



Tamil Information Centre

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Committed to Human Rights and Community Development

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TIC Note to Members of the UN Human Rights Council

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The Tamil Information Centre (TIC) is a non-profit community-based organization involved in promoting human rights, peace and development in Sri Lanka for over 25 years. The TIC is submitting this document to members of the UN Human Rights Council for information and consideration at the sessions in March 2008.

Sri Lanka: Human rights situation demands robust international intervention

Introduction

States bear ultimate responsibility as guarantors of democracy, human rights and rule of law. States are obliged under the Charter of the United Nations and other international instruments to promote respect for, and observance of, human rights and freedoms, and ensure that all people enjoy the freedoms without fear. States are also obliged to guarantee human rights and fundamental freedoms without discrimination and subject rights only to such limitations solely for the purpose of promoting the general welfare in a democratic society. States must uphold their human rights obligations during periods of conflict and national emergency, in accordance with international law, the rule of law, and the principles of democracy.

The Sri Lankan State has violated every democratic principle and has shown scant regard for democratic institutions. It has undermined the rule of law, thus placing constraint on the enjoyment of human rights. Government actions have created widespread fear and the people are unable to exercise their legitimate rights and carry on their daily lives in freedom and dignity without interference. The government, its security forces and state-sponsored armed groups, and the Liberation Tigers of Tamil Eelam (LTTE) which controls territory in the north-east, are the main violators of human rights. Sri Lanka has become a militarized State without law and order. There are reports of killings to settle private scores. But, because of the unwillingness on the part of the government and the wilful neglect of the State to build institutional capacity, these murders and other human rights violations remain uninvestigated. In Sri Lanka, where the Legislature and the Judiciary have become subservient to the Executive, the government rules under a state of emergency and has armed itself with draconian laws to suppress rights and freedoms.

The Sri Lankan government has encouraged impunity and the security forces and State officers are directly involved in extra-judicial executions, arbitrary arrest and detention, abductions for ransom,

torture, sexual abuse and disappearances. Security forces have also attacked or carried out aerial bombardment of populated areas in the north-east region causing large number of civilian deaths and destruction on a massive scale. The government has curtailed freedoms of expression and association and has targeted human rights defenders for intimidation, abduction and assassination.

In these conditions, when none of the State institutions, the Executive, the Legislature or the Judiciary, is providing protection to the people, international intervention has become necessary. Widespread and systematic human rights violations have continued in Sri Lanka since the 1980s and the Sri Lankan State has played a prominent role in the abuses. The UN and international human rights agencies have recorded the violations.

International concern on violations

Some of the statements of international concern over continuing human rights violations in Sri Lanka since 1985 are given below:

- In October 1985, Amnesty International reported the massacre or disappearance of 175 Tamil civilians, including women and children, by the security forces in Jaffna and Batticaloa in May 1985.¹
- Amnesty International reported in 1995 on 700 unresolved cases of disappearances between 1984 and 1987.²
- In 1991, the Special Rapporteur on Summary and Arbitrary Executions reported the disappearance of 158 Tamils taken into custody on 5 September 1990 by the Sri Lankan security forces from the Vantharumoolai refugee camp in Batticaloa District.³
- The UN Human Rights Committee expressed serious concern in October 1995 about information on loss of life of civilians, disappearances, torture, summary executions and arbitrary detention caused by both parties to the conflict.⁴
- The Special Rapporteur Extrajudicial, Summary or Arbitrary Executions, reported after a visit to Sri Lanka from 24 August to 5 September 1997 that there were large-scale human rights violations and abuses by members of the security forces, paramilitary groups (home guards) and the armed insurgent groups (LTTE), that military operations leading to the death of civilians included indiscriminate bombing of civilian settlements and armed incursions into villages, and that torture was used by the armed forces to obtain information on insurgent groups and to intimidate the population.⁵

¹ Amnesty International report on extra-judicial killings in Sri Lanka, 16 October 1985 – AI Index: ASA 37/14/85 Distr: SC/PO/CO

² Amnesty International Annual Report 1995

³ Report of the Special Rapporteur on Summary and Arbitrary Executions – E/CN.4/1991/36 para 471, 472

⁴ Concluding observations of the UN Human Rights Committee: Sri Lanka, 3 October 1995 – A/50/40, paras.436-476 – www.unhchr.ch

⁵ Report of the Special Rapporteur, Extrajudicial, Summary or Arbitrary Executions, 12 March 1998, Visit to Sri Lanka, 24 August to 5 September 1997 - E/CN.4/1998/68/Add.2 - <http://daccessdds.un.org/doc/UNDOC>

