment to the constitution of Sri Lanka which prohibits even discussion of a separate state, in violation of freedom of speech. The physical insecurity of Tamils is embodied in the 1979 Prevention of Terrorism Act which has been described by the International Commission of Jurists as “an ugly blot on the statute book of any civilized country”, and in the Emergency laws that have allowed hundreds of thousands of enforced disappearances, extrajudicial executions, torture and rape of Tamils with total impunity by the perpetrators. There has been no political space for the full articulation of Tamil political aspirations within the constraints of the Sri Lankan state’s constitutional structure, and, with the lack of personal security for Tamils within the island. It is the absence of political space for meaningful political participation, coupled with the absence of an international mechanism to resolve national conflict in accordance with law which led to the evolution of the Tamils’ peaceful campaign for their rights into an armed campaign under the leadership of the LTTE. The LTTE’s military power and the resultant *de facto* state created a political space for Tamils to freely express their political aspirations for the realization of the right to self-determination. However, that political space no longer exists. Thus, any meaningful political campaign for the Tamils’ rights can be pursued only from outside the island today.

2. Rationale

The social existence of the Tamil people depends on the preservation of their distinct political, economic, social and cultural way of life and their ability to coexist and be co-partners with other communities around the world. To achieve these goals and to control factors that pose threats to their existence, there is a need for a strong and self-governing political entity. This

was given shape in 1976 through the Vaddukkodai Resolution and reinforced by the mandate given by the people in the 1977 general elections.

In the island of Sri Lanka, the political structure has been militarized and accentuated for more than 60 years. The constitution brought in by Sinhala-Buddhist supremacy and the laws enacted there under have denied the fundamental rights and well-being of other nationalities. These have become stumbling blocks to the political identity, social existence and cultural advancement of the Tamil people, as well as other non-Sinhalese-Buddhist nationalities.

Furthermore, as we noted earlier, the internal conditions in the island of Sri Lanka have become very detrimental to the Tamils and prevent the Tamil people from freely expressing their aspirations and engaging in political discourse and activism. In this scenario, Tamils living in the Diaspora have a responsibility to confront these problems and to adopt different approaches to realize the Tamil people's political right to self-determination. It is also pointed out that the Tamil National Leader, Mr. V. Pirabakaran, in his 2008 Heroes Day speech entrusted the Tamils' campaign for the exercise of their sovereignty to the Tamil Diaspora, in particular to its second generation.

The Tamil Diaspora lives mainly in liberal democracies. They are committed to pursuing the goal of Tamil Eelam in the island of Sri Lanka through democratic and peaceful means in a manner consistent with the laws of the states they live in. It has now become necessary to constitute a coordinated and democratic polity to advance these objectives. This polity is the proposed Transnational Government of Tamil Eelam (TGTE).

The idea of forming a Transnational Government of Tamil Eelam was advanced by scholars and activists among the Diaspora as one mechanism available to the Tamil Diaspora to pursue Tamil aspirations through political and diplomatic means in the immediate future. What follows in this report are the outcome of deliberations over the past six months among a wide group of Tamils in different parts of the world, backed by the work and recommendations of an Advisory Committee (AC) assigned for this purpose.

3. Theoretical position

Transnationalism is a phenomenon of multiple ties and interactions linking communities and institutions across the traditional borders of nation states. The economic, social, cultural and - most importantly - political linkages that arise out of transnational ties of communities have

become the crucial force in contemporary politics and international relations.

Transnationalism is a function of the process of globalization, which besides integrating markets, has also brought about the possibility of organization of political and social movements on a global scale. The various issues such as environmental protection and human rights are now articulated globally by non-governmental organizations having considerable influence in international politics. The process has enabled ethnic groups which have been displaced from their homelands through repression to stand united and pursue goals as to their homelands through transnational movements exerting pressure to achieve their political and other objectives.

Transnationalism offers multiple and unique possibilities for Tamils in their quest for the realization of their right to self-determination and a separate nationhood. Tamil transnational politics is the logical consequence of their transnational life and transnational community networks.

Our political philosophy is anchored in the ideas of transnationalism and transnational politics.

3.1 Transnationalism and the Eelam Tamil Diaspora

People who are members of a Diaspora in any particular country maintain relationship among themselves, as well as with people in their land of origin and with parts of the Diaspora in other countries. Their lifestyle is not confined to the borders of their host country and, indeed, they establish themselves as a transnational society. While complying with the laws of the host country, the transnational social space is the factor that animates their political, social and economic ties and interests.

In effect, it is not just the Diaspora living overseas who seeks to maintain the relationship with those in the homeland. The Tamils remaining in the homeland also actively work to preserve the transnational relationship. Thus, the people of Tamil Eelam are also an active part of the transnational social space. In fact, these are two sides of the same coin. The Tamils' own national politics is no longer confined to the NorthEast region, but extends into the transnational social space. Hence, contemporary Tamil nationalism is one that encourages multiple and transnational identities, and is diversified, inclusive, socially beneficial and based on democratic principles. The integration of the Sri Lankan Tamil Diaspora is a given

fact. Not only is there social interaction between the various Diaspora communities –and this arises not only because families have been split- but the interaction at other levels such as the political level has been necessary to meet the continued repression of the Tamils in Sri Lanka as well as the international propaganda by the Sri Lankan state justifying such repression.

3.2 Transnational politics

Transnational politics in the past have generally focused on the anti-globalization, feminist, environmental, human rights movements and other movements that espouse solidarity with certain national liberation struggles. Transnational politics requires transnational governance and administrative structures. These structures demand models that go beyond the traditional nation-states and “international” models that deal only with recognized nation-states.

The 21st century political reality is Transnational. In the past, we have witnessed several instances of active transnational political participation in nationalist struggles. Irish people who emigrated to America and Canada gave staunch and open support to the Northern Ireland struggle. Likewise, the Jewish Diaspora until today supports the state of Israel, politically and financially. Transnational communities influence or have the potential to influence political, economic and military decision-making by their host countries in relation to their countries of origin.

At present, the Diaspora of countries such as Italy, El Salvador, Haiti, Eritrea, and Croatia have politically become an integral part of the politics of their respective home countries. Several representatives are elected from the Italian Diaspora to the Italian parliament. In Haiti a separate electoral riding has been allocated for Haitians living in the Diaspora. Further, more than half the countries in the world have recognized the holding of dual citizenship. Diasporas returning en masse to vote in national elections in Israel with political parties paying or subsidizing their flights is not unusual. In 1990, Croatia received millions of dollars from the Croatian Diaspora and, after elections, allocated 12 out of 120 seats to the Croatian Diaspora. The Indian Diaspora contributes heavily to India’s economic progress. A category of Non-Resident Indians has been created with special travel rights and rights of keeping bank accounts in India. There are moves to provide them with voting rights in Indian elections. They are often encouraged to return to India. Tamils in the Diaspora have systematically supported the struggle and sustained the war-ravaged society in the NorthEast of the island of Sri Lanka for three decades. All these factors point to the importance of transnational politics

in the 21st century. The efforts by Tamil Diaspora to form a Transnational Government will be a milestone in contemporary transnational politics.

