



Tamil Information Centre

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Committed to Human Rights and Community Development

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The International Community Must Take Urgent and Effective Action to Address Human Rights Abuses and Impunity in Sri Lanka

“Sri Lanka is a terrifying place to live”, says a human rights defender who fled from the north of the island and is in hiding, fearing for his life. The people are in constant fear of being denounced as opponents of the Sri Lankan government or the Liberation Tigers of Tamil Eelam (LTTE). The security services and the paramilitaries can strike at will and at any time. The paramilitaries are so fully integrated into the army's battle strategy, coordinated with soldiers in the field, and linked to government units through intelligence, assassins, supplies, weapons, cash and other common purpose, that they effectively instill terror amongst the population. Arbitrary arrests, abductions, torture and killings are commonplace. Thousands of people have fled their homeland rather than live under militarized regimes controlling the island of Sri Lanka.

What makes the current Colombo administration different from previous regimes is the culture of violence that has descended upon the nation. Since establishment, the government has continued its repressive violent policy, which includes ruthless killings, abductions for ransom, bombardment of civilian areas and targeted assassinations. It has sought to stifle freedom of expression and association and to control the media by threats, attacks, assassinations and destruction of media offices. It has also targeted human rights defenders and has accused and attempted denigrate officers of the UN and other international agencies involved humanitarian work. Further, it has prevented adequate humanitarian aid and assistance reaching the displaced people in the north-east region, and the security forces and intelligence services have murdered scores of humanitarian workers.

The LTTE's record of abuses against civilians has also worsened. The LTTE has been responsible for serious human rights abuses, including threats, intimidation, abductions, killing of civilians, hostage-taking, use of child soldiers, assassinations and the cruel and inhuman treatment of opponents. The LTTE is also guilty of grossly unfair demands on the people and forced displacement of civilians.

Innocent civilians make up more than 90 percent of the people killed by shelling and aerial bombardment of the government forces and suicide attacks of the LTTE. Such actions place no value on human life and continue to threaten the safety of all communities in the island. The blatant disregard for human life cannot be justified under any circumstance.

With the current scale of human rights violations that force people to leave their homes, the number of displaced people is likely to grow in the coming years. A cruel and callous disregard for human life and suffering remains the hallmark of Sri Lanka today. There is also increasing poverty and deterioration in health standards, which the government wishes to avoid discussing, an indication of its political bankruptcy and the intention to continue its current policy at the expense of all public standards, including human rights.

Arrest and detention

Arrests of Tamils are taking place in the north-east, in many areas of the south and the hill country. Thousands of Tamils have been arrested in the last two years and many are still in detention in prisons or detention centres, police stations or in military camps. Most arrests are not carried out on evidence of involvement in some illegal activity but on the mere basis of ethnicity.

More than 2,000 Tamils, including women and students were rounded-up in Colombo and its surrounding areas between Thursday 29 November and Sunday 4 December 2007 and were subject to humiliation and degrading treatment by the Sri Lankan security forces. Many of the detainees are from the north-east seeking safety in Colombo from military operations and violence in these areas, and many others are Hill Country Tamils from Hatton, Talawakelle, Nuwara Eliya and Kandy, either employed or involved in trade in Colombo. The rounding-up of only Tamils without any evidence against them indicates that the Tamils are targeted as an ethnic group in violation of national and international laws. The treatment of thousands of Tamils and the denial of their legitimate rights and safeguards also confirms that the human rights of the Tamil people of Sri Lanka are not protected by the rule of law. This action undermines the dignity of a group of people.

The Sri Lankan Constitution guarantees the freedom of movement and of choosing his/her residence within Sri Lanka. The Sri Lankan National Peace Council has pointed out that the government's apparent position that Tamil citizens from the north-east can reside in Colombo only if they satisfy the security forces about their reasons for being in the capital, is a gross violation of human rights under the Constitution as well as international law. Other human rights agencies have condemned the damning inability and unwillingness of the Sri Lankan State and security forces to conceptualize and enact measures to ensure the safety and security of all citizens without curtailing and violating fundamental rights. Highways Minister Jeyaraj Fernandopulle confirmed in Parliament on 5 December 2007 that 2,554 Tamils were taken into custody between these dates. He said that 2,352 were released after interrogation, and 202 were detained for further investigation. These statistics are open to question. According to local human rights agencies, the security forces often deliberately neglect to record the names of all the persons taken into custody during round-ups. This has led to the disappearances of hundreds of Tamils. Mr Fernandopulle also said that arrests will continue until terrorism is eliminated.