- The Committee against Torture said in May 1998 that it was gravely concerned by the serious violations of the Convention against Torture in Sri Lanka, particularly regarding torture linked with disappearances.⁶
- The UN Special Rapporteur on Violence against Women expressed concern in March 2000 that the incidence of gang rape and murder of women and girls by Sri Lankan soldiers is continuing unabated in Sri Lanka.⁷
- The UN Working Group on Enforced or Involuntary Disappearances said December 2000 that Sri Lanka remained the country with the second largest number of un-clarified disappearances in the world, next to Iraq. Between 1980 and 2000, the Working Group received reports of 12,277 disappearances of which 11,682 remain un-clarified.⁸
- The UN Human Rights Committee said in December 2003 that it remained ‘concerned about persistent reports of torture, and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces, and about the intimidation or threat of victims, thereby discouraging them from pursuing effective remedy.’⁹
- In December 2005, the UN Committee against Torture expressed concern about non-observance of fundamental legal safeguards such as habeas corpus rights, continued well-documented allegations of widespread torture and ill-treatment as well as disappearances, mainly committed by the Sri Lankan police forces, the lack of effective systematic review of all places of detention, continued allegations of sexual violence and abuse of women and children in custody, including by law enforcement officials, undue delay of trials, especially trials of people accused of torture and reprisals, intimidation and threats against persons reporting acts of torture and ill-treatment as well as the lack of effective witness and victim protection mechanisms.¹⁰
- The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions said in his report following a visit to Sri Lanka in November/December 2005 that he was immensely troubled by the fact that the police are engaged in summary executions and that in Sri Lanka’s police stations physical mistreatment is frequently used to extract confessions from suspects, sometimes resulting in death.¹¹
- Following a visit to Sri Lanka from 1 to 8 October 2007, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, expressed the opinion that the high number of indictments for torture filed by the Attorney General's office, the number of

⁶ Concluding observations of the Committee against Torture: Sri Lanka, 19 May 1998 – A/53/44, paras.243-257 – www.unhchr.ch

⁷ UN Press Release 14 March 2000 – www.unhchr.ch

⁸ Report of the UN Working Group on Enforced or Involuntary Disappearances, 18 December 2000 – E/CN.4/2001/68

⁹ Concluding observations of the Human Rights Committee: Sri Lanka, 1 December 2003 – CCPR/CO/79/LKA – www.unhchr.ch

¹⁰ Conclusions and recommendations of the UN Committee Against Torture: Sri Lanka, 15 December 2005 – CAT/CLKA/CO/2

¹¹ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 27, March 2006, Mission to Sri Lanka 28 November to 6 December 2005 - E/CN.4/2006/53/Add.5 – <http://daccessdds.un.org/doc/UNDOC>

successful fundamental rights cases decided by the Supreme Court, as well as the high number of complaints that the National Human Rights Commission continues to receive on an almost daily basis indicate that torture is widely practiced in Sri Lanka.¹²

International concern on impunity

Some of the statements of international concern over continuing impunity in Sri Lanka since 1991 are given below:

- The UN Working Group on Enforced or Involuntary Disappearances recommended in 1991 that the Prevention of Terrorism Act (PTA) and Emergency Regulations (ERs), which provide extensive powers to the security forces, thus encouraging human rights violations with impunity, should be abolished or brought in line with internationally accepted standards, as they violate the provisions of the ICCPR.¹³
- The Human Rights Committee noted in October 1995 that there was no effective system for prevention and punishment of violations and said that violations by police officers were not investigated by an independent body and this may contribute to impunity among perpetrators and constituted an impediment to promote human rights.¹⁴
- The Special Rapporteur Extrajudicial, Summary or Arbitrary Executions said after a visit to Sri Lanka from 24 August to 5 September 1997 that a culture of impunity led to arbitrary killings and contributed to the uncontrollable spiralling of violence, and only few perpetrators had been brought to justice. He said further that the systematic absence of investigation, either civil or military, into violations of the right to life facilitated impunity.¹⁵
- The Committee against Torture expressed concern in May 1998 that there were few, if any, prosecutions or disciplinary proceedings despite continuous Supreme Court warnings and awards of damages to torture victims.¹⁶
- The UN Working Group on Disappearances reported following a visit to Sri Lanka in October 1999 that family members of the disappeared persons and representatives of NGOs complained that many of the persons who were identified as suspected perpetrators by the three Presidential Commissions of Inquiry continued to serve in their posts or have been promoted.¹⁷
- The UN Human Rights Committee expressed concern in December 2003 about the large number of enforced or involuntary disappearances, and Sri Lankan State's inability to identify or inaction in identifying those responsible and to bring them to justice.¹⁸

¹² UN Press Release 29 October 2007 – www.unhchr.ch

¹³ Report of the Working Group on Enforced or Involuntary Disappearances on a visit to Sri Lanka 25-29 October 1999 E/CN.4/2000/64/Add.1