3.3 Transnational Governance/ Transnational Government

The concept of Transnational Governance has received the attention of social scientists, international jurists and other scholars for more than two decades. The models of transnational governance that have gained prominence are institutions such as the EU and NAFTA. However, the model of transnational governance proposed by this Advisory Committee is unique and conceptually different from the previous models. The Transnational Government of Tamil Eelam proposed by the Committee is the first of its kind promoted by an ethno-national group that has been struggling to achieve its independence. While the international community has been successful in aiding and abetting the Sri Lankan government in its military onslaught, against the wishes of the Tamils, the most powerful yet creative democratic political means to articulate our vision is the formation of a Transnational Government.

The Transnational Government is to be formed and sustained by the people. It relies on the exercise of democratic political rights, such as the freedom of association and the freedom of expression. It relies on the right to trade, the right to provide humanitarian relief to those in need and the right to maintain family and other social ties with a people in another state. These are rights that all liberal democracies provide. Because of the varied nature of the areas in which the proposed transnational government has to function, it has to be organized very much like a government would be. Hence, the use of the term government to describe the organization is appropriate. Its formation does not violate any laws of the host states of the Tamil Diaspora. The activities of the TGTE shall always be non-violent and shall not be designed to transgress any laws of the host states of the Diaspora.

Grass root organizations among the Tamil people should serve as the pillars of the Transnational Government. This Government will lobby for the support of the international community and people to find a political solution to the Tamil national question on the basis of nationhood, a homeland and the right to self-determination. It will campaign through political and diplomatic channels. In addition this government will also establish through political and legal means that the treatment to which the Tamils have been subjected constitute Genocide and propose a political solution as a remedial measure.

4. Formation Committee and Advisory Committee

Under the tragic background situation faced by Tamils in the island of Sri Lanka outlined at the beginning, and encouraged by the opportunity to mobilize the concerns of the Diaspora Tamil community, a Coordinator for the Formation Committee and the members of an Advisory Committee were announced on 16th of June 2009 when the press statement was made on the initial plan for the formation of TGTE. They were to explore the modalities for the establishment of a Transnational Government of Tamil Eelam, and to recommend the objectives that should be achieved by such a Transnational Government. Taking as point of departure the fundamental position that all efforts and activities about and of the Transnational Government will be democratic, the following were envisioned as the tasks of such a provisional government:

1. Uniting all Tamil entities and elements who subscribe to the fundamental tenets of Tamil political aspirations proclaimed in the Vaddukoddai Resolution, which was subsequently endorsed and mandated in the general election of 1977 and in the Thimphu Principles in 1985.
2. Working in partnership with the Tamil leadership in the island of Sri Lanka, considering that the political policies and aspirations articulated by the Tamil leadership at consecutive elections in 2001 and 2004 were strongly endorsed and, thereby mandated, by the Tamil people, and other groups that support and advocate for the realization of the Tamils' legitimate political aspirations to regain their sovereignty and the right to self-determination;
3. Articulating positions for negotiations with the Sinhala nation;
4. Establishing direct links with foreign Governments and other international organizations;
5. Working for the social, economic and cultural well-being of the more than one million members of the Tamil Diaspora;
6. Building a political program with the participation of Muslim representatives, taking into account that the diversity of Tamil and Muslim regions has been used as a threat in the past against the realization of the Tamils' right to self-determination; and
7. Performing such other tasks as may be necessary to promote the interests of the Tamil people in the NorthEast of the island of Sri Lanka and the Tamil Diaspora.

Given the urgent need to halt the onslaught of Tamils on the island, the Committee was also given the task of liaising with international non-governmental organizations and international organizations to ensure that the Tamils' physical survival is guaranteed; to stop the sexual violence against Tamil women; to stop the physical abuse of Tamil children by the Sri Lankan government's mono-ethnic armed forces and ensure their speedy reunification with their families; to ensure the return of the 300,000 Tamils held in internment camps to their homes and to bring to justice those who have committed genocide, war crimes and crimes against humanity.

The following is the list of names making up the Advisory Committee of experts representing various fields and walks of life:

Francis Boyle (USA)

Joseph Chandrakanthan (Canada)

Nagalingam Jeyalingam (USA)

Jeyaprakash Jeyalingam (USA)

Karen Parker (USA)

Palaniappan Ramasamy (Malaysia)

Visuvanathan Rudrakumaran (USA)

Peter Schalk (Sweden)

Sivanendran Seevanayagam (Australia)

Nadarajah Sriskandarajah (Sweden)

Muttucumaraswamy Sornarajah (UK)

Amuthu Louis Vasanthakumar (UK)

The Advisory Committee held four meetings, the first in Zürich on 2-4 August 2009, the second in Oslo on 2-4 October 2009, the third in London on 3-6 December 2009 and the fourth in New York on 19-20 February 2010. These meetings were connected with meetings of the respective local Tamil communities and with their organizations.

Special activity

While the Advisory Committee's main mandate was to work out recommendations for the organization of the electoral process leading to the formation of the Provisional Transnational Government of Tamil Eelam, it has also undertaken other projects on behalf of people detained in the internment camps, particularly children. The Committee was especially concerned about the IDPs being kept in camps similar to concentration camps. The Committee collected information about the children in these camps, their names, age and sex, and their placement in named camps, which makes it possible to follow up over time and prevent the Government from annihilating them through starvation and neglect. The list of names was given to the UN and a report was published.

The Advisory Committee has taken up all opportunities to meet with senior diplomats, government officials and humanitarian and donor agency personnel. We have provided regular briefings on the humanitarian situation in the North and East, especially of IDPs in Vanni, and we have highlighted the issues prior to high level visits to Sri Lanka by these agencies. Besides, the Advisory Committee has been working with the advocacy organizations to keep the international community's attention towards the plight of people still held in interment camps, of wounded combatants, family members of LTTE leaders and of children in secret detention facilities without adequate medical care or protection.

The Advisory Committee will try to secure access for the International Committee of the Red Cross (ICRC) to the detainees, help secure family visits and obtain access to lawyers. The Committee will advocate through every possible avenue for the release of all detainees.

The Advisory Committee recognises the need for a Task Force that includes professionals from different fields with the objective of addressing durable solutions for IDPs in early recovery contexts as well as undertakes all the relief activities in the homeland. The Task Force could draft policy guidance such as that provided by the Framework for Durable Solutions for IDPs and based on the Guiding Principles on Internal Displacement, and organize round table discussion with INGOs, NGOs, and community leaders to address immediate needs.

