

**INTERNATIONAL COMMUNITY!**

**WHY UN REPORTS HAVE NO EFFECT ON**

**SRI LANKA?**

**APPEAL TO THE**  
**UN HUMAN RIGHTS COUNCIL**

**APPEL A LA PRISE DE CONSCIENCE DU**  
**CONSEIL DES DROITS DE L'HOMME - NATIONS UNIES**

**LLAMADO PARA REACCION URGENTE DEL**  
**CONSEJO DE DERECHOS HUMANOS-NACIONES UNIDAS**

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**13th session / 13ème session / 13º período de sesiones**

**1/03/2010 -- 26/03/2010**



**TAMIL CENTRE FOR HUMAN RIGHTS - TCHR**

**CENTRE TAMOUL POUR LES DROITS DE L'HOMME - CTDH**  
**CENTRO TAMIL PARA LOS DERECHOS HUMANOS**  
**(ESTABLISHED IN 1990)**

**UN SECRETARY-GENERAL UNDERLINED  
THE IMPORTANCE OF AN ACCOUNTABILITY PROCESS**

JOINT STATEMENT BY UN SECRETARY-GENERAL, GOVERNMENT OF SRI LANKA – 26 MAY 2009

Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances. *(Excerpt from the original report)* <http://www.un.org/News/Press/docs//2009/sg2151.doc.htm>

\* \* \* \* \*

**DISAPPEARANCES - 5,651 REMAIN OUTSTANDING**

WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES –  
UNITED NATIONS A/HRC/13/31 - 21 DECEMBER 2009

(521) Since its establishment, the Working Group has transmitted 12,226 cases to the Government; of those, 40 cases have been clarified on the basis of information provided by sources, 6,535 cases have been clarified on the basis of information provided by the Government, and 5,651 remain outstanding. *(Excerpt from the original report)* <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-31.pdf>

\* \* \* \* \*

**10,000 TO 12,000 INDIVIDUALS HAVE BEEN DETAINED INCOMMUNICADO**

*JOINTSTUDY ON GLOBAL PRACTICES IN RELATION TO SECRET DETENTION  
IN THE CONTEXT OF COUNTERING TERRORISM BY UN SPECIAL RAPPORTEURS  
AND WORKING GROUPS - UN A/HRC/13/42 - 19 February 2010*

(201) Since the Government announced its victory over the LTTE in May 2009, reports have drawn attention to the detention of more than 10,000 persons suspected of having been involved with the LTTE. Human Rights Watch reported that it documented several cases in which individuals had been taken into custody without regard for the protection provided under Sri Lankan law. In many cases, the authorities had not informed family members about the whereabouts of the detained, leaving them in secret, incommunicado detention or possible enforced disappearance.<sup>398</sup> ICRC was reportedly barred from the main detention camps for displaced persons.<sup>420</sup> Amnesty International expressed the same concern about an estimated 10,000 to 12,000 individuals suspected of ties to the LTTE, who are or have been detained incommunicado in irregular detention facilities operated by the Sri Lankan security forces and affiliated paramilitary groups since May 2009.<sup>399</sup> *(Excerpt from the original report)* <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>

\* \* \* \* \*

**THERE SHOULD BE NO BLANK CHEQUE FOR COLOMBO TO REDEVELOP THE NORTH  
AND EAST WITHOUT FIRST CREATING A POLITICAL CLIMATE.....**

CRISIS GROUP - Asia Report N°186 - 23 February 2010

“.....India, Japan, Western governments and multilateral organisations can do much more to assist the political empowerment of Tamils in Sri Lanka and press Colombo to address the causes behind the rise of the LTTE and other Tamil militant groups. There should be no blank cheque for Colombo to redevelop the north and east without first creating a political climate where Tamils and Muslims can freely express their opinions and have a meaningful role in determining the future of the areas where they have long been the majority. Donor governments and the UN should also press more strongly for an independent inquiry into the thousands of civilians, almost all Tamil, killed in the final months of fighting. Their aid should be tied to an end to impunity for human rights violations and abuses of political power that undermine democracy and threaten the freedoms of Sri Lankans from all ethnic communities”. *(Excerpt from the original report)* <http://www.crisisgroup.org/home/index.cfm?id=6545&l=1>

# TAMIL CENTRE FOR HUMAN RIGHTS - TCHR

CENTRE TAMOUL POUR LES DROITS DE L'HOMME - CTDH

CENTRO TAMIL PARA LOS DERECHOS HUMANOS

(Established in 1990)

WEBSITE : [www.tchr.net](http://www.tchr.net)

## TCHR PARTICIPATION IN UNITED NATIONS WORLD CONFERENCES AND OTHER MEETINGS

- \* *TCHR was a registered participant in the World Social Forum 2009 in Belem, Brazil Jan 27- Feb 1, 2009.*
- \* *TCHR officially participated in the 61st annual DPI/NGO conference in UNESCO, Paris, 3-5 September 2008.*
- \* *TCHR was a registered participant in the European Social Forum 2008 in Malmo, Sweden 17-21 Sept 2008.*
- \* *TCHR submitted a written statement jointly with another NGO to the Universal Periodic Review (UPR) on Sri Lanka in February 2008.*
- \* *TCHR officially participated in the 'United Nations 7th Global Forum, Re-instating good governance', in Vienna, Austria 26-29 June 2007.*
- \* *Members of TCHR participated in the World Federation of United Nations Associations (WFUNA) seminar in Geneva, Switzerland, 29-31 July 2007.*
- \* *TCHR was officially accredited to participate in the United Nations Conference on Anti-corruption Measures, Good Governance and Human Rights, in Warsaw, Poland 8-9 November 2006.*
- \* *A meeting was held on 7 March 2006, in the European Parliament – titled "EU contribution to the peace process in Sri Lanka". This was jointly organised by TCHR and Mr. Robert Evans, a member of European Parliament and of Labour Party in UK.*
- \* *TCHR was officially accredited by the United Nations to participate in the World Summit on the Information Society – WSIS in Tunisia, 16 – 18 November 2005.*
- \* *TCHR officially participated in the NGO forum of the UN World Conference Against Racism – WCAR in Durban, South Africa, from 28 August to 1 September 2001. TCHR held an information stall including an exhibition at the forum. The TCHR representatives also attended the main WCAR conference held in Durban, 31 August to 7 September 2001. ([http://www.tchr.net/reports/wcar\\_detail.htm](http://www.tchr.net/reports/wcar_detail.htm))*
- \* *A meeting was held on 14 October 1998, in the European Parliament – titled "Press censorship in Sri Lanka". This was jointly organised by the Tamil Centre for Human Rights (TCHR) and Ms. Anita Pollack, a member of European Parliament and of Labour Party in UK.*
- \* *In 1993, TCHR held an information stall and a photo exhibition on human rights violations, in the United Nations 2<sup>nd</sup> World Conference on Human Rights held in Vienna, Austria, from 14-25 June.*
- \* *TCHR participates in meetings of Treaty bodies and submits reports to the same.*

## FACT FINDING MISSIONS TO THE NORTH EAST OF THE ISLAND OF SRI LANKA

- \* *May 2003* ([http://www.tchr.net/report\\_studymission\\_2003.htm](http://www.tchr.net/report_studymission_2003.htm))
- \* *December 2003 – addendum report* ([http://www.tchr.net/report\\_studymission\\_2003add.htm](http://www.tchr.net/report_studymission_2003add.htm))
- \* *July-August 2004* ([http://www.tchr.net/reports/visite\\_2004.htm](http://www.tchr.net/reports/visite_2004.htm))

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10 March 2010

**The President  
Members and Delegates  
13th Session – UN Human Rights Council  
1211 Geneva 10, Switzerland**

**Distinguished Sirs / Mesdames,**

First of all, we extend our congratulations to you for your appointment as President of the 13th session and following sessions.

We, in TCHR, repeatedly mentioned as an early warning, the on-going systematic cultural genocide and gross violations of fundamental human rights in the island of Sri Lanka and in particular the denial of the right to life. We called session by session for all possible preventive measures to be urgently taken by the UN Human Rights forums.

Sirs / Mesdames, for many years, the reports of the UN Special rapporteurs and the UN Working groups and furthermore the statements by international NGOs to every UN Human Rights forum clearly indicated that there was impending danger in Sri Lanka! However these reports were not taken into serious consideration, the outcome being War crimes, human suffering and prisons full of political detainees.

The culture of impunity has long being a very serious problem in Sri Lanka and has eventually contributed to genocide, war crimes and crimes against humanity

So far over 150,000 have been killed, thousands and thousands have been multiply internally displaced and several thousand arbitrarily detained without any charges for many years. Another 600,000 or more have sought asylum in foreign countries

Press freedom and freedom of expression are in peril in Sri Lanka. Journalists are arrested, tortured, abducted, disappeared and killed over-night. Misinformation is heavily used internally and internationally by the government to distort the real picture of what is happening in Island.

Ethnic cleansing of Tamils, Sinhalisation and the forceful planting of Buddha statues in every nook and corner in the North and East continues.

Sirs / Mesdames, the calling of a Special session on Sri Lanka in June 2009 clearly indicated that Sri Lanka is a country with severe human rights violations. What surprises civil society is that while other violating countries are scrutinised by UN forums, Sri Lanka continues to be granted a blank cheque and enjoy international impunity.

Once again we kindly appeal to this august body to act on these serious allegations. In addition, we urge this session to take immediate steps and prompt action to alleviate the humanitarian catastrophe that continues to be deliberately inflicted on the IDPs and the political detainees in Sri Lanka. Finally we urge the UN member countries to respond positively to the UN VVIPs call for an appointment of an International monitoring body on Sri Lanka.

Yours sincerely

**S. V. Kirubaharan  
General Secretary**

# RECENT UN REPORTS AND PRESS RELEASES ON SRI LANKA

## VISITS REQUESTED BY UN SPECIAL RAPPORTEURS BUT NO PERMISSION GRANTED BY SRI LANKA

- (1) Working Group on enforced disappearances - *requested in 2006, 2007, 2008 and 2009*
- (2) Spec. Rapporteur on Independence of Judges and Lawyers - *requested in 2007*
- (3) Spec. Rapporteur on human rights defenders – *requested in 2008*
- (4) Spec. Rapporteur on the Right to Freedom of Opinion and Expression (*scheduled for 20 February- 4 March 2006 - postponed*)
- (5) Independent Expert on minority issues – *requested in 2007*

## ADEQUATE HOUSING

### REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AND ON THE RIGHT TO NON-DISCRIMINATION IN THIS CONTEXT,

RAQUEL ROLNIK

United Nations A/HRC/13/20/Add.1 - 22 February 2010

#### ADDENDUM - SUMMARY OF COMMUNICATIONS SENT AND REPLIES RECEIVED FROM GOVERNMENTS AND OTHER ACTORS

#### SRI LANKA

##### COMMUNICATION SENT

80. On 8 June 2009, the Special Rapporteur sent an urgent appeal to the Government of Sri Lanka concerning alleged imminent forced evictions from tsunami shelters in the Moratuwa and Ratmalana DS Divisions and alleged unequal application of the Tsunami Housing Policy in regards to the needs of certain groups, including extended families and tenants. According to the information received, transitional shelter scheme under the Tsunami Housing Policy is an effective and widely used mean of providing temporary shelter and other basic services to families impacted upon by the devastating effects of the Tsunami in Sri Lanka in December 2004. The information received indicates that the Tsunami Housing Policy entitles everyone who lost a house in the disaster to receive a ready built house or a cash grant to build a house, regardless of the shelter they had in the past. However, the Tsunami Housing Policy allegedly states that tenants are not eligible to receive housing assistance. The Tsunami (Special Provisions) Act (2005) reportedly states that rent agreements between landlord and tenant remain valid even if that house was completely destroyed during the Tsunami disaster. The information provided indicates that tenants are disqualified from housing assistance because of their old agreements. In this context, families that were still living in transitional shelters in late 2008 reportedly received a first eviction notice from the Government dated 10 September 2008, which ordered them to vacate the camps by 25 September 2008. In addition to this notice, access to basic facilities and services was cut off in all camps. A fundamental rights petition was reportedly filled with the Supreme Court. On 10 October 2008, during the first hearing of the Court, representatives of the communities reportedly sought an order for the provision of housing assistance to all camp residents. A second hearing was reportedly held on 20 October 2008, in which the Government continued to claim that camp residents were not qualified for compensation under the tsunami housing policy. While judges reportedly agreed that residents would have to leave the camps, they also stated that residents would have to be given more time – between 3 to 6 months – as well as compensation before they can be evicted. Three months time and 25,000 Rupees compensation as a solution was accepted by the Court, who ordered people to leave the camps by 28 February 2009. By this decision, the Court reportedly upheld previous decisions and confirmed the Tsunami Housing Policy, based on which tenants and extended family members are not eligible for housing assistance under the tsunami assistance scheme. The District

Court held an additional hearing on 22 May 2009 ordering the families to vacate the camps by 5 June 2009, when a fifth hearing would have been held. It was alleged that an eviction order would be issued by the Court rapidly and that the around 500 families threatened to be imminently evicted would become homeless. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on the measures taken to ensure that the allocation of grants under the Tsunami Housing Policy is applied equally to all victims of the Tsunami disaster, including extended families and tenants; the reasons for the Tsunami Housing Policy to make no provision for tenants whose house has been destroyed; if landlords are benefiting from the Tsunami Housing Policy; on the measures foreseen to ensure that the around 500 families threatened with imminent eviction will not become homeless; on measures foreseen in terms of relocation, including details on the exact location and on the area and quality of land, access to public services and livelihood sources.

#### **OBSERVATION**

81. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to this communication. *(Excerpt from the original report)*  
[http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-20-Add1\\_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-20-Add1_EFS.pdf)

## **INTERNALLY DISPLACED PERSONS (IDPs)**

### **REPORT OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS,**

**WALTER KÄLIN**

**United Nations A/HRC/13/21 - 5 January 2010  
SRI LANKA**

26. The Representative carried out two working visits: from 2 to 6 April 2009, shortly before the end of hostilities, and again from 23 to 26 September 2009, at a time when the security situation had vastly improved, but over 250,000 internally displaced were still held in closed camps. Restoration of their freedom of movement had become a matter of urgency and it was imperative for the Government of Sri Lanka to comply with its commitments under international law. The Representative discussed a three-pronged strategy for decongesting the camps with the Government, based on returns of internally displaced persons to their homes, their release to host families and their temporary transfer to welfare centres in return areas until they were able to go back to their homes. The Representative urged the Government to pursue these options in parallel and with the highest priority. Since his visit, this process has started. At the time of writing, almost 149,000 internally displaced persons have been released to host families or have returned to Jaffna, Mannar, Trincomalee, and Batticaloa as well as to Vavuniya and Killionochi.

27. The increased freedom of movement for the 135,000 internally displaced persons who remain in camps is a welcome step towards fully restoring free movement and finding a durable solution for all the displaced in Sri Lanka. A letter received by the Representative dated 23 November 2009 from the Ministry of Disaster Management and Human Rights notes that the Government is endeavouring to complete the resettlement process by the end of January 2010, including for the old caseload of internally displaced, with due attention paid to their human rights.

28. The Representative emphasizes that return operations must be conducted in accordance with international standards to ensure the physical safety of returning internally displaced persons. He acknowledges the demining and reconstruction efforts being undertaken in return areas, but notes that concerns over mined areas, restrictions on freedom of movement and lack of access to basic services remain. Increased information for internally displaced persons provided by the Ministry of Resettlement and Disaster Relief Services and increased access of national non-governmental organizations (NGOs) to some of the return areas are positive developments. The Representative encourages the Government to extend access to other NGOs as well, including international NGOs. *(Excerpt from the original report)*

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-21.pdf>



## **UN REPRESENTATIVE DISCUSSES FREEDOM OF MOVEMENT FOR A QUARTER OF MILLION IN INTERNALLY DISPLACED PERSONS WITH SRI LANKAN GOVERNMENT**

**UN News & Media, 29 September 2009** - "Restoration of freedom of movement for more than 250,000 internally displaced persons held in closed camps in Northern Sri Lanka is becoming a matter of urgency, and I remain very concerned about the very slow pace of releases," the Representative of the United Nations Secretary-General on the human rights of internally displaced persons, Walter Kaelin, highlighted at the end of a three-day return visit to Sri Lanka.

During his recent visit the Representative followed up on the discussions of Undersecretary-General for Political Affairs, B. Lynn Pascoe, with the Government of Sri Lanka in order to explore how the protection of the human rights of the displaced could be strengthened and the present delays in camp releases addressed.

"I continue to welcome the Government's stated intention that 70–80 per cent of the displaced shall be allowed to return by the end of the year. In this regard, I was impressed by the Government's massive demining and reconstruction efforts that I witnessed in the Mannar rice bowl," he said.

"It is imperative to immediately take all measures necessary to decongest the overcrowded camps in Northern Sri Lanka with their difficult and risky living conditions. The IDPs should be allowed to leave these camps and return voluntarily and in freedom, safety and dignity to their homes. If this is not possible in the near future, the displaced must be allowed to stay with host families or in open transit sites," the Representative said. "This is particularly important as the monsoon season is approaching. The camps, which were set up to respond to an immediate emergency, are not equipped to deal with heavy rains. The expected flooding of low-lying areas in the upcoming weeks is likely to cause serious threats to health and life," Mr. Kaelin added. The Representative, while appreciating that his interlocutors in the Government shared these goals, called upon the Government to translate its commitments into action without further delay.

"Restoration of freedom of movement is important to gain the confidence of the Tamil community and enable the building of a sustainable peace," the Representative said. He added: "In this context an incident reported by the Sri Lankan Army on 26 September involving the use of firearms to control a group of internally displaced persons trying to move from one camp zone to another that resulted in injuries to two persons raises serious human rights issues. It also underscores how interning people in large and overcrowded camps not built for prolonged stays is in itself a factor detrimental to security."

According to international law, legitimate and imperative security concerns may justify the internment of civilians during the height of a conflict, but it must not last longer than absolutely necessary to respond to these security concerns. Internment decisions must further be made on an individual rather than a group basis. Those who are not released must be informed about the reasons on an individual basis and be given a genuine opportunity to have this decision reviewed by an independent body.

In light of these standards and the need to properly balance security concerns with the rights of internally displaced persons (IDPs), the Representative urged the Government again to take prompt action. "I acknowledge the scope of the task that the Government confronted at the end of the military operations in May, but also observe the passage of time and the vast improvement of the security situation. Given these factors, immediate and substantial progress in restoring freedom of movement for the displaced is an imperative if Sri Lanka is to respect the rights of its citizens and comply with its commitments and obligations under international law," he emphasized.

To address obstacles to the Government's stated goal of decongesting these camps and allow for the return to their homes of the large majority of displaced families who do not pose a security threat, the Representative made several concrete suggestions.

First, he called for an improvement of the screening procedures: "I remain particularly concerned about the slow pace of identifying those in the camps who do not pose a threat to security and the lack of transparent criteria in this regard. Such persons must not be subjected to renewed confinement and screening in districts of return. Only their immediate release from the camps will comply with the international law standards to which Sri Lanka has freely subscribed," the Representative emphasized.

Second, he recommended to pursue in parallel different options: returning displaced persons to their homes, releasing IDPs – in particular persons with special needs and their families - to host families, and

establishing open relief centres in transit areas for those with nowhere else to go. "Legitimate security concerns can be addressed by other control measures than keeping people in closed camps," Mr. Kaelin added.

The Representative recalled the importance of ensuring IDPs' and humanitarian workers' access to information. Information is essential to enable the displaced to learn about the fate of family members who are still separated from their relatives or were taken away for rehabilitation purposes, to assess their own situation in the camps, and to make an informed decision about their future. The right to voluntary return in safety and dignity, which is recognized by the United Nations Guiding Principles on Internal Displacement, also demands that those returning are properly informed about the modalities of the return process and the situation in home areas -- including through the "go and see" visits envisaged by the Government, which are welcomed by the Representative.

Close and constructive cooperation and information sharing between the Government and humanitarian and development actors are the most promising ways to address these challenges in the coming weeks. The Representative also welcomed the readiness of donors to support all measures allowing IDPs to find a durable solution to their displacement. In this context, he highlighted that continued international support for humanitarian demining in areas of return is critical.

Finally, the Representative recalled the fate of those IDPs, including many Muslims, who have been displaced 20 or more years ago, and the need to include them into reconstruction programmes. "Finding durable solutions for all of Sri Lanka's displaced in line with the United Nations Guiding Principles on Internal Displacement must remain the ultimate goal of the Government," Mr. Kaelin concluded.

During his visit to Sri Lanka (23-26 September), the Representative consulted with the Senior Advisor to the President and Chairman of the Presidential Task Force, Hon. Basil Rajapakse; the Minister of Resettlement and Disaster Relief Services, Mr. Rishard Bathiudeen; the Minister of Disaster Management and Human Rights, Mr. Mahinda Samarasinghe and the Ministry's Secretary, Prof. Rajiva Wijesinha; the Attorney General, Mohan Pieris; the Commander for the Vanni, Major-General Kamal Gunaratne; the Government Agent for Vavuniya, Mrs. P.M.S. Charles and other civilian and military representatives of the Government. He also spoke with heads of United Nations agencies and other humanitarian organizations and with civil society representatives. Apart from Colombo, Mr Kaelin visited Mannar district and met with IDPs at Menik Farm in Vavuniya.

*Walter Kaelin, professor of law at the University of Bern (Switzerland), has been the Representative of the Secretary General on the Human Rights of Internally Displaced Persons since 2004. Learn more about the mandate and work of the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons: <http://www2.ohchr.org/english/issues/idp/index.htm>*

*For further information on the situation of human rights in Sri Lanka, visit: <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/LKIndex.aspx>*

## HUMAN RIGHTS DEFENDERS

### REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, MARGARET SEKAGGYA

**United Nations A/HRC/13/22/Add.1 - 24 February 2010**

**Addendum - Summary of cases transmitted to Governments and replies received** □

#### SRI LANKA

##### LETTER OF ALLEGATIONS

2039. On 9 January 2009, the Special Rapporteur, together with the the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a letter of allegations to the Government concerning concerning the killing of Mr **Lasantha Wickrematunga**, chief editor of the English language weekly newspaper the Sunday Leader, an investigative newspaper which often reports on cases of alleged corruption and abuse of authority in Sri Lanka, and an attack on the premises of the independent television station, Sirasa TV

(formerly know as Pannipitiya MTV/MBC) in Colombo. 2040. According to information received, on 8 January 2009, Mr Wickrematunga was driving to work in Colombo. Two unidentified gunmen, who were travelling by motorcycle, smashed the window of Mr Wickrematunga's car with a steel bar before shooting him at close range in the head, chest and stomach. The attack occurred in rush-hour traffic about 100 metres from an air force checkpoint. Mr Wickrematunga was rushed to Colombo National Hospital where he died a few hours later from his injuries. A police investigation has been opened into the case. 2041. Prior to his death, Mr Wickrematunga had been the target of numerous intimidation attempts and libel suits for his outspoken criticism of your Excellency's Government. The most recent libel case had been brought against him by the Defence Secretary, Mr. Gotabaya Rajapaksa, over stories published in the Sunday Leader alleging corruption in defence procurement. Following the Court proceedings a ban was placed on the newspaper mentioning the Defence Secretary for several weeks. Previously, in November 2007, the printing press of the Sunday Leader media group (Leader Publications), located in a high security area near Colombo, was destroyed in an arson attack by a group of unidentified gunmen. No arrests were made in relation to the attack and reports claim that a full investigation was not carried out. It is further reported that in October 2008 the President of Sri Lanka referred to Mr Wickrematunga as a "terrorist journalist" during an interview with the non governmental organization Reporters Without Borders.

2042. Furthermore, in the early hours of the morning of 6 January 2009, approximately 20 unidentified individuals wielding assault rifles, pistols and armed bars raided the premises of Sirasa TV in Pannipitiya, Colombo. The assailants, who reportedly arrived at the premises in a white unmarked van, overpowered security personnel at the entrance before entering the main studio complex where they proceeded to assault staff who were working at the time. A few staff members, who were held at gunpoint, were forced to guide their attackers to the main control room. The assailants then destroyed the room with explosives, causing considerable damage to broadcasting equipment. An unexploded grenade was later recovered from the premises.

#### **RESPONSE FROM THE GOVERNMENT**

2043. In letters dated 11 February 2009 and 9 July 2009, the Government responded to the communication sent on 9 January 2009 as follows.

2044. On 8 January 2009, at about 10:05 hrs, Mr. Wickramatunga left in his car to go to his office in Attidiya in Templers Road, Mt. Lavinia. At 10:20 hrs. when he was passing Attidiya on his way to Templers Road opposite Attidiya Girls School , four motorcyclists who came after the car blocked the road and Mr. Wickramatunga's car came to a halt seeing the motorcyclists who were blocking the road. The four motorcyclists had been wearing helmets covering their faces, black jackets and all of them came on black coloured motorcycles. The cyclists surrounded the car and left on their bike after a few minutes.

2045. After the motorcycles had left, the onlookers had approached the car and found Mr. Wickramatunga lying on the seat with bleeding injuries on his head and the windscreen damaged. Both side-glasses of the car had also been damaged. One Dinesh Kumara, who was in the printing press opposite the place of the incident, rushed Mr. Wickramatunga to Kalubowila Hospital in a passing vehicle. The onlookers also informed the Police regarding the incident.

2046. Upon receipt of this information, Officer-in-Charge/Crimes, Mt. Lavinia, Inspector of Police (IP) Sugathapala, along with a team of officers visited the scene and conducted inquiries. Thereafter, on the instructions of the Inspector-General of the Police, Senior Superintendent of Police (SSP) for Mt. Lavinia directed inquiries along with the Assistant Superintendent of Police (ASP) for Mt. Lavinia, (I) Mr. C. Gunawardena in this connection.

2047. Mr. Wickramatunga succumbed to injuries in the hospital and a postmortem inquiry was conducted. The Judicial Medical Officer carrying out the inquiry reported that the death was due to shock and hemorrhage following gun shot injuries in the head.

2048. Mr. Harsha Sethunga, Magistrate for Mt. Lavinia, who held the inquest in connection with the death, returned a verdict of murder.

2049. The Government Analyst was summoned to examine the scene as well as the victim's car and his report is being awaited. No empty cartridges or used slugs have been traced from the scene or the dead body.

2050. Statements have been recorded from four eye-witnesses, but none of them are in a position to identify the suspects or to disclose the registration number of the motorcycles. One of them also had heard report of a gun from the scene of the incident.

2051. The deceased had died of gun shot injuries on his head. The assailants had committed this murder at a lonely stretch of Attidya Road when the victim was on his way to office. Further investigations continue.

2052. None of the four witnesses, who have come forward to make statements, have made references to any of the assailants wielding firearms. There is no specific mention of a steel bar. The witness speaks of Mr. Wickramatunga being attacked with an object covered with a newspaper which, in all probability, had been a hard object.

2053. The attack had taken place sometime after 10 am in the morning at a time the early morning vehicular traffic had eased. It is incorrect to state that there had been a check point manned by the air force personnel a hundred meters away from the place where Mr. Wickramatunga was attacked. The nearest check point had been no less than half a kilometer away. It must also be noted that the victim was rushed to the closest hospital that had all the facilities to attend to a victim who had suffered serious injuries of this nature, that is, the Colombo South Hospital. Every attempt had been made by a team of leading doctors that included two neurosurgeons, to save Mr. Wickramatunga's life. In the autopsy performed there after the Judicial Medical Officer had concluded that the cause of death was due to cranio cerebral injury due to the discharge of a firearm. It is incorrect to state that in addition to the gun shot injury on the head, the victim had been shot in the chest and stomach as his cadaver bore no such injuries. This is confirmed by the autopsy report.

2054. In addition, the assailants left neither the empty casing of the spent bullet nor the slug leaving very little evidence for the investigators to work with in relation to establishing the identity of the weapon used. The doctors who operated on Mr. Wickramatunga had cleaned the area and also removed certain parts of the skull bone around the entry wound. This has nevertheless caused some difficulty to the investigators in ascertaining the distance from which the purported shot was fired. No witness had heard a gunshot or shots being fired during the attack. The investigators had been further handicapped by the fact that no witness at the scene noted the registration plates of the motorcycles used by the assailants. The investigations are continuing with the singular aim of identifying the perpetrators, arresting and bringing them to justice without delay. The facts have been reported to Court and further investigations are being carried out under judicial supervision.

2055. Regarding the attack on the Sirasa TV station, the Government reported that the material facts contained in the communication were confirmed to a great extent by the police investigations. However, according to eye-witness account there is no mention of the use of pistols by the assailants. It is to be further noted that the number of assailants have been approximately 15 and not 20. Two of the employees who were working that night at the TV station complain of being assaulted whereas the others do not allege any assault. It is correct to state that an unexploded hand grenade was recovered from the premises.

2056. The investigators further report that 8 spent casings were found at the scene of the crime and in addition, police have also obtained the fingerprint of the employees of the TV station and are in the process of ascertaining the finger prints of the assailants, if any, by a process of elimination. A blood stain found on a floor tile had been retrieved by the investigators and sent for analysis with the aim of carrying out a DNA profiling in the course of further investigations. The other items so recovered too have been forwarded to the Government Analyst Department for analysis.

2057. Statements have been recorded from all employees. However, none of the employees who were present during the night of the attack are in a position to identify or provide any useful description that would enable the investigators to establish the identity of the assailants. This is primarily due to the fact that all intruders had their faces covered to avoid identification and recognition.

2058. The police are also in the process of carrying out a mobile phone call analysis to ascertain whether any of the assailants used mobile phones from the location at the material time, which was well past midnight. Police have thus sought the assistance of the relevant mobile phone companies to ascertain whether any phone calls were transmitted via any of the telephone towers in the vicinity,

2059. The police had also in the course of their investigations followed a few leads provided by anonymous callers. These had not yielded any positive results. The police have reported the matter to the Magistrate Court. The investigations are continuing under judicial supervision with periodic progress reports being filed in Court.

#### **URGENT APPEAL**

2060. On 27 January 2009, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, have sent an urgent appeal to the Government regarding Mr **Upali Tennakoon**, chief editor of the Rivira weekly newspaper, and the ongoing attacks on media professionals in Sri Lanka.

2061. On 9 January 2008, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders issued an urgent appeal letter in relation to the killing of Mr Lasantha Wickrematunga, chief editor of the English language weekly newspaper the Sunday Leader, and an attack on the premises of the independent television station, Sirasa TV in Colombo. A reply was received from the Government on 12 January 2009.

2062. According to information received, on 23 January 2009, Mr Upali Tennakoon was driving with his wife in Imbulgoda, on the outskirts of Colombo, when two unidentified individuals on a motorbike intercepted his car and ordered him to get out of the vehicle. When Mr Tennakoon failed to comply with their demands the assailants then smashed the car window and began to attack him and his wife with wooden clubs and a knife. The attackers then immediately fled on their motorbikes and Mr Tennakoon and his wife were taken to hospital, where they are in a stable condition. An investigation has reportedly been opened into the case.

2063. Concern was expressed that the aforementioned events may represent a direct attempt to prevent independent reporting in Sri Lanka, thus stifling freedom of expression in the country. Further concern was expressed for the physical and psychological integrity of Mr Upali Tennakoon and his family, as well as media professionals in general in Sri Lanka, particularly in light of reports that following recent events, including the killing of Mr Wickrematunga and the attack on staff at Sirasa TV, at least five journalists have gone into hiding as they fear for their safety and the news website Lankadissent has reportedly ceased operations due to threats.

#### **RESPONSE FROM THE GOVERNMENT**

2064. In a letter dated 14 May 2009, the Government responded to the communication sent on 27 January 2009 as follows. A complaint has been made by Kudugala Thennakoon Mudalige Upali Thennakoon, editor of Rivira Newspaper, at the Police Station Wellweriya regarding the above mentioned incident.

2065. On 23 Kanuary 2009 Upali Thennakoon and his wife left to go to the office and came to a narrow road and when entering into the main road an unknown four persons using clubs halted the vehicle and also Mr. Upali Tennakoon was assaulted. Vehicle had been damaged and Mr. Upali Tennakoon had suffered injuries. While trying to rescue Upali, his wife too has suffered injuries. Thereafter as the victims started to shout four unknown people had moved away in two motorbikes. Injured persons were sent to the National Hospital Colombo with the Police Security. The OIC of the police station of Wellweriya has started investigations. However, none of the suspects have been taken into custody up to date.

2066. Statements have been recorded after inquiring alleged victims and of another 50 people regarding the above incident. Upali Thennakoon and his wife have been directed to JMO. The car which was damaged and a club two and a half ft. long had been produced to the Government Analyst who had examined them. The car had been handed over to the owner by the order of the Magistrate. And finger marks had been taken at the place. Further investigation to the two motorbikes are being carried out and cases have been filed at the Magistrate's Court of Gampaha bearing No. B294/09. Security and service of the officers of State Intelligence Services have been provided to the residence of Mr. Upali Thennakoon by the OIC of the Willweriya Police Station. The OIC of the Kadavath Police Station has been directed to provide for the security of Mr. Upali Thennakoon.

#### **URGENT APPEAL**

2067. On 11 May 2009, the Special Rapporteur, together with the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, sent an urgent appeal to the Government regarding Mr **Sinnavan Stephen Sunthararaj**. Mr Sunthararaj is a project manager for the Centre for Human Rights and Development (CHRD) in Kollupitiya. He had formerly worked as a coordinator for the Jaffna District Child Protection Committee and with the Non-Governmental Organization (NGO) World Vision.

2068. According to the information received, on 7 May 2009, Mr Sinnavan Stephen Sunthararaj was reportedly abducted by men in uniform in Colombo, hours after he had been released from three months in police custody. The car carrying Mr Sunthararaj and his family from the CHRD office to the home of a colleague was stopped near the Turret road junction, close to the Buddhist Ladies College in Colombo, by two persons travelling on a motorbike and a white van with 4-5 persons in uniform. One man allegedly

pointed a gun at the driver's side, while another man in uniform opened the door of the car, dragged Mr Sunthararaj out of the car and pushed him into a white van waiting nearby. Several people witnessed the incident, including family members of Mr Sunthararaj. All men involved in the abduction allegedly wore Army uniforms and were armed.

2069. Mr Sinnavan Stephen Sunthararaj had been arrested on 12 February 2009, and detained at Kollupitiya police station for three months. He had been released on 7 May 2009, by a decision of the Magistrate Court and was accompanied by his lawyer to the CHRD office. While his lawyer went back to the Kollupitiya police station to collect Mr Sunthararaj's ID card and passport which had been withheld by the police, Mr Sunthararaj and his family were taken to a colleague's house by car. They were on their way to the house when the incident described above took place.

2070. Concern was expressed that the abduction and enforced disappearance of Mr Sinnavan Stephen Sunthararaj may be connected to his legitimate activities in the defence of human rights, especially his work on child abuse cases.