¹⁴ Concluding observations, 3 October 1995, op. cit

¹⁵ Report of the Special Rapporteur, Extrajudicial, Executions, 12 March 1998, op. cit

¹⁶ Concluding observations, 19 May 1998, op. cit

¹⁷ Report of the UN Working Group on Enforced or Involuntary Disappearances on a visit to Sri Lanka from 25 to 29 October 1999, 29 December 2001 - E/CN.4/2000/64/Add.1

¹⁸ Concluding observations, 1 December 2003, op. cit

- In December 2005, the UN Committee against Torture expressed concern over the failure to investigate impartially violations by law enforcement officials.¹⁹
- The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, following a visit to Sri Lanka in 2005, said that the failure to effectively prosecute government violence is a deeply-felt problem and noted that the Sri Lankan State's failure to convict anyone for the Bindunuwewa massacre is an example of this impunity. He also noted the frequent failure to prosecute police accused of responsibility for deaths in custody and the failure to rein in abuses committed or tolerated by the military.²⁰
- During his visit to Sri Lanka in October 2007, the Special Rapporteur on torture noted that there had been only three convictions against perpetrators under the 1994 Torture Act. He also observed a number of reasons for low convictions such as the absence of effective ex-officio investigation mechanisms in accordance with Article 12 of the Convention against Torture, as well as various obstacles detainees face in filing complaints and gaining access to independent medical examinations while still detained.²¹

Chronic violations and impunity

As evidenced in the above statements, the international community, including the UN, has been expressing concern over violations of human rights and impunity in Sri Lanka for some thirty years. The measures taken by successive Sri Lankan governments throughout this period have been cosmetic, and in most instances, aimed at deflecting the criticisms of national and international human rights agencies. The governments' attitude and refusal to take action on human rights violations have encouraged further abuses and impunity among security forces and government officers. In the face of grave abuses of human rights of the people, particularly, the Tamil community, by the Sri Lankan State, for such a long time, the response of the international community, including the UN, has been somewhat wanting. If criticism for thirty years has not produced results, surely it is time that the international community considered robust measures that will protect the civilian population.

Rule of law

The Sri Lankan government and government institutions have no respect for the rule of law. In her address to the UN Human Rights Council in August 2006, UN High Commissioner for Human Rights, Louise Arbour said that the failure of the Sri Lankan government to provide the protection of the rule of law to all its citizens generates serious concerns.²² The rule of law is undermined by introduction of laws that are not in conformity with reasonable and acceptable legal norms, through the majority power in the parliament, and by direct illegal orders of the Executive.

¹⁹ Conclusions and recommendations, 15 December 2005, op. cit

²⁰ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 27, March 2006, op. cit

²¹ UN Press Release 29 October 2007 – www.unhchr.ch

²² Address of the UN High Commissioner for Human Rights Louise Arbour at the Second Session of the UN Human Rights Council, 18 September 2006 - www.ohchr.org/english/bodies/hrcouncil

The current President Mahinda Rajapakse himself has wilfully breached the Constitution of Sri Lanka. He has so far failed to appoint a Constitutional Council as required by the 17th Amendment to the Constitution. Whereas the Constitution requires appointments to bodies such as the Supreme Court and the independent commissions to be made only from persons selected and screened by the Constitutional Council,²³ the President has made appointments in the absence of the Constitutional Council. He has appointed members of the Police Commission, Public Services Commission, Human Rights Commission and the Supreme Court. The decision of President Rajapakse to ignore the 17th Amendment is a serious threat to the implementation of the rule of law. The appointments to the judiciary affect the independence and integrity of the judiciary.

Draconian laws

The Emergency Regulations (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 Prevention of Terrorism Act (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

²³ Article 41B of the Sri Lankan Constitution

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.

Both laws, which give wide powers to the security forces and State officers, have been condemned as falling far below international standards by the UN and international human rights agencies, which have been repeatedly calling on the 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 grave 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 southern areas, 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 sometimes without even being produced before a court of law.

Human rights violations

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. In the last thirty years, the security forces have carried out a number of massacres of Tamil civilians, almost all 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. Critics and human rights activists are branded by government ministers and officers at every opportunity as LTTE sympathizers or agents. 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.

Arbitrary arrests

Thousands of Tamils have been arrested in the last two years throughout the island and many are still 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. On 7 June 2007, the

security forces forcibly removed 376 Tamils from Colombo to the north-east region.²⁴ Over 2,250 Tamils, including women and students, were rounded-up in Colombo and its surrounding areas between 29 November and 4 December 2007 and were subject to humiliation and degrading treatment by the security forces. The Sri Lankan Constitution guarantees the freedom of movement and residence. 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 Sri Lankan Constitution as well as international law. The treatment of thousands of Tamils and the denial of their legitimate rights and safeguards confirm that the human rights of the Tamil people of Sri Lanka are not protected by the rule of law.