4.1 The Work of the Formation Committee

At the beginning, it was planned to select members for the Formation Committee from the countries where Tamil Diaspora live in numbers, but due to practical reasons a different

strategy was adopted. The Advisory Committee took the responsibility for identifying the modalities for the process of forming the TGTE. It was decided to set up Country Working Groups (CWGs) in various countries to conduct the grass root work towards conducting elections for the Constituent Assembly of the TGTE based on the recommendations of the Advisory Committee. An International Secretariat was also established to coordinate and guide the CWGs for fulfilling their task effectively. It was also decided to appoint country representatives of the Secretariat to coordinate the task at the country level. These functionaries have thus become part of the formation process of the TGTE.

The task of the Coordinator has now evolved into coordinating the different functions that are being simultaneously undertaken at different parts of the world for the purpose of forming the TGTE. All of these functions, including the mandate of the Coordinator, will come to an end when the first sitting of the TGTE Assembly takes place and an interim executive committee for the TGTE is selected.

5. Procedures for the Formation of Transnational Government

This section of the report contains the general principles envisioned with regards to the form of a Transnational Government of Tamil Eelam, its objectives and the procedures that have to be in place for the formation of such a Government. In naming this institution as the 'Provisional' Transnational Government of Tamil Eelam, it is implied that its existence is needed and acceptable in the present situation and that it is subject to change and replacement by a more appropriate institution in the future. In the remainder of this report, the abbreviation TGTE is used to imply the Provisional Transnational Government of Tamil Eelam.

Though there may be views that a stronger basis should be created for the formation of a government, the Advisory Committee is tempered by the practical reality that the TGTE can only be established in accordance with the laws of the host states. It is paramount to the success of this exercise that no domestic laws are flouted in the setting up of the TGTE. The Advisory Committee has explored all possible avenues of setting up the TGTE in a manner that would make it consistent with the laws of the states in which the Tamil Diaspora exists.

The TGTE is not a government in exile. A government in exile is a government which relocates itself from its seat in the face of external threats and locates in another state which permits it to function from that territory. The government set up by De Gaulle in London during the Second World War is an example of a government in exile.

The Secretariat of the TGTE will be located in a state in which large concentrations of the Tamil Diaspora live. It will be formed in complete accordance with the laws of the state in which it is located.

5.1 Shape of the Transnational Assembly and Number of Members

The first step in forming the TGTE is to form a Transnational Constituent Assembly of Tamil Eelam by holding direct elections among the Tamil Diaspora in its many locations.

A right to public participation in democratic governance exists in international law. The United Nations Committee on Human Rights has recognized a specific right to participate in constitution making. One way to engage citizens is through the selection of popular representatives to the body that develops the draft constitution. Popular election is the most accepted mechanism for securing popular representation.

Participation is now promoted as both a right and a necessity. The right is established in international declarations and conventions adopted by most nations, as well as in many recent national constitutions. The necessity stems in part from the forceful advocacy of democracy as the sole model for legitimate governance. Participatory constitution making is a practice with growing momentum. Despite challenging difficulties of definition and implementation, a democratic constitution-making process is, in the words of African observer Julius Ivonhberere, “critical to the strength, acceptability, and legitimacy of the final product.”

The Advisory Committee considered at length the practicalities of conducting elections in all the countries and regions inhabited by the Tamil Diaspora to elect representatives to the Assembly, and the basis for determining the number of seats in the Assembly. Based on available demographic information, significance of different population centers in the international arena and convenience and access to these for conducting elections, the following recommendations are made:

- The first Transnational Constituent Assembly to be made up of 135 representatives.
- The main category of these will be the Elected Representatives (115) who will be chosen through direct ballot in the main population centers.

- There will be a second category of members called Delegates (20) to represent those countries or regions where conducting elections would not be feasible in the first instance for reasons such as small or diffused population or difficulty of access.
- The selection of the second category of Delegates will be undertaken after the first round of elections, by the elected Assembly.
- The procedure for selecting Delegates could be that the first Assembly calls for expressions of interest from among Tamils living in the named group of countries/regions, based on which the required number of delegates are chosen by the Assembly.
- The system of choosing Delegates will also allow some representation of a non-Eelam Tamil voice in the Assembly coming from India and a few other countries where Eelam Tamils live amongst a very large numbers of Tamils.
- In line with the principle of encouraging high level of participation by youth and women as representatives in the Assembly, it is recommended that Country Working Groups pay special attention to this aspect when designing the electoral process and recruiting participants as candidates.
- It is recommended that the first round of elections be concluded before 15th of May 2010.
- It is recommended that the first elected Assembly of the TGTE serves for a period of no more than three years. Processes associated with the life of the subsequent assemblies and the respective election processes will be governed by the Constitution to be drafted by the Constituent Assembly.

In determining how many delegates be allocated to each country where members of the Diaspora reside, the first and most significant criteria the Advisory Committee considered was fairness. Based on this principle of fairness, the Committee sought the highest degree of proportionality that could be achieved between the number of inhabitants of a State and the number of its representatives in the Constituent Assembly.

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This fundamental principle underlies what is meant by the notion of apportionment, namely, an assignment of representatives to the several states proportionately according to their size. According to Daniel Webster, "To apportion is to distribute by right measure, to set off in just parts, to assign in due and proper proportion." The same principle underlies the United States Constitutional mandate on apportionment, "representatives shall be apportioned ... according to their respective numbers."

However, it must be recognized that, barring an unreasonably large size of the Constituent Assembly, strict proportionality of representation cannot be achieved. Given that some degree of representation must be afforded to every member country, the objective must always be to obtain an apportionment that is proportional to population as closely as is possible, subject to the requirement of minimum representation.

The Advisory Committee recommends the following representation for the first Assembly of the TGTE to be elected in 2010. The form, the total number of representatives and their distribution in subsequent assemblies will be determined by the Constituent Assembly:

Country	Elected Representatives	Delegates
Canada	25	
UK	20	
France	10	
Switzerland	10	
Germany	10	
USA	10	
Australia	10	
Norway	3	
Denmark	3	
Italy	3	
South Africa	3	2
NL+Belgium + Luxemburg	3	

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New Zealand	2	
Sweden	1	
Finland	1	
Ireland	1	
Singapore		2
Malaysia		3
Middle East		2
Mauritius		1
Rest of Asia		1
Rest of Europe		1
Oceania		1
Caribbean and South America		1
Rest of Africa		1
India		5
Total	115	20

5.2 The tasks and process of forming the TGTE

When the Transnational Assembly of Tamil Eelam is formed, this Assembly will take over the tasks of forming the Provisional Transnational Government of Tamil Eelam. The Advisory Committee suggests the following as the first set of tasks for the Assembly in the process of forming the government.