Some 18,000 personnel belonging to the three armed forces, police and the Civil Defence Force were involved in cordon and search operations following suicide attacks in Nugegoda and Colombo on 28 November 2007 in which 20 civilians were killed and 37 others were wounded. The arrests of Tamils took place in Kotahena, Wellawatte, Kochchikade, Grandpass, Slave Island, Bambalapitiya, Fort, Pettah, Narahenpita, Kirullapone, Welikada, Dehiwela, Mt Lavinia, Wellampitiya, Kohuwela, Mirihana, Ragama and Wattala.

More than 350 Tamils, including 51 women, were taken to the Boossa detention centre in Galle District, 65 miles south of Colombo. The Boossa centre is notorious for torture and disappearance of Tamils. The detainees also include a British and a German national. The detainees in Boossa are being subjected to inhuman and degrading treatment. They are held in crowded conditions without proper water or toilet facilities. More than 100 people are expected to use one toilet. They are not being provided sufficient food and they have no change of clothing. Some parents have been able to visit their children at Boossa. But the detainees have no facility to communicate with their legal representatives, humanitarian agencies or their relatives, who live far away in Colombo, Hill Country or in the north-east.

The arrests took place during cordon and search operations although most of the people were in possession of more than one identity document - such as national identity cards, passports, police registration certificates, Village Headman certificates and evidence of employment or trade in Colombo. The persons were not informed of the reasons for the arrest or detention. The relatives were not informed of the whereabouts of the detainees. On 3 December 2007, the Information Department announced that Human Rights Minister Mahinda Samarasinghe has set-up an information centre where the names of the arrested persons will be displayed. The announcement also included a contact telephone number and a fax

number of the information centre. But it is clear that the security forces are not following even the few safeguards provided in the Emergency Regulations (ER) and the Presidential Directives.

Regulation 20 (9) of the ER provides as follows:

Where any person is taken into custody under the provisions of this regulation it shall be the duty of the arresting officer to issue to the spouse, father, mother, or any other close relative a document in such form as is specified by the Secretary, acknowledging the fact of arrest.

The Presidential Directives of 5 July 2006 provide as follows:

At or about the time of the arrest or as it is not possible in the circumstances, immediately thereafter as circumstances permit:

(i) The person making the arrest or detention shall identify himself to the person arrested or any relative or friend of such person upon inquiry, being made by name and ranks;

(ii) Every person arrested or detained shall be informed of the reason for the arrest;

(iii) The person making the arrest or detention shall issue, to the spouse, father, mother or any other close relation as the case may be a document in such form as specified by the Secretary to the Ministry of the Minister in charge of the subject of Defence, acknowledging the fact of arrest.

The name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained, shall also be specified.

The security forces may be hiding behind the following proviso common to both the Regulation and the Presidential Directive, which enables them to ignore the requirements:

Provided that, where any person is taken into custody and it is not possible to issue a document as set out above, it shall be the duty of the arresting officer, if such officer is a police officer, to make an entry in the Information Book, giving reasons as to why it is not possible to so issue a document, and if the arresting officer is a member of the Armed Forces to report the reasons why it is not possible to issue a document to the officer in charge of the police station, whose duty it shall be to make an entry of such fact along with the reasons therefor in the Information Book.

The Presidential Directives also require that the Sri Lanka Human Rights Commission (SLHRC) should be informed of every arrest under the ER or the Prevention of Terrorism Act (PTA) within 48 hours. But in the case of the mass arrests of Tamils, no information was provided to the SLHRC. The SLHRC itself has failed to take appropriate action in this regard by demanding information on arrests and the whereabouts of the detainees (See Annex 1 for details about the ER and the PTA).