The Colombo arrests are just an example of the vulnerable position of the Tamils. Arrests of Tamils are taking place in Sri Lanka's north-east, in many areas of the south and the hill country. The Colombo 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. It is clear that the security forces are not following even the few safeguards provided in the ER and the Presidential Directives. The Presidential Directives also require that the Sri Lanka Human Rights Commission (SLHRC) should be informed of every arrest under the ER or the 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 failing to demand information on arrests and the whereabouts of the detainees.

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 of 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. 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 victims, 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;

²⁴ Open letter to President Mahinda Rajapakse from 11 Sri Lankan human rights NGOs: *Stop expulsion of Tamils from Colombo*, 7 June 2007 – www.lawandsocietytrust.org

- 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;
- 15) 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 of 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.

Abductions and disappearances

Abductions and forced disappearances are taking place every day in Sri Lanka. It is clear that the majority of the abductions and involuntary disappearances are carried out by Sri Lankan government officers and the security forces or these violations are taking place with their knowledge and blessing.

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 November 2006 with a mandate to inquire into complaints of abductions, disappearances and unexplained killings. In June 2007, the International Independent Group of Eminent Persons (IIGEP) expressed concern that the conduct of the Presidential Commission is inconsistent with international norms²⁵ [See under Human rights institutions]. 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

²⁵ The second public statement of the International Independent Group of Eminent Persons, P N Bhagwati, Chairman, 15 June 2007 – www.pchrv.gov.lk/news

families.²⁶ But the government has not published the reports and has failed to take any action on the recommendations.

In Colombo and other areas of southern Sri Lanka, nearly 100 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 most of the others 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 investigate contravention of the Prevention of Money Laundering Act No 5 of 2006. These indicate government involvement in the abductions. Individuals, members of organizations and even parliamentarians who attempted to investigate the abductions have received death threats.

Disappearance of people in the north-east 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 without number plates, a hallmark of military death squads. The motorcycles used by the security forces are also often without number plates. During search operations, security force personnel in uniform often wear masks 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 military 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 assaulted, killed or disappeared. 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 northeast.

Extra-judicial executions

More than 5,000 people are reported to have died in north-east Sri Lanka since August 2006. These include extra-judicial executions. The Sri Lankan security forces, the non-state paramilitary groups aligned to the military and the LTTE are responsible for the killing of civilians. 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

²⁶ Letter dated 27 December 2006 by T A Mahanama Tillekaratne, Chairman of the Presidential Commission to the Asian Human Rights Commission – www.ahrchk.net

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. In many cases of killings of Sinhalese civilians, the government has offered compensation to the families, but has denied compensation to the families of Tamil victims.

Military regime in the north-east

The north-east region is effectively under military rule and military forces control the population through the decision-making process, whether it is government-controlled or LTTE-held areas. All decisions, including the supply of food, medicines, fuel and other essential needs, are made by these military forces, and civil authorities cannot act independently even in cases of emergency.

All rights and freedoms of the people in the north-east are suppressed or restricted. These include the freedoms of expression, association and movement. The Sri Lankan army has blocked access of the population to many roads and has taken possession of many houses and private buildings. It has declared vast areas as high security zones (HSZ) denying access to houses and agricultural land. There are 18 HSZs in the Jaffna peninsula alone, covering 160 sq kms or 18% of the total landmass. Nearly 30,000 houses, 300 schools, 25 roads, 40 industries and more than 42,000 acres of cultivable land are within HSZs. The army has also demolished a huge number of houses, particularly around military camps. Thousands of Tamils in the north-east who have been deprived of their lands, houses and other buildings live in refugee camps or with relatives and are undergoing great suffering. They have neither been compensated for the destruction of their houses nor paid any rent for occupation by the military.

In the north-east areas, the strong presence of soldiers in the street terrifies the people. They carry out body searches regardless of sex of the person searched. They often wear masks to hide their identity and to terrorize the people. These matters have been brought to the notice of the security force commanders on many occasions, but the harassment of civilians continues. Military identity cards have been issued to the people in areas of the north-east, which they must carry on their person in addition to the National Identity Card. In order to escape the threat to life posed by the security forces and the paramilitary groups, many people in Jaffna have sought protection from the Jaffna branch of the Sri Lanka Human Rights Commission (SLHR). These people are accommodated in the Jaffna prison on the request of the SLHRC. They are placed in the prison with convicted criminals under extremely crowded conditions and are expected to follow the prison regime.