#### **RESPONSE FROM THE GOVERNMENT**

2071. In a letter dated 6 October 2009, the Government responded to the communication sent on 11 May 2009 as follows. Mr. Sinnavan Stephen Sunthararaj has been working as a project manager at the Human Development Centre in Colombo since 2007. On 11 February 2009 Mr. Sinnavan Stephen Sunthararaj was arrested by Kollupitiya Police and held in detention on a detention order obtained for investigation. Thereafter on 7 May 2009, he was produced before the Magistrate Court Fort, under Case No. B 330 and released. The wife of the victim has made a complaint to the Cinnamon Grand Police Station on 7 May 2009 that her husband, whilst returning from the Human Rights Development Centre, with her and an office mate named Malani, in a double cab, was abducted by some unidentified persons at gunpoint near the Buddhist Ladies College at Dharmapala Mawatha. Police investigations by the Cinnamon Garden Police have been of no avail, so far, to locate the whereabouts of the victim, nor to identify those responsible for the abduction. Facts have been reported to the Magistrate Court Colombo under Case No. B 5535/01. This case was called on 27 November 2009. Further inquiries are being continued by the Cinnamon Gardens Police under judicial review.

#### **URGENT APPEAL**

2072. On 26 May 2009, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding Dr. **Thangamutha Sathiyamoorthy**, the regional director of health services in Kilinochchi, Dr. **Thurairaja Varatharajah**, the regional director of health services in Mullaitivu, and Dr. **V. Shanmugarajah**, medical superintendent at Mullivaaykkaal field hospital.

2073. According to the information received, Dr. Sathiyamoorthy, Dr. Varatharajah and Dr. Shanmugarajah are Government employed and had been treating the sick and wounded in the conflict zone in North-eastern Sri Lanka until they left the "No Fire Zone" with approximately 5,000 other civilians on 15 May 2009. The Sri Lankan Army (SLA) detained the three doctors on 16 May 2009, under the broad arrest and detention powers of security forces pursuant to the Prevention of Terrorism Act. The physicians were last seen on the morning of 15 May 2009 at a holding area at Omanthai check point. An official of the Ministry of Health stated on 18 May Government forces handed over the physicians to the police.

2074. Dr. Shanmugarajah and Dr. Sathiyamoorthy are apparently currently held at a detention centre of the Terrorist Investigation Division (T.I.D) in Colombo. However, their relatives are not aware of their exact whereabouts and neither has had access to a lawyer. Dr. Varatharajah was seriously injured and is reported to have been airlifted by the Sri Lankan Air Forces (SLAF) from the Omanthai check point to an unknown destination.

2075. While working in the conflict zone, the doctors provided detailed eyewitness reports to the media and the international community from hospitals and makeshift medical centres. Their reports detailed the suffering of ordinary civilians, many of whom died from war-related injuries. Their reports also highlighted continuous shelling of areas with large concentrations of noncombatants.

2076. Concerns were expressed that the three doctors may be held in reprisal for providing information about the situation of civilians in the conflict zone. In view of their reported incommunicado detention at

unknown places of detention, which could put them at risk of enforced disappearance, and in view of the reported serious injuries of Dr. Varatharajah, grave concerns were expressed as regards their physical and mental integrity.

#### **RESPONSE FROM THE GOVERNMENT**

2077. In letters dated 28 May 2009, 15 July 2009 and 3 August 2009, the Government responded to the communication sent on 26 May 2009, which are summarized as follows. Dr. Thangamuththu Sathiyamoorthy, Dr. Veerakethipillai Shanmugarajah and Dr. Thurairajah Varatharajah surrendered to the Army when they have arrived at Omanthai check point on 15 May 2009. Dr. Thurairajah Varatharajah who was injured at the time of surrender was admitted to the General Hospital Colombo on the same day. Later he was discharged (6 June 2009).

2078. All the doctors were detained under section 19 (1) of the Emergency Regulation on charges of their alleged links with the proscribed LTTE organization, disseminating false information to the international media and supplying medicine including medical equipment to the LTTE from Government hospitals. All the doctors are presently in the protective custody of the Criminal Investigation Department (CID) headquarter Colombo, pending completion of investigation.

2079. Dr. Thurairajah Varatharajah had been visited by ICRC representatives on 28 May 2009 and on 6 June 2009. The spouse and sister of Dr. Thurairajah Varatharajah visited him on 30 May 2009, 13 June 2009, 20 June 2009, 27 June 2009 and 4 July 2009. Dr. Thurairajah Varatharajah was taken to ward No. 32 of the General Hospital Colombo on 24 June 2009 for a medical check-up and brought back to the CID on 26 June 2009.

2080. Dr. Thangamuththu Sathiyamoorthy had been visited by ICRC representatives on 21 May 2009 and on 6 June 2009. The father, mother and brother of Dr. Sathiyamoorthy visited him on 23 May 2009, 30 May 2009, 6 June 2009, 30 June 2009 and 4 July 2009. His spouse and children visited him on 20 June 2009.

2081. Dr. Veerakethipillai Shanmugarajah had been visited by ICRC representatives on 21 May 2009 and 6 June 2009. Family members visited him on 4 July 2009 at the CID.

2082. All three doctors were given healthcare facilities. At a media briefing held on 8 July 2009 at the Media Center for National Security all three doctors have stated that they were forced by the LTTE to speak to foreign media and provided exaggerated information on civilian casualties. They have also said that they were not under duress to attend the media briefing arranged by the MCNS.

#### **URGENT APPEAL**

2083. On 24 August 2009, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal to the Government regarding Dr. **Paikiasothy Saravanamuttu**. Dr. Saravanamuttu is the Executive Director of the Centre for Policy Alternatives (CPA) in Colombo.

2084. According to the information received, on the morning of 20 August 2009, Dr. Saravanamuttu received an anonymous death threat letter posted to his private address. The letter, written in English and posted on CPA's website, states that Dr. Saravanamuttu will be killed if Sri Lanka is denied the European Union GSP Plus (Generalised System of Preferences) in October 2009. The author of the letter alleges that Dr. Saravanamuttu had transmitted to Ms. Benita Ferrero-Waldner, the EU's Commissioner for External Relations, information which could affect the renewal of GPS Plus to Sri Lanka.

2085. The letter reads as follows: "this serves to warn you that come October and Sri Lanka is denied GSP plus you WILL be killed, we swear on all that we hold sacred you WILL be killed, for we now know that you have been the principal person who has been feeding the European woman Ferraro with information to deny this country of this and put us out of our livelihoods".

2086. Dr. Saravanamuttu and the CPA have reported they will be lodging complaints with the relevant authorities to investigate and take all necessary measures to remedy this matter.

2087. Concern was expressed that the death threat against Dr. Saravanamuttu may be linked to his legitimate work in defence of human rights. In view of the content of the letter, further concern was expressed for the physical and psychological integrity of Dr. Saravanamuttu and other members of CPA.

#### **RESPONSE FROM THE GOVERNMENT**

2088. In a letter dated 25 August 2009, the Government responded to the communication sent on 24 August 2009 as follows. The Secretary of the Ministry of Disaster Management and Human Rights, Professor Rajiva

Wijesinha, was personally informed of the death threats at a reception by the victim on 24 August 2009. The Ministry was contacted by the issue on 21 August 2009 by a junior member of the British High Commission, who was told that the Ministry was awaiting a formal communication. Such a formal communication has not been received, but the Secretary instructed the DIG in charge to furnish a full report. The Ministry is not aware of the reasons for the delay in lodging a formal complaint by the alleged victim. The Secretary contended that due to the fact that the matter has been well publicized, an inquiry may be more difficult. The Secretary had nonetheless the DIG to treat this case as a matter of urgency.

#### **URGENT APPEAL**

2089. On 27 August 2009, the Special Rapporteur, together with the Vice-Chairperson Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding Mr. **Charles Raveendran Navaratnam**, aged 45, employed by the United Nations High Commissioner for Refugees and Mr. **Kanthasamy Sounthararajan**, aged 31, employed by the United Nations Office for Project Services.

2090. According to the information received, on 11 June 2009, Mr. Charles Raveendran Navaratnam was questioned at his home by a person addressed as the "OIC" and several other persons in civilian clothes. He was informed that he had to be taken away for an inquiry, and was taken to a dark blue Pajero Jeep (Registration No. 61-7068), where he was immediately handcuffed. He was then blindfolded and asked to indicate where the "goods" were. He denied any knowledge about this, following which he was beaten and stricken with an iron rod on his head. He was threatened with being killed if he did not reveal "the truth". He was then taken to Vepankulam where he was beaten in the stomach, neck and face including the mouth, ears and jaw, as well as on his legs with a wooden baton. He was taken to a house where other persons were being held. He spent the night handcuffed and with his legs chained. On 12 June 2009, he was again interrogated about the "goods" and asked whether he knew certain individuals. He denied any knowledge and was beaten once again. He was also taken to the Menik Farm and Technical College Internally Displaced Persons Camp, where he was ordered to identify LTTE suspects, which he failed to do. He spent the night at the Vavuniya Police Station, where he was forced to sleep with his legs chained.

2091. On 13 June 2009, at about 8:30 a.m., he was taken away in the same jeep and stopped at the Petrol Station close to Vavuniya Kachcheri. There, the persons in the jeep got out and forcibly took Mr. Kanthasamy Sounthararaja, indicating that he was being taken for questioning and would be released after an inquiry. He was questioned about some suspected persons and was beaten when he denied any information. Both men were then taken to Temple Road where international non-governmental organizations and United Nations Agencies have their offices. They were both directed to tell whether staff in these organizations had any connections with terrorists. They denied any knowledge and were threatened with death. In the afternoon, they were taken in the direction of Vavuniya Mannar Road and stopped at a cemetery in Bharathipuram. Mr. Sounthararaja was taken out, beaten and threatened to be shot at with a pistol. However, when by-standers arrived on the nearby road he was forced back into the jeep. Later that day, both men were taken to Colombo and were held in a building behind Borella Police Station. There they were subjected to prolonged interrogations by several police officers and beatings and were later transferred back to Borella Police Station.

2092. On 25 June 2009, they were examined by officers of the International Committee of the Red Cross. Later, they were permitted visits by relatives, staff of their employing agency and their lawyers. The next day, they were forced to sign a statement in Sinhala language which they did not understand. They are still being held at the Borella Police Station, and it is believed that they were arrested for "actively engaging in LTTE activities". A fundamental rights application was filed in the Supreme Court for both men. The Supreme Court gave them leave to proceed and instructed the Judicial Medical Officer (JMO) to examine the detainees and submit a report to the court. They were examined by the JMO on 26 June. On 23 July, the police took them back to the JMO and requested him to write a new report based on documentation provided by the police. However, the JMO refused.

2093. As a result of the beatings, both men suffer from back pain, partial loss of hearing and severe headaches.

2094. In view of their earlier incommunicado detention and reports about torture and illtreatment, grave concerns were expressed with respect to the physical and psychological integrity of Mr. Charles Raveendran Navaratnam and Mr. Kanthasamy Sounthararajan.



## LETTER OF ALLEGATIONS

2095. On 9 October 2009, the Special Rapporteur, together with the the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, sent a letter of allegations to the Government concerning **Mr. J.S. Tissainayagam**, editor in chief of the *North Eastern Monthly* magazine. Information regarding Mr. Tissainayagam was previously sent to your Excellency's Government on 14 March 2008 following his arrest and detention by the Terrorist Investigation Division (TID) along with five other journalists. The joint urgent appeal was sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the promotion and protection of human rights while countering terrorism. A response from your Excellency's Government was received on 16 July 2009, indicating that the courts found Mr. Tissainayagam's confession to the police to be voluntary and that his detention at the TID was not illegal. The Working Group on Arbitrary Detention also adopted an opinion on the case of Mr. Tissainayagam on 12 September 2008, which declared his detention to be arbitrary (opinion no.30/2008).

2096. According to new information received, on 25 August 2009, Mr. Tissainayagam was charged with three counts under the Prevention and Terrorism Act (PTA) and the Emergency Regulations of 2006 in relation to his criticism of the Sri Lankan Army's treatment of civilians in two articles published in the North Eastern Monthly magazine in June 2006. 2097. On 31 August 2009, Mr. Tissainayagam was found guilty by Colombo High Court judge Ms. Deepali Wijesundera and sentenced to 20 years of "rigorous imprisonment" under the PTA. Mr. Tissainayagam was found guilty on two counts of intending to "cause communal disharmony" (PTA, section 2), with mandatory minimum sentence of five years each, and one count of receipt of monies "in the furtherance of any act of terrorism" (Emergency Regulations, regulation 6), with mandatory minimum sentence of 10 years.

2098. Judge Wijesundara is allegedly the sister of the officer who signed the indictment against Mr. Tissainayagam. One of the main pieces of evidence used against Mr. Tissainayagam was a handwritten confession, which had been submitted to court by the prosecution. The defence counsel challenged the veracity of Tissainayagam's confession on the basis of three accounts: first, Mr. Tissainayagam was threatened and mentally tortured for the police to obtain that statement; second, the confession was not given to an Assistant Superintendent of Police as required by law, and third, the statement reportedly mirrored word for word a statement written on 7 March 2009 by the officer who had been present at the time of Mr Tissainayagam's detention and who has allegedly been involved in the torture of and threats against Mr. Tissainayagam. Judge Wijesundara denied Mr. Tissainayagam's right to appeal against the admissibility of this forced confession into evidence.

2099. Concern was expressed that the sentencing of Mr. Tissainayagam might be directly related to his work in defense of human rights and is an attempt to silence peaceful and legitimate criticisms of the government, thus stifling the right to freedom of opinion and expression in Sri Lanka. Concern was also expressed regarding the broad scope of the PTA and the Emergency Regulations, which do not appear to fall under the ambit of permissible restrictions to the right to freedom of opinion and expression under international human rights law. Further concern was expressed regarding fair trial standards in this case.

## URGENT APPEAL

2100. On 15 October 2009, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal to the Government regarding threats against Ms. **Dileesha Abeysondera**, journalist for the Sinhalese-language weekly *Irudina*, Deputy Secretary of the Free Media Movement, and Secretary of the National Forum for Journalists in Sri Lanka.

2101. According to information received, on 28 September 2009, Ms. Abeysondera organized and attended a meeting calling for the abolition of what she has publicly stated as the "draconian provisions" in the Press Council Act of 1973. On the same day at around 11:45 p.m., several men who were unidentified and were travelling in white vans attempted to forcibly enter Ms. Abeysondera's compound in the Borella district of Colombo. It has been reported that the men repeatedly called out her name while hitting her gate. After she informed them that they had the wrong house, they remained in the area and subsequently left due to poor weather.

2102. White vans have allegedly been used in many cases of abductions and enforced disappearances in Sri Lanka since 2006, when State agents and paramilitary groups that are allied to the Government allegedly increased attacks against those critical of the Government.

2103. Concern was expressed that Ms. Abeyesundera has been threatened because of her work in support of a free media in Sri Lanka and her work as a journalist with Irudina, which is allegedly known for its critical coverage of the Government. Further concern was expressed regarding Ms. Abeyesundera's physical and psychological integrity, particularly given the number of abductions, physical attacks, death threats, killings and acts of intimidation against journalists, and the ensuing lack of prosecutions of alleged perpetrators. Moreover, concern was expressed regarding restrictions on independent reporting in Sri Lanka, including the Press Council Act of 1973, which allows journalists to be prosecuted for contempt and sentenced to extended periods in prison, and prohibits the publication of materials related to Government documents, the armed services, national security and economic policy.

#### **URGENT APPEAL**

2104. On 6 November 2009, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal to the Government regarding the situation of Ms. **Frederica Jansz**, and Ms. **Munza Mushataq** and **staff members of the *Sunday Leader* weekly newspaper**, an investigative newspaper which often reports on cases of alleged corruption and abuse of authority in Sri Lanka. Ms. Jansz and Ms. Mushataq are respectively Editor-in-chief and News Editor of the *Sunday Leader*.

2105. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders sent on 9 January 2009, a letter of allegation on the killing of Mr. Lasantha Wickrematunga, founder and former Editor-in-Chief of the *Sunday Leader*. We acknowledge receipt of the responses of your Excellency's Government dated 11 February 2009 and 9 July 2009.

2106. According to the information received, on 22 October 2009, Ms. Jansz and Ms. Mushataq reportedly received death threat letters. The letters, handwritten in red ink, stated the following: "if you write anymore, we will kill you, slice you into pieces". Mr. Lasantha Wickrematunga was killed in January 2009 after having received a similar red ink handwritten death threat letter.

2107. These new threats occurred following the publication on 18 October 2009, of an article by the *Sunday Leader* in relation to a video allegedly showing Sri Lankan soldiers executing Tamil prisoners and denounced as a fake by your Excellency's Government.

2108. Ms. Jansz and Ms. Mushataq reported the threats to the Inspector General of Police and to the police in Colombo.

2109. It is further reported that staff members of the *Sunday Leader* have been threatened on many occasions and the premises of the newspaper burnt down and bombed several times.

2110. Grave concern was expressed that these new threats may be directly related to the legitimate work of Ms. Jansz and Ms. Mushataq and the staff members of the *Sunday Leader* in defense of human rights. Given the content of the letters and the killing of Mr. Wickrematunga, further concern was expressed for the physical and psychological integrity of Ms. Jansz and Ms. Mushataq and all staff of the *Sunday Leader*.

#### **OBSERVATIONS**

2111. The Special Rapporteur thanks the Government of Sri Lanka for its replies but regrets that at the time of the finalization of the report, the Government had not transmitted any replies to her communications dated 27 August 2009, 9 and 15 October 2009 and 6 November 2009. She considers response to her communications as an important part of the cooperation of Governments with her mandate.

2112. The Special Rapporteur urges the Government to transmit to her all relevant information regarding any investigation or prosecution in relation to the cases of Mr. Charles Raveendran Navaratnam, Mr. Kanthasamy Sounthararajan, Ms. Dileesha Abeyesundera Ms. Frederica Jansz, Ms. Munza Mushataq and staff members of the *Sunday Leader* newspaper.

2113. The Special Rapporteur wishes to remind the Government of the provisions of the Declaration on human rights defenders, specifically article 6 paragraph (b) and (c), which provide that everyone has the right (...) freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms as well as article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, (...) against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration". (**Excerpt from the original report**)

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-22-Add1\\_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-22-Add1_EFS.pdf)

# ARBITRARY DETENTION

## OPINIONS ADOPTED BY THE WORKING GROUP ON ARBITRARY DETENTION\* SRI LANKA

A/HRC/13/30/Add.1 - 2 March 2010

Communication addressed to the Government on 19 December 2007 –  
Concerning Mr. Gunasundaram Jayasundaram.

### The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.
3. (Same text as paragraph 1 of Opinion No. 17/2008.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, and has received its comments.
5. The case was reported to the Working Group as follows: Mr. Gunasundaram Jayasundaram, a dual Sri Lankan-Irish citizen, resident in Singapore, married and father of three children, was arrested on 4 September 2007 at Katunayake International Airport by agents of the Police's Terrorist Investigation Division (TID). He had just arrived from Singapore on a business trip to Colombo.
6. It appears that Mr. Jayasundaram has been detained on remand during three months and a half on the orders of the Secretary of the Ministry of Defence. No reasons for his arrest were communicated to him.
7. Mr. Jayasundaram has only been allowed access to a defence lawyer once during this period, despite repeated written requests to the authorities for regular access to legal counsel. On 29 October 2007, a writ of *habeas corpus* was filed on his behalf by Senior Counsel Mr. Appapillai Vinayagamoorthy, without any results.
8. The source adds that consular access to the detainee is also severely restricted. The Honorary Consul of the Republic of Ireland in Colombo has been allowed to visit him only once, on 14 December 2007.
9. According to the source, Mr. Jayasundaram's arrest and detention is arbitrary, since no reason was communicated to him to proceed to his arrest and no arrest warrant was shown to him. The source adds that, despite the time already elapsed, no charges have been brought against Mr. Jayasundaram. He has not been brought before a judge and no date for a trial has been set. The source concludes that Mr. Jayasundaram's detention is arbitrary.
10. In its response, the Government of Sri Lanka states that according to the investigation conducted by the authorities, on 4 April 2007, customs officers at Colombo International Airport arrested Visvalingam Gobidas – a resident of Colombo – for bringing high-powered communication sets to Sri Lanka without a permit.
11. Subsequent inquiries revealed that Visvalingam Gobidas is a member of the procurement team of the LTTE, a terrorist outfit banned in many countries, including the United States of America and the member countries of the European Union. These high-powered communication sets were brought for the use of the LTTE. On revelations made by Gobidas, Mr. Jayasundaram was providing monetary and material support to the LTTE. Mr. Jayasundaram was informed of these charges, and he was detained at the Terrorist Investigation Division (TID) in Colombo under Emergency Regulations No.19/(2). A copy of the detention order has been handed over to Mr. Jayasundaram.
12. The arrest of Mr. Jayasundaram was officially notified to the International Committee of the Red Cross (ICRC) and the National Human Rights Commission of Sri Lanka. Accordingly, representatives of the ICRC visited him a couple of times. The Honorary Consul of the Republic of Ireland in Sri Lanka visited Mr. Jayasundaram on 18 September, 26 October, 15 November and 14 December 2007. The defense lawyers, Mr. Appapillai Vinayagamoorthy and K.D. Kalupahana, visited Mr. Jayasundaram on 24 October, 20 November, and 21 December 2007.

13. According to the Government, further inquiries have revealed that Mr. Gunasundaram Jayasundaram is a member of the LTTE international procurement team and had been involved in the following:

(a) After the signing of the Ceasefire Agreement between the Government of Sri Lanka and the LTTE in 2002, he visited Vanni (an area in Sri Lanka temporarily controlled by the LTTE) with his spouse Biretta and children and met LTTE leader Velupillai Prabhakaran and Sea Tiger leader Soosai, and discussed opening up businesses in foreign countries for the LTTE;

(b) He had sent a plastic-bag manufacturing machine worth RS. 5 million to the LTTE through his company in Sri Lanka named "Lamipack Private Ltd.";

(c) In early 2005, Mr. Gunasundaram Jayasundaram visited Vanni with an Australian citizen and held discussions with the LTTE and its front organization, the Tamil Rehabilitation Organisation, regarding raising funds for a primary education centre in Vanni for the family members of the LTTE cadres.

14. Upon instructions of the LTTE leader in London in the years 2005/06, Mr. Jayasundaram purchased radar, satellite phones, deep-sea cameras, walkie-talkie sets, generators, marine boat engines, diving kits and spare parts for radar from Singapore on six occasions, shipped them to Colombo and sent them to the LTTE through his company and contacts in Colombo and Vanni. (The Government reports that the name of the leader in London, names of the ships, invoices, and e-mails are withheld due to security reasons). Mr. Gunasundaram Jayasundaram is presently in detention at the TID pending arraignment.

15. In its observations on the Government's response, the source denies that Mr. Jayasundaram is a member of LTTE international procurement team. It also claims that Mr. Jayasundaram's original detention order has expired and that he has never been provided with another order extending his detention. As regards Visalingam Gobidas' revelations about Mr. Jayasundaram procuring high-powered communication sets, the source notes that this is a mere allegation unsubstantiated by evidence. Mr. Jayasundaram does not know of and has never met with a person known as Visalingam Gobidas.

16. Mr. Jayasundaram had not visited Vanni in 17 years and when he had the opportunity to visit in 2003, his family and he visited Vanni solely for the purpose of seeing his family and helping rebuild the orphanage there. It is denied that Mr. Jayasundaram met any LTTE leaders. In fact, he and his family met many foreign dignitaries and well-wishers of the Tamil people, including the Ambassador of Norway.

17. The plastic-bag manufacturing machine sent to Sri Lanka was merely a business deal that Mr. Jayasundaram had been involved in. Furthermore, Mr. Jayasundaram's partner at Lamipak Private Ltd. in Sri Lanka is Sinhalese and has not been arrested or detained within five years for sending this machine or, for that matter, all the other equipment mentioned to Sri Lanka.

18. The source does not deny that Mr. Jayasundaram did visit Vanni with an Australian woman. He had the backing of the World Bank and the Norwegian Government, which agreed to jointly fund an overhaul of the early childhood and primary curriculum for the North and the East of Sri Lanka. Mr. Jayasundaram merely introduced that Australian woman as an expert in the area and the project was meant for the general public. The source alleges that it is not true that the project was for the family members of the LTTE cadres.

19. The source further states that Mr. Jayasundaram has only had access to his appointed lawyer on two occasions and not three. The other lawyer, K.D. Kalupahana, was appointed by Mr. Jayasundaram on the recommendation of the TID and she demanded USD 1,000 a day to represent Mr. Jayasundaram. She was subsequently discharged from acting on his behalf since she had the interest of the TID rather than that of Mr. Jayasundaram in mind.

20. A *habeas corpus* case was brought against the Government of Sri Lanka on 29 October 2007 and subsequently three hearings took place as late as 23 January, 5 and 26 March 2008. However, Mr. Jayasundaram was not brought before the court on any occasion.

21. The Working Group, in summing up this information, would like to draw attention to the following circumstances: Mr. Jayasundaram was arrested without an arrest warrant on orders of military authorities under the Emergency Regulations No.19/ (2) which resulted in his prolonged detention. The accusations against him are based solely on statements of another person, with whom, as the source attests, Mr. Jayasundaram has never met. Moreover, the Working Group finds the argument of the Government that Mr. Jayasundaram was providing monetary and material support to the LTTE unsubstantiated.

22. At any rate, the activities listed in the Government's response could only hardly amount to a criminal act, which could justify the arrest and detention of Mr. Jayasundaram for such a long term without proper charge

or detention. Doubts are further confirmed by the fact that, for a similar business, Mr. Jayasundaram's partner, a member of the Sinhalese ethnic group, was never arrested. The arrest and detention seems to be, among others, discriminatory towards Mr. Jayasundaram, as a member of the Tamil ethnic group.

23. The Working Group further notes that Mr. Jayasundaram has been detained without being charged before an independent judicial authority. He was arrested and held in detention without prompt access to a lawyer. He was not informed timely about his right to contact the Consul of the Republic of Ireland, as is provided for in the 1963 Vienna Convention on Consular Relations. In addition, the Government's response does not contain any information about whether Mr. Jayasundaram's detention was officially extended, when the initial detention order had expired. Finally, the Working Group also notes that Mr. Jayasundaram was not brought *in personam* before the court during the *habeas corpus* hearings.

24. All these acts violate fundamental human rights guaranteed under article 14 of the International Covenant on Civil and Political Rights, which states in particular the following:

"1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; ... (d) ... to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; ... (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

25. In the light of the foregoing, the Working Group renders the following Opinion: The deprivation of liberty of Mr. Gunasundaram Jayasundaram is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9, 14, and 26 of the International Covenant on Civil and Political Rights, and falls under categories II and III applicable to the consideration of cases submitted to the Working Group.

26. Consequent upon the Opinion rendered, the Working Group requests the Government of Sri Lanka to remedy the situation of Mr. Gunasundaram Jayasundaram and to bring it into conformity with its international human rights obligations under the International Covenant on Civil and Political Rights.

27. Finally, the Working Group reminds the Government that, according to the recommendations of the Human Rights Council, 4 national laws and measures aimed at combating terrorism shall comply with all obligations under international law, in particular international human rights law.

**Adopted on 12 September 2008**

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf>

## **RIGHT TO FOOD**

### **REPORT OF THE SPECIAL RAPPOREUR ON RIGHT TO FOOD OLIVIER DE SCHUTTER**

**UNITED NATIONS - A/HRC/13/33/ADD.1 – DATE 26 FEBRUARY /2010  
SRI LANKA**

#### **Communication sent**

61. On 31 December 2008, the Special Rapporteur sent an allegation letter to the Government of Sri Lanka regarding the restrictions that had been imposed on humanitarian aid, including food aid, in the Vanni region. According to this information, such restrictions had contributed to worsen the food security situation of those people displaced since April 2006, as well as of the population residing in the area prior to that date. On 16 September 2008, international non-governmental organizations (INGOs) including UN agencies had been ordered to leave the Vanni region following a directive requiring staff to be relocated outside the LTTE-controlled areas due to security concerns. According to the information received this directive had had the effect of decreasing the humanitarian assistance provided to the region. As a result, the food security

situation of the affected population had worsened. According to the reports received, since the UN agencies had been forced to withdraw temporarily from the Vanni region, seven UN convoys of humanitarian assistance including foodstuff had been dispatched to this region.

Reportedly, food shortages continued to affect the displaced as well as the local population. In particular it appeared that the approval and transportation of food to the Vanni region through the Omanthai checkpoint, the crossing point between government-controlled territory and that held by the LTTE, continued to be problematic as, for example, convoys were systematically controlled at the check point causing delays in distribution. In addition, it was alleged that there were instances where the size of those convoys crossing the Omanthai checkpoint had been reduced. The Special Rapporteur had also been informed that at the time of submission of this communication there had not been a comprehensive needs assessment in the region which rendered it difficult improving the quality of the assistance provided. The reports received also indicated that the prolonged displacement resulted in farmers having to abandon their crops. Reportedly, 60 percent of agricultural production had been affected in the Vanni area. This was likely to affect the next harvest and the quantities of food available in the region next year thus depriving those families whose livelihoods depend on small-scale agriculture of their usual means of procuring food. It was further alleged that continued fighting affected infrastructure, such as bridges and roads, which is essential for the prompt and safe passage and delivery of humanitarian assistance. The Government had taken measures to repair some of this infrastructure. Yet, this destruction of infrastructure, coupled with the heavy rains of the monsoon period, had resulted in humanitarian agencies finding it increasingly difficult to move material, including food.

62. In addition to relevant provisions of international human rights law, the Special Rapporteur referred to international humanitarian law. Pursuant to the rules of customary law applicable in both international and non-international armed conflict identified by the International Committee of the Red Cross. Rules 54, 55 and 56, which are a corollary to the prohibition of starvation of civilians as a method of warfare, state that attacking, destroying, removing objects indispensable to the survival of the civilian population (Rule 54) and denying access of humanitarian aid intended for civilians in need, including deliberately impeding humanitarian aid (Rule 55) or restricting the freedom of movement of humanitarian relief personnel (Rule 56) may constitute violations of the prohibition of starvation.

#### **Communication received**

63. On 6 January 2009, the Government of Sri Lanka sent a reply regarding the above-mentioned communication. The Government denied the allegations of food shortages in the Vanni region. The letter mentioned that the Government of Sri Lanka, as well as the International Committee of the Red Cross (ICRC), had sent many convoys of humanitarian assistance to the affected region. In addition, the Commissioner General of Essential Services almost on a daily basis ensured the provision of supplies for sale through the Cooperative System and therefore food supplies were available and affordable in the Vanni region. The Government acknowledged that the movements through the checkpoints were problematic but maintained that such measures were necessary as the primary responsibility of the Government was to provide physical security to the people. The Government also undertook to ensure that the displaced persons would return rapidly and that the disruption of their livelihoods would not lead to deprivation. The Government also informed the Special Rapporteur that despite the fact that fighting affected infrastructure such as bridges and roads the Government had succeeded in fulfilling basic needs of the populations in the Vanni region. Finally, the Government highlighted its achievements with regard to economic, social and cultural rights, and denied any violations of international humanitarian law with regards to the prohibition of starvation.

#### **Follow-up communication**

64. On 29 April 2009, the Special Rapporteur together with the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent a joint urgent appeal to the Government of Sri Lanka. The Special Rapporteur thanked the Government for the response letter of 6 January 2009 and expressed his interest in receiving responses to the detailed questions contained in his communication of 31 December 2008. The Special Procedures brought to the attention of the Government information which they had continued to receive concerning the persisting serious humanitarian situation, including access to food, water and health care of internally displaced persons (IDPs) in the Vanni region. According to the information received IDPs in Vavuniya had been unable to have regular access to sufficient and adequate food as the food distribution system had been subject to delays and unclear procedures. It had been reported that IDPs may receive food ration cards but only after having registered. The registration process had reportedly been very long. In some places it appeared that there were no registration mechanisms in place yet. Reportedly, there had been instances of people fighting over access to food which, in one case, had resulted in the death of a 7 year old. It had also been reported that

paramilitary and other groups had been providing for unorganized and ad-hoc distributions of small amounts of food which, since they could not satisfy needs, had contributed to fuel a tense and frustrating situation within IDP camps and sites. Reports indicated that in at some of the sites, including the screening site of Omanthai, IDPs had not received any food for three consecutive days. It appeared that due to the critical situation in the food sector, the Government had committed to resume providing cooked food for the first three days of new arrivals at the camps. At the time of the preparation of this communication it remained to be seen whether the Government had the capacity to implement this measure. It was also reported that the health situation in the Vanni region had further deteriorated. Due to malnutrition and dehydration, the population was becoming weaker and more vulnerable to infectious diseases. Chicken pox and watery diarrhoea epidemics has already been reported as well as a case of typhoid fever. Treatments for diabetes, hypertension, cancer, different psychiatric conditions and other chronic diseases were still unavailable. It had also been alleged that even though some transit sites got ambulances to visit every day, the majority was without a full time doctor and some reported no doctors visit at all for a few days. It was also reported that there was no data concerning the number of deaths, but it appeared that the majority was that of infants below the age of two and the elderly. In addition, referrals to hospitals remained problematic since the Ministry of Health had not developed a contingency plan. Consequently, the likelihood of preventable deaths during new arrival influxes was very high. The situation in hospitals receiving IDPs was reported to be increasingly difficult, as they were extremely under-staffed and severely overcrowded. In Vavuniya there was an estimated 1500 to 1800 patients with a bed capacity of 600. A similar situation was reported in Chettikulam hospital which was currently treating more than 520 patients with a bed capacity of 140. IDPs who had received life saving surgery were reportedly dying due to a lack of post-operative capacity to care for the patients. It was alleged that there was an urgent need for professional mental health support as significant numbers of IDPs were reportedly suffering from mental trauma as a result of their experience during the conflict. In addition, it was alleged that since 1 April hardly any shipment of food, medical supplies or non-food relief items had been delivered to the no fire zone. It was further alleged that for the previous 6 months, shipment of essential medicine and medical supplies for the people in the no fire zone had consistently met with delays in clearance from the Ministry of Defence which was consequently hindering access to life-saving supplies. Chronic water shortages as well as limited access to scant water supplies had been reported at Omanthai as well as in most of the transit sites. It was also alleged that the quality of drinking water was not satisfactory and that chlorine tablets to treat water supplies in the no fire zone had consistently not been cleared by the Ministry of Defence. In the transit sites and IDP camps, there were reports of insufficient toilet facilities and inadequate drainage system in place to manage the situation, particularly with heavy rains. It was also reported that sanitation facilities and water supplies were located far away from the blocks at Menik Farm zone 3 creating access problems particularly for the elderly and the disabled, and security concerns for women and children. Furthermore, the lack of adequate access to sanitation was reportedly leading to increased open defecation, which could cause serious health problems for the entire IDP population.

