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Sri Lanka: A test for the UPR mechanism

[Contribution under the Universal Periodic Review of the Human Rights Council]

1. Executive Summary

On 2 January 2008, the Government of Sri Lanka unilaterally withdrew from the Ceasefire Agreement (CFA) signed with the Liberation Tigers of Tamil Eelam (LTTE). Without action by the government, humanitarian and human rights violations will return to at least the levels and patterns of the prior period of conflict. Indeed, violations are likely to escalate further given government's failure to address impunity, increasing political interference of the government in the judiciary and other organs of the state, repression of dissent and ever more excessive powers to the security forces.

Despite widespread and systematic patterns of human rights violations and the failure of national remedies, the Government of Sri Lanka refuses to allow the Office of the High Commissioner for Human Rights (OHCHR) to open a field mission in the country. The United Nations Human Rights Council has failed to address massive human rights violations and abuses perpetrated by both the Sri Lankan government and the LTTE.

2. Human rights situation on the ground

I. Right to life

There have been widespread and credible reports of human rights violations, including the right to life, by the security forces from North Eastern and the Southern region of Sri Lanka. The Sri Lankan Air Force continues to bomb indiscriminately in LTTE held areas.

There were also reports of killings in air raids. In most of the cases, the security forces justified the killings by claiming that those killed were LTTE cadres. However, in some cases, the victims were civilians.¹

Custodial deaths are reported at regular intervals. The majority of the victims died as a result of torture and ill treatment. The National Police Commission (NPC) reportedly

¹. SLN shoots dead two fishermen in Kayts, TamilNet, 19 May 2007

received 11 complaints of death in police custody within the first seven months of 2007.² Investigations fell well below international standards. In some cases investigations were not carried out. For instance, no fresh investigation was conducted into the death of fisherman Thadallage Chamil Weerasena, resident of, Ratgama, who was allegedly tortured to death in police custody on 21 July 2007.³

II. Enforced disappearances

Disappearances are endemic in Sri Lanka. Ethnic Tamils are specific targets. The Government of Sri Lanka has dismissed disappearances and established Commissions of Inquiry that have regularly covered up gross human rights violations.

In September 2006, President Rajapaksa established a Presidential Commission of Inquiry to enquire into disappearances. On 31 August 2007, the Commission revealed that out of 1992 persons who had allegedly disappeared, 1,425 persons have returned. However, the Commission did not reveal the names of the persons who had returned.⁴

III. Arbitrary arrest, illegal detention and torture: Tamils as target

In 2005, the government expanded existing draconian Emergency Regulations. They granted the security forces further excessive powers of detention and arrest. With high levels of prevailing impunity the government has used the legislation against journalists who dissent from the government's security driven focus. In December 2006, the government awarded still further powers to the security forces under an Emergency Regulation 'the Prevention and Prohibition of Terrorism and Specified Terrorist Activities'. The regulation is loosely worded, allowing for the criminalization of a range of legitimate activities that are protected under Sri Lankan and international law. Notably the legislation strengthens impunity allowing prosecution exemptions for members of the security forces deemed to be acting in "good faith."

In April 2007, Police Chief Victor Perera publicly stated that the Police may have to *go beyond* the law to combat crime.⁵ The statement underlines the extent of impunity and the fragility of the rule of law.

Ethnic Tamils are specific targets of arbitrary arrest, detention and torture. The security forces carried out mass arrests and expulsions of Tamil civilians in Colombo and other places in the south. In December 2007, the Police conducted a mass arrest of nearly 2,200 ethnic Tamils including women and children after bombings by the LTTE in November 2007.⁶ Earlier in June 2007, about 500 ethnic Tamil minorities including women and

². NPC gets 1216 complaints against Police, The Island, 24 August 2007

³. Asian Human Rights Commission: Urgent Appeal, available with:
<http://www.ahrchk.net/ua/mainfile.php/2007/2519/>

⁴. Reveal names of abductees who returned : Commission , The Daily Mirror, 5 September 2007