The security forces have forcibly seized many vehicles of civilians in the north-east. For example, they have commandeered 376 Lorries, 57 dual-purpose vehicles, and 183 buses for military use in Jaffna. A large number of motorcycles have also been seized. The people who were reluctant to give up their vehicles received death threats from the military. Some people have informed the TIC that their vehicles are being used to transport arms and ammunition to front defence lines of the fighting. Many private vehicles have been destroyed in the fighting. But the owners have received no compensation.

Although the Sri Lankan Constitution guarantees freedom of movement with the island, people wishing to leave the Jaffna peninsula must obtain clearance from the security forces. The application must be submitted with four copies of photograph, National Identity Card and the Ration Card, and must have the recommendation of the Village Headman and Divisional Secretary. Permission to leave Jaffna may be delayed or denied by the military. On 5 September 2002, the Supreme Court declared that the

military pass system, which was in force for some ten years in the north-east, violated the provisions of the Constitution relating to the freedom of movement. The Court also awarded Rupees 30,000 (\$280) compensation to the applicant and Vavuniya resident Peter Vadivel. In defiance of this judgment, the military introduced a pass system in Vavuniya and Mannar on 20 October 2006 and in Amparai on 23 October 2006 and in Jaffna.

The security forces have also conducted their own census in the north-east. All information about residents must be provided. They include address, National Identity Card number, educational qualifications, occupation, telephone number, mobile phone number, bicycle details and car or motorcycle number. In some areas of the north-east, bicycles must be registered with the security forces and a permit obtained. Fishermen are expected to register their boats and engines.

A night curfew is enforced in the Jaffna peninsula since 11 August 2006 and currently it is between 7.00pm and 5.00am. The curfew has affected employment, education and the ability of the people to go out to buy food and other needs. The curfew, imposed allegedly to protect the people, has become a threat to their security. When fighting breaks out between the security forces and the LTTE during curfew hours, they are neither able to seek safety in other places nor provide urgent medical attention to injured civilians. The curfew enables the security forces and the paramilitary groups to abduct or murder civilians under cover of darkness. The life of the people is often violently disturbed by the military's cordon and search operations. The people suffer humiliation and degrading treatment. Mobile phones are blocked during search operations to prevent the people reporting any abuses by the security forces to the outside world.

Since August 2006, the Sri Lankan government and the military have imposed restrictions on food, fuel, medicines, raw materials and other essential needs to the LTTE-controlled areas of the north-east. It has imposed restrictions on materials that are essential for health, education, agriculture, transport, communication and other sectors. It has also restricted legitimate livelihood activities such as fishing. The TIC has received information that the hospitals in the north-east suffer from acute shortage of doctors, hospital staff, proper medical facilities and medicines. Doctors in the north-east have raised alarm about these issues, particularly the acute shortage of many essential drugs.

Tamil civilians in the southern part of the Vanni region, which lies along the forward defence lines of the Sri Lankan security forces, are under threat and their vulnerability has increased as a result of the current fighting. Essential commodities into the areas have been blocked. These areas are constantly shelled by the Sri Lankan military and thousands of people have been displaced. At Alampil in Mullaitivu District, shelling by the security forces has killed or injured civilians and has destroyed schools, houses and other buildings. In the Madhu area of Mannar District, IDP camps have been shelled, injuring refugees, including children. In the Adampan area of Mannar District, the fighting has forced farmers to abandon thousands of acres of cultivated land with crops ready for harvest. Part of crop has been destroyed by shells. The Nudunkerni area of Vavuniya District has come under security force claymore mine attacks, affecting work, schools and farming. Vehicles, including ambulances have been targeted, killing or injuring doctors and nurses.

Due to Sri Lankan government pressure and restrictions imposed by the security forces, several international humanitarian agencies are closing their operations and international staff are moving out of the north-east. They continue to fund local partners, but are ceasing direct operations. When international agency staff are present, the people are able to report about human rights violations and

receive some kind of protection. Perpetrators are often reluctant to commit offences when international staff are present in the area. The end of such protection will make the people of the north-east more vulnerable and is likely to result in increased human rights violations.

Attacks on human rights defenders

Human rights defenders have provided some measure of protection to the people in a volatile and dangerous situation, and therefore the persecution of human rights defenders has become a critical issue in Sri Lanka. If such persecution continues unchecked, the people will be totally exposed to the perpetrators. Human rights defenders, journalists and even MPs have been threatened with death or other physical harm to force them to keep quiet or abandon the cause they are pursuing.

A Tamil MP has informed the TIC that “The threats and pressure come from government ministers and from persons linked to high government authorities”. Information received by the TIC indicates that the persons most at risk of abuse in Sri Lanka are human rights defenders who persistently criticize the warring parties for human rights violations; reveal the links of politicians with the police officers and armed gangs involved in abuses; reveal corruption involving members of the administration and law enforcement officers; or reveal abuses against minorities.