### **Communication received**

65. On 11 May 2009, the Government of Sri Lanka sent a reply regarding the Follow Up communication mentioned above. Concerning the availability of food the Government informed the Special Rapporteur that despite the temporal problems during the sudden influx of people fleeing from the LTTE-controlled areas, food availability wasn't a problem any more. The Government also regretted the bad quality of rice provided by the World Food Program. The Government also informed the Special Rapporteur that it has started communal cooking in most centers. The Government also stated that the people fleeing from the LTTE-controlled areas have suffered from malnutrition there. The Government explained that despite it was sending food to the LTTE-controlled areas on regular basis it rarely reached the populations. The Government further denied the allegation that in one of the IDPs camps a child would have been killed by another child while fighting over the food. According to the Government, the child died because of stampede. The Government also denied the allegations that in the IDPs' camps the populations would suffer from epidemics, although it admitted that the health situation is problematic due to a big number of people living in the camps. Additionally the Government included some statistics indicating the amount of supplies provided for the people from the LTTE-controlled zones. Finally the Government informed the Special Rapporteur that it requested more detailed information to a number of Ministries in Sri Lanka.

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.33.Add.1\\_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.33.Add.1_EFS.pdf)

# DISAPPEARANCES

## REPORT OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

United Nations A/HRC/13/31 - 21 December 2009

### SRI LANKA

*Number of outstanding cases at the beginning of the period under review*

5 727

*Cases transmitted to the Government during the period under review:*

100

*Cases sent under the urgent action procedure*

04

*Cases sent under the standard procedure*

96

*Cases clarified during the period under review – Government*

05

*Number of outstanding cases at the end of the year under review*

5 8222

*Number of cases on which the Government has replied*

32

*Multiple replies on some cases*

Yes

*General allegation*

N/A

*Government response*

N/A

*Prompt intervention letter*

N/A

*Government response*

N/A

*Working Group request for a visit*

Yes

*Government response*

No

#### URGENT ACTIONS

504. The Working Group sent four cases under its urgent action procedure to the Government. One case concerned **Sivakumar (Sinnathambi) Ponnampalam**, last seen in November 2008, at the Manmunaitarai Checkpoint near the Kokkadicholi ferry point, Manmunai, Batticaloa. It is believed that the Police Special Task Force is responsible for his disappearance. The second case concerned **Vijayanathan Vellasamy**, who disappeared in December 2008, in Trincomalee District. It is believed that Security Forces are responsible for his disappearances. The third case concerned **Sivanantharuben Sivarasa**, who was abducted on 20 April 2009. It is believed that the Navy is responsible for his disappearance. The fourth case concerned **Southernrajan Kandasamy Southernrajan**, who was abducted by police officers in Vavuniya Kachcheri, Vavuniya, on 13 June 2009.

#### STANDARD PROCEDURES

505. The Working Group transmitted 96 newly-reported cases to the Government. The alleged disappearances took place between 2006 and 2008, mainly in Colombo, Trincomalee, Mannar, Vavuniya and Jaffna. The military, police, and security forces are allegedly responsible for these disappearances.

#### INFORMATION FROM THE GOVERNMENT

506. The Working Group received 11 communications from the Government.



507. On 16 December 2008, the Government provided information concerning 32 cases. For two cases, the Government provided further information on 4 March 2009 and as a result, the Working Group applied the six-month rule at its eighty-seventh session. Concerning the remaining cases, the information was insufficient to clarify them.

508. On 26 January 2009, information was provided concerning seven cases, which was insufficient to clarify them.

509. On 28 May, 15 July, and 3 August 2009, the Government replied to the joint communication sent on 26 May 2009.

510. On 15 July 2009, the Government also provided information concerning one case which led to a clarification.

511. On 3 August 2009, the Government provided information on one case which was considered insufficient to clarify it.

512. On 3 August, the Government also provided information on the communication sent on 8 July 2009.

513. On 6 October, the Government replied to the joint communication sent on 11 May 2009.

514. Furthermore, the Government submitted two communications dated 7 July and 2 September 2009, in which it provided two lists with a total of 459 possible duplicate cases. During its eighty-ninth session, the Working Group reviewed 171 cases and concluded that they were duplicates. As a result, these cases were deleted from its records. Regarding the remaining cases, the Working Group is in the process of checking the original submissions.

#### **INFORMATION FROM SOURCES**

515. The Working Group received information from sources validating the information previously provided by the Government which led to a clarification.

#### **CLARIFICATION**

516. Based on the information provided by the Government, the Working Group decided to clarify five cases, four of them following the expiration of the six-month rule.

#### **COMMUNICATIONS FROM THE WORKING GROUP**

517. The Working Group sent three urgent communications to the Government. The first one sent on 11 May 2009, jointly with the Special Rapporteur on the situation of human rights defenders, concerned **Sinnavan Stephen Sunthararaj**, abducted in Colombo on 7 May 2009. The second one sent on 26 May 2009, jointly with six other special procedures mechanisms, concerned **Thangamutha Sathiyamoorthy, Thurairaja Varatharajah** and **V. Shanmugarajah**, three doctors who had been treating the sick and wounded in the conflict zone in North-Eastern Sri Lanka, who were last seen on 15 May 2009 at a holding area at Omanthai check point. The last communication, sent on 8 July 2009, concerned **Joyashan Yogendran**, abducted near his home in Batticaloa on 3 May 2009.

518. The Government provided information on the above-mentioned communications.

#### **MEETINGS**

519. Representatives of the Government of Sri Lanka met with the Working Group at its eighty-seventh session to discuss developments connected to its outstanding cases.

#### **Request for a visit**

520. On 16 October 2006, the Working Group requested an invitation to undertake a mission to Sri Lanka. The Government replied that it would not be possible to schedule a visit during the proposed dates, and that the interest of the Working Group would be given due consideration. A reminder letter was sent on 20 July 2009. No reply from the Government has yet been received.

## TOTAL CASES TRANSMITTED, CLARIFIED AND OUTSTANDING

521. Since its establishment, the Working Group has transmitted 12,226 cases to the Government; of those, 40 cases have been clarified on the basis of information provided by sources, 6,535 cases have been clarified on the basis of information provided by the Government, and 5,651 remain outstanding.

## OBSERVATIONS

522. The Working Group remains gravely concerned at the number of reported cases of enforced disappearances in the country. The Working Group is alarmed that 100 cases were reported during 2009.

523. The Government of Sri Lanka has communicated extensively with the Working Group but many cases remain outstanding. Therefore, taking into consideration the change of circumstances in Sri Lanka, the Working Group would like to reiterate its request to conduct a mission to Sri Lanka as soon as possible.

524. The Working Group regrets that the Government has yet to report on the further implementation of the recommendations emanating from the Working Group visits in 1991, 1992 and 1999.

525. The Working Group reminds the Government of Sri Lanka of its obligations under the Declaration to "take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction" (art. 3).

526. The Working Group calls upon the Government to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance and accept the competence of the Committee under articles 31 and 32. *(Excerpt from the original report)*  
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-31.pdf>

# TORTURE

## REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

**MANFRED NOWAK**

**United Nations A/HRC/13/39/Add.1 – Date 22 February 2010**

### **ADDENDUM - COMMUNICATIONS TO AND FROM GOVERNMENTS**

#### **SRI LANKA**

**Para** : 233  
**Date** : 07/04/09  
**Type Mandate** : JAL IJL; TOR  
**Allegations transmitted** : Mr. Sunil Shantha.

At 2:30 p.m. on 1 March 2009, three police officers went to Mr. Sunil Shantha's home. When he identified himself, one of the police officers grabbed him by his stomach, while the other two officers grabbed him and forced his hands to his back. He was then assaulted on the face, back and stomach, and dragged along the road to a police jeep, where he was forced to sit on the floor, his legs shackled.

Once they arrived at the Meegahatenna Police Station, the police officers assaulted Mr. Shantha with a pole because he was unable to get out of the jeep. Once inside, Mr. Shantha's hands were tied with a rope, and a pole was put through his arms and legs, and lodged between two tables. This method of hanging is locally known as the Dharma Chakra, or wheel of enlightenment. Mr. Shantha was continuously asked to return stolen goods, allegations which he denied.

For the next two days, Mr. Shantha was left in the same room with his left leg shackled to one of the table legs, and his right hand to another. During this time, he was given neither food nor water, nor was he allowed to go to the bathroom. He also gave a statement to the Sub-Inspector and signed a paper without knowledge of its contents.

On 3 March, he was taken to the Meegahatenna Hospital, where he was examined. The doctor him recommended that he be admitted, but he was taken back to the Meegahatena Police Station. At about 5:30 p.m., he was presented before the Mathugama Magistrate, and threatened by the Sub-Inspector if he mentioned the assault. The Magistrate informed him that there were two charges of theft and one of assault against him.

Mr. Shantha's lawyer informed the Magistrate that he had been assaulted by the police, and he referred him to the Prison Hospital in Kalutara, where he received medical treatment until 11 March. When Mr. Shantha appeared again in court, his legal representative did not appear. She later informed Mr. Shantha's family that she had been threatened by the police. On 13 March, Mr. Shantha was sent home.

On 16 March, a complaint was sent to the chairperson of the National Human Rights Commission, the National Police Commission, the Inspector General of Police, the Attorney General and the Senior Superintendent of the Kalutara Police.

**Para** : 234  
**Date** : 26/05/09  
**Type Mandate** : JUA WGAD; WGED; FRDX; HLTH; IJL; TOR  
**Allegations transmitted** : Dr. Thangamutha Sathiyamoorthy, the regional director of health services in Kilinochchi, Dr. Thurairaja Varatharajah, the regional director of health services in Mullaitivu, and Dr. V. Shanmugarajah, medical superintendent at Mullivaaykkaal field hospital.

Dr. Sathiyamoorthy, Dr. Varatharajah and Dr. Shanmugarajah are Government employed and had been treating the sick and wounded in the conflict zone in North-eastern Sri Lanka until they left the "No Fire Zone" with approximately 5,000 other civilians on 15 May 2009. The Sri Lankan Army detained the three doctors on 16 May 2009, under the broad arrest and detention powers of security forces pursuant to the Prevention of Terrorism Act. The physicians were last seen on the morning of 15 May 2009 at a holding area at Omanthai check point. An official of the Ministry of Health stated on 18 May Government forces handed over the physicians to the police.

Dr. Shanmugarajah and Dr. Sathiyamoorthy are apparently currently held at a detention centre of the Terrorist Investigation Division in Colombo. However, their relatives are not aware of their exact whereabouts and neither has had access to a lawyer. Dr. Varatharajah was seriously injured and is reported to have been airlifted by the Sri Lankan Air Forces from the Omanthai check point to an unknown destination.

While working in the conflict zone, the doctors provided detailed eyewitness reports to the media and the international community from hospitals and makeshift medical centres. Their reports detailed the suffering of ordinary civilians, many of whom died from war-related injuries. Their reports also highlighted continuous shelling of areas with large concentrations of non-combatants.

**Government response:** By letter dated 28/05/09, the Government indicated that Dr. Varatharajah was injured and is now undergoing treatment, and will certainly be well looked after by his colleagues from the Ministry of Health. The Government cannot publicly reveal where he is since his life could still be under threat from LTTE elements. However, the Government would be happy to discuss the issue with the Special Rapporteur in Geneva.

With regard to the other two doctors, they are in custody and are being investigated as to the circumstances under which they made certain statements, under duress, over the last couple of months.

By letter dated 15/07/09, the Government indicated that Dr. Thangamuthu Sathiyamoorthy, Dr. V. Shanmugarajah and Dr. Thurairaja Varatharajah surrendered to the Army when they arrived at Omathai check point on 15 May 2009. Dr. Varatharajah, who was injured at the time of surrender was admitted to the General Hospital on Colombo. He was released on 6 June.

The three doctors were detained under section 19 (1) of the Emergency Regulation on charged of their alleged links with the LTTE organization, disseminating false information to the international media and supplying medicine and medical equipment to the LTTE from Government hospitals. They are now being held in protective custody by the Criminal Investigation Department in Colombo, pending the completion of the investigations. They have been visited by the ICRC and their families on several occasions, and were

given healthcare facilities. At a media briefing on 8 July, all three doctors stated that they were forced by the LTTE to speak to foreign media and provide exaggerated information on civilian casualties. They also said that they were not under duress to attend the media briefing organized by the Media Center for National Security.

By letter dated 03/08/09, the Government indicated that investigations so far have revealed that Dr. Shanmugarajah moved to Mullaitivu and joined the LTTE in 1995. He worked as a doctor at Puthuikuvuruppu Hospital run by the LTTE. During the peace accord in 2002, he completed his medical degree and served as a Government doctor in an LTTE controlled until 2009.

While he was serving at a makeshift hospital in Mullaivaikkal in May, a member of the LTTE Medical Wing informed him that the BBC in London would contact him, and that he should say that shelling by the Government troops continued and that scores of civilians and patients were dying as a result, which he did.

Dr. Sathiyamoorthy was appointed to the Killinochchi Base Hospital in 2000 and was promoted as the acting Medical Superintendent.

Between February and March 2009, when he was at Puthkuduiruppu makeshift hospital, a member of the LTTE Medical Wing informed him that the BBC in London would contact him, and that he should say that there was a severe shortage of drugs and that scores of civilians and patients were dying as a result, which he did.

Dr. Varatharajah was appointed Director of Health Services in Mullaitivu District in December 2008. In early 2009, he was given a check for 5 million Rs. by the leader of the LTTE Transport Wing, to purchase a jeep used by a Tamil National Alliance Member of Parliament. On instructions of the LTTE member, he bought the jeep and used it for his official and private work. At the request of the LTTE Medical Wing, medical equipment and drugs were given to the LTTE from the Government Hospitals in Mullaitivu District. These were then taken to LTTE makeshift hospitals to treat the injured LTTE cadres. BBC correspondents contacted him on several occasions, and he gave them exaggerated casualty figures. He also reported shelling by the Government troops to several other news agencies. On 14 May he sustained injuries due to LTTE shelling. All three doctors had access to healthcare facilities at the expense of the state, and were visited on several occasions by the ICRC and their families. In addition, physical exercises, reading and writing material and draft boards are available. No complaint has been lodged by or on behalf of these doctors.

**Para** : 235  
**Date** : 30/07/09  
**Type Mandate** : AL TOR  
**Allegations transmitted** : Mr. Abesinhage Don Janaka, National Identity Card No. 820656113V.

Mr. Janaka was gathered with two other persons when three police officers came and searched them. The police found a bullet in Mr. Janaka's bag and asked him where he had gotten it. He replied that he had picked it up on the road, but he was arrested on suspicion that he was carrying a gun. At the Police station, Mr. Janaka was forced to lean against the wall in a room inside the police station, where he was reportedly assaulted and kicked by the police officers. He was also assaulted when he was forced to lie down on the floor. Later, he was forced to sign a document which he was not allowed to read. Mr. Janaka sustained injuries which were later treated at the Prison Hospital in Kalutara. He filed a complaint with the National Police Commission and the Senior Superintendent of Police in Kalutara.

**Mr. Ramanayakage Nishantha Perera.** On 5 March 2009, Mr. Perera was called in to the Kamburupitiya Police Station regarding a call he had made the day before to the emergency police service in Colombo. Mr. Perera had reported that when he went to lodge a complaint about a land dispute with his neighbour, officers at the Kamburupitiya station had chased him away. When both parties to the dispute arrived at the Police Station, the Officer in Charge examined the deed of ownership and started to verbally abuse Mr. Perera. He brought a pole from the next room and started to beat Mr. Perera on his head and body. Two other officers kicked him from behind. After the assault, Mr. Kaldera forced him to sign a piece of paper. He then told the officer to take him to the Aadapana Government Hospital in Kamburupitiya. The doctor told the officer that he should be warded, but after speaking to the Officer in Charge by phone, Mr. Perera was taken back to the police station.

At around 3:30 p.m., Mr. Perera was charged with obstructing police duties. Two hours later, he was taken by jeep and produced before the magistrate of Matara. The lawyer who represented Mr. Perera informed the magistrate that he had been assaulted by the police and needed medical treatment. The magistrate ordered

that Mr. Perera be given medical treatment and that a judicial medical report be obtained. However, he was taken instead to Matara Prison. After being admitted at the gate, Mr. Perera was beaten by the prison guards. That night, he was put in an overcrowded ward known as “dal wattuwa” (mesh ward), and was not given any food. The next morning, he was taken to another room and stripped, under the pretext of prison procedure. He was later taken to the prison hospital where he was forced to sleep on the floor because there were no available beds. Three days later, he was examined by the prison doctor. Although the swelling across his body had diminished, the doctor recommended that he be taken immediately to the Matara Hospital for intensive treatment. On 14 March, he was discharged and taken back to Matara Prison, where he was denied the medicine prescribed at the hospital.

On 4 April, Mr. Perera was released on bail. On 8 April, he submitted written complaints to the National Human Rights Commission, National Police Commission, Inspector General of Police and Senior Superintendent of Police in Matara.

**Mr. Loku Naramgodage Shantha**, aged 47. On 2 March, Mr. Shantha came home from work, when a neighbour assaulted him and informed a man in civilian clothes that Mr. Shantha had stolen some gold. The man identified himself as a Sub Inspector and arrested Mr. Shantha. The Sub Inspector allegedly took a pole and beat him on his chest and spine, while he raised Mr. Shantha’s handcuffed hands over his head. At 7:00 p.m., the Sub Inspector took Mr. Shantha to the Meegahatenna Police Station. His hands were handcuffed to the grill of a door, and he was kept in that position until the next day. When he was released, he vomited blood and fainted. Mr. Shantha regained consciousness at the Nagoda Hospital on 4 March, and was released on 9 March.

When the Magistrate visited Mr. Shantha in the hospital, he inquired with the doctor about the alleged assault. The Sub Inspector reportedly said he regretted what he had done and tried to settle the matter by instructing another officer to buy some clothes for Mr. Shantha. On 11 March, Mr. Shantha was released on bail, but he was not informed of the charges against him.

**Mr. Chaminda Sampath Kumara Wickramapathirana**. On 20 May, at approximately 11:00 a.m., Mr. Wickramapathirana was returning home when he noticed a police jeep with five men inside. As he passed the jeep, a constable asked about the contents of his bag. Two other officers repeated the question, and when he answered that he was carrying poultry, they told him that he was the man they were looking for. The officers then took him by the neck and entered his home.

After searching his room, they found a pawn receipt for some jewelry. Mr. Wickramapathirana gave them another receipt and explained that they had been given to him by his neighbour for safekeeping. Mr. Wickramapathirana was then taken to the police station for questioning. Once at the station, the officers crowded around him and forced him to strip, kneel down and hold his hands up. One of the officers then put ten kochchi chillies in his mouth and forced him to eat them. He was then told to sit on the floor; his hands were tied behind him with a trip of cloth and his ankles were bound. Constable Manoj forced his head back and squeezed Kochchi juice into Mr. Wickramapathirana’s eyes and nostrils. Another officer proceeded to kick him on his chest, while another stood on his knees. Whenever he screamed, he was slapped. He was also hit with a rubber hose on his head. A Sub Inspector threatened that if he did not tell the truth, he would be charged for possession of firearms, which does not allow for bail. He was then told to dress and was taken to a cell. At approximately 6:00 p.m., Mr. Wickramapathirana’s brother was able to see him. The next morning, he was taken to several pawn shops in the Piliyandala area, along with two other men. The officers showed the three men’s identification cards and asked if there were any goods pawned under such identities. They found nothing for Mr. Wickramapathirana, but he was again taken back to a cell.

The following day, Mr. Wickramapathirana was forced to strip and sit on the floor with his knees bent and his hands around his knees so that he could be hung upside down with a thick pole, a method of torture commonly known as “dharma chakra” (wheel of enlightenment). Mr. Wickramapathirana was swung around the pole and asked to tell the truth. A Sub Inspector then squeezed some kochchi juice into his eyes and nose. Whenever he screamed, he was slapped in the face, hit with a rubber hose, kicked in the neck and hit on the soles of his feet. Mr. Wickramapathirana was kept in a cell until 27 May, when a Sub Inspector told him to sign a piece of paper, and was taken to court. Although no statement was taken, he was charged for possession of pawn receipts not belonging to him. That same day, Mr. Wickramapathirana admitted himself to the Panadura Hospital. Even though the hospital police visited him to take a statement, they refused to do it when they realized the assault had been perpetrated by the police. On 29 May, a Judicial Medical Officer examined Mr. Wickramapathirana.

On 5 June, Mr. Wickramapathirana informed the National Human Rights Commission, National Police Commission, Inspector General of the Police and Senior Superintendent of the Police in Panadura.

**Para** : 236  
**Date** : 14/08/09  
**Type Mandate** : JUA WGAD; TOR  
**Allegations transmitted** : Mr. Gunasundaram Jayasundaram (See A/HRC/10/44/Add.4 para. 197).

On 11 August 2009, Mr. Jayasundaram was moved from Colombo to Boosa without any family member having been informed about the transfer. His family learned about the transfer through an anonymous caller. When his sister-in-law visited Mr. Jayasundaram on 13 August, she found him in tears with bruises around the face and eye, as he had been allegedly beaten on his head by officers after he was informed about his transfer and asked to speak to the Officer-in-charge or the Director of the Terrorist Investigation Division, under whose authority he continues to be detained without charge since 4 September 2007.

Mr. Jayasundaram was allowed to receive home cooked meals twice per week at the detention centre in Colombo which enabled him to maintain a minimum degree of health. The prison guards refused to allow his sister-in-law to provide him with food and reading materials on 13 August. Mr. Jayasundaram requires medical attention.

**Para** : 237  
**Date** : 27/08/09  
**Type Mandate** : JUA WGAD; HLTH; HRD; TOR  
**Allegations transmitted** : Mr. Charles Raveendran Navaratnam, aged 45, employed by the United Nations High Commissioner for Refugees and Mr. Kanthasamy Sounthararajan, aged 31, employed by the United Nations Office for Project Services.

On 11 June 2009, Mr. Navaratnam was questioned at his home by a person addressed as the "OIC" and several other persons in civilian clothes. He was informed that he had to be taken away for an inquiry, and was taken to a dark blue Pajero Jeep (Registration No. 61-7068), where he was immediately handcuffed. He was then blindfolded and asked to indicate where the "goods" were. He denied any knowledge about this, following which he was beaten and stricken with an iron rod on his head. He was threatened with being killed if he did not reveal "the truth". He was then taken to Vepankulam where he was beaten in the stomach, neck and face including the mouth, ears and jaw, as well as on his legs with a wooden baton. He was taken to a house where other persons were being held. He spent the night handcuffed and with his legs chained.

On 12 June 2009, he was again interrogated about the "goods" and asked whether he knew certain individuals. He denied any knowledge and was beaten again. He was also taken to the Menik Farm and Technical College Internally Displaced Persons Camp, where he was ordered to identify LTTE suspects, which he failed to do. He spent the night at the Vavuniya Police Station, where he was forced to sleep with his legs chained. On 13 June 2009, at about 8:30 a.m., he was taken away in the same jeep and stopped at the Petrol Station close to Vavuniya Kachcheri. There, the persons in the jeep got out and forcibly took Mr. Kanthasamy Sounthararaja, indicating that he was being taken for questioning and would be released after an inquiry. He was questioned about some suspected persons and was beaten when he denied any information. Both men were then taken to Temple Road where international nongovernmental organizations and United Nations Agencies have their offices. They were both directed to tell whether staff in these organizations had any connections with terrorists. They denied any knowledge and were threatened with death. In the afternoon, they were taken in the direction of Vavuniya Mannar Road and stopped at a cemetery in Bharathipuram. Mr. Sounthararaja was taken out, beaten and threatened to be shot at with a pistol. However, when by-standers arrived on the nearby road he was forced back into the jeep. Later that day, both men were taken to Colombo and were held in a building behind Borella Police Station. There they were subjected to prolonged interrogations by several police officers and beatings and were later transferred back to Borella Police Station.

On 25 June 2009, they were examined by officers of the International Committee of the Red Cross. Later, they were permitted visits by relatives, staff of their employing agency and their lawyers. The next day, they were forced to sign a statement in Sinhala language which they did not understand. They are still being held at the Borella Police Station, and it is believed that they were arrested for "actively engaging in LTTE activities". A fundamental rights application was filed in the Supreme Court for both men. The Supreme Court gave them leave to proceed and instructed the Judicial Medical Officer (JMO) to examine the detainees and submit a report to the court. They were examined by the JMO on 26 June. On 23 July, the police took them back to the JMO and requested him to write a new report based on documentation provided by the police. However, the JMO refused. As a result of the beatings, both men suffer from back pain, partial loss of hearing and severe headaches.

**Para** : 238  
**Date** : 6/10/09  
**Type Mandate** : AL TOR  
**Allegations transmitted** : Mr. Upul Palitha Mawalage, aged 41 and Rankoth Pedige Wikrama, aged 52.

On 7 May 2009, Mr. Upul Palitha Mawalage, a driver, was carrying two passengers who were found to be carrying drugs in a routine check. All three were taken to the Bluemendhal Police Station, and the passengers were released after paying a bribe. In an alleged attempt to extract a confession, Mr. Mawalage was stripped naked, tied to a chair and beaten with a stick. Case B6425 was filed at the Maligakanda Magistrate's court, indicating that Mr. Mawalage was carrying drugs in his pocket. He is currently in remand at Welikada prison, where he has tried to commit suicide twice. In a separate case, on 14 July 2009, Mr. Rankoth Pedige Wikrama Nimalsiri was arrested by two police officers on his way to work. He was handcuffed, beaten and thrown into the police vehicle, where ground chili with water was squeezed into his eyes, nose and ears. Mr. Wikrama was then taken to a forest where he was strung by his thumbs to a tree and beaten. He was later taken to a building behind the Nikaweratiya Police Station, where he was again beaten by seven officers. He was then taken to the police station. The information provided stated that the Officer-in-charge of the police station indicated that he had been beaten in order to "find out the truth". On 25 July, Mr. Wikrama was taken to the General Hospital in Colombo after his case was covered by a local television station.

**Para** : 239  
**Date** : 8/10/09  
**Type Mandate** : JUA FRDX ; TOR  
**Allegations transmitted** : Mr. Mahanuwara Rajawasala Ratnayaka Mahanilamelage Isiwara Senaka Ekanayake.

Mr. Ekanayake, a journalist, was arrested in 2008 while trying to investigate a case implicating a senior police officer. He was severely beaten, tortured and robbed by the Kalpitiya police. Since his release on bail, Mr. Senaka Ekanayake has been constantly harassed by the police. In late 2008, he was once again arrested on alleged false charges by the Galkiriyagama Police. He was kept in remand in Anurandhapura Prison and released in September 2009. As a result of his torture in custody, which left him with numerous injuries, Mr. Senaka Ekanayake has been seeking redress from the authorities. He submitted complaints to the National Human Rights Commission (complaint HRD341/08, and a second letter 18/09/09), the National Police Commission (24/01/08 and 29/05/09) and the President of Sri Lanka (29/04/09). Since lodging such complaints, he has received death threats by phone. Men in a white van have allegedly gone to his house a number of times, late at night, to ask for him. He has gone into hiding.

**Para** : 240  
**Date** : 12/11/09  
**Type Mandate** : JUA TOR  
**Allegations transmitted** : Mr. Senaka Ekanaya.

On 24 March 2007, Mr. Senaka Ekanaya, a journalist by profession, was arrested by the officer in charge of the Kalpitiya Police Station. At the police station, he was handcuffed to a steel bar and beaten with an S-Lon (PVC) pipe. He was also verbally abused and threatened by the police. He was afterwards put in a cell, where he was kicked by police officers. Several hours later, police officers came with a type of liquor locally known as kassipu, poured it on him and forced him to drink it. The officers then proceeded to remove his clothes, exhibit his nudity to all officers and take photographs of him, indicating that the photographs would be published in the newspaper. After that, he was beaten again with the S-Lon pipe and sprayed with a water hose. He was given back his underwear, but he did not receive his trousers until the next morning.

On 25 March, Police Officer Evin forced Mr. Ekanaya to sign some documents without reading them. When he refused, he was threatened with a pistol pointed at his head. Subsequently, Mr. Ekanaya was presented before a Medical Officer who refused to examine him after seeing him from a distance. He was then taken to the Acting Magistrate Attorney at Law's home, where he was not allowed to speak. Later that day, he was taken to the Puttalam prison. The next day, he was transferred to the Negambo prison, where he was given medical assistance.

On 3 April 2007, Mr. Ekanaya was presented before the Acting Magistrate of the Puttalam District, where he stated his experience, but did not have the assistance of a lawyer. On 5 November, he was granted bail. Mr. Ekanaya's case is still on-going, and he has to report to the Kalpitiya Police at least once a month. Since his release, he has been receiving death threats from the officer in charge of the Kalpitiya Police.

Mr. Ekanaya filed complaints with the National Human Rights Commission, with the National Police Commission and the Inspector General of Police. No proper investigation regarding his incident has been conducted.

**Para** : 241  
**Date** : 2/12/09  
**Type Mandate** : UA TOR  
**Allegations transmitted** : Mr. Christopher Pakiam.

On 16 September 2009, Mr. Christopher Pakiam was admitted to the Bogambara Kandy Remand Prison infirmary. Two days later, he was admitted to Ward No. 28 of the Kandy Hospital. He has been unconscious for long periods of time and is now reportedly paralyzed from the waist down. He was recently transferred to the Digana Hospital, where he is tied to his bed and under constant guard. His family has not been able to speak with him privately. Consequently, the reasons why his condition deteriorated are not known. There is concern however that his condition may be due to torture or ill-treatment. Bail has been refused by the Kandy High Court.

242. Followup to earlier cases **Mr. Seynool Miswar, Abhu Ubeyda, Mr. Siyaguna Kosgodage Anton Sugath**

**Nishantha Fernando, Mr. Lalith Rajapakse and Gerald Mervin Perera** (A/HRC/10/44/Add.4, para. 200)

**Government response:** By letter dated 26 January 2009, the Government indicated that Mr. Seynool Abdeen Seynool Miswar was detained at Negombo Prison and was admitted to the Negombo Base Hospital on 3 July 2008 after he became ill. He died at the hospital. The Magistrate of the Negombo Court issued a verdict stating that the cause of death had been assault, and ordered the Police to conduct an investigation. As a result of said investigation, the police arrested a prison jailor and a prison guard. Criminal proceedings have started against these two persons, and a hearing was scheduled to take place on 1 December 2008. Regarding the allegations of Abu Ubeyda, no complaint to such effect was received by the police.

Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando was killed by unidentified gunmen on 20 September 2008. Police promptly visited the scene and initiated investigations, which have not led to the identification of the perpetrators. The deceased had been a suspect in several criminal cases, and various public complaints had also been filed against him. According to the Police, whenever such a complaint was made and he found the investigations unfavourable, he would complain against the investigators.

On 12 November 2007, the police signalled a motorcyclist who was not wearing a helmet, but the cyclist disregarded the police signal. He was later located, and when the Sub-Inspector of Police (SI) questioned him, he abused and assaulted him. A police party arrived at the scene and arrested the subject, his wife and their daughter. The SI was treated at the Negombo Base Hospital, and the subject and his wife were subjected to medical examinations. The three suspects were later produced in Court and released on bail. They filed complaints against the police before the Human Rights Commission and the National Child Protection Authority. A fundamental rights application was filed at the Supreme Court. The case is yet under hearing and there is no evidence to suggest the involvement of any police officer in the killing.

Mr. Lalith Rajapakse was the main witness in a torture case against a sub-inspector (SI) of the police. However, the SI was exonerated and discharged from the proceedings by the High Court of Negombo. On 24 May 2008, Mr. Rajapakse was accused of robbery. He was been evading the Police since.

Mr. Gerald Mervin Perera was a victim of torture. At the conclusion of the investigation on his case, six police officers were prosecuted by the High Court of Negombo. On 2 April 2008, the charges were dropped due to inadequate evidence to sustain the charges. However, as a result of a further investigation, an SI was indicted, and his hearing was fixed for 6 February 2009.

[HTTP://WWW2.OHCHR.ORG/ENGLISH/BODIES/HRCOUNCIL/DOCS/13SESSION/A.HRC.13.39.ADD.1 EFS.PDF](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.1_EFS.pdf)



# FREEDOM OF RELIGION OR BELIEF

## REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF

ASMA JAHANGIR

A/HRC/13/40/Add.1 - 16 February 2010

SRI LANKA

### 1. Communication sent on 20 November 2009 as a follow-up to the Special Rapporteur's country visit to Sri Lanka in May 2005

216. In a follow-up letter of 20 November 2009, the Special Rapporteur reiterated her appreciation for the cooperation of the Government in relation to her visit to Sri Lanka from 2 to 12 May 2005. She emphasized that follow-up to country reports was of central importance to the cooperation and dialogue between mandate holders and States. Referring to her previous report to the Human Rights Council (A/HRC/10/8, para. 17), the Special Rapporteur indicated that the aim of such follow-up letters after country visits was to receive updated information about the implementation of the recommendations at the national level.

217. For ease of reference, the Special Rapporteur also transmitted a table containing the conclusions and recommendations in the related mission report (E/CN.4/2006/5/Add.3) as well as follow-up information from relevant United Nations documents, including from the Human Rights Council's Universal Periodic Review, Special Procedures and Treaty Bodies. The Special Rapporteur asked the Government to provide her with updated information on the consideration given to these recommendations, the steps taken to implement them, and any constraints which may prevent their implementation. This table, including any information provided by the Government, is available online on the Special Rapporteur's website ([www2.ohchr.org/english/issues/religion/visits.htm](http://www2.ohchr.org/english/issues/religion/visits.htm)). *(Excerpt from the original report)*  
[http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-40-Add1\\_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-40-Add1_EFS.pdf)

## COUNTERING TERRORISM

### REPORT OF THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM,

MARTIN SCHEININ

A/HRC/13/37/Add.1 - 18 February 2010

ADDENDUM - COMMUNICATIONS TO AND FROM GOVERNMENTS

SRI LANKA

#### A. Communication sent to the Government

82. On 9 October 2009, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders, sent a communication to the Government of Sri Lanka regarding Mr. **J.S. Tissainayagam**, editor in chief of the North Eastern Monthly magazine.

According to new information received:

On 25 August 2009, Mr. Tissainayagam was charged with three counts under the Prevention and Terrorism Act (PTA) and the Emergency Regulations of 2006 in relation to his criticism of the Sri Lankan Army's treatment of civilians in two articles published in the North Eastern Monthly magazine in June 2006.

On 31 August 2009, Mr. Tissainayagam was found guilty by a Colombo High Court judge and sentenced to 20 years of “rigorous imprisonment” under the PTA. Mr. Tissainayagam was found guilty on two counts of intending to “cause communal disharmony” (PTA, section 2), with a mandatory minimum sentence of five years each, and one count of receipt of monies “in the furtherance of any act of terrorism” (Emergency Regulations, regulation 6), with a mandatory minimum sentence of 10 years.