⁵. Cops and killers: Who reigns? The Sunday Times, 27 May 2007

⁶. Lanka Business Online, 4 December 2007, available at:

http://www.lbo.lk/fullstory.php?newsID=1109311557&no_view=1&SEARCH_TERM=33

children were forcefully evicted from Colombo in the name of security.⁷ New regulations were introduced to restrict the temporary stay of Tamil civilians visiting Colombo from north-eastern provinces.⁸

Torture is a widespread and systematic practice in Sri Lanka. More than 23 cases of alleged torture by SLA soldiers and police personnel were reported to the Jaffna office of the Human Rights Commission of Sri Lanka in June 2007 alone.⁹ Yet, only in very few cases, the courts sentenced the police personnel and ordered to pay compensation to the torture victims.

IV. Prisoner's rights

Prisons are overcrowded and lack basic services and facilities. Pre-trial detainees exceed the convicted prisoners. According to the Special Rapporteur Mr. Manfred Nowak, there were some 28,000 prisoners being held in prisons that have the capacity of only 8,200.¹⁰ Torture of prisoners is a common practice in Sri Lanka. On 6 July 2006, M.S.F Perera of Pitakotte died of head injuries sustained under torture at the Kuruwita Prison.¹¹

V. Impunity

Impunity and war contribute to the deteriorating human rights situation.

The Commission of Inquiry (CoI) set up by President Rajapaksa in November 2006 to investigate 16 serious cases of rights abuses including the killings of 17 aid workers in Muttur failed to make any progress. In order to give credence to the Commission of Inquiry, President Rajapaksa established International Independent Group of Eminent Persons (IIGEP), an 11-member body headed by Justice P.N. Bhagwati, to observe, among others, the inquiry by the CoI. The IIGEP has repeatedly complained about the inquiry being compromised - including the absence of transparency, interference from the Attorney General's department and the Office of the President and failure to protect witnesses.¹² The Sri Lankan government disregards the IIGEP's recommendations.

In a rare case, on 20 January 2006, the High Court Trial-at-Bar sentenced five Army personnel identified as Lt. Ranjith Wijeratne, Susil de Silva, Kamala Wijeratne, Anura Kumara and Buddhi Dissanayake to death in the Udathalawinna massacre case. They were found guilty of the charges of murder of 10 youths on 5 December 2001 when the General Election was held.¹³

7. http://www.achrweb.org/urgent_action/UA-SLK0107.htm

8. Sri Lanka restricts North East Tamils from visiting Colombo, TamilNet, 8 November 2007

9. Jaffna elderly woman alleges SLA torture, Tamil Net, 4 July 2007

10. Torture widespread in Sri Lanka- UN, TamilNet, 30 October 2007

11. Bomb hoax call: Torture victim dies, The Daily Mirror, 7 July 2006

12. 2007: The year in review, TamilNet, 3 January 2008

13. Udathalawinna murder case: Five Army men sentenced to death, Ratwattes acquitted, The Daily News, 21 January 2006

VI. Status of vulnerable groups

i. Women's rights

Sri Lanka ratified CEDAW in 1981. In 2005, Sri Lankan Parliament passed the Prevention of Domestic Violence Act. Yet, domestic remedies are insufficient. The National Committee on Women is not a statutory body but a governmental department. According to a 2006 survey by the Ministry of Child Development and Women's Empowerment, 60 percent of women were victimised by domestic violence, while 44 percent of pregnant women were subjected to harassment.¹⁴

Women have been specific target during the war because of their gender. On the night of 8 June 2006, alleged Sri Lankan Army personnel brutally tortured and killed all the four members of a Tamil family identified as Mary Medaline alias Chitra (27), her husband Moorthy Martin (35) and their children - son Ann Nilxon (7) and daughter Ann Luxica (9) at their house in Vankalai, 12 km southeast of Mannar. Mary Medaline was allegedly raped before being killed.¹⁵ Local residents and eye witnesses told Mannar Additional Magistrate, T. J. Prabakaran who went to investigate the killings that they had seen three Sri Lanka Army personnel in uniform near the house of the deceased around 10 a.m. on 8 June 2006.¹⁶ On 3 July 2007, Ms. Kathiravelu Pushparanee (60) complained to the Jaffna office of the Sri Lankan Human Rights Commission alleging that she was tortured along with five other young women including her daughter by the army personnel who forcibly entered her house at Maariyamman Koayilady in Thirunelveli demanding information about a youth.¹⁷ Often the identity of the accused could not be established.