The police said that the arrests took place under the ER. But 101 people are held in the Boossa detention centre and another 74 people at the Terrorist Investigation Division (TID) under the PTA. Many people are also detained at other centres and prisons under the PTA. Both laws give wide powers to the security forces and State officers, and both laws have been condemned by the UN as falling far below international standards. The UN and international human rights agencies have been repeatedly calling on the Sri Lankan government to repeal these laws or introduce the necessary amendments to bring them into line with international standards. The Sri Lankan government has not only ignored these calls but has used these draconian laws to the fullest extent resulting in human rights violations.

The ERs and the PTA, which are almost exclusively used against the Tamil community, encourage impunity among the security forces, and have led to arbitrary arrests, illegal detention, torture, rape, disappearance and extra-judicial executions. Many Tamils arrested under these draconian laws are held in

detention for several years in the north-east as well as the south, in many instances without access to lawyers, organizations or relatives, without facilities for communication or information, without medical facilities or access to humanitarian agencies and without being produced before a court of law.

Torture

Torture and ill-treatment are being carried out by the armed forces, paramilitary groups and the police in military camps and police stations. There are also allegations of sexual violence and abuse of women and children in custody, and intimidation and threats against persons reporting torture. There are no effective witness and victim protection mechanisms in cases of torture. Torture by the security forces has continued in Sri Lanka for several decades and is widespread, systematic and institutionalized, despite international condemnation. Following a visit to Sri Lanka, the UN Special Rapporteur on Torture Manfred Nowak said in October 2007 that the high number of indictments for torture filed by the Attorney General's Office, the number of successful fundamental rights cases decided by the Supreme Court, as well as the high number of complaints that the SLHRC continues to receive on an almost daily basis indicates that torture is widely practiced in Sri Lanka. He also said that this practice is prone to become routine in the context of counter-terrorism operations.¹

The Joint Services Operations Command in Vavuniya, the Kankesanthurai military camp in Jaffna, the Plantain Point army camp in Trincomalee, the "Fourth Floor" headquarters of the Criminal Investigation Department (CID) and the Terrorist Investigation Division (TID) in Colombo, the Batticaloa prison and the Counter Subversive Units (CSU) in various towns, and police stations in the capital and other areas of the south are well known as centres of torture, and according to victim, have special rooms, equipment and devices for the purpose of torture.

Soon after arrest, the victim is usually assaulted and suffers degrading treatment at the place of arrest. Thereafter, the person is transported to these torture centres, stripped naked and subject to torture. The military and the police use various extreme physical and psychological beastly torture methods. Some of these are as follows: 1) beating with plastic pipes filled with cement, batons, belts or chains; 2) stamping wearing boots; 3) Hanging by the legs and beating all parts of the body; 4) burning with cigarettes; 5) suffocating by covering the head with plastic bags soaked in petrol; 6) beating on the soles of the feet; 7) inserting bottle, baton or barbed wire into the rectum; 8) applying chilli powder or other material to sensitive parts of the body; 9) detaining in a dark room; 10) kicking and punching repeatedly; 11) tying to a chair and beating; 12) tying the hand together and hanging from a pole; 13) giving electric shocks; 14) repeatedly smashing the head on a wall; inserting needles into finger nails and other parts of the body; 16) injecting liquids into various parts of the body; 17) deprivation of sleep.

Women have been sexually abused or raped as part of torture by the security forces. Some of the victims of torture have been forced under threat further torture to join paramilitary groups, give evidence against other people or to spy for the military. The Tamil victims are almost always forced to sign a confession under torture or threat of torture and these confessions are used in evidence against them in court. The provisions of the ER and PTA which allow confessions as evidence in court encourage torture.

Killings and death threats

Human rights agencies say that more than 5,000 people have died in north-east Sri Lanka in the last 15 months. These include extra-judicial executions. The Sri Lankan security forces, the non-state paramilitary groups aligned to the military and the Liberation Tigers of Tamil Eelam (LTTE) are responsible for the killing of civilians, and all sides to the Sri Lankan conflict violated human rights with impunity. TIC sources have compiled a list of 1,907 deaths in the north-east between September 2005 and April 2007, including 609 members of the security forces and 234 LTTE cadres. There were 1,064 civilians among the dead, including 95 women and 133 children.²

¹ Report of the Manfred Nowak, Special Rapporteur on Torture to the Third Committee of the UN General Assembly on.... , Sixty Second General Assembly, 28 October 2007 – www.un.org/News/Press

² The list does not include all the killings.