The judge in this case is allegedly the sister of the officer who signed the indictment against Mr. Tissainayagam. One of the main pieces of evidence used against Mr. Tissainayagam was a handwritten confession, which had been submitted to court by the prosecution. The defence counsel challenged the veracity of Tissainayagam’s confession on the basis of three accounts: first, Mr. Tissainayagam was threatened and mentally tortured for the police to obtain that statement; second, the confession was not given to an Assistant Superintendent of Police as required by law, and third, the statement reportedly mirrored word for word a statement written on 7 March 2009 by the officer who had been present at the time of Mr Tissainayagam’s detention and who has allegedly been involved in the torture of and threats against Mr. Tissainayagam. The judge denied Mr. Tissainayagam’s right to appeal against the admissibility of this forced confession into evidence.

83. The mandate holders voiced concern that the sentencing of Mr. Tissainayagam might be directly related to his work in defense of human rights and constitute an attempt to silence peaceful and legitimate criticisms of the Government. They also were concerned at the definitions of “terrorism” or “terrorist act” in the PTA being vaguely worded or having an overly broad application, and therefore being at variance with Article 15 of the International Covenant on Civil and Political Rights (ICCPR), which enshrines the principle of legality in criminal law and implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct. Vague or broad definitions of terrorism have a negative impact on other human rights protected under the ICCPR such as Article 19 on freedom of expression. The definitions with the PTA should not be defined so broadly as to negatively impact the peaceful methods used by civil society, including journalists, political and social activists.

84. They recalled General Assembly resolution 57/219 of 18 December 2002 which affirmed that States must ensure that any measure taken to combat terrorism comply with their obligations under international law. Finally, reference is made to Security Council resolution 1456 (2003), paragraph 6, which reiterates that “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.”

85. They further reiterated the principle enunciated in Resolution 2005/38 of the Commission on Human Rights, which calls on States to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, to refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law and to take utmost precaution in ensuring that counter-terrorism is not arbitrarily used as a pretext to restrict the right to freedom of opinion and expression in ways that are contrary to their obligations under international law.

86. In connection to the allegations of admission of forced evidence and the reported conflict of interests of the judge, they pointed to art. 14, para. 1 of the ICCPR, which requires that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”. Fairness of judicial proceedings is further established in the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, in particular its principle 6.87. In relation to the submission of the allegedly coerced confession by the prosecutor to the court, the mandate holders referred to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 16.

88. Furthermore, the mandate holders recalled a number of provisions of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, namely article 6, points b) and c), article 12, paras 2 and 3.

89. They requested clarification on how the provisions of the PTA and the Emergency Regulations are in compliance with articles 15 and 19 of the International Covenant on Civil and Political Rights, on the legal

basis upon which Mr. Tissanayagam was convicted and sentenced to 20 years of hard labour and on the safeguards in place to ensure judicial impartiality and fairness in judicial proceedings, in particular regarding the alleged conflict of interest and admission of coerced evidence.

## **B. REPLY FROM THE GOVERNMENT**

90. By letter dated 15 July 2009, the Sri Lankan Government responded to a communication sent on 14 March 2008, parts of which referred to the same case, indicating that Mr. Tissanayagam was indicted by the Attorney General subsequent to an investigation conducted by the Criminal Investigation Department. At the outset of the trial, the Courts conducted a "Voire Dire" inquiry to decide on the voluntariness of the confession given by Mr. Tissanayagam to the Police. After the inquiry, the Courts ruled that the confession was voluntary. The criminal trial in the High Court is proceeding. Mr. Tissanayagam has also filed a fundamental rights application in the Supreme Court alleging violations of his fundamental rights arising from his arrest and detention. The Counsel for Mr. Tissanayagam has initially agreed to limit the hearing to a period of 10 days after the detention order had lapsed. After the hearing, the Counsel for both the petitioner and respondent, the Courts ordered that the period of detention was not illegal and not in violation of the petitioner's fundamental rights. At this state, the Counsel for the petitioner had indicated to the Courts that he wishes to further canvas the arrest and detention of the petitioner. The matter is pending in the Supreme Court.

## **C. OBSERVATIONS**

91. The Working Group on Arbitrary Detention also adopted an opinion on the case of Mr. Tissanayagam on 12 September 2008, which declared his detention to be arbitrary (o [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add1\\_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add1_EFS.pdf)pinion no.30/2008). (*Excerpt from the original report*)  
[http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add1\\_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add1_EFS.pdf)

# **JOINTSTUDY ON GLOBAL PRACTICES IN RELATION TO SECRET DETENTION IN THE CONTEXT OF COUNTERING TERRORISM**

**SPECIAL RAPPORTEURS ON: HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM – MARTIN SCHEININ; TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, MANFRED NOWAK;**

**WORKING GROUPS ON: ARBITRARY DETENTION REPRESENTED BY ITS VICE-CHAIR – SHAHEEN SARDAR ALI; ENFORCED OR INVOLUNTARY DISAPPEARANCES REPRESENTED BY ITS CHAIR, JEREMY SARKIN**

**United Nations A/HRC/13/42 - 19 February 2010**

## **Asia**

167. With regard to Asia, the experts gathered information about secret detention in China, India, the Islamic Republic of Iran, Nepal, Pakistan, the Philippines and Sri Lanka, where anti-terrorist rhetoric is invoked to justify detention.

### **7. Sri Lanka**

197. United Nations human rights mechanisms and non-governmental organizations have expressed serious concerns with regard to abductions by police and military personnel, detention at undisclosed locations, and enforced disappearances. Concerning the latter phenomenon, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated in the report on his visit in December 2005 to Sri Lanka that he was very disturbed to receive reports that appeared to indicate a re-emergence of the pattern of enforced and involuntary disappearances that had so wracked Sri Lanka in the past.<sup>388</sup> He specifically referred to complaints of Tamil youths being picked up by white vans, allegedly with the involvement of security forces. In its 2008 report, the Working Group on Enforced and Involuntary Disappearances remarked that it remained gravely concerned at the increase in reported cases of enforced disappearances in the country.<sup>389</sup> Specific cases of Tamil men, possibly suspected of links to the Liberation Tigers of Tamil Eelam (LTTE), reportedly taken to undisclosed places of detention by security forces in a white van without a number plate and since then disappeared have been brought to the attention of the Government by special procedures and non-governmental organizations, without receiving a response.<sup>390</sup> The Tamileela Makkal Viduthalai Pulikal-Karuna group, a break-away faction of the LTTE supported by the Government, was also reported to be responsible for abductions of LTTE representatives and civilians in the area around Trincomalee.<sup>391</sup>

198. In its concluding observations on Sri Lanka, the Human Rights Committee expressed its regret regarding impunity for abductions and secret detentions. The Committee stated that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, had been inconclusive owing to a lack of satisfactory evidence and the unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers had been found guilty and punished.<sup>392</sup> The Committee also noted with concern reports that victims of human rights violations felt intimidated about bringing complaints or had been subjected to intimidation and/or threats, which discouraged them from pursuing appropriate avenues to obtain an effective remedy.

199. While the conduct of the security forces in “white van” abduction cases is most likely unlawful and criminal also under the law of Sri Lanka, the Special Rapporteur on torture<sup>393</sup> and the International Commission of Jurists have drawn attention to the far-reaching powers of arrest and detention that anti-terrorism laws and ordinances bestow upon the Sri Lankan security forces.<sup>394</sup> Under Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005, persons “acting in any manner prejudicial to the national security or the maintenance of public order” may be arrested and held in detention for up to one year, without access to judicial review by an independent body. Persons may be similarly detained for up to 18 months under the Prevention of Terrorism (Temporary Provisions) Act of 1979 or indefinitely, pending trial. Persons can be held in irregular and unpublicized places of detention, outside of a regular police station, recognized detention centre, penal institution or prison. Detainees may be moved from place to place during interrogation and denied prompt access to a lawyer, family members or authority competent to challenge the legitimacy of detention.<sup>395</sup> Section 15(A)(1) of the act, for instance, enables the Secretary to the Minister for Defence to order that persons held on remand should be “kept in the custody of any authority, in such place and subject to such conditions as may be determined by him”.<sup>414</sup> As a result of his visit to Sri Lanka in November 2007, the Special Rapporteur on torture concluded that torture had become a routine practice in the context of counter-terrorism operations, both by the police and the armed forces.<sup>396</sup>

200. Responding to questions raised during the universal periodic review process in May 2008, the Attorney General of Sri Lanka stated that, notwithstanding the serious nature of the security situation prevailing in Sri Lanka resulting from a reign of terror unleashed by the most ruthless terrorist organization in the world, the LTTE, it was not the policy of the State to adopt and enforce extraordinary measures outside the framework of the law. He stressed that the Government steadfastly insisted that all agents of the State should necessarily carry out arrests, detentions and investigations, including interrogations, in accordance with the due process of the law. With regard to allegations of a pattern of disappearances, the Government was studying credible reports to identify the magnitude of the problem and the possible identities of perpetrators. The Attorney General assured the Human Rights Council that it was not the policy of the State to illegally and surreptitiously arrest persons and detain them in undisclosed locations.<sup>397</sup>

201. Since the Government announced its victory over the LTTE in May 2009, reports have drawn attention to the detention of more than 10,000 persons suspected of having been involved with the LTTE. Human Rights Watch reported that it documented several cases in which individuals had been taken into custody without regard for the protection provided under Sri Lankan law. In many cases, the authorities had not informed family members about the whereabouts of the detained, leaving them in secret, incommunicado detention or possible enforced disappearance.<sup>398</sup> ICRC was reportedly barred from the main detention camps for displaced persons.<sup>420</sup> Amnesty International expressed the same concern about an estimated 10,000 to 12,000 individuals suspected of ties to the LTTE, who are or have been detained incommunicado in irregular detention facilities operated by the Sri Lankan security forces and affiliated paramilitary groups since May 2009.<sup>399</sup> ***(Excerpt from the original report)***

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<sup>388</sup> E/CN.4/2006/53/Add.5, para. 68.

<sup>389</sup> A/HRC/10/9, para. 366.

<sup>390</sup> See for instance A/HRC/10/12/Add.1, para. 2349, A/HRC/10/44/Add. 4, para. 196 and A/HRC/11/4/Add.1, paras. 2274-2276. See also the case reported by the Asian Human Rights Commission at the address [www.ahrchk.net/ua/mainfile.php/2008/2781/](http://www.ahrchk.net/ua/mainfile.php/2008/2781/).

<sup>391</sup> A/HRC/7/3/Add.6, paras. 12 and 16.

<sup>392</sup> CCPR/CO/79/LKA, para. 9.

<sup>393</sup> A/HRC/7/3/Add.6, paras. 41-48.

<sup>394</sup> International Commission of Jurists, Briefing Paper: Sri Lanka's Emergency Laws, March 2009, available from [www.icj.org//IMG/SriLanka-BriefingPaper-Mar09-FINAL.pdf](http://www.icj.org//IMG/SriLanka-BriefingPaper-Mar09-FINAL.pdf).

<sup>395</sup> *Ibid.*, pp. 17-18.

<sup>396</sup> A/HRC/7/3/Add.6, para. 70

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>

# EXTRAJUDICIAL, SUMMARY AND ARBITRARY EXECUTION

## UN EXPERT CONCLUDES THAT SRI LANKAN VIDEO IS AUTHENTIC, CALLS FOR AN INDEPENDENT WAR CRIMES INVESTIGATION

**UN News & Media Centre, 7 January 2010** - Reports by three independent experts strongly point to the authenticity of a videotape released by Channel 4 in Britain which appears to show the summary execution of bound, blindfolded, and naked Tamils by Sri Lankan soldiers. This was announced today by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, on the basis of detailed analyses conducted by recognized experts in forensic pathology, forensic video analysis, and firearm evidence.

Mr. Alston commissioned the three reports following the publication of four opinions by Sri Lankan experts, all of which concluded that the video was a fake. The Government of Sri Lanka informed the United Nations Human Rights Council that it would therefore not be undertaking any investigation of the allegations made. "Senior Government officials called upon me to apologize and to withdraw the allegations", said Mr. Alston. "They also criticized me for not having undertaken my own technical analysis. In response to that criticism and to what seemed to me the patent inadequacies of the reports commissioned by the Government (two of which were prepared by officials of the Sri Lankan Army), I requested highly qualified and totally independent experts to undertake evaluations."

Mr. Alston released the full text of the expert opinions in a "Technical Note" made public in New York today. "Together, the reports by these experts strongly suggest that the video is authentic", Mr. Alston stated.

"Given these conclusions, and in light of the persistent flow of other allegations of extrajudicial executions by both sides during the closing phases of the war against the LTTE (Liberation Tigers of Tamil Eelam), I call for the establishment of an independent inquiry to carry out an impartial investigation into war crimes and other grave violations of international humanitarian and human rights law allegedly committed in Sri Lanka."

Mr. Alston summarized the key findings of the experts:

Peter Diaczuk, an expert in firearms evidence, concluded that the recoil, movement of the weapon and the shooter, and the gases expelled from the muzzle in both apparent shootings were consistent with firing live ammunition, and not with shooting blank cartridges.

Daniel Spitz, a prominent forensic pathologist, found that the footage appeared authentic, especially with respect to the two individuals who are shown being shot in the head at close range. He found that the body reaction, movement, and blood evidence was entirely consistent with what would be expected in such shootings.

Jeff Spivack, an expert in forensic video analysis, found no evidence of breaks in continuity in the video, no additional video layers, and no evidence of image manipulation.

Mr. Alston added that the independent experts' analyses also systematically rebutted most of the arguments relied upon by Sri Lanka's experts in support of their contention that the video was faked. He gave the following examples:

(a) A Sri Lankan expert stated that there was no recoil or movement of the weapon discharged. However, Mr. Spivack and Mr. Diaczuk described the recoil visible on the video, and the way in which the movement was consistent with firing live ammunition;

(b) A Sri Lankan expert stated that the lack of audio synchronization with the video indicated manipulation. However, Mr. Spivack stated that the video/audio synchronization in the video was well within acceptable limits, and that audio can be ahead or behind video, subject to various variables;

(c) A Sri Lankan expert stated that the movement of the second victim after being shot was not consistent with the normal expected reaction. However, Mr. Spitz stated that the movement was entirely consistent with the manner in which the individual was apparently shot;

(d) A Sri Lankan expert stated that while wind could be heard on the audio, it was not evident in the video. Mr. Spivack however described multiple places in the video where there is clear evidence of wind;

(e) Sri Lanka's experts argued that the footage was likely to have been recorded on a digital camcorder, and not a mobile phone. Mr. Spivack concluded that the metadata he retrieved from the video was entirely consistent with multimedia files produced by mobile phones with video recording capability, and that it would have been very difficult to alter the metadata.

There are a small number of characteristics of the video which the experts were unable to explain. These included the movement of certain victims in the video, 17 frames at the end of the video, and the date of 17 July 2009 encoded in the video. Each of these characteristics can, however, be explained in a manner entirely consistent with the conclusion that the videotape appears to be authentic.

In sum, while there are some unexplained elements in the video, there are strong indications of its authenticity. In addition, most of the arguments relied upon by the Government of Sri Lanka to impugn the video have been shown to be flawed.

Mr. Philip Alston was appointed Special Rapporteur in 2004 and reports to the United Nations Human Rights Council and the General Assembly. The United Nations Commission on Human Rights first decided to appoint a Special Rapporteur to examine questions relevant to summary or arbitrary executions in 1982. Mr. Alston is Professor of Law and Faculty Director of the Center for Human Rights and Global Justice at New York University School of Law.

**Full texts of technical note & its appendix containing independent experts' analyses are available at:**  
<http://www2.ohchr.org/english/issues/executions/index.htm>.

[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/805B89A7085A2DEAC12576A4005A8669?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/805B89A7085A2DEAC12576A4005A8669?OpenDocument)

## **PHILIP ALSTON SEEKS CLARIFICATION FROM SRI LANKAN GOVERNMENT ON POSSIBLE WAR CRIMES BY GOTAPAYA RAJAPAKSA**

Full text of the letter sent by UN Special Rapporteur on extrajudicial, summary and arbitrary execution to :

***H. E. Mrs Ksuenuka Senewiratne  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of Sri Lanka  
to the United Nations office at Geneva***

18 December 2009

***Excellency,***

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 8.3.

I write to your Excellency's Government with regard to the circumstances of the death of three senior representatives of the Liberation Tigers of Tamil Eelam (LTTE), Mr. Balasingham Nadeshan, Mr. Seevaratnam Pulidevan and Mr. Ramesh, as well as of members of their families, in the night of 17 to 18 May 2009.

According to information I have received:

On 17 May 2009, the day before your Excellency's Government announced that its forces had completely defeated the LTTE. Messrs, Nadeshan, Pulidevan and Ramesh were trapped with other senior cadres of the LTTE in a small area north of Vellamullivaikkal. Through intermediaries they sought to establish contact with your Excellency's Government to inquire how they could surrender to the Sri Lanka Army (SLA). The reply, coming from the Secretary of Defence in your Excellency's Government and from a Member of Parliament who is at the same time a senior adviser to the President, and conveyed through the intermediaries, was that they should walk towards the positions of the SLA in a way that made their intentions clear and holding a white cloth. The Commander of the SLA 58th Brigade, the unit on the front line with the last LTTE position, however, received a telephone call from the Secretary of Defence instructing him to order his forces to shoot

those surrendering. When Messrs. Nadeshan, Pulidevan and Ramesh walked towards the SLA positions carrying white cloths in the first hours of 18 May 2009, soldiers opened fire on them and killed them. An unspecified number of family members of the three men were killed as well.

These allegations were made by the Commander of the Sri Lanka Army at the time of the events and subsequent Chief of Defence Staff (now retired) General Gardihewa Sarath Chandralal Fonseka, in an interview to the newspaper The Sunday Leader. The accounts of journalists embedded with the SLA 58th Brigade confirm some of the alleged circumstances of the death of Messrs. Nadeshan, Pulidevan and Ramesh and their families.

While I do not wish to prejudge the accuracy of these reports, I would like to refer your Excellency's Government to fundamental legal rules applicable to all armed conflicts under international humanitarian law and human rights law.

Common Article 5 (applicable to armed conflict not of an international character) of the Geneva Conventions of 1949, to which your Excellency's Government is a party, dictates that "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely [...]". To this end the following acts are and shall remain prohibited at anytime and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds".

Similarly, an authoritative study of customary international humanitarian law finds that attacking and killing persons who are recognized as hors de combat is prohibited. Persons hors de combat include anyone who clearly expresses an intention to surrender, provided he or she abstains from any hostile act and does not attempt to escape (Rule 47 Of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross).

It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on the death of Messrs. Nadeshan, Pulidevan and Ramesh, as well as of the members of their families, I would be grateful for the cooperation and observations of your Excellency's Government. In particular in relation to the following questions:

1. Are the allegations summarized above accurate, If not so, please share the information and documents proving their inaccuracy.
2. What information does your Excellency's Government have on the family members of Messrs. Nadeshan, Pulidevan and Ramesh allegedly killed on 18 May 2009.
3. Please refer to the results of my military, police, judicial and other inquiry or investigation carried out in relation to the allegations summarized above.

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration. Please accept, Excellency, the assurances of my highest consideration.

**Philip Alston**

*Special Rapporteur on extrajudicial, summary or arbitrary executions*

## **SRI LANKA SHOULD PERMIT AN IMPARTIAL INVESTIGATION INTO THE "CHANNEL 4 VIDEOTAPE" - PROFESSOR PHILIP ALSTON**

**GENEVA, 17 September 2009** -- Professor Philip Alston, the Special Rapporteur on extrajudicial executions of the United Nations Human Rights Council, today issued the following statement:

"I have been requested by the Government of Sri Lanka to issue a public statement in response to the latest information provided by the Government in relation to the Channel 4 video which purports to show extrajudicial executions being carried out by the Sri Lankan Army. I have carefully reviewed the various briefings and statements made by the Minister for Disaster Management and Human Rights, which are essentially based upon a detailed "Consolidated Response" issued by the Government to the local and international media on 7 September 2009 and to the diplomatic community the following day. The Government's response was summarized in the Minister's statement on 15 September 2009 to the Human Rights Council in which he stated that "four separate investigations have now scientifically established beyond any doubt that this video is a fake."

I welcome the fact that the Government is now devoting considerable attention to this issue. The legal obligation incumbent upon a Government in a situation such as this is to undertake a "thorough, prompt and

impartial investigation."\* My role as Special Rapporteur on extrajudicial executions is to evaluate whether the investigations undertaken have met the relevant criteria established under international law, and to advise the Human Rights Council accordingly.

I can attest to the fact that the investigation has been "prompt" since it was completed within two weeks of the information becoming available.

I am not, however, in a position to conclude that it was "thorough." I have not seen the original version of three of the four expert investigations. The fourth of the investigations seems to have originated as an Opinion piece in *The Island* newspaper, and was subsequently elaborated upon. It is not clear whether or not this was at the Government's request. The statement provided by the Minister summarizes "observations" made by the remaining three experts in presentations made at a meeting convened by the Government for this purpose. I would welcome the publication of the full text of the analyses undertaken and reports presented by each of the four experts.

The third and most important question is whether the "four separate investigations" meet the criteria of impartiality. I would note that two of the experts are members of the Sri Lankan Army, the body whose actions have been called into question. A third report is by Dr. Chathura De Silva, BSc Eng Hons (Moratuwa), MEng (NTU), PhD (NUS), Senior Lecturer, Dept of Computer Science and Engineering, University of Moratuwa, who has advised the Government in relation to a number of other similar issues in the past. And the fourth is by Siri Hewawitharana, a broadcast media specialist based in Australia, who is said to be the former head of Cisco's global broadcast and digital video practice. No other information has been provided by the government on Mr Hewawitharana, but it would appear that he is a member of a network of Sri Lankan Professionals. I would welcome more information on how he was identified and selected by the government as an independent expert.

Based on the limited information available to me, it is impossible to conclude that these four individuals, given their relationship to the Government, meet the criteria for impartiality in this context. When the actions of a Government are called into question in a matter of this gravity, what is required is to undertake an investigation by demonstrated experts who can be shown to be fully independent of the Government concerned. Two of these individuals are full-time Government employees, one has previously acted on behalf of the Government, and the basis on which the fourth was identified and selected as an expert remains unclear. I must conclude therefore, on the basis of the information made available by the Government, that the investigations undertaken cannot be characterized as "impartial".

The final question that remains is whether the information provided by the Government raises significant doubts as to the authenticity of the video. On this question, my conclusion is that the views expressed do indeed raise several issues which warrant further investigation before it could reasonably be concluded that the video is authentic. The only way to do this is for an independent and impartial investigation to take place. This is all that I have called for. Such an investigation might well conclude that the position adopted by the Government is fully warranted. I would welcome that outcome very warmly, and I hope that the Government would do likewise".

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## **REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS**

**PHILIP ALSTON**  
**A/HRC/11/2/Add.1 - 29 May 2009**  
**Sri Lanka**

<b>Communications Sent</b>	5 (5 AL)9
<b>Government Responses Received</b>	6 (5 AL)10
<b>Number and Category of Individuals Concerned</b>	8 males (1 journalist) Unknown
<b>Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened</b>	Death threats/deaths in custody/Impunity (1) Deaths in custody (2) Attacks or killings (1) Violations of right to life in armed conflict (1)
<b>Character of Replies Received</b>	Largely satisfactory response (5) Cooperative but incomplete response (1),No response (1)



**Sri Lanka: Death of Lelwala Gamage Nandiraja****Violation alleged:** Death in custody**Subject(s) of appeal:** 1 male**Character of reply:** Cooperative but incomplete response**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the initial information provided by the Government of Sri Lanka concerning the death in custody of Lelwala Gamage Nandiraja and looks forward to receiving more detailed information on the progress of the investigations and possible criminal proceedings against the alleged perpetrators. The Special Rapporteur notes that the Attorney General's Department has yet to provide information on actions taken in the three years since the alleged perpetrators were released on bail.

**Allegation letter dated 7 March 2006**, sent with the Special Rapporteur on the question of torture.

In this connection, we would like to bring to your Government's attention information we have received concerning **Lelwala Gamage Nandiraja**, aged 53, a physician. According to the information received, On 29 May 2005, he was arrested during the night at his home by two police officers wearing uniforms of the Weliveriya police and four other men in civilian clothing. They entered the house and beat him all over his body before dragging him naked from the house to their vehicle. On 30 May 2005, he was reportedly rushed to Gampaha District Government Hospital. He died of his injuries, although it is not clear whether he died before or after arriving at the hospital. According to the information received, it would appear that this is a case of mistaken identity. The police had been looking for a 40 year old man named Lalewela Nandiraja on suspicion of theft and they mistakenly arrested Lelwala Gamage Nandiraja due to the similarities between his name and the name of the suspect.

Without prejudging the facts of the case, we should like to appeal to your Excellency to seek clarification regarding the ill-treatment and death of Lelwala Gamage Nandiraja. In this regard, we would like to draw your Excellency's attention to Article 12 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed. I would also like to draw your attention to Article 7 of the Convention Against Torture, which requires state parties to prosecute alleged offenders. With regard to the alleged killing of Lelwala Gamage Nandiraja, the same obligations arise under Article 6 of the International Covenant on Civil and Political Rights.

We urge your Government to take all necessary measures to guarantee the accountability of any person guilty of the alleged violations ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Commission, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged on behalf of Lelwala Gamage Nandiraja?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the family of the victim.

**Response from the Government of Sri Lanka dated 2 September 2008**

Upon receipt of the joint communication from the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions and upon consideration of the allegations contained therein, reports were called from the Police on the alleged death of Mr. Lelwala Gamage Nandiraja in Police custody.

According to available information, a complaint had been made to the Weliveriya Police on 29 May 2005 by Mr. J K Dharmaratne, saying that the office room of his timber mill was broke open and an electric saw worth of Rs. 82.000/- and a grinder were stolen. He had further stated that he suspects Mr. Lelwala Gamage Nandiraja, a worker of the mill. The reason for the suspicion is the fact that after his burglary, Nandiraja had fled the mill.

Weliweriya Police sent two police officers to arrest the suspect to the address supplied by the proprietor of the timber mill. On 29 May 2005 the suspect was arrested at the house of his sister. Lelawala Gamage Weerawathie in Kahaduwa. According to the Police, at the time of the arrest, the suspect was in a heavily intoxicated state and he had a bleeding wound on his forehead. After the arrest of the suspect and after recording his statement, the electric saw was recovered from the house of Mr. K. U. T. Gamini, a neighbour, while the grinder was recovered from under a bush. The suspect was brought to Weliweriya Police and since he was in a critical condition, he was taken to the Base Hospital Gampaha, but the suspect had passed away before being admitted to the hospital.

Facts regarding this incident were reported under Case No. B 2046/2005 to Magistrate Court Gampaha and on the orders of the Court, the body of the deceased was handed over to Ragama hospital for the post-mortem. The post-mortem was conducted on the 1 June 2005 by Judicial Medical Officer P. Paranitharan and the report was submitted to the Court.

After the relatives of the deceased made a complaint to the Criminal Investigations Department, the two Police officers who arrested the suspect, the driver of the vehicle in which the victim was taken to the Police and the complainant of the burglary were arrested and remanded and subsequently released on bail on 16 December 2005. The investigations conducted so far have been sent to the Attorney General's Department for advice on further action.

#### **Sri Lanka: Death of Thadallage Chamil Weerasena**

**Violation alleged:** Death in custody owing to torture, neglect, or the use of force

**Subject(s) of appeal:** 1 male

**Character of reply:** Largely satisfactory response

#### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of the Sri Lanka on the death of Thadallage Chamil Weerasena, and looks forward to information on the results of the disciplinary proceedings against the police officer in charge on the day of the death.

#### **Allegation letter dated 20 September 2007**

I am writing concerning the death of Mr. **Thadallage Chamil Weerasena** at Ratgama Police Station on 21 July, 2007.

According to information received, Mr. Thadallage Chamil Weerasena was arrested on the above date and taken to Ratgama Police Station, Galle District.

The victim's mother travelled to the police station the same morning and observed her son detained in a police cell but was reportedly prevented from approaching the cell by police officers. A friend of the victim who was able to visit him later the same day stated that the victim reported being assaulted by the police. The victim's elder brother and mother returned to the police station later that day where they saw the victim's dead body lying inside the police cell covered in a sarong. A relative observed injuries to the back, chest and face of the victim, including blood to his head.

It was reported that on 22 July, 2007 a doctor took photographs of the body and that a magistrate indicated later in a letter that Mr. Weerasena died of hanging. Three years previously the police had reportedly filed charges against Mr. Weerasena for possession of drugs and the case was still pending before court at the time of his death.

Without in any way implying any conclusion as to the facts of the case, I would like to recall that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) to which Sri Lanka is a Party, enshrines the right not to be arbitrarily deprived of one's life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody, there is a presumption of State responsibility. In this respect, I would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (1990)):

"While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant." I should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the death of the person named above. I would like to stress that each Government has the obligation to protect the right to physical

and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

I would also like to draw your Government's attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, "stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed;". Moreover, it is my responsibility under the mandate provided to me by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the case of Mr Weerasena.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether compensation has been provided to the family of the victim.

#### **Response from the Government of Sri Lanka dated 27 September 2007**

HE Mr. Dayan Jayatilleka will in due course forward your communications [dated 12 September, 19 September and 20 September 2007] to the competent authorities in Colombo seeking urgent responses to the several alleged events and issues raised by you in the aforementioned communications.

#### **Response from the Government of Sri Lanka dated 20 August 2008**

On a directive of Inspector General of Police the Criminal Investigation Department commenced investigations into the above noted subject on 23 July 2007.

Inquiries have revealed that on 21 July 2007 at 02.23hrs deceased Chamil Weerasena was arrested by the Officers of Ratgama Police in Ratgama Police area on the charges of physical abuse and robbery of a gold chain (Grave Crime Register No. 62/2007). On their way back to the Police station with the suspect Police arrested another suspect named Sujith Hemantha alias Rupiah, on an arrest warrant issued by the Magistrate court of Balapitiya and both suspects were produced at Ratgama Police Station at 05.45 and detained at two separate cells. No other suspects were in the custody of Ratgama Police on this day.

21st July 2007 happened to be the funeral of the spouse of a Woman Police Inspector attached to Ratgama Police Station and the Officer in Charge and most of the Police Officers have gone to attend this funeral leaving a skeleton staff.

Suspects Chamil Weerasena and Sujith Hemantha have been served with breakfast and lunch by the Police on 21st July 2007 and entries have been made in the relevant information books. At around 18.50hrs the Reserve-In-Charge of Ratganma Police, Police Constable 58915 Jayatissa had noticed suspect Chamil Weerasena hanging on the top iron bar of the door cell from the white coloured trouser he was wearing and found him dead.

Judicial Medical Officer Dr. Ajith Susantha Kumara, who held the post-mortem examination, opined that the cause of death as death by hanging as there was no medical evidence to establish that someone has strangled the deceased. Further the JMO has reported that there were no internal or external injuries on the body of the deceased.

Facts of this suicide have been reported in the Magistrate Court of Galle under Case No. B 92780/07. The mother of the deceased Kande Garlishmay of #25, Pannilla, Ratgama was questioned and she stated that on 21st July 2007 around 05.00hrs she came to know that her son Chamil Weerasena has been arrested by Ratgama Police and in the afternoon she went to the Police Station and saw Chamil seated on the floor of the cell bear bodied wearing a white coloured trouser. However, she was not allowed to speak to him or go near the cell. She admitted the fact that Chamil Weerasena was a drug addict and was at the Unawatuna Rehabilitation centre about 3 years ago.

Kosman Nandaseeli, the illegitimate wife of suspect Chamil Weerasena stated that she visited Ratgama Police in the afternoon of 21st July 2007 and was allowed to speak to Chamil and Chamil bear bodied, informed her that he was assaulted by the Police and wanted her to get him bailed out. However she did not notice any visible injuries on Chamil.

At around midnight she came to know that Chamil had died at the Police Station when she visited the police station she saw the body of Chamil lying face downwards in the cell covered with a sarong and she did not see his face. She also noticed the white coloured trouser of Chamil tied to the upper iron bar of the cell door. She also corroborated the fact that Chamil was a drug addict and had gone under rehabilitation about 3 years ago.

Sujith Hemantha alias Rupiah of #123, Pannila, New colony, Ratgama, who was brought to Ratgama Police station along with Chamil Weerasena stated that he spoke with Chamil who was in adjoining cell and at no stage he saw Police assaulting Chamil nor Chamil informed him that he was assaulted. At around 17.00hrs he fell asleep and woke up when there was some sort of a commotion and saw Police officers opening the cell of Chamil. He further stated that in the afternoon he shared refreshments brought by his family with Chamil with the permission of Police. The statements of all persons who visited Ratgama Police Station for various reasons on this particular day have been recorded and none had seen Police assaulting anyone. Inquires have revealed that deceased Chamil Weerasena has not been assaulted by Police and he had committed suicide in the cell by hanging for reasons best know to him.

Ratgama Police station has been constructed recently and from the place where Reserve/Reception desk was positioned one cannot see the inside of the cells. Further due to the funeral of the spouse of Woman Police Inspector attached to Ratgama Police Station there was no sufficient staff to monitor the movements of the suspects on this ill fated day. Since this incident the Reception Desk has been shifted to an area where inside the cells are visible.

It is the responsibility of the Reserve-In-Charge of a Police Station to look after the safe custody of the suspects. After an preliminary internal investigation conducted by Assistant Superintendent of Police, Galle District (1), the services of Police Constable 58915 Jayatissa, who was the Reserve-In-Charge on this ill fated day, have been suspended pending Departmental disciplinary action for neglect of duty and failing to secure the safety of the suspects in custody.

### **Sri Lanka: Indiscriminate Attacks by the Sri Lankan Armed Forces**

**Violation alleged:** Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law

**Subject(s) of appeal:** Unknown number of persons

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

The Special Rapporteur regrets that the Government of Sri Lanka has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

#### **Allegation letter dated 6 October 2008**

I would like to bring to your Government's attention information I have received concerning reports of attacks on civilian targets by the Sri Lankan armed forces in August 2008 resulting in the killing of civilians.

According to information I have received:

On 9 August 2008, at 1.00 am, approximately forty shells fired by the Sri Lanka armed forces exploded in the immediate surroundings of the Mullaithivu district hospital. One shell exploded 25 meters from the hospital electricity generator. Another shell exploded just seven meters from the residence of the hospital's medical superintendant, 75 meters from the main hospital building. Another shell exploded 50 meters from the nurses' quarters and inside the hospital playground. 40 more shells exploded within a 150 meters surrounding of the hospital compound. In the houses surrounding the hospital a five-year-old, **Iyan Sankeerthanan**, was killed and four women were seriously injured.