1. The first major task of the Constituent Assembly should be to draft the Constitution of the Transnational Government of Tamil Eelam,
2. The Committee recommends that before the Constitution is finalized and adopted, certain transitional measures be considered:
 1. Choosing an Executive Committee or a Chief Executive to direct the work.

2. Establishing ministries or legislative committees to address the most pressing urgent needs of the people on the island.
3. Establishing a task force with the objective of addressing the issues pertaining to the Internally Displaced People and the detained people.

The Committee considers the issues of highest concern to include:

- (1) The situation of the Tamil people in camps and other forms of detention, and issues such as the killing, torture and rape of Tamil civilians;
- (2) The protection of the lands in the areas the Tamils have traditionally inhabited in the Northern and Eastern parts of the island of Sri Lanka, especially in terms of ownership, colonization, demographic change and militarization. Such issues include the urgent needs to address the ecology, environment and sanitation of Tamil lands;
- (3) The urgent need to protect natural and productive resources such as water resources, agricultural lands, fisheries resources, forestry and mineral deposits;
- (4) Education of Tamil children and youth;
- (5) The protection of Tamil language, culture and identity;
- (6) The urgent need to address war crimes, crimes against humanity and genocide to ensure that these gross violations against the individual and community on account of Tamil ethnicity never occur again; laws are respected and the guilty are brought to justice;
- (7) The adoption of basic international documents, treaties and processes relating to human rights and humanitarian law, as well as those concerned with international cooperation as envisioned in the Charter of the United Nations;
- (8) Committing the TGTE to the establishment of a secular and democratic State with full regard to instilling communal harmony.

5.3 The Rationale for drafting the Constitution after the election

The recommendation by the Advisory Committee that the task of drafting the constitution is undertaken by the elected Assembly as its first task is based on the well established international practice when forming a government for the first time. The people who draft the constitution should have the mandate from the people as elected representatives and this provides the democratic legitimacy for the constitution.

Article 21 (3) of the Universal Declaration of Human Rights (UDHR) says: ‘The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by the equivalent free voting procedures.’ The UDHR, which constitutes customary international law, provides a definitive answer to any questions about the legitimacy of going into elections without a constitution drafted before hand.

This practice was also recommended in the 1977 election mandate of the Tamil United Liberation Front (TULF). With the Vaddukoddai Resolution already passed in 1976, people were asked in 1977 to give the mandate for forming an independent and sovereign state of Tamil Eelam. The 1977 TULF manifesto stated that the people who get elected will constitute a constituent assembly and draft a constitution.

5.4 Procedures for the Election Process

As noted already, it is suggested that elections be held in order to elect 115 representatives from various countries where the Eelam Tamil Diaspora live in substantial numbers. It is considered important to form a working group in the countries where elections are to be held. These working groups are responsible for fulfilling the task of forming the Transnational Constituent Assembly by holding direct elections. The working groups are named Country Working Groups (CWG).

A Secretariat is to be established to perform all executive functions. As need arises, the Secretariat will appoint persons to implement programs necessary for carrying out the tasks of setting up the Transnational Government. The Secretariat should run a newspaper and a website offering information about the electoral process and other activities relevant to the Tamil community.

5.4.1 Country Working Groups:

Country Working Groups have been in the process of being established since October 2009. In the first round, details of the Country Working Groups were announced for the United Kingdom, Canada, USA, South Africa and Norway. The CWGs for Australia, New Zealand and France have been announced subsequently, with a few more still to be announced.

The CWGs will engage in policy discussions with local Tamil organizations and Tamil people to garner support for the TGTE. These groups not only will seek support among Tamils, but also will canvass support from the wider civil society for the formation of the TGTE. They will also engage in soliciting the support of political leaders and governments of respective countries.

The tasks of the CWGs are outlined in the form of Terms of Reference below.

5.4.1.1 Terms of Reference for Country Working Groups

1. The members of the Country Working Groups (CWG) shall select a Chairperson/Coordinator for the CWG from among the members who have been selected to the CWG.
2. The CWG shall establish relationships with Tamil Diaspora community organizations. The purpose of establishing these relationships shall be to educate members of the Tamil community about TGTE and the upcoming elections in order to disseminate information about the TGTE to members of the community.
 - a. Public meetings may be organized to raise awareness of the TGTE and TGTE elections and to answer questions from members of the community.
3. The CWG shall establish contacts with both Tamil language media and other national language media of the host country. The purpose of establishing media contacts shall be to efficiently distribute TGTE materials and information regarding the TGTE election to the community.

4. The CWG shall identify polling sites for the election. The CWG shall identify polling places that can accommodate in-person voting. The polling places should also be easily accessible to members of the community.
5. The CWG shall form an Election Commission. The Election Commission shall be comprised of members of the Tamil community as well as experts in the field of election planning and people with experience organizing elections.
6. The CWG shall select Election Monitors. The Election Monitors shall be comprised of members from the Tamil community as well as independent observers from respected organizations, including but not limited to organizations involved with democracy promotion, accounting firms, and law firms.
7. The CWG shall liaise with the Advisory Committee and Formation Committee (FC). The CWG shall submit to the Advisory Committee and FC periodic written reports about the activities of the CWG. The CWG shall also submit reports to the Advisory Committee and FC as requested by those committees.
8. The CWG shall mobilize necessary financial and human resources in order to fulfill the assigned tasks.

5.4.2 Election Commission and Election Monitoring Process

An independent Election Commission is to be established in each country where direct elections are to be held to elect the representatives of Transnational Constituent Assembly. As noted above, the CWG is responsible for forming each Election Commission. Election Monitors will also be appointed to monitor that the process of elections are conducted in a fair and free manner.

The tasks of the Elections Commission and Monitors are recommended as follows:

5.4.2.1 Terms of Reference for Election Commissions

1. The Election Commission (EC) shall be the body that receives applications from people wishing to be candidates in the election for the TGTE constituent assembly.
2. The EC shall evaluate applications to ensure that people wishing to be candidates in the election for the TGTE Constituent Assembly meet all criteria set forth by the FC.
3. The EC shall be responsible for counting votes cast in the TGTE election for the Constituent Assembly. The EC shall follow guidelines set forth by the FC when conducting the vote count.
4. The EC shall organize Election Day or days in accordance with guidelines set forth by the FC.
5. The EC shall announce results of the TGTE election for the Constituent Assembly in accordance with guidelines set forth by the FC.
6. The EC shall establish and operate a dispute resolution process in accordance with guidelines set forth by the FC.

5.4.2.2 Terms of Reference for Election Monitors

1. The Election Monitors (EM) shall observe on the day or days of the elections the conduct of voting at polling sites to ensure that voting is conducted in accordance with guidelines set forth by the FC and voting is conducted in accordance with internationally accepted standards for democratic elections.
2. The EM shall observe the vote count as conducted by the EC to ensure that the count is conducted in accordance with standards set forth by the FC and with international election standards for democratic elections.