ii. Rights of the child

Hundreds of children have been displaced as a result of the armed conflict. Many were forcefully recruited as child soldiers by the armed opposition groups (AOGs). Recruitment of child soldiers continues despite pledges made by the AOGs to end the practice. The Jaffna Office of the Human Rights Commission reportedly received 147 complaints against armed opposition groups and political parties for abducting children by end of March 2007. Of these, 71 were against the Karuna group, 66 were against the LTTE and 10 against the Eelam People's Democratic Party.¹⁸ According to UNICEF, there were 1,448 outstanding cases of under age recruitment by the LTTE and 223 outstanding cases of under age recruitment by the Karuna group as of 31 October 2007.¹⁹

14. Sri Lanka's pregnant women are subject to harassment at home, The ColomboPage, 19 June 2006

15. SLA soldiers massacre family of four in Vankalai, Mannar, Tamil Net, 9 June 2006, available at <http://www.tamilnet.com/art.html?catid=13&artid=18447>

16. Thousands mourn Vankalai victims, TamilNet, 10 June 2006

17. Jaffna elderly woman alleges SLA torture, Tamil Net, 4 July 2007

18. Jaffna children in HRC custody, The Muslim Guardian, 17 May 2007

19. http://www.unicef.org/srilanka/Monitoring_and_Reporting_October_update.pdf

iii. Rights of indigenous peoples

The plight of the indigenous Veddas community continued to be of concern. The government failed to take appropriate steps to improve their overall conditions. Apart from discrimination, lack of education and poverty, they were targets of religious conversion.²⁰ In August 2007, four indigenous Veddas were arrested for collecting honey at Maduru Oya National Park, Sri Lanka.²¹

iv. Rights of the minorities

The plight of the Muslim minority in the Northern Province who were forcibly evicted from their homes by the LTTE in 1990 continued to be deplorable. Their conditions have been ignored by the media coverage of the conflict. Around 130,000 Muslims continue to languish in refugee camps in abject poverty, unemployment, and lack of basic facilities including health and education.²²

v. IDPs

The escalation of violence between the government and LTTE has resulted in displacement of thousands of people. Many fled to Tamil Nadu in India. As of 31 December 2007, there were 187,850 Internally Displaced Persons (IDPs) in Sri Lanka. Of these, 31,843 still remain in welfare centres or temporary accommodation centres, while 156,007 were said to live with friends and relatives.²³ Although the majority of them have returned, they faced security and livelihood problems. Humanitarian agencies have extremely restricted access.

VII. Administration of justice

Political interference in the Supreme Court and the Judicial Service Commission (JSC) has seriously undermined the independent functioning of Sri Lanka's judiciary. The arbitrary transfers of the magistrates in high profile cases of extra-judicial executions and enforced disappearances such as the killing of 17 aid workers of *Action Contre La Faim*,²⁴ seriously undermine the impartiality of judicial proceedings.

VIII. Situation of Human Rights Defenders

Sri Lanka has increasingly been difficult for humanitarian workers since 2006. As stated above, investigations into the massacre of 17 workers of *Action Contre la Faim* (Action Against Hunger, ACF) at Muttur town on 5 August 2006 has failed to make any progress.

²⁰. Indigenous community a target for conversion, The Daily News, 16 March 2006

²¹. Asian Indigenous and Tribal Peoples Network, July –September 2006 Issue of Indigenous Rights Quarterly

²². The plight of the Northern Muslims – A forgotten story, The Muslim Guardian, 26 June 2007

²³. Sri Lanka: 187,500 Internally Displaced Persons, The Asian Tribune, 28 January 2008

²⁴. UNHRC meeting: Concern over judicial independence, Daily Mirror, 14 June 2007

NGOs alleged that at least 43 aid workers were killed and 14 others remained missing in Sri Lanka since 2006.²⁵ At least four humanitarian workers including three Red Cross Workers and a Sri Lankan staff member of the Danish Refugee Council²⁶ were killed in 2007. Humanitarian workers have also been threatened for not following the orders of the AOGs.