On 30 August 2008, the Sri Lanka Army launched an artillery attack on Puthumurippu village, 7 km southwest of Kilinochchi town, where numerous IDPs had converged. On the day before the attack, 29 August 2008, the Sri Lanka Air Force had dropped leaflets warning civilians of possible heavy casualties unless they moved from the LTTE administered Vanni. The artillery attack on 30 August killed at least five IDP civilians: Mr. **Karuppiyah Anantharajah** (aged 28), his 2-year-old son **Anantharajah Gowtham**, Ms. **Thilakeshvari Visvanthan** (aged 27), her 1-month-old baby, and Ms. **Alahesan Luka Pathmalatha** (aged 28). The victims were recently displaced from Parapukadanthan in the Mannar district. Three civilians were taken to Kilinochchi hospital in critical condition, Kalyani Balasubram (aged 47), Rajeswary Balasubramaniyam (aged 17), and Iyalvili Alageswaran (a baby of ten months).

While I do not wish to prejudge the accuracy of these reports, I would like to refer Your Excellency's Government to the fundamental legal rules applicable to all armed conflicts under international humanitarian law and human rights law.

Specifically, your Government is under an obligation to distinguish between combatants and civilians and to direct attacks only against combatants (Rules 1, 6 and 7 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross ("Customary Rules")). Indiscriminate attacks are prohibited (Rule 11 of the Customary Rules). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). All feasible precautions must be taken to avoid and minimize incidental loss of civilian life (Rule 15 of the Customary Rules). This explicitly requires that parties to a conflict must give effective advance warning of attacks which may affect the civilian population (Rule 20 of the Customary Rules). Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy (Rule 28).

It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this alleged incident, I would be grateful for your cooperation and observations on the following four matters:

1. Are the facts alleged in the above summary accurate? Please refer to the results of any police or military investigation, or judicial or other inquiries carried out in relation to the alleged incident.
2. What, if any, assessment was made to ensure that the attack complied with the rules of international humanitarian law and human rights law? Specifically, what safeguards, if any, were employed to verify that only legitimate military targets were attacked? What methods were adopted to distinguish between military and civilian objects? What precautions were taken to minimize loss of civilian life? What means and methods of warfare were adopted to avoid incidental loss of civilian life, and to ensure that incidental loss of life was not excessive in relation to the anticipated military advantage?
3. Please provide the details of any disciplinary measures imposed on, or criminal prosecutions against, members of the armed forces responsible for the alleged incident.
4. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

#### **Sri Lanka: Killings of 3 men and intimidation of witnesses**

**Violation alleged:** Death threats and fear of imminent extrajudicial executions by State officials; Deaths in custody owing to torture, neglect, or the use of force; Impunity

**Subject(s) of appeal:** 5 males

**Character of reply:** Largely satisfactory response

#### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of the Sri Lanka on these cases.

The Special Rapporteur looks forward to receiving from the Government information about developments in the criminal proceedings initiated in the cases of Seynool Miswar and Gerald Mervin Perera as well as information on the progress of the investigations into the killing of Siyaguna Kosgodage Anton Sugath Nishantha Fernando.

**Allegation letter dated 30 October 2008**, sent with the Special Rapporteur on the question of torture.

We would like to bring to your Government's attention information we have recently received concerning a case of death in custody due to torture, the assassination of a torture victim, and threats to the life of another torture victim and a witness in a torture case.

According to the allegations received:

Mr. **Seynool Miswar** died in Negombo prison on 3 July 2008 shortly after 4 p.m.. Around 3 p.m. on that day, Seynool Miswar had told his brother, Mr. Seynool Arbdeen Seynool Aswar, who was visiting him in prison, that prison officers had threatened to assault him unless he paid Rs. 25,000 (approximately USD 232). An hour later, Seynool Miswar was seen holding his chest and abdomen in pain and told another prisoner, Mr. Seyedu Mohamad Abhu Ubeyda, that he had been assaulted by three prison guards. Soon thereafter, Seynool Miswar fell dead on the floor.

In the subsequent investigation, **Abhu Ubeyda** testified to officers from the Crime Section of the Negombo Police Station. Two prison guards were taken into remand custody. Back in Negombo prison after he made his statement to the police, Abhu Ubeyda was approached by two inmates who pretended to hit him and pushed him to the floor. He was admitted to the prison hospital. When he was discharged from hospital, the

Chief Jailor of the prison called him to his office, asked questions about the incident, and informed him that he had been released on bail. The Chief Jailor also told him “we will come and see you at home. I will give you Rs. 150,000 if you do not mention my name in the incident.” Abhu Ubeyda did not accept this offer. On 17 July 2008, at around 9:45 p.m., four men in helmets came to his house, tied him to the window grille and beat him with a pole for some time. They warned him not to testify before the court in the case of Seynool Miswar. Abhu Ubeyda recognized two of the aggressors as prison guards.

Mr. **Siyaguna Kosgodage Anton Sugath Nishantha Fernando** was the complainant in a fundamental rights case before the Supreme Court of Sri Lanka (Case No. SCFR. 446/07), in which he alleged that he had been tortured by policemen at Negombo Police Station, as well as in a bribery case in the High Court. He was killed by unidentified gunmen on 20 September 2008. Nishantha Fernando had repeatedly complained to the Inspector General of Police, the Attorney General, the National Police Commission (NPC) and the Human Rights Commission of Sri Lanka, about the constant threats of assassination he and his family had been receiving. On 23 June 2008 four men, believed by him to be hired by the police, arrived at his house and told him to withdraw the case before the Supreme Court. They stated that if within 24 hours he did not do so, he and his family would be killed. Nishantha Fernando and his family went into hiding and informed the relevant authorities of the threat. He returned to his home after a period in hiding shortly before his death on 20 September 2008. The police officers named as perpetrators of torture in his fundamental rights case remain on patrol in the area.

Mr. **Lalith Rajapakse**, a torture victim, is the complainant in a fundamental rights application before the Supreme Court (filed six years ago, in 2002) and the main witness in a torture case (Act No. 22 of 1994) against a Sub Inspector of Police from the Kandana Police Station filed by the Attorney General's Department. On 7 January 2005, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment drew your Government's attention to threats against Mr. Rajapakse and Mr. U.L.A. Joseph Perera, a human rights advocate assisting him in his case. Your Government replied on 21 February 2005, stating that the homes of the two men were protected around the clock and that special security arrangements had been made for a court hearing involving Mr. Rajapakse. Notwithstanding these protective measures, Lalith Rajapakse stayed away from his village in Kandana to avoid harassment by the police for five years. He recently returned to look after his grandfather. On 25 May 2008, around midnight, three persons, two of them armed with pistols, arrived near his house. Lalith Rajapakse saw them approaching and fled. When he thereafter made a complaint to the Human Rights Commission about this incident, he learnt that officers of Kandana police station had been spreading the rumor that he was a notorious criminal, although the Wattala magistrate's court had already acquitted him in three criminal cases brought against him by the Kandana police after he complained of being tortured. This – allegedly completely unsubstantiated – labeling as “notorious criminal”, combined with the nightly visit by armed men, raises concerns that Lalith Rajapakse might be at risk of becoming the victim of a fabricated “shoot-out” with the police or killing while escaping arrest.

On 9 October 2008, the High Court trying the criminal case against the policeman accused of subjecting Lalith Rajapakse to torture acquitted the defendant. It would appear that the judge, who reportedly is the same judge who acquitted the defendant in the case regarding the torture of Gerald Mervin Perera (see below), found that the evidence was insufficient to establish that Mr. Lalith Rajapakse had been tortured. This conclusion was reached in spite of medical evidence allegedly indicating that Lalith Rajapakse (who spent 16 days in hospital at the time of the alleged torture incident in 1992) had injuries on the soles of his feet and a cerebral contusion which had caused edema to the brain.

In connection with these recent killings of and threats against victims and witnesses in torture cases, we would like to seek from your Excellency's Government an update on the case against the murderers of Mr. **Gerald Mervin Perera**. As you will recall, Gerald Perera, a torture victim and the subject of an urgent appeal of the Special Rapporteur on torture dated 22 November 2004, was a successful plaintiff in a fundamental human rights case relating to torture. He was due to testify on 2 December 2004 in the criminal case against the policemen who tortured him, but was shot on 21 November and died of the wounds on 24 November 2004. On 25 March 2005, your Government informed the Special Rapporteur on torture that “the Criminal Investigations Department (CID) of Sri Lanka Police undertook the investigations into the killing of Mr. Perera and arrested five suspects including the assassin. The assassin Ajith Nishanta, arrested on 04.02.2005, was produced before an identification parade at the magistrate's Court, Wattala, where he was identified by two witnesses. Out of these five suspects, Sub Inspector Suresh Gunasena and Reserved Sub inspector Asela Kumara Herath have been indicted at the Negombo High Court (Case No: 326/2003) for the alleged torture of the deceased Gerald Mervin Perera.” More than three-and-a-half years have passed since this promising communication from your Government, and we would greatly appreciate information on the outcome of the criminal proceedings. We were in the meantime informed that the criminal proceedings against the policeman accused of committing torture against Gerald Perera have ended in an acquittal.

While we do not wish to prejudge the accuracy of the reports summarized above, we would like to draw your Government's attention to the fundamental principles applicable under international law to this case. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life.

These two fundamental rights imply that all States have the obligation "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", as stated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4). The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring and end to impunity and prevent the recurrence of such executions". These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In the context of the cases summarized above, we would particularly like to draw your Government's attention to Article 13 of CAT, which requires that "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

Also Principle 15 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which is equally relevant to cases of torture, holds: "Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations."

The reports we have received above regarding the cases of Seynool Miswar, Abhu Ubeyda, Nishantha Fernando, and Lalith Rajapakse all suggest that, contrary to the above provisions, police officers potentially implicated in torture and executions remain in a position of power over complainants and witnesses, free to intimidate, attack and even kill them. The excessive duration of criminal proceedings against perpetrators – in the case of Mr. Rajapakse, it would appear that the case took six years for a first instance judgment to be reached – of course increases the vulnerability of victims and witnesses to intimidation and violence.

We therefore urge your Government to - adopt effective protective measures for Abhu Ubeyda and Lalith Rajapakse, as well as for the families of Seynool Miswar and Nishantha Fernando; - to remove those potentially implicated in the cases of Seynool Miswar and Nishantha Fernando from any position of control or power, whether direct or indirect, over witnesses, victims and their families; and to complete the inquiries into the circumstances surrounding the deaths of Seynool Miswar and Nishantha Fernando and the torture of Lalith Rajapakse expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate their families.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the case summaries accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to each of the cases. Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons accused of being responsible, as perpetrators or as responsible commanders, for the deaths of Gerald Mervin Perera, Seynool Miswar and Nishantha Fernando and the torture of Lalith Rajapakse and Gerald Mervin Perera.
4. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims in these cases are not subject to any intimidation or retaliation, as provided in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

5. Please provide the details of any compensation payments made to the families or dependants of any of the victims in the cases described above.

6. Please provide details of any successful prosecution of police officers charged with an offense under the CAT Act (Act No. 22 of 1994).

### **Response from the Government of Sri Lanka dated 26 January 2009**

The Government of Sri Lanka provided the following information: Cases concerning the following information:

#### **(1) Mr. Seynool Abdeen Seynool Miswar**

He has been in remand Prison Negombo under Prison No. M. 0558 and he has fallen sick whilst in Prison custody and has been admitted to Negombo Base Hospital on 3<sup>rd</sup> July 2008 with a history of assault. - Subsequent to admission he died at the - Negombo Base Hospital. Police have reported facts relevant to this death to Magistrate Court Negombo in case No. B. 313/08 and thereafter the Postmortem Examination was conducted by JMO Negombo, Dr. Channa Perera. The Police led evidence of the witnesses namely the brother of the deceased Seynool Abdeen Seynool Anwar, other two inmates in the Prison Sahul Hameed Mohamed -Nawfer, Siyadu Mo-hamad Abu Ubeyda during the inquest. Subsequent to hearing of the material-including the findings in the JMO report; Magistrate returned a verdict of death due to an assault and ordered the Police to conduct an investigation relevant to the crime.

Accordingly, Police conducted investigations and arrested Warnakulasooriya Rotito Meril Francis Lowe alias "Lo Mahattaya" a Prison Jailor, attached to Negombo Prisons and Mohomad Ramlage Buddhika Jayasanka, a Prison Guard of the same Prisons and were produced in Court and remanded. On conclusion of the investigations, Police have instituted criminal proceedings against the aforesaid two accused in the Magistrate Court of Negombo in Case No. A 8384/02 and this case is fixed for hearing on 01.12.2008.

However, as regards the allegation of Abu Ubeyda referred to in the UN communication, no complaint has been received to such effect by Police. Nevertheless, it is correct that Ubeyda and Nawfer who were inmates of Negombo Prison at the time of the incident are the two principle witnesses in the case against the Jailor and the Prison guard.

#### **(ii) Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando**

As regards, this person, subject has been killed by unidentified, gunmen on 20<sup>th</sup> September 2008 at Dalupotha in Negombo Police area. Police have promptly visited the scene and initiated investigations. Inquiries conducted, so far, have not led to the identification of the culprit or culprits. According to SSP / Negombo the deceased had been a suspect in several criminal cases including offences of robbery, arson & even in incidents of obstruction to Police Officers in the discharge of their duties.

There had also been public complaints against him for his bad behaviour and for causing harassment to neighbours, where complaints have been lodged by residents, both at Negombo and Kochchikade Police Stations. The Police have also reported that whenever such a complaint against him was made and he found investigations are not made by the Police in a manner favourable to him he has been in the habit of making complaints of frivolous nature against the Investigators.

It is also reported that on 12.11.2007 a Police team headed by S.I. Abeynayake of Negombo Police who were on vehicle checking at Dalupotha junction had signaled a motorcyclist who was without a helmet traveling with a lady passenger on the pillion but the motor cyclist had gone without stopping, disregarding the Police signal. On suspicion the SI with a PC had given chase in their motorcycle and were able to locate him in front of a house in Jaya Mawatha off Dalupotha Junction. When the SI questioned the rider, who was later, identified to be the subject, he and the lady passenger who travelled in the pillion had abused the SI and assaulted him and for his uniform. A Police party arrived, at the scene, later arrested the subject, his wife and their daughter Kalpani Dilrukshy. The SI was treated at the Negombo Base Hospital and the subject and his wife too were subjected to medical examinations. Later the Police reported facts to Courts and produced the three suspects in Court under Case No. B 381/07. They were later released on bail by court. They have complained against the Police relevant to this incident before the Human Rights Commission and to the National Child Protection Authority. He had also filed a Fundamental Rights application in the Supreme Court. This refers to SCFR 446/07. The Inspector General of Police, SSP/Negombo & two other Police officers have been cited as respondents in this case. This case is yet under hearing. There is no basis to substantiate that the killing of Nishantha Fernando had been due to instances referred to in UN communication and there is no evidence to suggest the involvement of any Police Officer in the killing.

#### **(iii) Mr. Lalith Rajapakse**

Reference the communication concerning this person, it is correct that he was the main witness in a torture case against SI Prasanga Peiris who was attached to Kandana Police Station. This case was filed by the Hon. Attorney General in the High Court of Negombo subsequent to the conduct of a criminal investigation



by the CID. This refers to Case No. 259/03. However; the accused officer has been exonerated and discharged from the proceedings by the High Court of Negombo at a latter date of hearing. The allegation of torture against the SI has been consequent to his arrest by the Sub Inspector on a complaint of causing grievous hurt by stabbing with a knife where he was prosecuted in M.C. Wattala in Case No. 92619, under Section 326 of the Penal Code for causing grievous hurt.

However, in view of the torture complaint against the SI the Hon. Attorney General directed to lay-by the criminal case against him until the conclusion of the torture case in the High Court of Negombo. Police now contemplates of re-opening the case as the torture case since been concluded.

On 24.05.2008 one Lakshman Jayalath Fernando. of 532/09, Kapuwatta, Ja-ela has complained to Police of a theft of a Peddle Cycle to the value of Rs. 5000/= accusing Lalith Rajapakse as the culprit. This refers to MC Kanuwana Case No. 1509/08. In the light of this complaint against the subject Police had gone looking for him. Ever since then Lalith Rajapakse is evading Police. It appears that Rajapakse is trying to take cover by making complaints to the Human Rights Commission and to the Special Rapporteur on Torture UNHRC with a view to finding ways and means of proving his innocence by bringing forth allegations against Police which are of frivolous nature.

**(iv) Mr. Gerald Mervin Perera**

In relation to the killing of this person it is true that he was a torture victim and in this respect a criminal investigation was conducted by CID. At the conclusion of these inquiries six suspects, all of whom who were Police officers, were prosecuted by the Hon. Attorney General in the High Court of Negombo in case No. 326/03. However, subsequent to a protracted hearing of this case the Court on 02.04.2008, discharged all of them due to inadequate evidence to sustain charges preferred against them.

However, in the subsequent investigation conducted by the CID relevant to the murder of Gerald Mervin Perera, the Hon. Attorney General indicted SI Makavitage Suresh Gunasena and another in the High Court of Negombo under Case No. 445/05. Further hearing of this case is fixed for 06.02.2009. The first accused in the aforesaid murder case SI Makavitage Sures Gunasena, has ironically been also the 1st accused against whom charges were preferred under the Torture Act by the Hon. A.G. for a causing degrading and inhuman treatment to Gerald Mervin Perera.

**Sri Lanka: Killing of Lasantha Wickrematunga**

**Violation alleged:** Death due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** 1 male (journalist)

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of the Sri Lanka on the killing of Lasantha Wickrematunga. The Special Rapporteur looks forward to receiving detailed information from the Government both on the progress of the police investigation into the killing and on any resulting prosecutions.

**Allegation letter dated 9 January 2009**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.

In this connection, we would like to bring to your Government's attention information we have received concerning the killing of Mr **Lasantha Wickrematunga**, chief editor of the English language weekly newspaper the *Sunday Leader*, an investigative newspaper which often reports on cases of alleged corruption and abuse of authority in Sri Lanka, and an attack on the premises of the independent television station, *Sirasa TV* (formerly know as Pannipitiya MTV/MBC) in Colombo.

According to information received:

On 8 January 2009, Mr Wickrematunga was driving to work in Colombo. Two unidentified gunmen, who were travelling by motorcycle, smashed the window of Mr Wickrematunga's car with a steel bar before shooting him at close range in the head, chest and stomach. The attack occurred in rush-hour traffic about 100 metres from an air force checkpoint. Mr Wickrematunga was rushed to Colombo National Hospital where he died a few hours later from his injuries. A police investigation has been opened into the case.

Prior to his death, Mr Wickrematunga had been the target of numerous intimidation attempts and libel suits for his outspoken criticism of your Excellency's Government. The most recent libel case had been brought against him by the Defence Secretary, Mr. Gotabaya Rajapaksa, over stories published in the *Sunday Leader* alleging corruption in defence procurement.

Following the Court proceedings a ban was placed on the newspaper mentioning the Defence Secretary for several weeks. Previously, in November 2007, the printing press of the Sunday Leader media group (Leader Publications), located in a high security area near Colombo, was destroyed in an arson attack by a group of unidentified gunmen. No arrests were made in relation to the attack and reports claim that a full investigation was not carried out. It is further reported that in October 2008 the President of Sri Lanka referred to Mr Wickrematunga as a “terrorist journalist” during an interview with the non governmental organization Reporters Without Borders.

Furthermore, in the early hours of the morning of 6 January 2009, approximately 20 unidentified individuals wielding assault rifles, pistols and armed bars raided the premises of Sirasa TV in Pannipitiya, Colombo. The assailants, who reportedly arrived at the premises in a white unmarked van, overpowered security personnel at the entrance before entering the main studio complex where they proceeded to assault staff who were working at the time.

A few staff members, who were held at gunpoint, were forced to guide their attackers to the main control room. The assailants then destroyed the room with explosives, causing considerable damage to broadcasting equipment. An unexploded grenade was later recovered from the premises. While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency’s Government to take effective measures to take measures to prevent further killings of journalists and protect journalists and media organisations. In this respect, it is very important that the persons responsible for the assassination of Mr Wickrematunga and for the attacks against media premises, both as material perpetrators and as instigators, are rapidly identified, arrested and brought to justice. It would appear to be equally important that your Excellency’s Government unreservedly condemns these attacks.

We would also like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (“ICCPR”), to which Sri Lanka is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In this respect, we would like to recall that, as reiterated in Human Rights Council resolution 8/3 on “The Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), all States have “the obligation ... to conduct exhaustive and impartial investigation into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions”. Families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public (Principles 16 and 17 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions).

We would also like to recall that taking effective measures to protect journalists and to prosecute those responsible of killings or death threats against them is a precondition to ensuring the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and the ICCPR, which provides that: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In this context, we deem it further appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which calls upon States to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

These principles are reiterated with specific focus on the role of human rights defenders in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Declaration highlights the importance of “the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms” (article 6 points b) and c)) for the effective enjoyment of “the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” (article 1). Article 12 paras 2) and 3) of the Declaration provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. This is an essential part of “each [State’s] prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms” (article 2).

We are concerned that killings of journalists and attacks on the premises of media organisations, particularly if they remain unpunished, could create a climate of impunity and result in preventing independent reporting and stifling freedom of expression. As stressed by the Declaration, freedom of expression and independent reporting are in their turn key safeguards for the protection of human rights.

It is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the cases accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killing of Mr Lasantha Wickrematunga and the raid on the Sirasa TV station. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. If no inquiries have taken place or if they have been inconclusive, please explain why?

#### **Response from the Government of Sri Lanka dated 12 January 2009**

Pending a comprehensive response from the relevant authorities with regard to the concerns expressed by the Special Rapporteurs on the subject, the Permanent Mission of Sri Lanka wishes to inform the Special Rapporteurs that soon after the assassination of Mr. Wickramatunga, President of Sri Lanka His Excellency Mahinda Rajapaksa most vehemently and unequivocally condemned the assassination and directed the law enforcement authorities to conduct the most thorough investigation to bring to book any and all persons responsible for this act of brutality, with maximum speed. The full text of the statement made by the President of Sri Lanka in this regard is as follows:

"My government and I most vehemently and unequivocally condemn the murder of Mr. Lasantha Wickramatunga, Editor of the Sunday Leader, which took place today. I am both grieved and shocked by his tragic death as Mr. Wickramatunga was a close friend of mine who I have known for many years as a courageous journalist. This heinous crime points to the grave dangers faced by the democratic social order of our country, and the existence of forces that will go to the furthest extremes in using terror and criminality to damage our social fabric and bring disrepute to the country. It is significant that such an attack was carried out at a time when the country is gaining repeated victories over the forces of terrorism, in our efforts to establish freedom and democracy throughout the country. I have directed the Police to conduct the most thorough investigation to bring to book any and all persons responsible for this act of brutality, with maximum speed. On this sad occasion, I extend my deepest sympathies to the members of the family of the late Mr. Wickramatunga, to all his colleagues in The Sunday Leader and associated newspapers, and in the profession of journalism.

Despite grave threats of this nature, my government reiterates its commitment to upholding the principles of Media Freedom and Freedom of Expression, even under the most trying circumstances, as we have witnessed today."

#### **Reponse from the Government of Sri Lanka dated 11 February 2009**

The Government of Sri Lanka provided the following information:

##### **Facts in Brief**

On 8th January 2009 at about 10:15hrs. Mr. Wickramatunga left in his car No. WP KC-1098 to go to his office in Attidiya in Templers Road, Mt. Lavinia. At 10:20 hrs. when he was passing Attidiya on his way to Templers Road opposite Attidiya Girls School, four Motorcyclists who came after the car blocked the road and Mr. Wickramatunga's car came to a halt on seeing the motorcyclists who were blocking the road. The four motorcyclists had been wearing helmets covering their faces, black jackets and all of them came on black coloured motorcycles. The cyclists surrounded the car and left on their bikes after a few minutes.

After the motorcycles had left, the onlookers had approached the car and found Mr. Wickramatunga lying on the seat with bleeding injuries on his head and the windscreen damaged. Both side-glasses of the car also had been damaged. One Dinesh K. who was in the printing press opposite the place of incident, rushed Mr. Wickramatunga to Kalubowila Hospital in a passing vehicle. The onlookers also informed the Police regarding the incident.

##### **Action taken**

On receipt of this information, Officer-In-Charge/Crimes, Mt. Lavinia Inspector of Police (IP) Sugathapala along with a team of Officers visited the scene and conducted inquiries. Thereafter, on the instructions of the Inspector-General of Police, Senior Superintendent of Police (SSP) for Mt. Lavinia directed inquiries along with Assistant Superintendent of Police (ASP) for Mt. Lavinia, (I) Mr. C. Gunawarena in this connection.

Mr. Wickramatunga succumbed to injuries at the Hospital and post-mortem inquiry was conducted by Dr. K. Sunil Kumara, Judicial Medical Officer (JMO) for Colombo South. He reported that the death was due to shock and haemorrhage following gun shot injuries in the head.

Mr. Harsha Sethunga, Magistrate for Mt. Lavinia, who held the inquest in connection with the death, returned a verdict of murder.

The Government Analyst was summoned to examine the scene as well as the victim's car and his report is being awaited. No empty cartridges or used slugs have been traced from the scene of the dead body.

Statements have been recorded from 4 eye-witnesses, but none of them are in a position to identify the suspects or to disclose the registration numbers of the Motorcycles. One of them also had heard report of a gun from the scene of the incident.

### **Observations**

The deceased had died of gun shot injuries in his head. The assailants had committed this murder at a lonely stretch of Attidiya Road when the victim was on his way to office. *(Excerpt from the original report)*  
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.1.pdf>

## **FREEDOM OF OPINION AND EXPRESSION**

### **REPORT OF THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION,**

**FRANK LA RUE**

**A/HRC/11/4/Add.1 - 27 May 2009**

**Sri Lanka**

#### **Urgent appeal sent on 14 March 2008**

2258. The Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights while countering terrorism, sent a communication concerning the case of Mr. N. Jasikaren, a former journalist with the Tamil language bi-monthly "Sariniher" and journalist with the web news service "Outreachsl.com" and owner of the Outreach Multimedia and E-Kwality Graphics, a printing press; Ms. Valarmathi Jasikaren, his wife; Mr. J.S. Tissanaygam, journalist with the "Sunday Times" and the "Daily Mirror" and chief editor of the "Northeastern - Herald" an English-language regional newspaper and "Outreachsl.com"; Mr. K. Wijayasinghe, a freelance journalist, who writes for the weekly newspaper "Ravaya", the daily "Mawbima" and "Outreachsl.com"; Mr. Udayen, a video editor for "Outreachsl.com"; and Mr. A.G. Lasantha Ranga, a video journalist for "Outreachsl.com".

2259. According to information received, Mr. N. Jasikaren was arrested by the Terrorist Investigation Department (TID) (a special police division that reports directly to the Secretary of the Ministry of Defence) at his office on the evening of 6 March 2008; during his arrest, his laptop and printed materials were seized by the TID. Mr. Jasikaren is being held at the TID offices in Colombo. Mr. Jasikaren's wife, Valarmathi Jasikaren, a marketing officer with Maharaja Broadcasting, was arrested on 6 March at their home on the same day. Mr. Jasikaren was assaulted by TID officers. Valarmathi Jasikaren suffers from a liver disease and underwent surgery a few weeks ago, and there is no indication that she has access to her medication in custody.

2260. J.S. Tissanaygam and K. Wijayasinghe were arrested by TID officers on 7 March at 11:30 a.m. when they went to TID offices to inquire about the arrests of Mr. Jasikaren and his wife. Mr. Tissanaygam was detained incommunicado until late in the evening of 7 March, when his family was informed of his whereabouts. Both men are being detained at the TID offices in Colombo. Mr. Tissanaygam and Mr. Wijayasinghe's wives were allowed to visit them.

2261. Udayen was arrested at his home on 7 March. He was detained incommunicado until midnight and he is being held at the TID offices in Colombo.

2262. A.G. Lasantha Ranga was requested to report to the TID offices before 3 p.m. on 8 March. He has been detained since then at the TID offices in Colombo. Mr. Ranga's wife visited him on 10 March. Mr. Ranga was threatened by TID officers in front of her, stating that if Mr. Ranga had seen how Jasikaren and Tissanayagam were tortured "he would die on the spot". TID officers told her that she should not visit her husband with a lawyer.

2263. A seventh person, Mr. Siva Sivakumar, journalist and spokesperson for the Free Media Movement and chief editor of the Tamil-language newspapers "Sarinher" and "Adhavan", was also arrested on 8 March 2008. He was, however, released after a detention period of 12 hours during which a statement was taken from him. TID officers had gone to his home on the evening of 7 March to arrest him, but took his cousin into custody instead as he was absent. TID officers informed Mr. Sivakumar's relatives that his cousin would be released when he presents himself to TID offices, which he did in the morning of 8 March.

2264. With regard to the above persons who have been arrested, detention orders have reportedly been prepared pursuant to Regulation 21 of the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 of 2006. However, to date none of the accused have seen the detention order. It is also not clear if it was the Secretary of the Ministry of Defence or a Deputy Inspector General (DIG) of the police who issued detention orders in this case. If detention orders have been issued, the detainees must be brought before a magistrate at least once every 30 days, but this is only to verify that the person is still being detained. Magistrates have no power to question, cancel or renew a detention order. Only the person issuing the detention order - the Secretary of Defence or the DIG - can renew, amend or cancel it.

2265. With regard to the cases of Mr. Jasikaren and his wife, TID officials have issued receipts acknowledging their arrests and citing as a reason aiding and abetting terrorist activities. No information has yet been given concerning the reason for the detention of the remaining persons and their arrests and detention have not yet been acknowledged by the TID. However, a few weeks before the arrests, authorities proclaimed that some websites reporting on human rights violations were a hindrance to the ongoing war.

2266. All meetings with relatives were held in the presence of TID officers. None of the above cited persons were allowed access to legal counsel. With a view to the allegations of ill-treatment and threats of ill-treatment in detention, serious concerns were expressed as regards the physical and mental integrity of the above-mentioned persons. Further concern was expressed that the arrest and detention of the above-mentioned persons might be solely connected to their reportedly peaceful exercise of their right to freedom of opinion and expression.

### **Observations**

2267. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to his communication of 14 March 2008.

### **Urgent appeal sent on 15 July 2008**

2268. The Special Rapporteur, together with the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on human rights defenders, sent an urgent appeal concerning the interrogation of staff of the Right to Life Centre, Law and Society Trust, Civil Monitoring Commission and Janasansadaya.

2269. According to the information received, on 12 July 2008, three persons from the Colombo Crime Division (CCD) went to the office of the Right to Life Centre and questioned two staff members about the history, objectives and details of their work. The questioning came as a result of the printing and distribution of two leaflets during a public demonstration on 10 December 2007. The CCD officers requested the two staff members to go to the CCD office situated in Colombo 9 (Dematagoda), where they were questioned further. Information about the staff members and their families was also recorded. They were instructed to ensure that the leaders of all four organisations present themselves at the CCD office the next day. On 13 July 2008, four representatives from the Right to Life Centre and Law and Society Trust went to the CCD office, where they were questioned for several hours on the information contained in the leaflet, details of the organisations and family information.

2270. Concern was expressed that the questioning of staff of the above mentioned organizations may be a form of harassment to discourage them from carrying out their legitimate work in defense of human rights.

### **Response from the Government**

2271. In a letter dated 4 September 2008, the Government responded to the communication above. The Government reported that investigations were launched based on information received to the effect that the occupants of a vehicle were engaged in distributing pamphlets attempting to excite feelings of disaffection

amongst the public in contempt of the administration of justice. The vehicle in question was searched by the security forces and police personnel, and a bundle of pamphlets, incriminating in nature, has been recovered. The owner of the vehicle stated that a person gave him the pamphlets when he stopped at a traffic light. The material in the pamphlet was provocative in nature, which would have aroused feelings of hatred towards security forces and the police.

2272. According to the details denoted in the pamphlet in its concluding page, readers were directed to the NGOs Right to Life; Law and Society Trust; Civil Monitoring Commission and Janasansadaya for inquiries. In terms of Regulation 29 of the Emergency Regulations, it would be an offence to publish any false statement likely to cause public alarm or disorder, creating communal tension. In the pamphlet in question certain statements have been made against the armed forces and the police and the activities in the performance of their duties. Therefore it was necessary to investigate the nature of the publication and to seek legal advice from the Attorney General. In the course of the police investigations no arrests or detention were made and the investigators merely recorded statements. At no stage of the investigations were any threats or intimidations leveled on those who were subjected to questioning. The investigators conducted themselves within the law and had only performed their legitimate duties, which cannot be construed as harassment. The pamphlet, along with the statements, has been referred to the Attorney General for advice, which is awaited.

### **Observations**

2273. The Special Rapporteur is grateful for the Government's reply.

### **Letter of allegation**

2274. On 18 July 2008, the Special Rapporteur sent a communication concerning Mr. Namal Perera, a freelance Sinhala language journalist and deputy head of the advocacy section of the Sri Lanka Press Institute (SLPI), a media rights advocacy group.

2275. According to information received, on 30 June 2008, at approximately 6.30 p.m., Mr. Namal Perera, was attacked by a group of unknown individuals as he travelled by car, along with an official from the British High Commission, between Narahenpita and Kirulapone. Reports claim that the car in which Mr. Namal Perera and his colleague were travelling was followed by men on two motorbikes, before being intercepted by a white van. Four individuals wielding iron bars reportedly stepped out of the van and proceeded to attack Mr. Namal Perera's car, breaking the windows. The men attempted to drag Mr. Namal Perera from the car shouting that it was he that they were looking for. Mr. Perera managed to resist a potential abduction, however both he and his colleague were repeatedly beaten with metal bars before the attackers fled the scene. Mr. Namal Perera and his colleague were brought to Apollo hospital in Colombo where they were treated for their injuries. The aforementioned attack on Mr. Perera is allegedly linked to his work as a journalist, in particular recent articles he had written which criticised the government's actions in its campaign against secessionist Tamil rebels.

2276. According to reports a cabinet sub-committee, to be chaired by Minister Sarath Amunugamato, has been appointed by the Government to address ongoing attacks against journalists and the police are reportedly investigating Mr. Perera's case. While the establishment of the aforementioned sub-committee is welcomed concern is expressed that the attack on Mr. Perera may represent a direct attempt to prevent independent reporting in Sri Lanka, thus stifling freedom of expression in the country.

### **Observations**

2277. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to his communication of 18 July 2008.

### **Letter of allegation sent on 29 September 2008**

2278. On 29 September 2008, the Special Rapporteur sent a communication concerning Ms. Radhika Devakumar, a correspondent for the state-owned Tamil-language newspaper Thinakaran. Ms. Devakumar was also working as a media secretary for an Eastern Province Minister.