In many cases of civilian deaths, the killings have been carried out by unidentified persons arriving at homes and shooting them or taking them away to other places and murdering them. Many people have been abducted by the so-called “unidentified persons”, murdered and their bodies dumped in public places. The perpetrators are referred to as “unidentified persons” in order to avoid persecution in the absence of witness and human rights defender protection. Others have been murdered in public places such as bus stations, streets, shops or offices.

Many civilians, including journalists, human rights defenders, officers of NGOs, government officers and even Tamil MPs have received death threats from the military. Many of those threatened have taken refuge in the Jaffna prison, where they are held along with other prisoners. The military has also directly threatened members of the judiciary with death, and the judges in army-controlled areas of the north-east are unable to perform their duties effectively.

Disappearances

In Colombo and other areas of southern Sri Lanka, 88 Tamils were abducted since February 2006. The persons abducted include journalists, students and women. The bodies of 12 people were found later and the fate of 60 people is unknown. Sixteen people were released after paying huge sums of money as ransom. The ransom monies are paid into named bank accounts, but the Banks and the Police are not willing to carry out investigations. The police have also not investigated contravention of laws relating to money-laundering. Individuals, members of organizations and even parliamentarians who attempted to investigate the abductions have received death threats.

In addition to the killings, and the disappearances in the east and Colombo, TIC sources have compiled a list of 900 people who went missing in Jaffna alone between December 2005 and August 2007. Of these, 252 were traced subsequently, 129 of whom were found in security force detention (78 were released later). This means, no information had been given by the security forces about arrest and detention to the relatives or the SLHRC. Seventeen people who went missing were brought in vehicles and dropped at various places by unidentified persons. The dead bodies of 13 other persons were later found. According to the list, 648 are still missing and people have witnessed 194 of them being abducted by the security forces.

Disappearance of people takes place during cordon and search operations, at military checkpoints and during curfew hours. People living near military installations are vulnerable. Often abductions are carried out in white vans, a hallmark of military death squads. During search operations, security force personnel in uniform cover their faces with black scarves in order to hide their identity. The daily curfew in Jaffna between 7.00pm and 5.00am and the cover of night enable the security forces to enter into houses and carry out abductions. Because of the curfew, people are vulnerable and there is no way to escape or call for help. The abductors have no difficulty in passing through several checkpoints with the victims. Where people have witnessed abductions or arrests during cordon and search operations, the military deny holding any person in custody when inquiries are made at army camps. Local *Gramma Sevakas* (Village Headmen) are often threatened by the military with death, should they reveal the names of persons arrested during search operations. Many people who visited police stations to report about abductions or arrests by the military and to record their statements as witnesses, have themselves been disappeared or killed. In some instances, several members of one family who made statements to the police have disappeared. This indicates that the police are providing information to the military about witnesses and are involved in disappearances.

In addition to the activities of the security forces, parents and relatives continue to complain that forcible recruitment by the LTTE is taking place in areas controlled by them as well as other parts of the north-east.

Impunity

The government's attitude and its refusal to take action on human rights violations are encouraging further abuses and impunity among security forces and government officers. Four Presidential Commissions inquired into 37,662 of the 54,404 complaints of disappearances, which took place between January 1988 and December 1995 and found evidence of disappearance in 21,115 cases. No enquiries have been conducted into another 16,742 cases of disappearances. No further action has been taken in the 21,115 cases where the commissions have recorded the names of the security force personnel responsible for the disappearances. A new Presidential Commission was appointed in 2006 with a mandate to inquire into complaints of abductions, disappearances and unexplained killings. In a statement on 15 June 2007, the International Independent Group of Eminent Persons (IIGEP) expressed concern that the conduct of the Presidential Commission is inconsistent with international norms and standards and that failure to take corrective action will result in the Commission not fulfilling its fact-finding mandate in conformity with those norms and standards.¹ This Presidential Commission submitted reports to the President in 2006 and 2007 and says it has made recommendations to take strong action against officers in charge of the police stations responsible for violations, and their superior officers for lapse of duty, and to pay compensation to the bereaved families.² But the government has not published the reports and has failed to take any action on the recommendations.