3. The EM shall observe the dispute resolution process, if a dispute arises with regard to candidate selection.
4. The EM shall observe the dispute resolution process, if a dispute arises with regard to the voter registration process or with the eligibility to vote.
5. The EM shall observe the dispute resolution process, if a dispute arises with regard to the vote count.
6. The EM shall document its findings and produce a written report to be submitted to the Advisory Committee and the FC.

5.4.3 Voters and Candidates

The following procedures are suggested for registration of voters, and for voter and candidate eligibility by the Advisory Committee.

5.4.3.1 Voter Registration

The EC shall establish a hybrid registration system for the election of the TGTE constituent assembly.

1. There shall be available to people who wish to vote in the election for the TGTE Constituent Assembly an option for same day registration. People wishing to vote in the TGTE Constituent Assembly election shall be able to vote by showing election officials proof of eligibility at the polling site. Their personal information shall not be recorded in any manner.
2. There shall be available to people who wish to vote in the TGTE Constituent Assembly an option for advance registration. People wishing to vote in the TGTE Constituent Assembly election shall have the option of registering in advance of the election. Their proof of eligibility shall be evaluated by election officials prior

to Election Day or days. Their information shall be collected and used solely for voting purposes.

5.4.3.2 Voter Eligibility

1. Those wishing to vote in the TGTE Constituent Assembly election shall be seventeen (17) years of age or older by Election Day and shall be connected to Tamil Eelam culture by descent, marriage or adoption, along with anyone identifying himself as an Eelam Tamil to the satisfaction of the Election Commission. The latter category is a residual category to be applied strictly having regard to the circumstances of each individual case.

5.4.3.3 Candidate Eligibility

1. In order to be a candidate in the TGTE Constituent Assembly election the interested person shall meet voter eligibility standards and shall pay (if required) a registration fee.
2. The requirement and amount of the filing fee to be paid shall be determined by the CWG.

6.0 Proposed Mode of Operation:

Some of the crucial tasks and some proposed modes of operation are presented below.

6.1 TGTE as a power centre

For the last 25 years the LTTE's military power provided a power base for the Tamils to realize their right to self-determination.

In order to realize its objectives, the TGTE should have power. Power is the ability of one party to move the other in an intended direction, and it does not refer exclusively to military power. Power encompasses economic leverage, international legitimacy, the moral basis of one's position, mass support, leadership, etc. Power includes hard power such as military coercion, as well as soft power which is defined by Joseph Nye as the ability to achieve one's intended result through non-military means. Soft power includes among others a drain on the state's economy, persuasion or coercion by large powers. The TGTE should be committed to employ "soft power" to realize its goals.

Even though there are several Diaspora organizations and possibly many more to come, two things should differentiate TGTE from other organizations at present. These are that:

- 1) TGTE will evolve through a direct democratic exercise at a transnational level.
- 2) TGTE will be an institution that is parallel to a government.

However, these distinguishing features alone will not make TGTE a power centre for the Tamil Diaspora.

We believe that there are four important actors who have to recognize TGTE as a power centre. These actors need not publicly endorse TGTE but should accept it through their actions. The four important actors are:

- 1) Tamil Diaspora
- 2) Tamil people in the homeland
- 3) The global Tamil community-Tamils from other countries such as Malaysia, India, Singapore etc.
- 4) The International community.

The establishment of the TGTE as a power centre requires that it devises appropriate programmes of work based on proper strategy and tactics to make the TGTE as a power centre for the Eelam Tamil Nation. It is acknowledged that as an institution representing a small nation, the capacity of the TGTE to influence policy decisions at the global level will be limited. However, while being pragmatic in its expectations, the TGTE can evolve into a dynamic forum which understands global power dimensions and how to move forward its interests in the global arena.

6.2 Positions in relation to existing and emerging organizations

As a vibrant Diaspora community, Eelam Tamils have seen the development of a plethora of social and voluntary organizations over the past three decades and so many of them are functioning effectively, with their similarities as well as unique features in their activities and membership base. The significance of these organizations and the efficiency of the activities they perform are praiseworthy. Yet, the need for a higher order organization has been felt for some time to encounter the challenges faced by the Tamil community, nationally and internationally. This is in effect the proposed Transnational Government of Tamil Eelam.

TGTE formed with representatives democratically elected by the people will function in coordination with the people's organizations among the Tamil Diaspora.

It has been a stated position that direct elections provide the best opportunity for the Diaspora community to exercise their democratic rights. It is based on this position that the decision has been made to form the Transnational Constituent Assembly by holding direct elections in those countries where it is practical to do so. Forming the Assembly with directly elected representatives alone will give legitimacy to TGTE. Therefore, no one other than the directly elected members will make up the TGTE. These directly elected representatives of the Transnational Constituent Assembly would adopt a mechanism for selecting delegates from those countries where direct elections would not be possible immediately.

The directly elected members of the TGTE will also ultimately decide on what kind of relationship the TGTE will have with existing and newly created national level bodies in carrying out its functions of governance. There are current initiatives to create new national level organizations of Diaspora Tamils through an electoral process in some countries. While welcoming all such democratic initiatives, the Formation Committee would neither support nor oppose these initiatives at present because it does not have the mandate to speak on behalf of the TGTE. All final decisions concerning the working relationships of TGTE and local level organisations will have to be made by the TGTE itself after it is formed.

6.3 Engagement with the International Community

Presently, members of the Advisory Committee have been meeting with foreign government officials, policy makers and think tanks and holding productive ongoing discussions. CWGs have also been given the task of mobilising support for the concept of forming the Provisional TGTE and the process of forming the institution. Once the TGTE is elected, it will continue the same form of international engagement, but to a greater degree.

In discussion with the government officials, a misperception that the TGTE will be a "government in exile" has been discerned. Since foreign governments already recognize the Sri Lankan government as a "legitimate" government, these officials have expressed concerns about dealing with the TGTE, as if it were a "government in exile." Thus the distinction between the Transnational Government of Tamil Eelam and a "Government in Exile" must be emphasised here.

The TGTE should take into consideration the current state of international relations in general and should approach foreign governments diplomatically. Given the nature of the present state of international relations, it is felt that the TGTE might not be able to obtain explicit recognition from the international community immediately.

6.3.1 Strategy for engaging the International Community

The TGTE shall set up a foreign affairs section which shall function as the diplomatic arm of the TGTE and undertake all activities that are normally undertaken in the conduct of foreign affairs. It shall maintain contact with other states in order to discuss conditions that are favourable to the exercise of the right of self-determination by the Tamil people, in accordance with international law. A primary purpose of the activity of the TGTE within the international community is to further the support for the realisation of the Tamils' right to self-determination and to exercise Tamil sovereignty.