Hundreds of human rights defenders have received death threats and many of them have been attacked. Many have left their homes and localities in the face of continued threats and many others have fled the country. Agents of the State including the police, army, and other law enforcement agencies, for whom successive governments of Sri Lanka have been directly accountable, have continued to perpetrate violations against human rights defenders.

Between January 2006 and September 2007, at least 57 humanitarian workers were killed in Sri Lanka. In many of the killings, government agencies, security forces or government-aligned paramilitaries are suspected to be involved. NGOs maintaining a position independent of the government in the defense of human rights are under severe pressure from the Sri Lankan government as well as the LTTE and the paramilitary groups. The government has forced some humanitarian agencies to leave the country and denied visas to foreign aid workers. During the past two years, 12 media personnel have been killed in Sri Lanka. President Rajapakse, Defence Secretary Gotabhaya Rajapakse and the army commander have summoned meetings of media representatives on several occasions to warn them against criticizing the war. Trade unions and trade union rights are also under attack in Sri Lanka.

The intelligence services and other shadowy groups operated by senior government officers are also responsible for abuses against human rights defenders. These violations are mainly arbitrary arrest, torture, disappearances and murder. They also include the following:

- Continued harassment of human rights defenders through filing cases on unsubstantiated criminal accusations;
- Visiting them at night and threatening them with death or serious bodily harm;
- Telling them that their spouses and children will be killed or abducted;
- Using abusive language against them;
- Telephoning spouses and threatening them;
- Following them in unmarked motorcycles to work and other places;

- Arriving in vehicles and waiting outside the home or office, sometimes for several days;
- Sending them death threat letters and parcels containing bullets;
- Policemen from the Criminal Investigation Department (CID) ransacking houses on the pretext of search;
- Denying human rights defenders access to scenes of incidents;
- Publishing inflammatory messages in newspapers against defenders;
- Forcing spouses to attend enquiries by providing false information;
- Forcing human rights defenders or spouses to attend enquiries repeatedly;
- Withholding identity cards, thus preventing their movement and forcing to remain in their homes;
- Phone tapping;
- Demanding them to provide their mobile telephone numbers;
- Withdrawing or reducing the number of security officers for MPs and others, making them vulnerable to attacks.

Other perpetrators of abuses against human rights defenders are the LTTE, paramilitary groups operating with the security forces, individuals or groups linked to armed criminal gangs, parties of the ruling coalition or the opposition, and mercenary gangs hired by local politicians to suppress revelations about their unlawful activities. Abuses committed by these groups include death threats and physical attacks against human rights defenders

Human Rights institutions

It is clear from the inaction even in the cases of serious human rights violations, the Sri Lanka Human Rights Commission (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, as in the case of other commissions appointed by the President, lacks the legal basis for effective functioning.

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. Despite the downgrading of the SLHRC in 2007 by

the International Coordinating Committee of National Human Rights Institutions (ICC) for failure in human rights responsibilities, no action has been taken to improve its position.

In a statement on 15 June 2007, International Independent Group of Eminent Persons (IIGEP) expressed concern that the conduct of the Presidential Commission appointed in November 2006 to inquire into complaints of abductions, disappearances and unexplained killings is inconsistent with international norms and standards. The IIGEP has pointed to the following problems:

- 1) Lack of speed in investigation: The first investigation began on 14 May 2007, but since then only a few witnesses have been examined and no substantial progress has been made into any of the mandated cases.
- 2) Lack of transparency: The Commission's decision to conduct investigations in closed sessions may undermine the transparency. The amendments to organizational rules implying that Commissioners can make a decision not to hold a public inquiry at the end of an investigation further affects transparency.
- 3) Lack of independence: The involvement of the Attorney General's Department in the Panel of Counsel to the Commission, involves serious conflicts of interest and compromises national and international standards of independence and impartiality that are central to the credibility of and public confidence in the Commission.
- 4) Lack of financial independence: The Commission does not have sufficient financial independence enabling it to exercise direct control of its resources and avoid delays to its operations.
- 5) Lack of victim and witness protection: The Commission has no functioning Victim and Witness Assistance and Protection Unit, and no adequate training programme to ensure that potential witnesses have the confidence and protection to testify in an inquiry.
- 6) Failure to secure disclosure: The Commission is conducting investigations without relevant and sufficient information and evidence from state bodies and other persons which is vital for comprehensive and effective investigations. The Commission has failed to exercise powers in the Presidential Warrant and secure adequate disclosure.

The IIGEP has called upon the Commission and the Sri Lankan government to comply effectively with international norms and standards in order to achieve the objectives of the Commission's mandate, but no effective action has been taken to remedy the situation.