2279. According to information received, on 8 September 2008, at approximately 7:30 p.m., Ms. Radhika Devakumar was attacked by unidentified individuals at her home in Batticaloa. The assailants reportedly fired three shots critically injuring Ms. Devakumar in the shoulder, abdomen and chest. Ms. Devakumar's family managed to transfer her to the local teaching hospital of Batticaloa where she underwent emergency treatment. She has since been moved to a hospital in Colombo where she remained in intensive care.

2280. Concern was expressed that the aforementioned events may represent a direct attempt to prevent independent reporting in Sri Lanka, thus stifling freedom of expression in the country.

## Observations

2281. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to his communication of 29 September 2008.

### Urgent appeal sent on 22 October 2008

2282. On 22 October 2008, the Special Rapporteur, together with the Special Rapporteur on human rights defenders, sent a communication concerning Fr. Sarath Iddamalgoda, a founding member of the Christian Solidarity Movement (CSM). Fr. Sarath Iddamalgoda is a prominent leader in the CSM's current campaign to document the human rights and humanitarian crisis in the Vanni region, highlighting the abuses and suffering faced by civilians, particularly displaced people. It was said that this campaign seeks to raise awareness of the abuses faced by people affected by ongoing military operations, particularly the lack of security, food, medicine and shelter. The CSM provides reportedly independent information on these matters.

2283. According to information received, on 12 October 2008, Fr. Sarath Iddamalgoda was accused of distributing materials against the Government and the Armed Forces by the Deputy Minister of Ports and Aviation, a Member of Parliament from Negombo. The Deputy Minister of Ports and Aviation asked Fr. Sarath Iddamalgoda to cease these activities in Negombo, because "his group" was misleading innocent people. According to the Deputy Minister of Ports and Aviation, such campaigns should not be carried out without previous consultation with him. These comments were later reported in a Sinhalese newspaper.

2284. On 13 October 2008, the Deputy Minister of Ports and Aviation condemned the CSM's campaign at a public meeting in Negombo, referring specifically to Fr. Sarath Iddamalgoda. The Deputy Minister stated that the Presidential Advisor, a Member of Parliament, as well as the Church authorities, had been informed of this condemnation. He asked the CSM to stop its campaign, claiming that Catholic priests would no longer be respected if they involved themselves in such campaigns.

2285. The same day the Deputy Minister of Ports and Aviations' statement was televised on the news by Independent Television Network (ITN), a State-owned television channel, as well as on two other television channels, Rupavahini and Eye TV. On 16 October 2008, at approximately 7 p.m., the ITN news again condemned the CSM campaign. The news item and related video clips were also featured on the ITN webpage. No channel contacted the CSM for comments despite the contact details being made available by the leaflets which had given rise to the accusation against the CSM.

2286. Concern was expressed that the accusation against Fr. Sarath Iddamalgoda and the CSM may be directly related to their activities in raising awareness of human rights violations in Vanni. Given that four human rights groups were reportedly questioned, on 12 July 2008, about leaflets which they had distributed, further concern was expressed that the events described above may form part of an ongoing trend of restriction of freedom of expression in Sri Lanka.

## Observations

2287. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to his communication of 22 October 2008.

### Follow-up to previously transmitted communications

2288. In a letter dated 28 July 2008, the Government responded to an urgent appeal of 4 May 2006. The Government reported that "the journalist, Ms. Sivaramaya Sivanathan, was arrested at the UNESCO World Press Freedom Day Conference. According to the Police, Ms. Sivaramaya Sivanathan had been arrested by the security officers when she had tried to enter the UNESCO World Press Freedom Day Conference held at the Bandaranayake Memorial International Conference Hall on 01.05.2006, without an invitation. Since only the invitees were allowed to participate in the conference, and she could not give a satisfactory explanation for her presence at the function, she was arrested and taken to the Cinnamon Gardens Police. Subsequently she was produced before the Magistrate's court at Aluthkade and remained till 05.05.2006, pending completion of inquiry. After completion of inquiry, court has released her on 2 June 2006".

2289. In a letter dated 2 September 2008, the Government responded to a letter of allegations of 8 December 2006. The Government reported that "based on the reports received from the Brigade and the unit concerned, the contents of the leaflets were full of malice against the army, written with the aim of agitating the people and disrupting the government's efforts at bringing normality to the area. The persons mentioned in the communication acknowledged that they used the young male and the female in question to distribute these leaflets. None of the suspects had been detained in an Army Camp as alleged in the communication nor is information recorded about a complaint made by the alleged victims to the Police seeking redress of their grievances.

## Observations

2290. The Special Rapporteur is grateful for the Government's reply. *(Excerpt from the original report)*

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.4.Add.1.pdf>

# PHYSICAL AND MENTAL HEALTH

## REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

ANAND GROVER

A/HRC/11/12/Add.1 - 18 May 2009  
Sri Lanka

### Communication sent

185. On **2 February 2009**, the Special Rapporteur on the right to the highest attainable standard of health sent an urgent appeal to the Government of Sri Lanka concerning the Vanni region.

186. According to the information received, the ongoing hostilities between government forces and LTTE reportedly have a detrimental effect particularly in the Vanni region, which resulted in the killing of 300 internally displaced persons and over 1000 injured in the last few days prior to the date of this communication. It is alleged that health facilities are understaffed and ill-equipped to handle the large numbers of injuries. It is also reported that hospitals and ambulances had been hit by the shelling and a number of humanitarian workers and medical staff had to be evacuated. ***It was further alleged that the Puthukkudiyiruppu Hospital, which accommodates 500 persons, was shelled twice in the previous week.*** Moreover, it was alleged that basic emergency medical care for the injured is not available due to the lack of essential drugs and services in Mullaitivu and surrounding areas which is due the heavy fighting. In addition, the imposed travel restrictions limited transfer of the injured to hospitals outside the conflict zones.

187. Allegedly, the Regional Director of Health Services (RDHS) sent out an urgent appeal on 26 January 2009 requesting immediate supplies of medicine and other essential items, indicating that if supplies were not provided, many more patients would succumb to their injuries.

188. According to the information received, ***some 250,000 people have been trapped in a 250 square-kilometer area***, which has come under intense fighting. Those civilians had no safe shelter, since demarcated "safe zones" have also been targeted. It is also alleged that the few thousand civilians who have managed to flee Vanni were detained in camps in Vavuniya, Mannar and Jaffna under the guard of the security forces, in order to ensure that LTTE fighters do not infiltrate the south of the country. There were alleged restrictions of freedom of movement for those living within the camps as well as limited access to extended family members and humanitarian workers.

### Communication received

189. By its letter dated **5 February 2009**, the Government reiterated its great concern regarding health services in the Vanni region. While indicating that Sri Lankan forces have been battling terrorism for several years, the Government succeeded in maintaining health services, which was recognized by the UN Resident Coordinator after his visit to Vanni. Details on incidents of 27 January were provided indicating that LTTE held back a convoy with several ambulances and two UN staff members. The convoy was finally allowed to leave Vanni on 29 January. The alleged statement of the Regional Director of Health Services was denied and in the rebuttal, he noted that he did not have access to email which was the mode he was alleged to have used.

Although acknowledging some of the facts presented in the communication sent, the overall picture is inaccurate since the health situations has deteriorated but mainly due to the LTTE actions. The Government continues maintaining hospitals and providing services free of charge and will continue to transfer patients to hospitals in government controlled areas if and when LTTE permits. Contingency plans for IDPs who make it out to government controlled areas have been prepared and a workshop conducted by the government with UN and NGO participation.

### Observation

190. The Special Rapporteur thanks the Government for its reply.

***(Excerpt from the original report)***

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.12.Add.1.pdf>



# INDEPENDENCE OF JUDGES AND LAWYERS

## REPORT OF THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

LEANDRO DESPOUY

A/HRC/11/41/Add.1 - 19 May 2009  
Sri Lanka

### Communications sent

279. On 8 December 2006, the Special Rapporteur sent a joint allegation letter<sup>8</sup> together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding the arrest of and charges brought against Fr. Jesuratnam Jude Bernard Omi, Director of the Centre for Peace and Reconciliation (CPR) in Jaffna, Sri Lanka. According to the information received, on 24 November 2006, Fr. Omi was arrested after he intervened in a matter concerning a young man, Mariyanayaham Godfry Morris Gnanageethan, who had been detained for allegedly distributing leaflets issued by the Justice Peace Commission (JPC) concerning the humanitarian situation in Jaffna. It is reported that Mr. Mariyanayaham had been queuing for food at the 6 CLI army camp when his cousin, Ms. Alanday Dinoshia, spoke with him and gave him one of the aforementioned leaflets to read. Members of the Sri Lankan Army (SLA) reportedly confiscated the leaflet and asked Mr. Mariyanayaham questions relating to its origin. When he referred to his cousin, troops allegedly went to her house in order to arrest her, but she had gone to seek the assistance of Fr. Omi, who immediately contacted and informed the JPC of the situation. A member of the JPC, Fr. Francis Xavier Jeyasegaram, accompanied Fr. Omi, Ms. Alanday and her mother to the army camp where Mr. Mariyanayaham was detained. They were allegedly photographed by SLA troops and threatened by Colonel Manjula who said, "If you all can organize a campaign against the forces we will also do things against you all. You all will face the consequences soon." As they left the camp with Mr. Mariyanayaham, the colonel allegedly circled around them on a motorcycle. Later that day, it is reported that Fr. Omi went to the High Court where Brigade Commander Godipilli stated that Fr. Omi and Fr. Jeyasegaram had distributed the leaflets to people in the queue. Two soldiers were apparently called as witnesses but they never appeared before the court. It is further reported that Fr. Omi then went to the District Court to record a statement, but while there, army troops surrounded the office of the CPR and arrested Fr. Jeyasegaram. According to reports, Fr. Omi went to the Human Rights Commission and recorded a statement before going to the 6 CLI camp escorted by members of the Non-Violent Peaceforce. The sources indicate that the SLA transferred the two priests, along with Mr. Mariyanayaham, Ms. Alanday and their parents, in an army vehicle to the police station, where they were handed over to the police. Reportedly they all made individual statements and Ms. Alanday was subjected to a full-body search. At approximately 10.55 p.m. the two priests were allegedly taken to the acting magistrate in relation to a curfew pass and were released at 11.45 p.m. and taken to the bishop's house. Mr. Mariyanayaham and Ms. Alanday were reportedly released on bail the next day.

On 29 November 2006, the four individuals appeared before the Magistrate's Court of Jaffna where they were allegedly charged under criminal law although they were not informed of the charges brought against them. They were told that their file would be sent to the Attorney General's Department and the charges against them should be announced by 31 January 2007. They have all reportedly been ordered not to leave the country and they will not be permitted to leave Jaffna before the start of the trial.

Concern was expressed that the arrest of Fr. Jesuratnam Jude Bernard Omi may be related to his defence of the right of Mr. Mariyanayaham Godfry Morris Gnanageethan and Ms. Alanday Dinoshia to exercise their freedom of expression. Further concern was expressed that the charges against him are fabricated and that he will not receive a fair or impartial trial.

280. On 5 April 2007, the Special Rapporteur sent a joint urgent appeal,<sup>9</sup> together with the Special Representative of the Secretary-General on the situation of human rights defenders, regarding the case of Mr. Dushyantha Basnayake, human rights defender and financial director of Standard Newspapers Private Limited (SNPL), which publishes the Sinhalese-language weekly Mawbima, in Colombo and Ms. Parameswari Munusamy, journalist with Mawbima. According to information received, on 26 February 2007, Mr. Basnayake was arrested at his office in Colombo by officials from the Terrorist Investigation Division (TID). He was reportedly being detained incommunicado at the Terrorist Investigation Unit in Colombo where he had been denied access to a lawyer. Mr. Basnayake was questioned by officials from the Criminal Investigations Division (CID) several months prior to his arrest. He was later released without charge and the authorities allegedly apologised for any inconvenience caused.

On 13 March 2007 Mr Basnayake's bank accounts were frozen. Previously on 24 November 2006, Ms Munusamy was detained under the Prevention of Terrorism Act (PTA) at the Terrorist Investigation Unit in Colombo. She was reportedly held without charge by the police Terrorist Investigation Division (TID). On 21 March 2007, an order was issued by the Supreme Court to release Ms Munusamy on the basis that her arrest was illegal and that there was insufficient evidence in order to convict her. She was released on 22 March 2007. Ms Munusamy was the only Tamil speaking journalist working for Mawbima and her arrest was related to the publication of articles by Mawbima in Tamil, which highlighted human rights abuses in Sri Lanka. On 24 February 2006, President Rajapaksa reportedly criticised the management and journalists of Mawbima newspaper for their coverage of human rights violations in Sri Lanka during a press conference. Newspaper staff have been receiving death threats since February.

Concern was expressed that arrest and detention of Mr Dushyantha Basnayake along with the arrest, detention and subsequent release of Ms Parameswaree Munusamy forms part of an ongoing campaign to silence human rights defenders in Sri Lanka, and in particular those who aim to highlight human rights violations in the country.

281. On 19 June 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the question of torture, regarding the case of Mr. Gunasundaram Jayasundaram, a dual Sri Lankan-Irish citizen, usually residing in Singapore. According to the information received, on 4 September 2007, he was arrested by Terrorist Investigation Division (TID) officers at the airport upon arrival from Singapore. He was arrested without a warrant and on the orders of the Secretary of Defence. Mr. Jayasundaram was allowed access to his lawyers only twice, in October and December 2007, despite numerous written requests to the authorities for access to legal counsel. The Honorary Consul of the Republic of Ireland in Colombo was allowed to visit him only once, on 14 December 2007.

On 29 October 2007, a writ of habeas corpus was filed by his lawyer and four court hearings have taken place since then: on 23 January, 5 and 26 March, and 11 June 2008. No decision was taken by the court and Mr. Jayasundaram was not presented before the court in persona. The next hearing was scheduled for 27 June 2008. No charges have been brought against Mr. Jayasundaram and no trial date has been scheduled yet. Mr. Jayasundaram has recently been transferred from the detention facilities of TID to Boossa Prison, where he spent 16 days in solitary confinement. One of his relatives was allowed to visit him on 13 June. Mr. Jayasundaram suffered from high blood pressure and had run a fever for about four days, which had caused muscle spasms, making movements in his cell difficult. He had to sleep on the floor, was not provided with any reading material, and had not been allowed to buy any food in the canteen. In view of the reported deterioration of his health and conditions of detention, concerns were expressed for Mr. Jayasundaram's state of health.

282. On 6 October 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, and the Chairman of the Working Group on Enforced or Involuntary Disappearances, regarding the case of Mr. J.C. Weliamuna, lawyer and executive director of the Sri Lanka branch of the organisation Transparency International. According to the information received, on 27 September 2008, the premises of Mr. Weliamuna were attacked by two grenades. While the first grenade exploded, the second one was later found inside the house by the police. In the past, Mr. Weliamuna has dealt with important cases of bribery and corruption most of which involved state officials. He has also acted as a lawyer in bringing sensitive cases of alleged serious human rights violations to court, including extrajudicial killings, enforced disappearances and torture. On the day of the attack, Mr. Weliamuna moved a motion at the Bar Council in relation to a lawyer who had received death threats as a consequence of his appearance in a case of alleged extra-judicial killing. Concern was expressed that the attack against Mr. Weliamuna may be related to his activities in the defense of human rights, including as a lawyer.

283. On 6 November 2008, the Special Rapporteur sent a joint urgent appeal, together with the Special Rapporteur on the situation of human rights defenders, regarding threats received by registrars of all courts and a number of human rights lawyers in Sri Lanka. According to the information received, on 21 October 2008, registrars of all courts in Sri Lanka and a number of human rights lawyers reportedly received a notice from a group that identifies itself as the Mahason Balakaya (Mahason Battalion), threatening death or other serious physical harm to any lawyers who may defend any suspected terrorist in any court in Sri Lanka. These lawyers were referred to as "traitors", and should "be subject to the same fate that the terrorists mete out to [their enemies]". Concern was expressed for the physical and mental integrity of lawyers who offer legal assistance to suspected terrorists.

### **Communications received**

284. On 2 September 2008, the Government replies to the urgent appeal of 8 December 2006 concerning the alleged arrest of Fr. Jeruratnam Jude Bernard, Fr. Francis Xavier Jeyasegaram, Mr. Mariyanaham Godfrey Morris Gnanageetham and Ms. Alanday Dinoshia and thereby allegedly violating their rights to the exercise of freedom of expression. The Government stated that upon receipt of the joint communication from the UN and upon consideration of the allegations contained therein, reports were called from the Police and the Army on the alleged arrest of Fr. Jesuratnam Jude Bernard, Fr. Francis Xavier Jeyasegaram, Mr. Mariyanaham Godfrey Morris Gnanageetham and Ms. Alanday Dinoshia and thereby allegedly violating their right to the exercise of freedom of expression. The Security Forces Headquarters Jaffna has submitted a report having conducted a full scale inquiry into the alleged arrest of the above mentioned persons on 24 November 2006.

On the day of the incident the troops belonging to 6th Battalion, Sri Lanka Light Infantry of 512 Brigade manning an Army Welfare Shop, established at Colombathurai for the purpose of distributing essential food items, had been distributing food items to a large gathering of people. Around 11.30 hours in the morning a person who approached the troops had informed that there was a person distributing leaflets containing anti government slogans at the tail of the queue. Troops had gone to the tail of the queue about 100 meters away and found Mr. Mariyanaham Godfrey Morris Gnanageetham distributing the last few of the leaflets to the people in the queue. The troops had confiscated a copy of the leaflet. The leaflet contained anti governmental slogans in an obvious attempt to agitate the general public and disrupt the government's effort to restore normalcy in the area. During an on the spot inquiry Mr. Gnanageetham had revealed that the leaflets were given to him by Ms. Alanday Dinoshia that morning to be distributed among the public. A message had been passed requesting Ms. Alanday Dinoshia to come to the location and she had come accompanied by her mother.

On arrival Ms. Alanday Dinoshia had revealed that the leaflets were given to her by Fr. Francis Xavier Jeyasegaram. Meanwhile, even before troops summoned him, Fr. Jesuratnam Jude Bernard had acknowledged that he gave the leaflets to Ms. Dinoshia to be distributed among the public. The Troops had contacted the Commanding Officer of 6th Battalion, Sri Lanka Light Infantry seeking instructions on further action. He had instructed troops to follow the normal procedure and hand over the suspects to the Police for further investigations. Troops had complied and handed over the suspects to the police for further investigations. Troops had complied and handed over the suspects to the Jaffna Police Station on the same afternoon. The Police had produced them before the Magistrate of Jaffna under M/C B 532/2006 who in turn had released them on bail. The case had been referred to Hon. Attorney General's department under reference No. CN/17/2007 for instructions. Attorney General's instructions on the case are still pending. Based on the reports received from the Brigade and the unit concerned the following observations are made with regards to the allegations made in the abovementioned joint communications: the contents of the leaflets were full of malice against the army, written with the aim of agitating the people and disrupting the government's efforts at bringing normalcy to the area; the Commanding Officer who was not present at the scene could not have used any threatening language as alleged in the complaint; Fr. Jeyasegaram and Fr. Jude Bernard have publicly acknowledged that they used the young male and female in question to distribute these leaflets; the troops have not done anything in excess of their mandates and they have followed the correct procedure by officially handing over the suspects to police for onward legal actions;

The Female in question had been accompanied by her mother and there had been no attempt to harass her as the complainant attempts to imply; None of the suspects had been detained in an Army Camp as alleged in the complaint. They had only been held near a welfare shop run by the Army and located in a public place in Colombathurai until properly handed over to the police; there is no information of a complaint made by the alleged victims to the Police seeking redress of their grievances. It is brought to the attention that the Security Forces had acted bona fide in the lawful performance of their duties in taking into custody the personnel involved in anti Government/anti Security forces propaganda campaign in order to maintain law and order in the Jaffna Peninsula.

285. On 2 September 2008, the Government also replies to the urgent appeal of 5 April 2007, concerning the arrest and detention of Dushyantha Basnayake and Parameshwarce Munusamy. Basnayake Mudiyansele Dushyantha Basnayake was taken into custody on 26 February 2007 at 21.15hrs in his office at no: 99/6, Rosmead Place, Colombo 07 for alleged complicity in terrorist activities and was detained at the Terrorist investigation Division at No: 101, Chaithya Rd, Colombo 01 on a detention order issued by Secretariat/Ministry of Defense in terms of regulation 19(1) of the Emergency Regulations. Reasons for his arrests & detention were explained to him and also to his Attorney-at-Law i.e. suspected to have aided and abetted terrorist activities by way of providing financial assistance to a known LTTE activist named Luxmie Emi Kanthan who is absconding at present. Facts in this regard were reported to the Chief Magistrate, Colombo, under case no: 998/1/2007 periodically. In the course of this investigation, it was revealed that Dushyantha

Basnayake is the Financial and Administration Director of the CEB Group of Companies at No: 99/6, Rosmead Place, Colombo 07. He is also the Financial Director of the "Standard Newspapers Private Limited" which publishes "Mawbima" Sinhala Newspaper. He is not a journalist, through he functions as the owner and the printer of "Mawbima" Newspaper. Financial transactions of the CBE Group of Companies are being investigated on an order given by the Colombo High Court.

Inquiries also revealed that Dushyantha Basnayaka had sold nearly 12,000 "Dialog" mobile telephone connections through CEB Group of Companies to the North and East of Sri Lanka with the assistance of Luxmie Emil Katban. There is no documentation maintained concerning these transactions. It was also revealed during investigations that Dushyantha Basnayaka was instrumental in building a house at Pitakotte spending around RS. 13 Million for the mother of Luxmie Emil Kanthan. It also transpired that during the period of 1 April 2005 and 24 March 2006 Dushyantha Basnayaka had released about Rs. 57 million from the funds of CBE to Emil Kathan and to his nominees. Material elicited so far were forwarded to the Hon. Attorney General and he is of the view that Dushshyantha Basnayake and other Board of Directors of the CBE Group of Companies could be charged under section 3 of the Convention of the Supervision of Terrorist Financing act no: 25 of 2005. Accordingly Dushshyantha Basnayake was produced before the Colombo Chief Magistrate on the above charge and was enlarged on bail on 8 May 2007 pending legal proceedings. The Government also stated that consequent to information received by the Police to the effect that a suicide LTTE women cadre had come to Colombo, officers of the Special Task Force (STF) effected the arrest of one Tambirasa Sumanthi of Batticaloa on 213 November 2006 at 21.00 hrs. at Wallawatte. At the time of his arrest Munisamy Parameshwary was responsible for providing accommodation to Tambirasa Sumanthi at No: 28, Ramakrishna Road, Wallawatte. On the basis of the evidence Parameswari too was arrested by the STF. Subsequently they were handed over to Special Task Force (TID) for further investigations. Munisamy Parameswari was detained on a Detention Order issued by the Secretary /Ministry of the Defense in terms of Regulation 19(1) of the Emergency Regulations.

Reasons for her arrest and detention were explained to her and to the Attorney at Law who represented her that she was alleged to have aided and abetted Thambiraso Sumanthi for her intended terrorist activities in Colombo. Munisamy Parameswari was produced before the Chief Magistrate Court of Colombo in terms of Regulation 21(1) of the Emergency Regulations under case no: B 7875/1/6 on 22 December 2006 and detained at the TID for further investigation. Her relatives and attorneys had access to her during her detention and the International Committee of the Red Cross too visited her on several occasions. In depth investigations conducted by the TID revealed that Thambirasa Sumanthi had ties with the LTTE leadership and was closely associated to a hardcore LTTE cadre in Colombo. It also revealed that Munisamy Parameswari had made arrangements to accommodate Thambirasa Sumanthi in Colombo. It further revealed that Munisamy Parameswari is not a registered Journalist at the Department of Government Information. Even in the year 2005 she had been found loitering in the high security areas. Consequent to an application submitted to the Supreme Court of Sri Lanka by her attorneys against her arrest and detention, the Hon. Attorney General Advised that the material available is insufficient to institute legal proceedings against Munisamy Parameswari and accordingly she was released through the chief Magistrate Court of Colombo on 22 March 2007 under reference case No. B 8347/01/2206.

### **Press releases**

286. On 9 February 2009, the Special Rapporteur issued the following press statement, jointly with nine other special procedures mandate holders.

"Ten independent UN Experts expressed their deep concern at the deteriorating human rights situation in Sri Lanka, particularly the shrinking space for critical voices and the fear of reprisals against victims and witnesses which - together with a lack of effective investigations and prosecutions - has led to unabated impunity for human rights violations. The UN Experts also unreservedly condemned this morning's suicide attack, allegedly by a female Tamil Tiger, which reportedly killed 28 and injured about 90 civilians and soldiers in Mullaitivu district in north-east Sri Lanka.

Speaking of the general human rights situation in the country, Ms. Margaret Sekaggya, the Special Rapporteur on the situation of human rights defenders, said "A climate of fear and intimidation reigns over those defending human rights, especially over journalists and lawyers." The safety of defenders has worsened considerably over the past year, most significantly following denunciations of human rights abuses committed by parties to the conflict, of corruption by state officials and of impunity. Serious and fatal aggression against journalists and the media are now a common occurrence as witnessed in the killing of the journalist Lasantha Wickremetunga and recent attacks on major media outlets. The fighting in the North of the country has resulted in hundreds of thousands of civilians being internally displaced and trapped. The UN Experts share the deep concern of the United Nations High Commissioner for Human Rights over the rapidly deteriorating conditions facing those civilians and the significant number of civilian casualties. They also deplore the restrictions on humanitarian access to conflict areas which exacerbate the ongoing serious violations of the most basic economic and social rights.

Notwithstanding the severity of the abuses in areas of conflict, the Experts wish to highlight that the problem is deeper and more endemic. The conflict deflects attention from the impunity which has been allowed to go unabated throughout Sri Lanka. The fear of reprisals against victims and witnesses, together with a lack of effective investigations and prosecutions, has led to a circle of impunity that must be broken. The Experts continue to receive disturbing reports of torture, extra-judicial killings and enforced disappearances throughout the country.

The UN Experts strongly urge the Government of Sri Lanka to immediately take measures to ensure that effective remedial action can be pursued in support of the victims of human rights abuses and their families. They also highlight that thorough reforms of the general system of governance are needed to prevent the reoccurrence of further serious human rights violations. The Experts call for an immediate end to impunity and to refrain from any reprisals. To strengthen the rule of law and to help ensure the safety and protection of the human rights of all persons in Sri Lanka, they continue to extend their offer of assistance to the Government.”

### **Special Rapporteur’s comments and observations**

287. The Special Rapporteur wishes to thank the Government of Sri Lanka for their replies of 5 September 2008. However, the Special Rapporteur notes the considerable delay in replying and is concerned at the absence of an official reply to his letters of 19 June 2008, 6 October 2008 and 6 November 2008 and urges the Government of Sri Lanka to provide at the earliest possible date detailed substantive replies to the above allegations. *(Excerpt from the original report)*

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41.Add.1\\_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41.Add.1_EFS.pdf)

## **UN SECRETARY GENERAL**

### **UN CHIEF URGES DUE PROCESS FOR ARRESTED OPPOSITION LEADER**

**UN News Centre, 9 February 2010** – Secretary-General Ban Ki-moon today called on authorities in Sri Lanka to ensure the rights and safety of the defeated presidential candidate and former army chief who was arrested yesterday, and said he intends to speak to the country’s President Mahinda Rajapaksa to discuss the issue.

General Sarath Fonseka, the challenger who received 40 per cent of the vote in the 27 January presidential election, was arrested yesterday by Sri Lankan troops for alleged “military offences.” Mr. Rajapaksa is also reported to have ordered the dissolution of Parliament with effect from midnight on Tuesday.

Mr. Ban is following developments in the South Asian nation “with concern,” UN spokesperson Martin Nesirky told reporters in New York.

“He urges the authorities to follow due process of law and provide all the necessary protections and guarantees to his safety,” said Mr. Nesirky.

“He underlined the importance of ensuring a positive political climate as the country prepares for parliamentary elections and in the interest of peace, stability and reconciliation.”

The Secretary-General intends to speak to Mr. Rajapaksa, who was re-elected after obtaining nearly 58 per cent of the more than 10 million votes cast in the recent polls, and will maintain close engagement through his senior advisers, the spokesperson added.

<http://www.un.org/apps/news/story.asp?NewsID=33721&Cr=sri+lanka&Cr1=>

### **BAN VOICES CONCERN TO SRI LANKAN LEADER OVER RECENT DEVELOPMENTS**

**UN News Centre, 10 February 2010** – Secretary-General Ban Ki-moon has expressed his concerns about recent developments in Sri Lanka, where a defeated presidential candidate has been arrested and Parliament dissolved, to the leader of the South Asian country and announced plans to dispatch his top political official to the island nation for further dialogue.

Mr. Ban spoke by telephone last night with Mahinda Rajapaksa, according to a spokesperson for the Secretary-General, and urged the President to respect due process of law regarding the case of General Sarath Fonseka, the former army chief and runner-up in recent presidential elections.

Mr. Ban called on the Government in Colombo to guarantee the personal safety of Mr. Fonseka, who was arrested on Monday for alleged "military offences." Mr. Fonseka won about 40 per cent of the overall vote in the presidential race on 27 January.

The spokesperson said the Secretary-General also urged Mr. Rajapaksa to keep his commitment, set out in a joint statement with the UN last year, "to ensure concrete proposals for a political solution of issues with the Tamil community in the north and to ensure full accountability for any crimes against international humanitarian law or abuses of human rights."

In May last year Government forces in Sri Lanka defeated the Liberation Tigers of Tamil Eelam (LTTE), ending a civil war that had lasted more than two decades. Hundreds of thousands of displaced civilians were then housed in camps.

Mr. Ban "took note of the progress in returning displaced persons to their places of origin, but added that more needs to be done in this regard."

Saying he looked forward to further dialogue between the UN and the Sri Lankan Government, Mr. Ban said he would send Under-Secretary-General for Political Affairs B. Lynn Pascoe to Colombo for talks soon after the presidential inauguration scheduled for later this month.

<http://www.un.org/apps/news/story.asp?NewsID=33733&Cr=Sri+Lanka&Cr1=>

## **JOINT STATEMENT BY UN SECRETARY-GENERAL, GOVERNMENT OF SRI LANKA**

### **SECRETARY GENERAL**

**SG/2151 - 26 May 2009**

**Department of Public Information • News and Media Division • New York**

### **JOINT STATEMENT BY UN SECRETARY-GENERAL, GOVERNMENT OF SRI LANKA**

Following is the joint statement by the Government of Sri Lanka and the United Nations at the conclusion of UN Secretary-General Ban Ki-moon's visit to Sri Lanka on 23 May:

At the invitation of Mahinda Rajapaksa, President of Sri Lanka, the Secretary-General of the United Nations, Ban Ki-moon, paid a visit to Sri Lanka. During the course of his visit, he held talks with the President, Foreign Minister as well as other senior leaders of Sri Lanka. During his stay, he also consulted other relevant stakeholders, members of international humanitarian agencies and civil society. The Secretary-General visited the internally displaced persons (IDP) sites at Vavuniya and overflew the conflict area, near Mullaitivu that was the scene of the conflict.

President Rajapaksa welcomed the Secretary-General as the highest dignitary to visit Sri Lanka in the post-conflict phase. This was a reflection of the close cooperation between Sri Lanka and the United Nations as well as Sri Lanka's commitment to work with the United Nations in the future.

President Rajapaksa and Secretary-General Ban Ki-moon agreed that following the end of operations against the Liberation Tigers of Tamil Eelam (LTTE), Sri Lanka had entered a new post-conflict beginning. In this context, the Government of Sri Lanka faced many immediate and long-term challenges relating to issues of relief, rehabilitation, resettlement and reconciliation. While addressing these critical issues, it was agreed that the new situation offered opportunities for long-term development of the north and for re-establishing democratic institutions and electoral politics after 2 ½ decades. The Government expressed its commitment to ensure the economic and political empowerment of the people of the north through its programmes.

President Rajapaksa and the Secretary-General agreed that addressing the aspirations and grievances of all communities and working towards a lasting political solution was fundamental to ensuring long-term socio-economic development. ***The Secretary-General welcomed the assurance of the President of Sri Lanka contained in his statement in Parliament on 19 May 2009 that a national solution acceptable to all sections of people will be evolved.*** President Rajapaksa expressed his firm resolve to proceed with the implementation of the 13th Amendment, as well as to begin a broader dialogue with all parties, including the Tamil parties in the new circumstances, to further enhance this process and to bring about lasting peace and development in Sri Lanka.

President Rajapaksa and Secretary-General Ban Ki-moon discussed a series of areas in which the United Nations will assist the ongoing efforts of the Government of Sri Lanka in addressing the future challenges and opportunities.

With regard to IDPs, the United Nations will continue to provide humanitarian assistance to the IDPs now in Vavuniya and Jaffna. The Government will continue to provide access to humanitarian agencies. The Government will expedite the necessary basic and civil infrastructure as well as means of livelihood necessary for the IDPs to resume their normal lives at the earliest. ***The Secretary-General welcomed the announcement by the Government expressing its intention to dismantle the welfare villages at the earliest, as outlined in the Plan to resettle the bulk of IDPs and call for its early implementation.***

The Government seeks the cooperation of the international community in mine clearing, which is an essential prerequisite to expediting the early return of IDPs.

The Secretary-General called for donor assistance towards the Common Humanitarian Action Plan (CHAP) jointly launched by the Government of Sri Lanka and the United Nations, which supports the relief, shelter and humanitarian needs of those in IDP sites.

President Rajapaksa and the Secretary-General recognized the large number of former child soldiers forcibly recruited by the LTTE as an important issue in the post-conflict context. President Rajapaksa reiterated his firm policy of zero tolerance in relation to child recruitment. In cooperation with the United Nations Children's Fund (UNICEF), child-friendly procedures have been established for their "release and surrender" and rehabilitation in Protective Accommodation Centres. The objective of the rehabilitation process presently underway is to reintegrate former child soldiers into society as productive citizens. The Secretary-General expressed satisfaction on the progress already made by the Government in cooperation with UNICEF and encouraged Sri Lanka to adopt similar policies and procedures relating to former child soldiers in the north.

President Rajapaksa informed the Secretary-General regarding ongoing initiatives relating to rehabilitation and reintegration of ex-combatants. In addition to the ongoing work by the Office of the Commissioner General for Rehabilitation, a National Framework for the Integration of Ex-combatants into Civilian Life is under preparation, with the assistance of the United Nations and other international organizations.

Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations. ***The Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances.*** <http://www.un.org/News/Press/docs//2009/sg2151.doc.htm>

## **DURABLE POLITICAL SOLUTION KEY TO DEVELOPMENT IN POST-CONFLICT SRI LANKA – BAN**

**UN News Centre, 24 May 2009** - Addressing the aspirations and grievances of all communities, as well as finding a lasting political solution, is essential for long-term development in the wake of the end of the long-running conflict between Sri Lankan troops and separatist rebels, according to a joint statement issued by the Government of the South Asian nation and the United Nations.