Furthermore, the TGTE will demonstrate through legal and/or political means to the international community that the treatment to which Tamils have been subjected to constitutes genocide and will propose as a remedial measure an independent state to ensure the Tamil nation's self preservation.

The TGTE will also work to ensure that the human rights of the people resident in the NorthEast of the island of Sri Lanka, irrespective of their ethnicity and cultural ancestry, are protected and nurtured. The TGTE as a transnational entity has the right to foster the human rights of any person based on the premise that the aim of all international human rights documents is to protect the rights of all human beings irrespective of their nationality. Several NGOs in the world such as Amnesty International and Human Rights Watch perform such functions. In the case of the TGTE, the function will be specifically focused on the Tamil community within Sri Lanka which all human rights NGOs have pointed out have been subjected to persistent human rights violations.

The TGTE, having such competence as a transnational entity, will take specific action to protect the human rights of the people in the NorthEast against any violation by the Government of Sri Lanka. It shall do so by detecting such violations and campaigning within the international community for the immediate cessation of such violations and ensuring accountability in the regime as well as in the individual violators.

6.4 The modalities for engaging with the domestic Tamil polity in the island of Sri Lanka

The TGTE will always take into consideration the decisions made by the domestic leadership in the NorthEast and shall ensure that the policies designed by these leaders are not countermanded except in the situation they are deemed by the TGTE that the domestic leadership under duress and/or circumstances beyond their control deviates from the pursuit of the realization of the right of self-determination of the people of the NorthEast and the exercise of their sovereignty. Appropriate consultations will be held between the TGTE and the Tamil leadership in the NorthEast so that common policies could be pursued.

The Advisory Committee recommends that the TGTE creates opportunities for ex-officio status, with or without voting rights, to elected political leaders and civil society groups from the NorthEast. Representatives of local government, the university community, clergy and local NGOs may fulfil the need for domestic civil society presence in the Assembly.

In connection with the delivery of relief efforts to the people, there will be consultations with the leaders of the NorthEast to determine how these activities could be coordinated.

6.5 On the Relationship with Muslim People

The Muslims of Sri Lanka, who seek their identity based on Islamic religious faith, are essentially Tamil-speaking people. They have a base in the language that is often stronger than that of other Tamil speakers. Many great poets and literary thinkers of the Tamil language come from the Muslim community. Despite the presence and participation of their political elite and politicians in main stream politics, the Muslim community has not been able to overcome the drastic challenges due to Sinhala domination. The preservation of the unity of the Tamil-speaking community is essential to the progress of the whole community in the face of Sinhala domination. At the same time, it must be recognized that the Muslim identity has a significant and often an exclusive base in the religion of Islam. Any constitutional arrangement must recognize this fact. For this reason, the following constitutional arrangement is suggested so as to accommodate the Muslim people within the TGTE.

Facilities will be provided to accommodate the legitimate interests of the Muslims put forward by members of the Islamic faith. For this purpose, it is recommended that a significant component of the Assembly shall consist of Muslims and that there is a quota in every national group maintained to ensure Muslim representation. The working of the

structure of the TGTE shall ensure that the Muslim identity is respected and that their interests are continually safeguarded. While the TGTE recognizes that there are other religions within the Tamil-speaking community, a similar issue does not exist in their case. Toward that end the TGTE shall be governed by and operate in accordance with the Universal Declaration of Human Rights (1948) at all times.

In the event of a state of Tamil Eelam being established, the TGTE will propose that a strong human rights body with an unchangeable blocking mechanism over legislation for the Muslim members is established that oversees all legislative programmes. It will also ensure that the right of an eventual separation if the need ever arises for the establishment of a separate autonomous state in the Muslim areas is maintained. As with the Tamil people, the Muslims are entitled to the right to self-determination, but it is the desire and the goal of the TGTE that they will remain as a Tamil-speaking people with the other Tamil-speaking people to enrich the life of the Tamil community as they have done in the past.

6.6 On the changing dynamics of the geopolitical situation in South Asia

As reported in *Far Eastern Economic Review* in October 2009: “How elusive the peace dividend remains can be seen from his decision to press ahead with the further expansion of an already-large military. The Sri Lankan military is bigger in troop strength than the British and Israeli armed forces, having been expanded fivefold since the late 1980s to some 200,000 regular soldiers today. In victory, that strength is being raised by 50% to 300,000 troops in the name of "eternal vigilance." After the May 2009 victory, the government announced a drive to recruit 50,000 new troops to help control the northern areas captured from the rebels. The expansion would make the Sri Lankan military larger than those of major powers such as France, Japan and Germany.”

A militarized Sri Lanka, especially in the absence of internal military threats, is a threat to peace and stability in South Asia. TGTE can play a role in contributing to peace and stability in South Asia. The TGTE must be conscious of the strategic location of the island of Sri Lanka in the Indian Ocean and the geo-political situation in South Asia and elsewhere in formulating its political strategies. The Secretariat shall contain a small wing which shall devote itself to the study of such strategies. It shall function in a manner similar to think tanks that work in the field. Again, all activity must be completely legal.

6.7 Elected officials and their conduct in line with TGTE's goals

It is pointed out that a mechanism is needed to monitor the progress of the TGTE in accordance with guiding principles that have been established.

6.7.1 Recall Procedure

The recall is a direct democracy procedure that allows the people to demand a vote on whether an elected holder of public office should be removed from that office before the end of his or her term. To be considered an instrument of direct democracy, the process of legally interrupting the period in office of an elected official must involve the initiative and/or the vote of the people.

The recall is a political instrument through which the electorate in a particular electoral jurisdiction can express their dissatisfaction with a specific official. In order to ensure that the recall can contribute to improving the means of participation and people's oversight of elected officials in a democratic setting, the rights of both the people and the elected officials have to be guaranteed. To achieve this balance, the rights of all people – those in favour of and those against removing the official concerned – as well the rights of the official involved in the process have to be protected. The recall, like other direct democracy procedures, has to balance the principles of participation and effective governance.

In the context of the TGTE, it is suggested that if in the perception of the people of the particular jurisdiction, their elected representatives are deviating from the fundamental tenets of the Tamil freedom struggle namely the recognition of the Tamil nationhood, Tamil homeland, the Tamils' right to self-determination and the sovereignty of the Tamil nation; they do not contribute either in words or deeds in the realization of the Tamils' right to self-determination and exercise of Tamil sovereignty, the electors should have a right and ability to recall their elected representatives. The recall mechanism should also be employed if the people in a particular jurisdiction perceive that their elected representatives are abusing their powers and/or are failing in good conduct.

The recall mechanism should be enshrined in the Constitution of the TGTE. The required numbers for exercising the recall mechanism should be determined by the TGTE itself.