Human Rights violations, including torture, are not probed by the police. In most cases where there is a claim by authorities that investigation is underway, in reality no action has been taken. In many instances, the investigators themselves have turned protectors or defenders of the perpetrators, and witnesses have been threatened. The security forces have carried out a number of massacres of Tamil civilians, most of which remain un-investigated. Many Tamil civilians have also been killed in aerial bombardment by the Sri Lanka airforce and the Sri Lankan government has always denied that civilians were killed.

Since Mahinda Rajapakse became President of Sri Lanka, the government has encouraged human rights violations against Tamil civilians by the security forces. This encouragement has been given by government ministers and officers by their war-mongering statements, the stance that the peace process will begin only after the LTTE is destroyed and the territory controlled by the LTTE is liberated. Ministers and government officers are also telling the public not to criticize the security forces, even in the face of grave violations of human rights. Speaking in Parliament on 4 December 2007, Minister Jeyaraj Fernandopulle accused the people protesting against the Colombo arrests of demoralizing the security forces, who, he said, had gained tremendous success against the LTTE in recent months. Critics and human rights activists are branded by government ministers and officers at every opportunity as LTTE sympathizers. Even international agencies carrying out humanitarian work in Sri Lanka, including UN agencies, have come under severe attack from the government. Journalists who criticize the government have been attacked, arrested under the ER or even killed. On 21 November 2007, the office of the *Sunday Leader* newspaper was burned. The perpetrators were able to pass security force checkpoints easily and escape.

The Judiciary led by Chief Justice Sarath N. Silva, which should protect the people, has become a partner of the executive in the violation of the rights of the people. The Chief Justice himself has warned some lawyers who represent victims of human rights abuses, in open court, that he will not hesitate to remove them from the Lawyers' Roll, if any more human rights case is brought before him. Impartial judges hearing human rights cases against security force personnel in the north-east have been threatened and transferred to other areas. The Judicial Services Commission, which is headed by the Chief Justice, has sent a circular letter to all judges in the north-east instructing them not to interfere in the activities of the security forces.

¹ The second public statement of the International Independent Group of Eminent Persons, P N Bhagwati, Chairman, 15 June 2007 – www.pchr.gov.lk/news

² Letter dated 27 December 2006 by T A Mahanama Tillekaratne, Chairman of the Presidential Commission to the Asian Human Rights Commission – www.ahrchk.net

Sri Lanka Human Rights Commission (SLHRC)

It is clear from the inaction even in the cases of serious human rights violations, the SLHRC which should be independent, is now functioning fully under the control of the Sri Lankan government and has failed to provide protection to the people in accordance with its mandate. It has failed to adequately monitor human rights violations and to investigate abuses. It lacks transparency and accountability. It has failed systematically to hold inquiries into abuses and publish reports. As a consequence, it has totally lost the confidence of the people and people's institutions. In relation to torture and disappearances, the regional offices of the SLHRC have provided information to the SLHRC headquarters in Colombo. But the commissioners have not taken any action. The SLHRC lacks the legal basis for effective functioning. The Sri Lankan President appointed the Commission in May 2006 without the recommendations of the Constitutional Council, which is a mandatory legal requirement in terms of the 17th Amendment to the Constitution. The President has also failed thus far to appoint the Constitutional Council which makes recommendations for the appointment of all the independent commissions.

The SLHRC announced in June 2006 that it will not hear 2,127 cases of disappearance passed on to it from the presidential commissions appointed to investigate disappearances, 'unless special directions are received from the government, as findings will result in payment of compensation'. This is a clear indication that the SLHRC is taking instructions from the government contrary to its purpose and mandate. In June 2007, the SLHRC introduced a three-month time-limit for investigation of complaints, although Human Rights Commission of Sri Lanka Act 1996 does not limit the time for investigations. It has also issued instructions to its regional offices to stop sharing information with NGOs. Sri Lankan human rights agencies have stated that the SLHRC violates fundamental features of the Paris Principles Relating to National Institutions for Protection and Promotion of Human Rights. By failing to carry out its duties as a national institution, the SLHRC in effect, is contributing to impunity and human rights violations in Sri Lanka.