Secretary-General Ban Ki-moon, at the invitation of Sri Lankan President Mahinda Rajapaksa, wrapped up his visit – during which he met with top officials and others, visited camps for internally displaced persons (IDPs) and flew over the former conflict zone – to the country yesterday.

Addressing reporters yesterday, Mr. Ban characterized his visit to the IDP sites at Manik Farm as "very sobering."

His mission to Sri Lanka sought to promote progress in three key areas: immediate humanitarian relief reintegration and reconstruction and an equitable political solution.

In the joint statement also issued yesterday, Mr. Rajapaksa and Mr. Ban agreed that following last week's end of military operations against the Liberation Tigers of Tamil Eelam (LTTE), the country has entered a new post-conflict phase and faces many obstacles relating to relief, rehabilitation, resettlement and reconciliation.

"While addressing these critical issues, it was agreed that the new situation offered opportunities for long-term development of the North and for re-establishing democratic institutions and electoral politics after 2 ½

decades," it said, noting that the Government has committed to empower the people of the north, where fighting raged, both economically and politically.

Further, the two leaders agreed that all communities' grievances must be addressed and efforts made to promote a sustainable political solution to ensure long-term development, with Mr. Rajapaksa expressing his determination to commence a broader dialogue with all parties, including Tamil ones.

"The Government should undertake certain confidence-building measures to clearly and unmistakably signal its good intentions in addressing root causes of Tamil and Muslim grievances," Mr. Ban told reporters yesterday.

During his two-day visit to Sri Lanka, he discussed with the President how the UN will aid the Government's continuing efforts to address future challenges and opportunities.

According to the statement, the world body will continue providing humanitarian assistance to the IDPs in Vavuniya and Jaffna, while the Sri Lankan Government will continue helping relief agencies and endeavour to allow IDPs to resume their normal lives as quickly as possible.

"The Secretary-General welcomed the announcement by the Government expressing its intention to dismantle the welfare villages at the earliest as outlined in the Plan to resettle the bulk of IDPs and call for its early implementation," it noted.

Mr. Ban also called on the international community to fund the Common Humanitarian Action Plan, or CHAP, launched by the Sri Lankan Government and the UN, which seeks to meet the needs of those uprooted by the clashes.

The large number of former child soldiers forcibly recruited by the LTTE was recognized by both the President and Secretary-General as an important issue, with Mr. Rajapaksa underscoring his firm zero tolerance policy and child-friendly procedures having been set up for their release and rehabilitation in centres, in cooperation with the UN Children's Fund (UNICEF).

"Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights in keeping with international human rights standards and Sri Lanka's international obligations," the statement said.

"The Secretary General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law," it added. "The Government will take measures to address those grievances."

<http://www.un.org/apps/news/story.asp?NewsID=30904&Cr=sri+lanka&Cr1=>

## **BAN ARRIVES IN SRI LANKA FOR FIRST-HAND LOOK AT POST-CONFLICT SITUATION**

**UN News Centre, 22 May 2009** – Calling for an end to "old enmities," Secretary-General Ban Ki-moon arrived in Sri Lanka today, days after the Government declared that its military operation against the separatist Liberation Tigers of Tamil Eelam (LTTE) has ended.

"We are here at a defining moment in Sri Lanka's history," Mr. Ban said in a **statement** after touching down on the South Asian island nation. "A long and terrible conflict has come to an end. Now is the time for the nation to unite and build a just and lasting peace."

He expressed his deep concern over the safety and welfare of the at least 300,000 people uprooted by the clashes. "I hope my visit today can help begin a process of national recovery, renewal and reconciliation for all Sri Lankans," he said. "That is why I am here."

The Secretary-General, who will meet with the country's President, Mahinda Rajapaksa, and other senior officials tomorrow, said that he seeks to further progress in three areas.

Firstly, he said that he hopes that urgent humanitarian needs will be met, stressing the importance of ensuring that the camps for internally displaced persons (IDPs) meet minimum standards and that essential supplies, including food and medicine, are available.

"I will therefore ask that UN agencies and international humanitarian organizations be given immediate and unhindered access to all areas where there are displaced people," he said.



Another goal is to call on the Government to fast-track the screening and processing of refugees as quickly as possible, Mr. Ban said, underscoring the need for families to be reunited and for people to start rebuilding their lives.

Lastly, he said that he “will urge the Government and all elements of society to take powerful and immediate steps to initiate a political process of dialogue, accommodation and reconciliation.”

In his statement, the Secretary-General, who hopes to travel to the former conflict zone in the north-east and visit an IDP camp during his two-day visit, highlighted that “Sri Lankans of every ethnic and religious identity must enjoy equal justice, rights and guarantees of security under the law, as President Rajapaksa declared in his recent address to Parliament,” adding that “the world will be watching.”

Earlier today, Mr. Ban’s Chief of Staff, Vijay Nambiar, who has been in the country for several days, told reporters in the capital, Colombo, that the national reconciliation process must be “all-inclusive” and address the legitimate aspirations of Tamils and other minorities.

“It is important that victory becomes a victory for all Sri Lankans,” he added.

Over the past week, Mr. Nambiar has visited camps for internally IDPs in Menik farm in the country’s north as well as taking a helicopter ride over the former conflict area.

The official said he also held meetings with Mr. Rajapaksa, other senior officials, diplomats, representatives of humanitarian agencies and political leaders, including Tamil members of Parliament.

<http://www.un.org/apps/news/story.asp?NewsID=30897&Cr=sri+lanka&Cr1=>

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## **NON GOVERNMENTAL ORGANISATIONS (NGOs)**

### **WRITTEN STATEMENTS**

**INTERNATIONAL EDUCATIONAL DEVELOPMENT (IED), INC.,  
UNITED NATION A/HRC/13/NGO/39 - 24 FEBRUARY 2010**

### **THE SITUATION OF THE TAMIL PEOPLE IN SRI LANKA<sup>1</sup>**

International Educational Development and the Association of Humanitarian Lawyers again presents to the Council our deep concerns over the plight of the Tamil people in the north and east of Sri Lanka. Of special concern are the hundreds of thousand Tamil civilians who are still internally displaced (IDPs) – some since the Tsunami in 2004 – and persons alleged to be combatants of the Liberation Tiger of Tamil Eelam (LTTE) whose whereabouts are uncertain since being captured by the government forces. We are also concerned that there has been neither adequate follow-up of the Special Session nor any investigation into the credible allegations of serious war crimes committed both throughout the conflict and in its final phase in May 2009.

The International Organization for Migration (IOM) appears to be the only agency with shelter assistance for IDPs who seek to return to their original areas but whose homes and properties have been destroyed or rendered uninhabitable. Due to the volume of IDPs, far more is needed than the IOM can provide. In this regard, the Council should call on the international community as a whole to require that the government of Sri Lanka, which has primary responsibility for them, to do so. If the government refuses to do so, to the continuing detriment of the rights of the Tamil civilians, than the Council should ask the United Nations system and other international actors to do so and the government billed for it.

A major problem for many Tamils is that the government continues to hold huge areas of their land and properties in High Security Zones (HSZ), including farming land and fisheries, making return impossible. Their survival and the survival of other Tamil civilians is more precarious due to severe food shortages. The post-election re-imposition of a ban on night fishing in large areas further burdens food security for Tamil civilians as well as the financial resources of the fishermen.<sup>2</sup> The World Food Programme (WFP) has been providing limited rice, wheat, dried beans, cooking oil and a few other basics, but most IDPs have no funds with which to buy other basic food items. A stipend promised to IDPs has not been provided.

Many Tamil civilians have war-related injuries and diseases related to unhealthy conditions in the internment camps. Medical care for them is also grossly inadequate, and neither the IOM nor the WFP can address this. The International Committee of the Red Cross has a reduced role in the country, and we fear that there is no effective plan to provide for the medical needs of the IDPs or, indeed, any other persons in the North and East of the island.

Regarding LTTE prisoners of war (POWs), we submitted a written statement to the 12<sup>th</sup> Session of the Council in which we indicated that we forwarded to the relevant mandate holders a video tape that is alleged

to be of the government forces shooting naked Tamil combatants point-blank. We asserted it was reasonable to consider that they were naked so as not to be identifiable as POWs. We asked that the circumstances of this be investigated as soon as possible because such summary executions are war crimes. The BBC now reports that the evaluation of the film, by acclaimed experts in the field, indicates that the film is genuine. As a result, Special Rapporteur Alston has called for a war crime probe into that and other incidents. The Council should support that request.

On our statement to the 12th Session, we also addressed the situation of currently detained LTTE POWs, as they are all at risk of summary execution, torture and other grave war crimes.<sup>3</sup> It is our understanding that the International Committee of the Red Cross (ICRC) has still not been allowed access to the places where alleged POWs are being held, and we have no information about whether those detained have access to judicial proceedings to challenge their status or the ability to exercise any of the rights afforded POWs under international humanitarian law standards.<sup>4</sup> Additionally, there is no disclosure by the Sri Lankan authorities of the names, ages or numbers of those being held, as required under humanitarian law norms.

Throughout our long involvement in this conflict, we were very blunt that the geo-political interests of third party States have been a factor, if not the main factor, in the failure to resolve the conflict and prevent the obviously genocidal policies suffered by the Tamil people. Recent hearings in the US Congress, and earlier sessions in the Parliament of the UK confirm these geopolitical interests. Both countries indirectly armed the government forces through “surrogates” (in the US case, through Israel, Pakistan, and the Czech Republic, to name a few) and helped “demonize” the Tamil people through using the “terrorist” label, even though the situation was clearly an armed conflict, with two warring parties and governed by humanitarian law. We also note that the government of Iran also helped arm the Sri Lanka military forces, and Iranian military leaders have made postelection visits to Sri Lanka. China has also supported the Sri Lankan government in its armed conflict. The government of Sri Lanka is playing with a wide and diverse array of States that have contributed to severe if not genocidal policies against the Tamils: we particularly note that both Israel and Iran are involved and wonder at this rather strange alignment. In fact, both governments have pledged to the newly re-elected Rajapakse administration, that they will provide rather substantial military aid. In any case, all States that supplied military assistance to Sri Lanka during the armed conflict did so when the Sri Lankan authorities had been violating the Geneva Conventions for many years, and had openly defended genocidal policies. We and a number of other NGOs, as well as many UN mandate holders, put all States on notice that such aid has legal consequences.

We inform the Council of the views of the former UN spokesperson for Sri Lanka, Gordon Weiss (Australia) who stated that up to 40,000 Tamil civilians had been killed in the final assault against the LTTE-occupied areas, where more than 300,000 Tamil civilian had been trapped. While assigning blame to both sides, Mr. Gordon indicated that the Sri Lanka authorities deliberately underestimated the numbers of civilians or deliberately lied.<sup>5</sup> The High Commissioner recently stated that national investigations into these matters “have not worked so far.”<sup>6</sup> She also indicated that the Secretary-General is committed to holding Sri Lanka to promised compliance. We see no such evidence, as the Secretary-General has not supported the recommendations of Rapporteur Alston and did not send any representative to Sri Lanka during the recent elections.<sup>7</sup>

These and other serious human rights issues should be addressed in concerted action by the Council.<sup>8</sup> We hope that Members of the Council are aware that the Sinhala government has not proposed any plans to address the serious grievances of the Tamil people that, of course, were the cause of the long war. The termination of the war did not resolve these grievances, but now is adding additional ones. While more and more Tamils are seeking and receiving asylum, the resolution of the Tamil question is not to drive them all out.

<sup>1</sup> The Association of Humanitarian Lawyers (AHL) also shares the views expressed in this statement.

<sup>2</sup> Apparently the government is allowing trawlers from India to fish out the waters in the Mannar area at night, when the Tamil fishermen are banned.

<sup>3</sup> The Council’s mandate holders, for example, have repeatedly indicated widespread summary executions and torture taking place in Sri Lanka. It is reasonable to assume that ex-cadres of the LTTE would be subjected to these acts.

<sup>4</sup> Minimum standards for the treatment of POWs are found in The Hague Convention of 1907, Regulations, Articles 4 – 20; Geneva Convention III as a whole (international armed conflicts) and Articles 3 and 130 (civil wars); Protocol Additional I to the Geneva Conventions, Articles 44 and 45; Protocol Additional II, Articles 5 and 6; and the application of the Marten’s Clause and the rule by analogy in general humanitarian law.

<sup>5</sup> E. Campbell, “Hell or High Water”, [interview with Gordon Weiss], ABC News [Australia], 9 February 2010.

<sup>6</sup> “War crimes probe call reiterated”, BBCsinhala.com, 12 February 2010.

<sup>7</sup> At time of writing, the Secretary-General has apparently not commented on the arrest of losing Presidential candidate Sarath Fonseka.

<sup>8</sup> At time of writing, the timetable for the 13th Session has not yet circulated, and we do not know if the Council intends to include follow-up to the 11th Special Session. Council Resolution S-11/1 does not address follow-up, but under the circumstances, follow-up is a minimum required action.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/112/60/PDF/G1011260.pdf?OpenElement>

## THE SITUATION OF PRISONERS OF WAR IN SRI LANKA<sup>1</sup>

**1) International Educational Development and the Association of Humanitarian Lawyers** are profoundly disturbed by the abject failure to comply with humanitarian law in the course of the conflict in Sri Lanka, especially in regards to prisoners of war (POWs) or those are alleged to be POWs.

**2)** In numerous written and oral statements throughout the long armed conflict in Sri Lanka we have pointed out the absence of compliance with minimum Geneva Conventions and The Hague Convention standards regarding POWs. Unfortunately the international community did not take up this issue with any seriousness of purpose regarding combatants of the Liberation Tigers of Tamil Eelam (LTTE) held by the government, allowing the current government to assume that it is free to do as it likes with them.<sup>2</sup> In our view, there is credible evidence of past and on-going grave breaches of humanitarian law in regards to LTTE combatants held as POWs by the government. The international community cannot afford to ignore this possibility, not only for past and potential victims of war crimes in Sri Lanka, but also because it is essential to re-establish the viability of humanitarian law in all conflicts. Under the terms of a common article in all four Geneva Conventions, State parties to the Geneva Conventions are obligated to search for persons alleged to have committed or ordered to be committed serious violations of humanitarian law. Additionally, under the terms of another common article, they cannot absolve any liability for such serious violations. The fact that many States have welcomed Sri Lankan officials reasonably chargeable with such crimes is itself an indication that these States have repudiated humanitarian law.

**3)** There are credible allegations and substantial evidence that the government forces executed senior cadres of the Liberation Tigers of Tamil Eelam (LTTE) as they attempted to surrender as POWs. The government itself released photographs that indicate that this may be true. As this would represent serious war crimes under humanitarian law if it in fact occurred, this should be investigated as soon as possible. **4)** We have also forwarded to the relevant mandate holders a video tape that is alleged to be of the government forces shooting naked Tamils point blank. As the persons were naked, it is not possible to discern whether they were captured LTTE combatants or civilians, but it is reasonable to consider that they were naked so as not to be identifiable as POWs. The circumstances of this incident should also be investigated as soon as possible because such summary executions are also war crimes. **5)** The situation of currently detained LTTE POWs is also of great concern, as they are all at risk of summary execution, torture and other grave war crimes.<sup>3</sup> It is our understanding that the International Committee of the Red Cross (ICRC) has not yet been allowed access to the places where alleged POWs are being held, and we have no information about whether those detained have access to judicial proceedings to challenge their status or the ability to exercise any of other the rights afforded POWs under international humanitarian law standards.<sup>4</sup> Additionally, there is no disclosure by the Sri Lankan authorities of the names, ages or numbers of those being held. **7)** We are also deeply disturbed by the abduction in Malaysia of Shanmugam Kumaran Pathmanathan, also known as KP, currently being held in detention in Colombo. Mr. Pathmanathan had, after the end of hostilities in Sri Lanka, announced he was assuming the leadership of the LTTE because all the other senior leaders had been killed. He also announced that the LTTE would utilize a "political-democratic" path to achieve Tamil goals. We fear that Mr. Pathmanathan may be subjected to torture in the course of interrogation. **8)** As with others held as members of the LTTE, Mr. Pathmanathan is entitled to POW claim status or to the right to challenge that status before an appropriate judicial body.<sup>5</sup> As he is essentially held incommunicado, it is not possible to know if he is claiming POW status. If he is, then he is only obligated to provide his name, rank and date of birth and military serial number. We also note that under humanitarian law rules, generally POWs may not be held in penitentiaries, but must be detained in facilities that conform to international POW standards. In Mr. Parthmanathan's case, as with all POWs, he may not be charged with any offenses that may have been committed by LTTE combatants for which he had no direct involvement or responsibility. If he had actual command duties he may only be charged if he knew or could reasonably be expected to know that offenses would be committed by a subordinate and if he was in a position to take measures to prevent them.<sup>6</sup>

**9)** While the situation of POWs in all wars is an issue for the States that have ratified humanitarian law instruments, it is also an issue for a number of UN mandate holders. In our view this includes the Secretary- General, the High Commissioner for Human Rights, the Special Advisor on Children in Armed Conflict, the Human Rights Council and a number of its procedures and mandate holders. In particular, we consider that the mandates of the Councils rapporteurs on summary executions, torture, and the Working Groups on disappearances and detention are especially invoked. However, because of the urgent need to restore humanitarian law, we urge the Council to appoint a Special Rapporteur on Armed Conflict. **10)** Regardless of politically motivated considerations regarding the LTTE, it is essential that the international community as a whole honors and respects, and ensures respect, for all the rights of LTTE combatants. Failure to do so will be yet another repudiation of humanitarian law, which, in our view, will haunt the UN and the international community for years to come.

<sup>1</sup> The Association of Humanitarian Lawyers (AHL) also shares the views expressed in this statement.

<sup>2</sup> We note that some mandate holders and other international actors indicated concern for breaches committed against POWs held by the Liberation Tigers of Tamil Eelam. Further, there were also a number of LTTE-held POWs turned over to the International Committee of the Red Cross, which was given some access to LTTE-held POWs. The Council's mandate holders, for example, have repeatedly indicated widespread summary executions and torture taking place in Sri Lanka. It is reasonable to assume that ex-cadres of the LTTE

<sup>4</sup> would be subjected to these acts. Minimum standards for the treatment of POWs are found in The Hague Convention of 1907, Regulations, Articles 4 – 20; Geneva Convention III as a whole (international armed conflicts) and Articles 3 and 130 (civil wars); Protocol Additional I to the Geneva Conventions, Articles 44 and 45; Protocol Additional II, Articles 5 and 6; and the application of the Marten's Clause and the rule by analogy in general humanitarian law. Both actual combatants and those acting purely in

<sup>6</sup> political roles under the authority of a combatant force are entitled to claim POW status. This is known as "failure to act" liability. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/156/29/PDF/G0915629.pdf?OpenElement>

## THE SITUATION OF THE TAMIL PEOPLE IN SRI LANKA<sup>1</sup>

1. **International Educational Development and the Association of Humanitarian Lawyers** have been profoundly disturbed for many years by the abject failure to comply with humanitarian law in the course of the long conflict in Sri Lanka, and are now alarmed by the continuing tragedy of genocidal proportions affecting the Tamil people there.

2. Throughout the long conflict there have been serious violations of humanitarian law that we have raised in numerous oral and written statements during the course of the conflict, mainly committed against the Tamil civilian population in the Tamil areas in the North and East. Yet Tamil civilians in the Tamil areas now actually face worse violations and misery than when combat was raging. As many as 500,000 Tamils are being held involuntarily in a number of detention camps, the largest of which, Menik Farm, holds nearly 300,000.<sup>2</sup> Conditions in all the camps is appalling, with grossly inadequate facilities, and extremely harsh conditions that worsened horrifically because of flooding due to recent tropical storms.

3. We stress that these Tamils are detained, not because they are civilians, but because they are Tamil. In this regard, we are troubled by press releases, reports and statements by members of the international community, including NGOs, that comment on the situation of “civilians” – seemingly intentionally leaving out the fact the these “civilians” are all Tamil and that they are detained precisely because they are Tamil.

4. Because of the large-scale detention of Tamils, we urge the Council's Working Group on Arbitrary Detention to undertake urgent actions, especially because on 23 August 2009, the Sri Lankan Secretary of Defense, Gotabhaya Rajapakse, claims that the detention of these Tamils will be indefinite.

5. We have studied the laws of the internment of persons based on ethnicity, looking especially at rulings related to the Holocaust, the capture and internment in the United States of persons of Japanese ancestry during World War II, the seizure and internment by the United States of Latin Americans of Japanese ancestry during the same period, and the more recent cases of the situation of the Miskito people in Nicaragua during the “Contra affair” and the removal, incarceration and destruction of property of the Kurdish people in Turkey. Regarding the Japanese Americans, the United States subsequently determined that this violated international law, and passed a bill providing for apology and compensation. Regarding the Latin Americans of Japanese ancestry, a case in their behalf is currently before the Organization of American States American Commission on Human Rights, primarily on the issue of equal compensation. Regarding the Miskito people, the Inter-American Commission on Human Rights, in its “Report on a Segment of the Nicaraguan Population of Miskito Origen” (the Miskito case, OEA/Ser.L/V.11.62.Doc.10,rev.3 (29 November 1983) addressed many factors identical to the Tamil situation, finding numerous violations: the Miskito people had been prevented from fishing, they were prohibited from leaving “camps” and witnessed the expropriation of their lands under a variety of pretexts. The Organization of American States also considered the application of Article 27 of the American Convention on Human Rights (essentially identical to Article 4 of the International Covenant on Civil and Political Rights) in the context of the removal of Miskito from the combat areas. The OAS indicated that while in times of armed conflict civilians may be relocated from the area of combat, any relocation must meet the “strict exigency” test and not be based solely on ethnicity. Further, at the conclusion of hostilities, those persons removed from the area of hostilities must be allowed to return to their original homes. Finally, the Inter-American Commission ruled that those whose properties were damaged or expropriated for illegitimate grounds be compensated. Regarding the Kurdish people, the European Court of Human Rights, in its case *Akdivar v. Turkey*, App. No. 99/1995 (1996), ruled that Turkey violated the rights of the residents of Kelekci when it destroyed the village, and that the residents should receive just compensation.<sup>3</sup>

6. In our view, review of the above cases and many other similar ones, when applied to the situation of the Tamil people in the detention camps in Sri Lanka, shows clear and convincing violations of their rights. The hostilities are clearly over, and there is no possibility of them resuming in the foreseeable future. The international community as a whole, and especially officials of the United Nations, should insist in the strongest possible way that all persons detained in the camps be free to come and go as they please. They should insist that there is full access to the camps by responsible international actors, human rights investigators, media, aid workers, and family members. The aid sent to people in need in Sri Lanka should not be subject to taxes and other impediments. Aid specially sent for the Tamils should be distributed to them, and not expropriated for other needs.

7. Equally important, the Tamil people should be allowed to return to their own villages, be provided with sufficient means to rebuild what has been destroyed, and receive full compensation for their losses if from intentional destruction.<sup>4</sup>

8. We have heard alarming news that the authorities plan to settle both military personnel and Sinhala civilians in former Tamil villages, and expropriate lands belonging to Tamils in large sections of the Tamil areas.<sup>5</sup> This should be immediately investigated because if this occurs it would constitute ethnic cleaning. In similar fashion, the Tamil fisherfolk should have unfettered access to their traditional fishing grounds, and the agricultural lands confiscated to form “High Security Zones” should be restored to their owners. We urge Mr. de Schutter, the Special Rapporteur on the right to food, to assist in this regard. We also urge the Special Rapporteur on housing, Mrs. Rolnik, to assist in setting up a registry of Tamil properties and former villages, especially in the Vanni area, to ensure that they are rightfully restored to their owners. This can perhaps be facilitated with an expanded office of the High Commissioner in Sri Lanka.

9. We continue to have serious concerns about the physical survival of the Tamil people and their culture in the North and East of the country. We note with alarm statements by government authorities who insist that with the demise of the Liberation Tigers of Tamil Eelam, there are no minorities or minority issues in Sri Lanka. We urge the Special Rapporteur on Racism, Mr. Muigai, to undertake a mission to Sri Lanka, especially to the Tamil areas and to the camps, to assess what we clearly see as racism with genocidal implications. In particular, he should ask the government to set out its intentions regarding the Tamil people so that they may be evaluated under existing norms.

10. The international community has responded far too late and has done far too little for the Tamil people: the international community allowed the war against them to take on genocidal proportions, it allowed the “peace” to mean total subjugation and mass internment, and it allowed the government to enjoy total impunity. The Council, in spite of what in our view was a very distressing Special Session, must begin to act forcefully to ensure the physical survival of the Tamil people and their full enjoyment of human rights. A minimum first step in this direction for the Council would be to most strongly urge the government to allow the High Commissioner to expand her office in Sri Lanka, and to allow her and her staff unfettered access to all areas of the island to investigate human rights and humanitarian law compliance. The Council should also undertake action to restore respect for humanitarian law – so egregiously absent in this war.

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<sup>1</sup> The Association of Humanitarian Lawyers (AHL) also shares the views expressed in this statement.

<sup>2</sup> The Sri Lankan government refers to these camps as “welfare centers,” but its own Minister for Disaster management and Human Rights called them “so-called welfare centers” at a Parliamentary debate on 22 July 2009. In any case, the Tamils are clearly not free to leave and there is very little outside access to them.

<sup>3</sup> Turkey subsequently had to allow the resettlement of the Kurdish people back to the more than 3000 villages destroyed or ethnically cleansed. Turkey has previously defended its policy of destroying Kurdish villages and removing the residents because the people sympathized with the armed resistance movement, the PKK.

<sup>4</sup> We point out that wanton destruction or expropriation of civilian property is a grave breach of Geneva Convention IV of 1949 (Article 147) and is also prohibited by The Hague Convention of 1907 (Regulations, Article 25).

<sup>5</sup> We also point out announcement by the authorities to increase the numbers of military in the Tamil areas. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/156/27/PDF/G0915627.pdf?OpenElement>

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## UNITED NATION A/HRC/11/NGO/19 – 9 JUNE 2009

### APPLICATION OF HUMANITARIAN LAW IN SRI LANKA<sup>1</sup>

**1. International Educational Development and the Association of Humanitarian Lawyers** are profoundly disturbed by the abject failure to comply with humanitarian law in the course of the conflict in Sri Lanka, and the unfolding tragedy of genocidal proportions affecting the Tamil people there.

2. Throughout the long conflict there have been serious violations of humanitarian law – many of them considered grave breaches (war crimes) under Article 50 of Geneva Convention I of 1949, Article 130 of Geneva Convention III, and Article 147 of Geneva Convention IV. In numerous oral and written statements we have brought these violations to the attention of the Commission on Human Rights and now the Human Right Council for many years.

3. We are very grateful to the many United Nations officials who have addressed those violations falling under their particular mandates, both in individual and joint statements and in undertaking missions to Sri Lanka.

4. At the present time we have serious concerns about the physical survival of the Tamil people in the North and East of the country. For that reason we were especially pleased with the statement of 8 May 2009 issued by Rapporteurs Alston, Grover, de Schutter and de Albuquerque. Tamil victims of armed conflict are being killed outright: recent figures from UN officials indicate at least 8,000 Tamil civilians killed since January 2009 – a figure we consider low as there is presently no way of knowing how many were killed in the final two or three days or, having been left wounded on the field of battle, subsequently died. Survivors face lifethreatening shortages of food, water and medical care. The government refused to allow the International Committee of the Red Cross and the World Food Programme to provide urgently needed medical care, food and water for a number of weeks prior to the government force's assaults on the remaining Tamil-controlled area. Many of the nearly 300,000 recent arrivals in government –controlled camps have died or are near death due to food, water and medical care. The government is also preventing access of humanitarian aid providers to these victims, and we expect deaths to mount. As we have pointed out in a number of our statements, denial of food, water and medical care to victims of armed conflict is an element of the crime of extermination under the Statute and Elements of the International Criminal Court.<sup>2</sup> If a combatant force is unwilling or unable to provide food, water or medical care, it must allow others, such as United Nations entities or humanitarian aid organizations, to do so. Additionally, medical personnel, whether treating sick or wounded combatants or civilians, have a right to protection. The provision of care may not be criminalized. In this light we are concerned about the fate of three doctors -- Dr. T. Sathiyamoorthy, Dr. T. Varatharajah, and Dr. Shanmugarajah -- who are apparently being detained by government authorities. We are also concerned about the staff of the Tamils Rehabilitation Organization who were in the Tamil-controlled area and whose whereabouts are unknown. We have grave concerns about the condition of captured or surrendered combatants of the Liberation Tigers of Tamil Eelam, as there are reports of outright killings in contravention of Article 130 of Geneva Convention III, and that those who are sick or wounded are not attended to in contravention of Article 50 of Geneva Convention I, Articles 10, 40 and 41 of Protocol Additional I to the Geneva Conventions and numerous other provisions of humanitarian law. International organizations, such as the International Committee of the Red Cross, must be given access to all prisoners of war.

5. One reason for the tragic Tamil genocide is that the international community did way too little for far too long, and when it finally began to act it was too late. Unfortunately, there are a number of States with geopolitical interests in Sri Lanka, including the United States, India, China, and Japan, that was made appallingly apparent recently when the Security Council was deciding whether to even address the situation at all. The Secretary-General did not help matters, by stumbling with the media over the issue and twice sending an envoy who is closely related to a paid military consultant to the government of Sri Lanka. Nine European governments, India, Israel, Iran, China and Pakistan have provided the government with military arms and equipment, even in light of the serious humanitarian law violations and the serious risk of genocide raised in this forum for so many years by us and many other non-governmental organizations. This so emboldened the current administration in Sri Lanka that it was persuaded it could carry out the extermination of the Tamil people and engage in serious and repeated illegal military operations in plain view with total impunity – which it did. It was persuaded that it could silence the media, either by assassination or intimidation with impunity – which it also did.<sup>3</sup> Rather than comply with human rights and humanitarian law when urged to by the international community, government authorities were openly defiant. ***For example, when addressing the media after a recent meeting with the foreign ministers of the United Kingdom and France, President Rajapakse stated “they are trying to preach to me about civilians. I tell them to go and see what they are doing in Iraq and Afghanistan.”***

6. While this written paper is submitted prior to the Special Session on Sri Lanka, we assume that the international community, especially the Council, will come to grips with the gravity of the situation, will demand immediate access by international actors to all places and Tamil victims they wish to see, and will take other relevant actions on an urgency basis. While military operations appear to be over, the resolution of the Tamil conflict is not. It is clear that the government of Sri Lanka, heavily dominated by the Sinhala majority, is unwilling and unable to resolve the situation on its own. Further, it intends to keep much of the Tamil population in the north in concentration camps with no access of international actors for quite some time, in spite of promises made to the contrary. This will result, of course, in prolonged arbitrary detention and other gross violations of human rights of the Tamil people: the Council must do all possible to prevent this from occurring.

7. One measure the Council should undertake is to demand that the government of Sri Lanka permit the High Commissioner to expand her office in Sri Lanka so that the situation of the Tamil people can receive concerted attention. The Council can also appoint a Special Rapporteur for Sri Lanka, with a mandate that

includes monitoring progress made by the government to address the underlying causes of the armed conflict and how to ensure the full realization of the rights of the Tamil people. Should the government of Sri Lanka resist measures urged by the Council, the Council should urge penalty action within the United Nations system.

8. Remedies to the Sri Lanka genocide may, with great international resolve and many years, result in the realization of all human rights of the Tamil people in Sri Lanka. However, the damage done to humanitarian law as a whole will also need such a resolve and many years to restore it as a viable and compelling body of law. It will not happen without actual efforts rather than mere talk. In this light, the Council must undertake specific actions to restore and revitalize humanitarian law. In particular we urge the appointment of a Special Rapporteur on humanitarian law. Such a mandate would not in any way conflict with the operations of existing humanitarian aid providers, such as the International Committee of the Red Cross, but rather would monitor existing armed conflicts for compliance with humanitarian law in an open and transparent way and would make recommendations accordingly to the Council and the General Assembly.

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<sup>1</sup> The Association of Humanitarian Lawyers (AHL) also shares the views expressed in this statement.

<sup>2</sup> International Criminal Court, Rome Statute, Articles 7 (1)(b) and 7(2)(b); ICC Elements, Article 7(1)(b).

<sup>3</sup> As stated in the Statement of 9 February 2009 by mandate- holders Corcuera Cabezul, Sekaggya, LaRue, Castrillo, Grover, Despouy, de Schutter, Alston and Rolnik, the government engaged in the "suppression of criticism and unabated impunity."

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/139/68/PDF/G0913968.pdf?OpenElement>

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## **AMNESTY INTERNATIONAL**

**UNITED NATION A/HRC/12/NGO/39 – 7 SEPTEMBER 2009**

### **PROTECTING THE RIGHTS OF SRI LANKAN INTERNALLY DISPLACED PEOPLE (IDPs)**

Amnesty International is concerned about the lack of effective implementation of commitments undertaken by the Sri Lankan Government to protect the human rights of displaced civilians. The special session on Sri Lanka, convened by the Human Rights Council in May reflected the international community's grave concern with the situation faced by civilians in the wake of Sri Lanka's armed conflict. Prior to the special session, in the context of UN Secretary General Ban Ki-Moon's visit to Sri Lanka, the Government of Sri Lanka made a number of commitments to promote and protect human rights and to ensure assistance to persons affected by conflict. The government promised to provide access for humanitarian agencies to internally displaced persons (IDPs), to 'dismantle the welfare villages at the earliest' and to resettle the bulk of the IDPs. Resolution S-11/1 adopted by the Council (although unsatisfactory in its failure to make specific human rights recommendations) was based on and reflected these undertakings. In a joint statement released on 23 May by the Government of Sri Lanka and the United Nations at the conclusion of the Secretary General's visit, Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances.

Now, three months after the special session it is clear that the Government of Sri Lanka is not respecting its own commitments, including most of those reflected in the Human Rights Council's resolution. The Council needs to re-examine the situation faced by civilians displaced by conflict in Sri Lanka, but this time without allowing itself to be distracted by the Government of Sri Lanka's empty promises.

Council resolution S-11/1 placed the priority in terms of human rights in Sri Lanka on the provision of assistance to ensure relief and rehabilitation of persons affected by the conflict, including the internally displaced. It welcomed the Government of Sri Lanka's proposal to safely resettle most displaced persons within six months and its efforts to "ensure safety and security for all Sri Lankans." It commended the measures the Government had taken to address the needs of internally displaced person, and acknowledged its commitment to provide access to international humanitarian agencies (although in fact, the

government had consistently rejected calls by the UN and others for unimpeded access, and had blocked essential human rights protection activities). The resolution urged continued donor support for post-war reconstruction efforts.