7. Role of the Advisory Committee after the presentation of the Report - Transitional Arrangements

The Advisory Committee is aware that while in principle its main task is to address the methods and mechanisms of the planned election of a Constituent Assembly of the Provisional TGTE, some of the additional tasks assigned to the Advisory Committee include functions that logically would take place in the time period between the issuance of the Report and the voting for the Constituent Assembly. These tasks include establishing direct links with foreign governments, international actors, and non-governmental organizations, as well as undertaking actions in regard to the social, economic, and cultural rights of the Tamils in the Diaspora and in the island of Sri Lanka. The Advisory Committee has undertaken actions on behalf of children in the detention camps, but has not undertaken actions on other issues due to the Committee's determination that these other issues may best be undertaken by other Tamil organizations. However, the Advisory Committee will work in a spirit of full cooperation with any requests directed to it by other Tamil groups.

At the same time Tamils, both individually and as groups, have expressed to the Advisory Committee their concerns about possible difficulties in carrying out the elections. Accordingly, the Advisory Committee makes the following recommendations regarding the election process:

1. The mandate of the Advisory Committee should be continued beyond the issuance of the Report and may include consultations, as requested by the CWGs or Election Commissions.
2. The Advisory Committee also indicates its willingness to facilitate the inclusion of voters in States with few eligible voters or whose situations, such as in India, make participation difficult, and will make recommendations in this regard as needed. Such recommendations may include requests that the CWGs in certain countries expand their mandate to include neighboring or regional States.
3. The Advisory Committee agrees to make it available to act as a mediator, if requested, in disputes that cannot be resolved by the CWGs or ECs.

4. The Advisory Committee, as requested by the Coordinator, also agrees to make itself available to the Constituent Assembly if so requested. Nonetheless, the Committee recommends that the Constituent Assembly address issues about which they may wish to seek expert or other advice, and that the Constituent Assembly itself appoint an Advisory body if it deems it useful.

The Advisory Committee considered recommendations regarding: (1) issues relating to the Formation Committee; (2) issues relating to the formation and development of the Secretariat; and (3) issues relating to the official gazette (newspaper) of the TGTE. In this regard, the Committee agrees to participate in such a capacity, and will issue timely information and reports on its work in this regard in communications separate from this Report and as requested by the Coordinator.

8. The Guiding Principles and Programmes of the TGTE

The Advisory Committee also was required to report on the aims of the TGTE. The aim of the TGTE will always be to realize the Eelam Tamils' legitimate aspirations. In addition, there are other functions that the Government will have to perform in the course of achieving this eventual objective. These functions will lay strong foundations for the achievement of Tamil Eelam and also prepare conditions favorable to its existence as a state within the world community. These functions will ensure that the Tamil Diaspora is linked with the Tamil community of the homeland as well as with the Global Tamil community. A purpose of the Transnational Government shall be to strengthen these links. The Committee hopes that these aims will be included by the Constituent Assembly in the constitution of the TGTE. The Committee, however, wishes to provide guidance as to what these aims shall be:

1. Commitment to achieving Tamil Eelam.

This has been the objective of the Tamil struggle for the last thirty-five years

It is said in some quarters that the right to self-determination is applicable only in the colonial context. It is true that the General Assembly Resolution 1514 entitled "U.N. Declaration of the granting of Independence to colonial countries and peoples" was passed in the colonial context. However, the 1970 Declaration on Friendly Relations recognized the right to self-determination of all people, colonial as well as non-colonial, and the 1970 declaration has become customary international law. Moreover, the UN's fifty-year anniversary document,

which was not a product of a colonial context, reaffirmed the right to self-determination. The recent Canadian Supreme Court Decision on Quebec also affirms the right to self-determination. In the course of its opinion, the Canadian Supreme Court stated the following:

It is clear that “a people” may include only a portion of the population of an existing state. The right to self-determination has developed largely as a human right, and is generally used in documents that simultaneously contain references to “nation” and “state”. The juxtaposition of these terms is indicative that the reference to “people” does not necessarily mean the entirety of a state’s population. To restrict the definition of the term to the population of the existing states would render the granting of a right to self determination largely duplicative, given the parallel emphasis within the majority of the source documents on the need to protect the territorial integrity of existing states, and would frustrate its remedial purpose.

The Court also unequivocally stated that the right to external self-determination is applicable even outside the colonial context. This Canadian Supreme Court’s opinion was rendered not in the 1960s or 70s but in 1997.

According to Gordon Weiss, a former UN employee in Sri Lanka, more than 40,000 Tamils were killed during the final phase of the GOSL aggression. More than 300,000 Tamil civilians were rendered Internally Displaced People by the Sri Lankan government, which is permanently and overwhelmingly dominated by the Sinhalese; Tamil civilians were subjected to indiscriminate aerial bombing and shelling by the Sri Lankan armed forces - 99% Sinhalese - killing innumerable Tamil civilians, not to mention serious bodily and mental harm, along with the destruction of civilian infrastructure, and civic institutions of the Tamils, and institutions built by the Liberation Tigers of Tamil Eelam, an authentic representative of the Tamils. More than 300,000 Tamil civilians have been denied relief by the Sinhala-dominated government. International NGOs, which were providing relief to those in need, had been ordered by the Sinhala government to vacate the Tamil areas in which active conflict is occurring; thereby denying food, shelter, medicine and other essentials to innumerable innocents. This is a calculated effort to bring about the Tamils’ physical destruction in whole or in part, and is an act of genocide.

The Genocide Convention recognized the concept of self preservation. The concept of self preservation is also implicit in human rights covenants that protect the national identity of

groups. Thus when a group is subject to genocide it, as a remedial measure, can and should establish an independent state in order to preserve itself.

GUIDING PRINCIPLE ONE

The TGTE shall endeavor to an establishment of an independent, sovereign State of Tamil Eelam.

The strategy to establish an independent sovereign state would be by gaining recognition for the fundamental principles of Tamil nationhood, homeland and right to self-determination. This shall be followed by exercising the rights gained by such recognition.

A further strategy would be to demonstrate through legal and/or political means that the treatment to which Tamils have been subjected to constitutes genocide and to propose as a remedial measure an independent state to ensure the Tamil nation's self preservation.

2. Secularism

It was resolved as part of the Vaddukoddai Resolution that Tamil Eelam shall be a secular state giving equal protection and assistance to all religions to which the people of the state may belong. This position was inspired by the Indian Constitution, adopted by the TULF and the LTTE. Therefore, it has a strong position and a background in modern Tamil culture and it is quite different from French and American secularism. The question about secularism has been a burning one in many sections of Tamil society for decades.

GUIDING PRINCIPLE TWO

The State of Tamil Eelam will be a secular state. No religion shall be given the foremost place.