The International Community

The international community, through international agencies, UN organizations, government agencies and other means, has made attempts for more than 25 years to improve human rights in Sri Lanka. Within the last two years the human rights situation has gravely deteriorated and the Sri Lankan government, rather than taking measures to protect the people, has unleashed its power on the people themselves, resulting in enormous suffering, particularly for the Tamil people in the island, and in erosion of democracy. The government has also made it clear by words and action that it will not take, for the foreseeable future, any measure to put the peace process back on track. If persuasion has not produced results for 25 years, the TIC believes that the International Community must explore other means to restore human rights, democracy and peace in Sri Lanka.

The TIC calls up on the International Community to take all measures as are necessary to

- a) ensure the presence of an international human rights monitoring body with access to all parts of Sri Lanka and access to all relevant institutions in Sri Lanka;**
- b) ensure that a mechanism for investigation of human rights violations throughout the island, which meets the requirements of independence, credibility, effectiveness and empowerment is established, with international participation, so that it contributes to public confidence, peace and stability in all parts of Sri Lanka;**
- c) tackle impunity in Sri Lanka, paying special attention to the laws and regulations that contribute to impunity by ensuring proper, adequate and impartial investigations into allegations of torture, rape, disappearances and extra-judicial executions, and prosecuting the perpetrators, irrespective of their ethnic origin, position or status.**

Annex 1

Emergency Regulations (ER) and the Prevention of Terrorism Act (PTA)

The ERs introduced in August 2005 have the effect of removing judicial oversight in relation to arrest and detention, and suspend the relevant provisions of the normal law. The ERs give authority to security forces to arrest on mere suspicion, without warrant. The person arrested can be detained without access and without charge, and the ERs do not limit the time period of detention. Under the ERs the Defence Secretary can order a person to be held for a period of one year and such person need not be produced before a Magistrate for 30 days or in some cases 90 days. The Magistrate has no authority to release the person on bail without written permission from the Attorney General.

The ERs allow confessions to the police admissible as evidence in court and suspend the relevant provisions of the normal law. A confession or statement made to any person under any circumstance may also be used as substantive evidence against the accused. The burden of proving that the confession was made under duress lies on the accused.

The ERs also erode the powers of the courts under normal law in relation to deaths in the custody of the police or armed services. Under normal law, the Magistrate has wide powers to receive information immediately, view the body and hold an enquiry to ascertain the causes of death. But under the ERs enquiries into deaths in custody can take place only on the application of the Inspector General of Police (IGP). After a post-mortem, a DIG has the power under the ERs to burn the body without handing it over to relatives.

ERs introduced in December 2006 give a very wide definition of “terrorism” and are clearly intended to curtail legitimate democratic activities and constitutionally protected rights of the people, organizations and the media. The regulations say that no person shall engage in any transaction on any matter whatsoever with a group engaged in terrorism. But the regulations also say that there can be transaction with such a group with the written approval of the Competent Authority appointed by the President, to facilitate a peaceful political solution, maintenance of supplies, services essential to the life of the community, provision of humanitarian assistance, conduct of development activities or for any other lawful purpose. This means, individuals and civil society organizations engaged in these activities, including promotion of peace, cannot continue. If they wish to carry out these legitimate activities, they must obtain written approval from the Competent Authority, as otherwise they would be accused of engaging in terrorism.

In addition to ERs, the PTA gives wide powers of arrest and detention to the security forces and State officers. A person may be arrested without a warrant under the PTA and can be detained for 72 hours. But during this period of 72 hours, the Defence Minister has the power to issue a detention order and detain the person for three months and such order may be extended up to 18 months. The Minister’s detention order is final and cannot be called into question in any court or tribunal in any manner. A person can be held for 18 months without being produced before a court. As in the case of ERs, confessions to the police are admissible as substantive evidence.