Judiciary

The judiciary is a vital institution of any democracy. The UN Special Rapporteur on Extra-judicial Executions says that in Sri Lanka, an ineffective justice system creates a climate of public opinion conducive to condoning police torture and summary execution of suspects.²⁷ The ER and the PTA erode, and in many instances remove, the powers of the judiciary.

²⁷ *Civil and political rights, including the question of disappearances and Summary executions*, Report dated 27 March 2006 of the Special Rapporteur on Extra-judicial, Summary and Arbitrary Executions to the 62nd Session of the Commission on Human Rights, Mission to Sri Lanka 28 November-6 December 2005, E/CN.4/2006/53/Add.5 – www.ohchr.org

Human rights defenders are attacked from all sides and they have no one to turn to for protection. The courts, particularly the Supreme Court, are hostile to the defenders. In 2007, the Chief Justice himself threatened human rights defenders during court proceedings that he would suitably deal with them if they brought human rights cases before the Supreme Court against the security forces.

On 15 September 2006, the Supreme Court effectively ruled that Sri Lankan citizens cannot seek remedy from the UN Human Rights Committee regarding human rights violations. It declared that the Accession to the Optional Protocol to the International Covenant of Civil and Political Rights (ICCPR) in 1997 does not bind Sri Lanka and has no legal effect within the island.²⁸ The decision effectively nullifies Sri Lanka's obligations under international law, except those that have been incorporated into local laws, and Sri Lanka will not be able to protect and promote human rights under the laws and institutions of the UN.

In a judgment on 16 October 2006, the Supreme Court declared that the merger of the Northern and Eastern Provinces in 1987 to form one administrative unit is unconstitutional and invalid. Lawyers appearing for four Interventient Petitioners from the Eastern Province were not permitted to adequately explain the position of the Tamil people. In court, Chief Justice Sarath Silva did not allow them to appear as representing the Interventient Petitioners. They were told that they could appear only as *amicus curiae* (court advisors) and could not make written submissions.

Many Tamil people believe that the Sri Lankan government is behind the decisions of the Supreme Court that affect the Tamil people. In the case against the Post-Tsunami Operational Management System (P-TOMS), alleging infringement of the right to equal protection of the law,²⁹ the Chief Justice Sarath Silva said in a decision in July 2005 that relief must be granted to the people of the north-east, who have suffered and continue to suffer, untold hardship and tragedy from the tsunami and that the interests of these hapless people should be borne firmly in mind. But in November 2005, the court suspended the enquiry indefinitely and in addition granted an indefinite injunction against the provisions of the P-TOMS. Many people, within and outside Sri Lanka, have expressed their suspicion to the TIC that this change is due to political intervention or some devious political deal.

The Tamils have suffered and continue to suffer by decisions of the Sri Lankan courts, which have on many occasions been politically motivated. The judiciary failed to grant remedy to the Hill Country Tamils and allowed a million of them to suffer without citizenship and voting rights for more than 50 years. The judiciary also failed to protect the Tamils against political abuse and legislation which were clearly aimed at denying equality and other the rights of the Tamils, including in education and employment. The judiciary has further failed to protect the Tamils against physical abuses such as torture, injury and extra-judicial executions. Many Tamils, particularly in cases under the PTA and the ERs, have been remanded or convicted and imprisoned without any evidence.

²⁸ Nallaratnam Singarasa vs The Attorney-General – Decision of the Supreme Court 15 September 2006 – SC Spl (LA) No 182/99

²⁹ The Sri Lankan government and the LTTE signed the P-TOMS agreement on 24 June 2005 and the JVP filed action in the Supreme Court on 27 June 2005.

Judges serving in north-east Sri Lanka have come under constant threat from the security forces, intelligence services and the paramilitary groups. Impartial judges hearing human rights cases against security force personnel in the north-east have been directly threatened or transferred to other areas. The fact that judges are threatened or disrespected is a clear sign for promotion of violence in the region. The Judicial Services Commission, which is headed by the Chief Justice, sent a circular letter on 22 August 2006 effectively ordering the judges in Jaffna not to interfere in the activities of the security forces. The letter says that judges should 'refrain from any direct conversation or contact with armed force personnel, except where necessity for such action shall arise in proceedings in open court'.

Accountability is lacking in the judiciary. It is clear that justice cannot be expected from the courts, particularly from the current Supreme Court, which appears to be acting, not independently in the interests of the people, but to promote a programme of the Executive aimed at denying the fundamental rights and aspirations of the people of Sri Lanka.

Killing and abduction of children and child recruitment

Killings and abductions of children and other violent incidents have traumatized the children in the north-east. Many children have been affected by the deaths of hundreds of young fathers, who were the sole breadwinners of their families, and the killing of parents in their presence. The number of orphans in the north-east region is increasing.