3. Promotion of the Welfare of the People in the homeland, the Tamil Diaspora and the Global Tamil Community that consists of Tamils who have migrated and are now living in other areas of the world. The Tamil Diaspora and the Global Tamil Community include, but are not limited to Tamil communities in South Africa, Singapore, Malaysia, Mauritius, the West Indies, etc. The function of the TGTE shall be to further strong ties between the people in the homeland, the Tamil Diaspora and the Global Tamil Community by continuing intense contacts of a social and cultural nature between these peoples. This will ensure that the

objective of achieving Tamil Eelam remains vigorous and that people of homeland are given assistance in re-establishing their shattered social and cultural lives.

GUIDING PRINCIPLE THREE

Towards the objective identified above, TGTE shall institute the following measures:

- (i) Assist in the establishment of health facilities in the homeland,**
- (ii) Creation of homes and refuges for those affected by the war,**
- (iii) Assist in supporting programs so that civilian housing and infrastructure that was destroyed by the war are restored,**
- (iv) Wherever possible, give similar assistance when needed to any Tamil within the three Tamil communities recognized above,**
- (v) Take measures to promote cultural activities that stress the distinctiveness of Eelam Tamil culture in the Diaspora countries and safeguard its links with other Tamil cultures within the Tamil Diaspora and the Global Tamil community.**

4. Promotion of Education in the homeland.

A strategy of successive Sinhalese governments has been to destroy the educational infrastructure of Tamil Eelam, noted for producing scholars of international repute. In a grievous blow to learning, the Sinhalese army set on fire the famous Jaffna Public Library, a storehouse of ancient works of Tamil. Other educational institutions were bombed and destroyed. The tradition of scholarship within the Tamil homelands has to be rebuilt.

GUIDING PRINCIPLE FOUR

The TGTE shall take measures to redress this situation through the following measures:

- (i) Establish funds for assisting existing schools in the homeland so that their facilities are upgraded.**
- (ii) Provide scholarships so that able students of the homeland as well as able students from the Tamil Diaspora and the Global Tamil Community could further their education in the states of the Tamil Diaspora.**
- (iii) Encourage members of the Tamil Diaspora to return to teach at**

educational institutions in the homeland at least for short periods.

- (iv) Increase scope for education especially in new technologies in the homeland so that a highly skilled group could emerge in these areas of knowledge.**

5. Promote Economic Welfare

The TGTE shall promote the economic welfare of the homeland through ensuring greater trade for the industrial products of the homeland in the states of the Diaspora. It shall do so by exploring setting up its own corporations towards the achievement of this objective of upgrading the trade flows from the homeland.

GUIDING PRINCIPLE FIVE

- (i) Consistent with this aim, the TGTE shall set up a Trading Commission operating in the different states of the Tamil Diaspora to promote trade between homeland and the states of the Tamil Diaspora and the Global Tamil Community.**
- (ii) The Transnational Government shall assist in the setting up of new industries in the homeland and raise funds for this purpose.**
- (iii) It will create corporations that become the conduit for trade with industries in the homeland and assist in the export of products of the homeland thereby promoting industries in the homeland.**

6. Conduct of Foreign Relations

The TGTE shall endeavor to bring about conditions favorable to the establishment of Tamil Eelam by urging the need for an independent state as a solution to the ethnic strife in Sri Lanka. It shall lobby governments and other institutions so that a favorable climate for the creation and recognition of Tamil Eelam is established.

There must be immediate priority given to establishing links with the international community. Country groups should devote a share of their funds for this purpose. A research think tank should be established to advise on issues which will be of interest to the international community and to provide analysis of events in South Asia which impact on the Sri Lankan situation.

GUIDING PRINCIPLE SIX

- (i) The TGTE shall set up the machinery to bring about conditions favorable to the establishment of Tamil Eelam through lobbying and other activities. It should stress the legitimate aspirations of the Tamil people for an independent sovereign state and ensure that the international community moves towards the acceptance of this objective**
- (ii) A think tank should be established to study issues of relevance in the South Asian region that impact Eelam Tamils' national question.**
- (iii) The strengthening of the principle of self-determination and the democratic struggle to achieve it through peaceful means for both the Tamils and for other persecuted groups must be promoted by the Transnational Government.**

7. Prosecution of War Crimes, Crimes against Humanity and Genocide

The Government of Sri Lanka and its leaders have committed serious violations of humanitarian law by killing over 50,000 Tamil civilians in 2009 and incarcerating over 300,000 Tamil civilians in concentration camps. There is evidence that many in the camps have been killed or tortured. It is important both for the international community as well as the future of the Tamils that the criminals involved be punished. The TGTE will take measures to secure the conviction of the war criminals and those responsible for crimes against humanity and genocide. This is also to constitute an announcement that public servants and military personnel assisting in the commission of international crimes will be prosecuted and that superior orders can never be a defense to liability under national law or under international law.

GUIDING PRINCIPLE SEVEN

The TGTE shall ensure that crimes committed against the Tamil people are prosecuted and those responsible are brought to justice.

8. Protect the Equality of Women and of All Tamils

The Tamil struggle to date has resulted in the emancipation of the Tamil Woman. This emancipation must be promoted. Equally, the struggle also destroyed the caste system and ensured that the principle of equality is established. The TGTE shall establish mechanisms that recognize the full legal equality of men and women.

GUIDING PRINCIPLE EIGHT

The Tamil Woman's rights to equality must be protected. Wherever possible, the Tamil Woman should be entitled to preferential treatment in matters of the granting of scholarships and other entitlements. The TGTE will work towards the abolition of the dowry system in marriage and any other customary practice injurious to the interest of the Tamil Woman. The TGTE will also ensure that the three Tamil Communities eradicate the caste system totally.

9. Welfare of families of Martyrs, Former Combatants, and families affected by war

Tamil freedom fighters always have a special and respected place in the hearts of every Tamil. It is the duty of the TGTE that it pursues all avenues to help the families of martyrs and former combatants including: educational scholarships, sustainable livelihood programmes, monthly allowances, health care, legal assistance, tracing family members, family reunification, securing release from prisons, help to rebuild their lives, counseling and other similar activities. It should also study similar programs in countries that have established organizations to assist war veterans such as the Veterans Affairs in the United States.

GUIDING PRINCIPLE NINE

The TGTE will appoint a special committee to look after the welfare of the families of our Martyrs and former combatants.

9. Conclusions

The Advisory Committee has been consulting many sources and taken into account various questions raised by sections of the Tamil-speaking people in preparation of this report, and during the subsequent community consulting forums. Several country level dialogue meetings have been conducted, and feedback obtained from the community. Most of the suggestions for

improvement and a number of the critical comments have been incorporated in this version of the report.

Given the fact that this initiative is a process which will continue to develop, public input will remain as an important ingredient in that development. Though the work of preparing this report is now complete, the channels of communication via printed and electronic media maintained by the International Secretariat will serve as points of contact in the immediate future. All inputs received by the International Secretariat will be transmitted in due course to the Constituent Assembly. It is expected that the Constituent Assembly will set up its own mechanism for public consultation as part of its constitution building process.