IX. Freedom of expression

Journalists in Sri Lanka work under constant threat. Sri Lanka was ranked third most dangerous place for media in the world by Geneva-based Press Emblem Campaign (PEC). PEC recorded the killing of 7 journalists in Sri Lanka during 2007.²⁷ Not a single case of killing or attack against journalists or newspaper offices has been investigated.

Instead, the Government of Sri Lanka has used anti-terrorism laws to harass, interrogate and arrest media personnel. Several others have been physically attacked, illegally arrested and being subjected to interrogations by the security forces.

X. Armed opposition groups and humanitarian law

Armed opposition groups have been responsible for grave violations of the international humanitarian law through killings, abductions and recruitment of child soldiers. Of the non-state actors, the LTTE remained the main violator of international humanitarian law in particular the targeting of civilians with explosive devices. For example, 19 people including children were killed in a bomb blast at Nugegoda junction in Colombo on 28 November 2007²⁸ and at least 15 persons were killed in a claymore mine attack on a CTB passenger bus in Padaviya near Kebithigollewa on 5 December 2007.²⁹

3. State's Obligations/Commitments

I. National level obligations

The Government of Sri Lanka must take all necessary steps to end systematic extrajudicial killings, enforced disappearances, illegal detention and torture and end the culture of impunity by establishing accountability for human rights violations.

In order to promote and protect human rights effectively the Government of Sri Lanka must ensure that the Sri Lanka Human Rights Commission (SLHRC) operates in accordance with the Paris Principles. In December 2007 the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights – the international body that regulates national human rights institutions – reduced Sri

²⁵. 43 aid workers killed in Lanka: HR group, The Daily Star, 7 September 2007

²⁶. Danish aid group says staffer killed in Sri Lanka, The Reuters, 23 July 2007

²⁷. Sri Lanka ranked third in murders of journalists, TamilNet, 18 December 2007

²⁸. Civil rights groups protest against terror attacks on civilians in Sri Lanka, The ColomboPage, 1 December 2007

²⁹. LTTE claymore mine kills 15, injures 23 civilians in Sri Lanka, The ColomboPage, 5 December 2007

Lanka's NHRC to the status of an "observer" because of concerns over its independence. Similar politicized appointments were also made to Public Service Commission (PSC) and the National Police Commission (NPC).

The government must ensure that there is no political interference in the functioning of Sri Lanka's judiciary and to ensure fair trial and justice especially to the minority Tamils.

The government must ensure safety of the humanitarian workers and give access to visit the conflict-torn areas.

Similarly, the government must ensure independent functioning of the freedom of the press, and not to use anti-terrorism laws to question and arrest media personnel for political ends.

II. International obligations

The Government of Sri Lanka has failed to ratify Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment; Second Optional Protocol to the International Covenant on Civil and Political Rights; Convention for the Protection of All Persons from Enforced Disappearance; and Optional Protocol to the Convention on the Rights of Persons with Disabilities.

4. Enhancement of State's capacity/technical cooperation

Sri Lanka requires a full field mission of the Office of the High Commissioner for Human Rights to monitor human rights and increase the capacity of the State to address human rights violations.

5. Cooperation with the HRC, Treaty Bodies and OHCHR

Although, the Government of Sri Lanka has ratified most international human rights instruments but seldom implements the same at national level. The government of Sri Lanka failed to submit periodic reports under International Convention on the Elimination of All Forms of Racial Discrimination since 2003; under International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families since 2004, and Convention on the Elimination of All Forms of Discrimination against Women since 1998, among others.

On 15 September 2006, the Supreme Court headed by Chief Justice Sarath N Silva held that the country's accession to the Optional Protocol to the International Covenant on Civil and Political Rights was "unconstitutional and illegal" as it was signed by the previous President and not adopted by parliament.