Child recruitment for the military purposes of the LTTE and Karuna Group in eastern Sri Lanka has seriously affected the psycho-social conditions of the children. The undertakings given by them in relation to child recruitment to the international community have not been fulfilled. The children released by them and other male youths continue to seek UNICEF's aid for special protection in fear of assassination, arrest or abduction.

Right to education

The International Covenant on Economic, Social and Cultural Rights (ICES) says in Article 13 that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. But the Tamil north-east region in Sri Lanka has suffered discrimination in the provision of education. More than 15,000 classrooms in 500 schools were damaged or destroyed in the war in the north-east, requiring about 209,000 sq. metres of additional classroom space and 312,000 sq. metres of additional space for laboratories, libraries and office rooms. In the December 2004 tsunami, further damage was caused to 122 schools. Equipment, IT facilities, laboratories, furniture, electricity supply and sanitation facilities are needed for the schools. There is also a shortage of teachers in the north-east. The Sri Lankan government has done little to provide these needs and has denied adequate assistance for the people affected by the tsunami.

The fighting, continued harassment at military checkpoints, human rights violations and restrictions imposed by the military, such as curfew, have severely impacted on the education of children. Aerial bombardment and shelling of populated areas, the multi-barrel gun attacks and the arrest and abduction of children, and cordon and search operations in schools and universities have caused tremendous fear among the students. More than 100 students were killed in the north-east between October 2005 and

May 2007. The Sri Lankan Airforce killed 61 children attending a training course and wounded 129 others in an air attack in Mullaitivu on 14 August 2006.

Many students are reluctant to attend school. The military has made the fear more acute by announcing that students who do not attend school would be regarded as having links with the LTTE. Many students have been arrested and have suffered torture by the security forces. Jaffna University final year student Vijayaraja Vijayaruban was abducted in a military vehicle on 29 March 2007. He was released the following day. He had been severely tortured and sustained external as well as internal injuries.

Right to Health

The ICES recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and States are obliged to take full steps to achieve the realization of this right. Out of 400 health institutions such as hospitals in the north-east, 55 were totally destroyed in the war and 49 could not function. Several hospitals, dispensaries and medical centres were also damaged or destroyed in the tsunami. A large number of vacancies in the health sector have not been filled and hospitals are affected by the lack or shortage of essential drugs. Mothers and children are affected by malnutrition. The state of sanitation facilities in the north-east is poor and rural areas lack water facilities. Again the Sri Lankan government has done little to provide the needed health facilities to the population of the north-east and has denied adequate medical assistance to the people affected by the tsunami.

Internally displaced people

On 2 January 2008, the Sri Lankan government withdrew from the ceasefire agreement of 22 February 2002. As a consequence, the international monitoring body, the Sri Lanka Monitoring Mission (SLMM), established to enquire into any instance of violation of the terms and conditions of the agreement, has come to an end. The withdrawal of the government from the ceasefire and resumption of hostilities will result in displacement and great human suffering. When the tsunami struck in December 2004, there were some 340,000 war-displaced people in Sri Lanka, majority of them in the north-east. The tsunami displaced a further half a million people. The government refused to establish a joint mechanism for the equitable distribution of tsunami aid to the north-east, which could have formed a basis for cooperation towards finding a political solution. More than 300,000 people were displaced in the north-east when the government launched military operations in 2006 and 2007. Currently there are 189,000 internally displaced people in Sri Lanka, 98% of who are in the north-east.

Although international agencies are involved in humanitarian aid, the Sri Lankan government has not taken adequate and necessary measures to improve their quality of life and to enable them to return to normal life, particularly in the provision of housing, health and livelihood.

The Tamil Information Centre request

In light of the above and worsening situation in Sri Lanka, the TIC call upon the UN Human Rights Council to

- a) take urgent measures for the presence of an international human rights monitoring body with access to all parts of Sri Lanka and access to all relevant institutions with a**

view to improving human rights on the ground and ensuring Sri Lanka's human rights obligations and commitments;

- 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) ensure that impunity is dealt with in Sri Lanka, paying special attention to the laws and regulations that contribute to impunity, particularly through proper, adequate and impartial investigations into allegations of torture, rape, disappearances and extra-judicial executions, and that the perpetrators, irrespective of their ethnic origin, position or status, are prosecuted.**
- d) impress upon the Sri Lankan government that the role of human rights defenders in the protection of human rights and fundamental freedoms has been recognized by the UN, urge the government to end all attacks, verbal and physical, on human rights defenders, and promote a mechanism for the protection of the human rights defenders that ensures ability to carry out their work unimpeded.**