We have passed the half-way mark in the government's undertaking to the Human Rights Council to resettle the bulk of the IDPs within six months. More than two hundred and fifty thousand Tamil civilians displaced by the recent fighting are still detained by the government in crowded and unsanitary camps under military control; and these camps have deteriorated significantly since the onset of the rains, which has caused flooding, squalid conditions and reported outbreaks of disease. Many people have somewhere else they could go if permitted to leave the camps. Instead, Sri Lanka's IDP camps – which should only serve to provide emergency assistance to people uprooted by conflict – have become places of mass arbitrary detention, violating the rights of persons residing in the camps to liberty and freedom of movement, and denying them access to legal safeguards and redress for violations they may have suffered.

International human rights law dictates that while displaced people reside in these camps (for want of any better alternative) they must be at liberty to come and go. They should also be able to exercise their right to freedom of movement -- to return voluntarily to their homes in safety and with dignity or to choose their own residence elsewhere in their country. The government's claim that it needs to impose restrictions to carry out ongoing screening of IDPs so as to identify LTTE fighters is not a credible reason to detain civilians, including entire families, the elderly and children, for indefinite periods in conditions which violate their human rights.

As the resolution noted, Sri Lanka has a duty and responsibility to provide protection and humanitarian assistance to all segments of the population, including internally displaced persons, without discrimination. But camp inmates are prevented from speaking freely to aid workers, thus obstructing critical human rights protection activities. At the same time, access by journalists and independent human rights monitors has been restricted. The absence of independent monitors who can freely visit the camps and talk to IDPs, places people at risk of enforced disappearances, abductions and torture and we have reports of their occurrence.

The Sri Lankan government's policy of detaining IDPs based on their displaced status and their ethnic identity is discriminatory and is prohibited in international human rights law. Its continued practice is evidence that the Sri Lankan government has not taken seriously its human rights obligations or its commitments to the international community and the Human Rights Council, which urged the government to ensure that minorities in Sri Lanka were not subjected to discrimination.

In September 2008, the Sri Lankan Ministry of Defence barred humanitarian workers, journalists and human rights investigators from the conflict zone. Sri Lanka's displaced civilians are survivors of and witnesses to the final phase of the conflict when credible evidence strongly suggests that both the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) committed war crimes. Restrictions on the ability of these displaced people to speak with outsiders, including those doing legal and protection work, not only jeopardizes their safety in the camps, but denies them the right to seek justice. Amnesty International has called for the Council to establish a fact-finding mission to look into allegations of abuses of human rights and international humanitarian law by both sides. UN High Commissioner for Human Rights, Navi Pillay also called for an independent international investigation. This remains an urgent need for one.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/157/01/PDF/G0915701.pdf?OpenElement>

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## **PENDING REPORT**

### **REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE FOLLOW-UP TO THE HRC 9TH & 12TH SPECIAL SESSIONS**

**United Nations A/HRC/13/54 – Date??/03/2010**



# WAR CRIMES

## UP TO 40,000 CIVILIANS 'DIED IN SRI LANKA OFFENSIVE'

**The Independent, 12 February 2010** - The bitter controversy surrounding the final stages of the Sri Lankan government's operation to crush separatist rebels has been reopened after a former UN official claimed that up to 40,000 civilians may have been killed.

In the final stages of last year's move to defeat the Liberation Tigers of Tamil Eelam, the UN protested strongly about the number of Tamil civilians caught up in the fighting. Privately, officials estimated that between 8,000-10,000 lost their lives and that many more were wounded.

Now, Gordon Weiss, who until the end of last year was the UN's spokesman in Colombo, has suggested the figure may be much higher. "A lot of civilians died inside the siege zone. I have heard anything between ten and forty thousand people and that's from reliable sources who had a presence inside the zone," he told the Australian Broadcasting Corporation. "[The Sri Lankan authorities] repeated a number of things that were either intentionally misleading or were lies. One senior government civil servant remarked at the end of the war that the government insistence that the figures were very low was a ploy. It was a ploy to allow the government to get on with its business."

Last night, the Sri Lankan government dismissed the claims. Lucien Rajakarunanayake, a senior presidential spokesman said: "All I can tell you is that [Mr Weiss] is unaware of the facts. The figures are a total exaggeration. The UN itself has given figures that are much lower than this."

Precisely how many civilians were injured or wounded as Sri Lankan forces defeated the remnant of the LTTE fighters making a final stand in the north east of Sri Lanka, may never be known. At the time, the UN and other organisations claimed that civilians were being struck by ordinance fired by both sides. Testimony provided by Tamils who escaped from the war zone suggests that many civilians were used as human shields by the LTTE as government troops advanced.

Mr Weiss was last night unavailable to comment and the UN in Sri Lanka refused to discuss the claims of its former spokesman, believed to be writing a memoir of his experiences in Sri Lanka.

In the interview, the former spokesman also suggested there was a need to investigate allegations of possible war crimes. While there have been widespread calls for such an inquiry, including from some senior figures within the UN, the Sri Lankan authorities have refused such an undertaking. "I will not allow any investigation by the United Nations or any other country. There is nothing wrong happening in this country? Take it from me, we will not allow any investigation," Gotabhaya Rajapaksa, the country's defence secretary and brother of the president, recently told an interviewer.

Indeed, the purported readiness of former army chief Sarath Fonseka to cooperate with such an inquiry has been cited by the government as one of the reasons he was arrested and placed in detention and will likely be placed before a court-martial. Mr Fonseka, who last month failed in his electoral challenge to Sri Lanka's president, Mahinda Rajapaksa, had said allegations about war could be investigated. The defence secretary said of Mr Fonseka's undertaking: "He simply cannot do that. For one thing it is a lie."

Yesterday, hundreds of lawyers marched through Colombo to protest against Mr Fonseka's continued detention. They gathered near the country's Supreme Court which admitted a petition filed by the former general's wife that claimed his detention by the military police was illegal. The court has given the government four weeks to reply.

Such a date would be less than a month before parliamentary that Mr Fonseka has intended to contest. The government has not yet specified which charges it wishes to bring against him, but has repeatedly claimed he was plotting a coup – something he denied.

Meanwhile, the US and Norway denied claims made by the government that they had bankrolled Mr Fonseka's campaign. In a statement, the US Embassy in Colombo said: "The United States backed no candidate but strongly supported a free, fair, and credible democratic process."

<http://www.independent.co.uk/news/world/asia/up-to-40000-civilians-died-in-sri-lanka-offensive-1897865.html>

## **“GOTA ORDERED THEM TO BE SHOT” – GENERAL SARATH FONSEKA**

*-General Fonseka speaks on the killings of the LTTE's Pulidevan, Nadeson and Ramesh*

*-Basil denies involvement*

*-General Shavindra Silva says “no comment”*

**By Frederica Jansz –**

**The Sunday Leader, 13 December 2010** - Common opposition candidate General Sarath Fonseka says Defense Secretary Gothabaya Rajapaksa instructed a key ground commander in the north that all LTTE leaders must be killed and not allowed to surrender.

In an explosive interview with The Sunday Leader General Fonseka the then Army Commander said he had no information communicated to him in the final days of the war that three key LTTE leaders had opted to surrender to Sri Lanka's armed forces as the battle drew to a bloody finish.

Fonseka charged that communications were instead confined between the LTTE leaders, Norway, various foreign parties, Basil Rajapaksa, Member of Parliament and the powerful senior adviser to the President and such information was never conveyed to him as he supervised the final stages of the war. “Later, I learnt that Basil had conveyed this information to the Defense Secretary Gothabaya Rajapaksa – who in turn spoke with Brigadier Shavendra Silva, Commander of the Army's 58th Division, giving orders not to accommodate any LTTE leaders attempting surrender and that “they must all be killed.”

General Fonseka explained how on the night of May 17th this year desperate efforts of three senior LTTE leaders trapped in the war zone to save their lives failed as they were instead shot dead as they prepared to surrender to government forces.

The government later claimed that troops found bodies of three key LTTE leaders identified as Nadesan, Pulidevan and Ramesh during the mop- up operations in the last LTTE stronghold on the morning of May 18.

General Fonseka said the incident took place as the remaining LTTE cadres were boxed into a 100m x 100m area, North of Vellamullivaikkal.

Balasingham Nadeshan a former police constable of Sri Lanka police was the political head of the LTTE. Seevaratnam Pulidevan was the head of “LTTE peace secretariat” while Ramesh a senior special commander of the military wing.

Hours before they surrendered, in a flurry of emails, text messages and telephone calls between NGOs, a foreign government and Sri Lankan officials in Colombo, the two LTTE political leaders had frantically inquired as to how they could give themselves up.

They were told: “Get a piece of white cloth, put up your hands and walk towards the other side in a non-threatening manner.”

But the attempt to surrender by the three LTTE leader and their families failed. Sometime between midnight on 17 May and the early hours of the next morning, the three men and their family members were shot dead.

General Fonseka said it was Basil Rajapaksa together with the Defence Secretary Gothabaya Rajapaksa who through foreign intermediaries conveyed a message back to the LTTE leaders who wished to surrender to walk out carrying a piece of white cloth. “It was their idea,” he said.

### **GENERAL SILVA AND ARMY COMMANDER SAY ‘ NO COMMENT ’**

When we contacted Shavendra Silva, now promoted to Major General he sounded very shocked when told of the allegation but insisted he could not respond to this charge until he had clearance from the military spokesman.

Brigadier Udaya Nanayakkara told us he had to get clearance from the Army Commander Jagath Jayasuriya.

Later in the day the military spokesman said that he had contacted both the Army Commander and General Shavindra Silva and both had said that they would not comment on the matter.

The chief intermediary for the three LTTE men was the Norwegian government's then Environment and Development Minister Erik Solheim. (Solheim is now the overseas development minister) On Sunday 17 May, Mr Solheim apparently received calls from LTTE figures who said they wanted to surrender.

The ICRC in Colombo later confirmed that it had received word from the Norwegians that the two leaders were looking to give themselves up. "The ICRC was approached on this matter by the representatives of the LTTE as well as the Norwegian authorities," spokeswoman Sarasi Wijeratne was quoted saying at the time of the incident. "The information was referred to the Sri Lankan authorities. We have no idea what happened [then]. We lost contact with everyone in the last conflict."

The government's point man in the negotiations appears to have been former foreign secretary Palitha Kohona who is now Sri Lanka's ambassador to the United Nations. He was quoted by news agencies saying that in the days leading up to Sunday evening, he had received a number of messages indicating from Mr. Nadesan and Mr Pulidevan – whom he has met at various peace talks – wanting a way out.

In one interview with 'SiberNews' Mr. Kohona said that his response had been that "there was only one way to surrender that is recognised by military practice". He said they should obtain a white flag and give themselves up. "I kept saying this for three days," he added.

But General Fonseka maintains that Nadesan, Ramesh and Pulidevan had been shot dead by government troops as they advanced towards them carrying a white flag, as they had been instructed to do.

Fonseka said he later learnt about what exactly had taken place as a result of journalists who had been entrenched at the time with General Shavendra Silva's brigade command. These reporters according to Fonseka were privy to the telephone call received by the Army's 58th Brigade Commander from the Defence Secretary – "telling him to not accommodate any LTTE surrenders but to simply go ahead and kill them." – "These journalists later told me what exactly took place," Fonseka said.

#### **"NORWAY NEVER GOT IN TOUCH" – BASIL**

Presidential Advisor Basil Rajapaksa refuted this damning charge. He told The Sunday Leader, "The Norwegians never got in touch with me over this particular incident. I have been in touch with the Norwegians over various issues pertaining to the conflict but never once on this particular issue."

When asked if he had been unaware then that three LTTE leaders were seeking surrender during the last stages of the war – Rajapaksa replied, "No. I won't say that. But Norway never got in touch with me."

Asked nevertheless if he did convey something to this effect to his brother and Defence Secretary Gotabaya Rajapaksa, Mr. Rajapaksa said "If I had not been informed by Norway in the first instance then obviously the second did not happen."

Our attempts to contact Defence Secretary Gotabaya Rajapaksa failed. When we telephoned the Defence Ministry Friday we were told Mr. Rajapaksa had not been in office the entire day. His staff refused to release any other telephone number.

<http://www.thesundayleader.lk/2009/12/13/%e2%80%9cgota-ordered-them-to-be-shot%e2%80%9d-%e2%80%93-general-sarath-fonseka/>

### **CLARIFICATION BY GENERAL SARATH FONSEKA ON OUR LEAD STORY ON DECEMBER 13**

**The Sunday Leader, 20 December 2010** - "As Commander of the Army during the final stages of the war, I did not receive any communication that some LTTE leaders were planning or wanting to surrender.

I was not told at any stage they wanted to do so and that some kind of an agreement had been reached that they must come out carrying pieces of white cloth.

I can speak conclusively and authoritatively on this particular issue and say categorically that nobody carrying white flags attempted surrender in those final days of the war. Therefore all of the LTTE leaders were killed as forces completely took over a remaining 100m x 100m area of land north of Vellamullivaikkal.

Two days after the war ended I learnt through some journalists who were entrenched at the time with then Brigadier Shavendra Silva that an illegal order had been conveyed to General Shavendra Silva by Defence Secretary Gotabaya Rajapaksa.

This illegal order was however not carried out at ground level. I take full responsibility for what happened on the ground.”

<http://www.thesundayleader.lk/2009/12/20/clarification-by-general-sarath-fonseka-on-our-lead-story-on-december-13/>

## **SRI LANKAN WAR CRIMES VIDEO IS AUTHENTIC, TIMES INVESTIGATION FINDS**

The Times December 15, 2009

Video footage that appears to show Sri Lankan troops committing war crimes by summarily executing captured Tamil Tiger fighters on the battlefield was not fabricated, as claimed by the Sri Lankan Government, an investigation by The Times has found. The findings come after General Sarath Fonseka, the former head of the army, alleged that Gotabhaya Rajapaksa, the Defence Minister, had ordered that surrendering Tiger leaders be killed rather than taken prisoner in the final days of the brutal 26-year civil war that ended in May.

The claims, vehemently denied by the Government, added to a lengthy list of war crimes allegations against it.

The video of the alleged battlefield executions, which was aired on Channel 4 in August, shows a naked man, bound and blindfolded, being made to kneel.

Another man, dressed in what appears to be Sri Lankan army uniform, approaches from behind and shoots him in the head at point-blank range. “It’s like he jumped,” the executor laughs. The camera then pans to show eight similarly bound corpses.

It is impossible to confirm when and where the filming occurred or the identities of the men shown. Pro-Tamil groups alleged that the video was filmed by troops on a mobile phone in January, when they overran the Tiger stronghold of Kilinochchi in the north of the country. Those claims were denied by government officials, who said they had “established beyond doubt” that the footage was fake.

An analysis for The Times by Grant Fredericks, an independent forensic video specialist who is also an instructor at the FBI National Academy, suggests otherwise. He found no evidence of digital manipulation, editing or any other special effects. However, subtle details consistent with a real shooting, such as a discharge of gas from the barrel of the weapon used, were visible.

“This level of subtle detail cannot be virtually reproduced. This is clearly an original recording,” said Mr Fredericks, who was previously the head of the Vancouver police forensic video unit in Canada.

There was also strong evidence to rule out the use of actors. “Even if the weapons fired blanks, the barrel is so close to the head of the ‘actors’ that the gas discharge alone leaves the weapon with such force it would likely cause serious injury or death,” Mr Fredericks said.

The reactions of those executed was consistent with reality, he added. “The victims do not lunge forward . . . [they] fall backward in a very realistic reaction, unlike what is normally depicted in the movies.”

In Mr Fredericks’s opinion “the injury to the head of the second victim and the oozing liquid from that injury cannot be reproduced realistically without editing cuts, camera angle changes and special effects. No [errors] exist anywhere in any of the images that support a technical fabrication of the events depicted,” he said.

The Sri Lankan Government said in a statement in September that the footage was “done with a sophisticated video camera, dubbed to give the gunshot effect and transferred to a mobile phone.”

Mr Fredericks’s research showed that code embedded in the footage appeared to match with software used in Nokia mobile phones.” He said: “The recording is completely consistent with a cell phone video recording and there are no signs of editing or alterations.”

The strong evidence that the footage does show real executions could reinforce international calls for an independent war crimes investigation — something that the Sri Lanka Government has resisted. A Sri Lankan army spokesman requested that a copy of Mr Fredericks's report be sent to him yesterday, but did not reply when it was.

Mr Fonseka, who resigned from the army last month after being sidelined, is campaigning to unseat President Rajapaksa, the Defence Minister's brother, at elections next month.

<http://www.timesonline.co.uk/tol/news/world/asia/article6956569.ece>

## **SRI LANKA EXECUTION VIDEO 'NOT FAKE'**

**Updated on 15 December 2009**

**By Channel 4 News**

A forensic video specialist says Channel 4 News footage appearing to show the execution of Tamil Tigers was not fabricated, as the Sri Lankan government has claimed.

It was a quick and violent end to a long and violent war; 80,000 dead; maybe 20,000 in what was called the No Fire Zone in the last few bloody weeks. Tens of thousands of Tamil civilians caught up in the final showdown as artillery shells slammed down; both government forces and the Liberation Tigers of Tamil Eelam accused of war crimes.

But journalists and independent investigators were denied access to the combat zone, and even after it was all over to eye-witnesses too. But reports still filtered out of unspeakable suffering. Then, in August, this grim video was obtained by and broadcast by Channel 4 News.

The raw footage, a continuous shot one minute eight seconds long, purported to show the casual execution of eight bound, blindfolded, naked Tamil men by Sri Lankan government soldiers. If this was what was claimed, this video would bolster international demands for an independent war crimes investigation - something the victorious Sri Lankan government has resisted.

The government denounced the controversial video as a fake, but the UN expert on extrajudicial killings wasn't convinced. "This video tape seems to have most of the characteristics of a genuine article and that in itself is sufficient to impose an obligation on a government to undertake a sustained and effective impartial investigation to ascertain the truth." - Philip Alston, UN Special Rapporteur.

The Sri Lankan government conducted four investigations and then announced to a roomful of foreign diplomats that they'd all concluded that the footage was doctored. But some remained unconvinced by the "impartiality" of these findings, the US State Department among them.

Now, an independent expert in forensic video analysis has examined the footage, at the request of The Times. Grant Fredericks is a former policeman who works with the FBI as an expert witness.

He concluded that the video, consistent with a cell-phone recording, showed "no evidence of digital manipulation, editing or any other special effects." The level of subtle detail, he said, could not have been virtually produced, citing the visible discharge of gas - from the barrel of the weapon and bleeding from the injury, which, he said, could not have been reproduced without special effects.

No errors exist anywhere to support a technical fabrication, he said. "All the events that are purported to have taken place in the field of view of the camera are authentic. "There's no signs of editing, there is no signs of any errors in the video. It's impossible to reproduce virtually in a computer environment." - Grant Fredericks, Forensics Video Analyst

Professor Rajiva Wijesinha from the Sri Lankan Ministry of Disaster Management responded: "The technical reasons given by our expert are not even addressed by Mr Fredericks and I think that's rather sad because I think we have given the full background of our chap, who has also an international reputation and I think he is very good.

"So I'm afraid I don't find Mr Fredericks very convincing." - Professor Rajiva Wijesinha, Sri Lankan Ministry of Disaster Management. With a presidential election looming next month, there is growing dissent in the ranks of the leadership.

President Mahinda Rajapaksa's brother and defence minister has now been accused of ordering other such killings at the end of the war by a former army commander.

With their victory receding into the past, the cabal who won the war are now turning on each other and tonight Channel 4 News has learned that the UN's special rapporteur will soon announce the findings of another independent report into the executions' video.

Sri Lanka's first peace time election in decades will be haunted by the horrors of its war.

[http://www.channel4.com/news/articles/politics/international\\_politics/sri+lanka+execution+video+aposnot+fak+eapos/3464152](http://www.channel4.com/news/articles/politics/international_politics/sri+lanka+execution+video+aposnot+fak+eapos/3464152)

## **AUSTRALIAN CITIZEN DR PALITHA KOHONA IMPLICATED IN SRI LANKAN WAR CRIME**

**ABC News - 07/12/2009**

"Dr Kohona is a dual Australian-Sri Lankan citizen. The fact that he is an Australian citizen automatically activates obligations for Australia to investigate this matter at the legal level, but the fact that he was a former high-profile official for the Australian Government representing Australia in international negotiations, I think perhaps places an even stronger responsibility on Australia to at least conduct the initial investigations into this matter,"

- Don Rothwell, Professor of international law at the Australian National University  
Full Text of ABC News

### **Sri Lanka war crime allegations surface**

Six months after the Sri Lankan Government won its war with the Tamil Tigers, allegations are surfacing of war crimes committed in the final months of the conflict.

Last month the US Department of Homeland Security tried to question the Sri Lankan presidential candidate and US citizen, General Sarath Fonseka, about possible war crimes. But the Australian Government has made no such moves to question a prominent dual Sri Lankan-Australian citizen about his activities.

In the last days of the civil war, it is alleged two political leaders of the rebel Tamil Tiger fighters were killed as they tried to lay down their arms and surrender. The men led about a dozen men and women under a white flag to waiting Sri Lankan army troops.

A Tamil eyewitness said the soldiers fired on them with machine guns. Everyone in the group was killed.

The incident is mentioned in a 2009 US State Department report to Congress, on possible violations of international humanitarian law in Sri Lanka, from January until the end of May this year.

The report says "the leaders, Nadesan and Puleedevan, spoke to international and domestic figures, who acted as intermediaries with the then foreign secretary, Dr Palitha Kohona, to negotiate a surrender. Nadesan requested a UN witness but was told he had the Sri Lankan President's guarantee of safety".

Dr Kohona is now Sri Lanka's ambassador to the United Nations. He is also an Australian citizen and, according to Hansard, a former senior official with the Department of Foreign Affairs and Trade.

When asked what his role was in arranging the surrender, he told the ABC he had "no role in arranging anything". "Because I was in foreign ministry I had nothing to do with the defence ministry or the defence forces, and I don't think anything was arranged anyway," he said.

"I don't think anybody else was involved in such a surrender either. "There was an attempt to wake me up in the middle of the night, and I told them that I was not the person to contact about those demands.

"There was a general query about surrendering and I told them that I was the wrong person, that I had nothing to do with surrendering and asked them to go and deal with the matter in the way it ought to be dealt with."

Three weeks after the shooting, Sri Lanka's army chief General Sarath Fonseka was reported as saying the military had to overlook traditional rules of war and kill Tamil Tiger rebels who had come under white flags to surrender.

### ***Calls for an investigation***

Don Rothwell, professor of international law at the Australian National University, says as a diplomat Dr Kohona has immunity from prosecution, but recently international law courts have begun to question this principle in the case of possible war crimes.

"There's nothing to suggest Dr Kohona was directly responsible for committing these alleged war crimes, though international law does recognise principles of what's called command responsibility, where if someone had direct command, whether it's legal or political, with respect to the commission of these types of offences," he said.

Mr Rothwell says in this case, there is enough material to launch a preliminary investigation. "Dr Kohona is a dual Australian-Sri Lankan citizen. The fact that he is an Australian citizen automatically activates obligations for Australia to investigate this matter at the legal level, but the fact that he was a former high-profile official for the Australian Government representing Australia in international negotiations, I think perhaps places an even stronger responsibility on Australia to at least conduct the initial investigations into this matter," he said.

Mr Kohona says the allegations "first and foremost ... need to be substantiated [and] no country goes around investigating silly accusations based on innuendo and unsubstantiated facts".

Both the Federal Government and the Australian Federal Police (AFP) say they are aware of the US State Department's report. The AFP says it has not received any referral to investigate Dr Kohona for alleged war crimes. A spokesman for the Attorney-General's Department says investigation and prosecution by the country in which criminal conduct occurred is the most appropriate way to bring an alleged war criminal to justice.

<http://www.abc.net.au/news/stories/2009/12/07/2764384.htm?section=world>

## **JOURNALIST NAMES COMMAND OFFICERS INVOLVED IN KILLING SURRENDERING COMBATANTS IN SRI LANKA**

A Journalist has named the brigade and command officers involved in the execution of surrendering LTTE combatants in Sri Lanka, in the early hours of May 18th 2009. Names of those Command Officers involved in alleged War Crimes are,

- Special Forces Regiment were deployed alongside the 59 division : Commanded then by **Col. Athula Kodipilli**. Special Force battalions 1-SF led by **Maj. Mahinda Ranasinghe** and 2-SF led by **Maj. Vipulathilake Ihalage**. Golf squad under **Capt. Chaminda Gunasekera** , Romeo squad under **Capt. Kavinda Abeywardene**, Echo squad led by **Maj. Kosala Wijekone** and Delta squad led by **Capt. Lasantha Ratnasekera**. The Golf and Romeo squads were from 1SF while the Echo and Delta squads were from 2SF.

- 59 division led by **Prasanna Silva**
- 58 div led by **Shavendra Silva**
- 53 div led by **Kamal Gunaratne**
- Task Force 8 led by **Col Ravipriya**

".. From the Government side those in the loop were President **Mahinda Rajapakse**, Presidential secretary **Lalith Weeratunga**, Defence secretary **Gotabhaya Rajapakse**, Parliamentarian and Special adviser to the President **Basil Rajapakse** and then Foreign secretary **Palitha Kohona** .."

## **REMARKS ON THE ADOPTION OF A UNITED NATIONS SECURITY COUNCIL RESOLUTION TO COMBAT SEXUAL VIOLENCE IN ARMED CONFLICT**

**Hillary Rodham Clinton**  
*Secretary of State*

**SECRETARY CLINTON:** The 6,195<sup>th</sup> meeting of the Security Council is called to order. The provisional agenda for this meeting is before the Council in document S/Agenda 6,195, which reads, and I quote: "Women and Peace and Security," end of quote. Unless I hear any objection, I shall consider the agenda adopted. The agenda is adopted.

.....“Now, reading the headlines, one might think that the use of rape as a tactic of war only happens occasionally, or in a few places, like the Democratic Republic of the Congo or Sudan. That would be bad enough, but the reality is much worse. We’ve seen rape used as a tactic of war before in Bosnia, Burma, Sri Lanka, and elsewhere. In too many countries and in too many cases, the perpetrators of this violence are not punished, and so this impunity encourages further attacks.” (Excerpt from the original report) <http://www.state.gov/secretary/rm/2009a/09/130041.htm>

## **'AS THE SHELLS FELL, WE TRIED TO SAVE LIVES WITH NO BLOOD OR MEDICINE'**

***Gethin Chamberlain talks to Damilvany Gnanakumar, a 25-year-old British Tamil who witnessed the horrors of the conflict and was later imprisoned in an internment camp***

**The Guardian, 16 September 2009** - The young mother was standing by the side of the road, clutching her baby. The baby was dead.

Damilvany Gnanakumar watched as she tried to make a decision. Around them, thousands of people were picking their way between bodies strewn across the road, desperate to escape the fighting all around them.

“The mother couldn’t bring the dead body and she doesn’t want to leave it as well. She was standing holding the baby. She didn’t know what to do. At the end, because of the shell bombing and people rushing there were thousands and thousands of people, they were rushing in and pushing everyone. She just had to leave the baby at the side of the road — she had to leave the body there and come — she had no choice. And I was thinking in my mind ‘What have the people done wrong? Why are they going through this, why is the international government not speaking up for them? I’m still asking.’”

Four months later and Gnanakumar is sitting on a cream leather sofa in the living room of the family home in Chingford, Essex, reliving the final days of Sri Lanka’s brutal civil war.

### **In grim internment camps**

For most of those four months, the 25-year-old British graduate was imprisoned behind razor wire inside the country’s grim internment camps, home to nearly 300,000 people. She was released last week, partly as a result of pressure from this newspaper (The Guardian), and flew back into London on Sunday.

The last time she publicly spoke about the conflict was from the hospital where she was working inside the ever-shrinking war zone in Sri Lanka’s north-east. Then, the national army had surrounded the small sliver of land where the remnants of the Tamil Tiger guerrillas held out and where hundreds of thousands of civilians had taken refuge. She had been in despair: a shell had just struck the hospital and dozens were dead. “At the moment, it is like hell,” she said then.

### **Treating the wounded**

Gnanakumar was one of a small group of medics treating the wounded and providing a running commentary to the outside world from behind the lines. For months she had managed to stay alive while around her thousands died. At night, she lived in bunkers dug in the sand. During the day, she helped in the makeshift hospitals, dodging the shells and the bullets, tending the wounded and the dying, as the doctors tried to operate with butcher’s knives and watered-down anesthetic.

Now her damning account provides a powerful rebuke to the claims of the Sri Lankan President, Mahinda Rajapakse, that the defeat of the Tamil Tigers was achieved without the spilling of a drop of civilian blood.

Born in Jaffna in the Tamil-dominated north of Sri Lanka in 1984, Gnanakumar and her family moved to Britain in 1994. Until February 28 last year, she had not been back. She had just completed a biomedical degree at Greenwich University, but her short-lived marriage was on the rocks and she decided it was time to make a clean break. She left the house, telling no one where she was going.

### **Fighting was getting worse**

Arriving in the capital, Colombo, she headed for the Wannu, the Tamil heartland, to stay with a relative she calls her brother (her real brother is back in the UK, along with her two sisters). There seemed little sign of danger, but by June 2008 fighting was getting worse: the Tamil Tigers, or Liberation Tigers of Tamil Eelam (LTTE), still thought they would be able to negotiate a ceasefire, as they had done in the past, but the



government had other ideas. They were determined to destroy the LTTE once and for all. Gnanakumar decided to stay on to try to help those who were trapped by the advance.

Even before the arrival of the government's ground forces, there had been regular air raids by air force Kfir jets. But in early January artillery barrages began, forcing the population to move.

That was when the reality of the war hit Gnanakumar for the first time.

"It was raining and you could see everywhere on the road the blood is running with the water and the bodies were left there because there was no-one to identify who was dead and who is alive, the bodies were just laid down on the floor and that's the first time I saw dead bodies and wounded people crying out, shouting."

### **Built bunkers**

Wherever they stopped, they built a bunker, digging down until they could stand up in the hole, cutting down palm branches and laying them across the top for a roof and packing sandbags on the top and around the sides.

As the frontline advanced, trapping as many as 300,000 people inside a shrinking enclave of LTTE-held land, Gnanakumar went to the makeshift government hospital, which had moved into a former primary school, and volunteered to help, dressing wounds and administering first aid.

Her laboratory training had not prepared her for anything like this, but she learned as she went along. As the fighting intensified, they were treating as many as 500 people every day in two rooms. "They had a shortage of medicine but they had to somehow save the people. The last two weeks or so there was a shortage of everything."

With replacement blood running out, she had to filter what she could from the patients through a cloth before feeding it back into their veins. When the anesthetics ran short, they diluted them with distilled water. "I watched when there was a six-year-old boy," she said. "They had to take off the leg and also the arm, but they didn't have proper equipment, they just had a knife that the butchers use to cut the meat, and we have to use that to take off his leg and arm. He cried and cried."

### **It got worse**

As the army closed in, it got worse. "People were running and running to get them safely away from the shell bombing, but they couldn't and it came to a point where we thought we were all going to die, there is no way we can be safe anymore here, but we just have to take it. I mean, you can't get out of the shell-bombing. I didn't think that I would be alive and I would be here now. I said OK, I'm going to die, that is the end of it."

"One day I was inside the (operating) theatre and the next room was bombed. We had a lot of the treated people left in the room for the doctors to go and monitor and they all died in that shell bomb. And they (the Sri Lankan forces) again bombed the hospital and one of the doctors died in that."

Inside the hospital, there was no respite. Gnanakumar cannot forget the day a mother was brought in, injured, clutching her baby.

"She had the baby on her lap, the baby is dead and the mother didn't know and the doctor said: 'Don't tell her, because if we tell her now she will start crying out and shouting and we have to save the mother first.' So we said: 'OK, give the baby to us, we'll look after her you go and get the treatment from the doctor,' and only after she got the treatment we told the truth, that your baby is dead. I can easily say it, but at that moment I was in so much pain — the innocent baby — the mother didn't know the baby was dead she thought 'my baby is sleeping.'

"There were so many incidents. Another time the mother was dead and the baby was still suckling."

### **Ate what they could**

The fighting was getting closer. They ate what they could find and those who could slept, in the occasional lulls. "You have to be ready to run, you can't relax and go to sleep, any minute you just have to be ready," she said. Gnanakumar could not take any more. On May 13 the hospital had been hit, killing about 50 people. "The bunker right next to ours had a shell on top of it and there were six people in the same family who died and three were wounded."

"I saw them suddenly I start hearing people are crying out and I thought, it has to be somewhere really close? I came out of my tent and I saw blood everywhere and the people? I couldn't even imagine that place, there was blood and then the bodies were in pieces everywhere and my brother said: 'Just pack up and let's get away from this place.'"

In the last five days, she says, she believes about 20,000 people died. It is a very high estimate, though the UN has acknowledged the true death toll may never be known. Tamil groups such as the Global Tamil Forum say her account corroborates their own figures drawn from interviews with survivors.

Over the course of the three-decade war, it is estimated that up to 100,000 people have died. But independent confirmation of the death toll in the final days has been impossible. The Sri Lankan government has barred independent journalists from the war zone to this day, and has expelled UN officials and aid workers.

### **Survivors spirited away**

Meanwhile, the survivors of the final assault have been spirited away inside sprawling camps in a militarised zone.

It was to those camps, at Menik Farm, that Gnanakumar was taken. Following that last bombing, she joined thousands fleeing towards the government lines. "We started moving and after walking about one hour or so we saw the Sri Lankan army.

"They were saying: 'Come, you are safe now, food will be provided for you.' There were bodies everywhere, in pieces. We had to just walk." That was when she saw the mother agonising over 'what to do with her dead baby.' No one had time to bury the bodies, she says. Some pushed them into bunkers and covered them with a little sand. That was the best they could do.

That night, they slept in a school, then they were taken by bus to the town of Vavuniya. She called her mother: "I said, Mum, just get me out of here, I just want to get out of this place. And the phone got cut off."

The Sri Lankan government has built a series of camps to house the estimated 300,000 people who poured out of the war zone. It claims that it needs to hold the civilians until it can weed out the former Tamil Tiger fighters; its critics, including many UN organisations and independent aid groups, question why, even if that is true, it needs to imprison children and the elderly behind barbed wire, and why it has not quickly identified the rebels. Despite pledges to start sending the internees back to their homes "at the earliest possible opportunity," the UN says only 2,000 have so far been released.

### **No food**

There was no food on the first day Gnanakumar arrived, and she had lost contact with the people she had been with. She slept in a tent with strangers.

Even after the privations of the war zone, conditions in the camp still came as a shock.

"Wherever you go there are big queues, whatever you want you have to queue. The toilets are terrible, I can't describe how disgusting it was. Flies everywhere, mosquitoes — unhygienic. People had all sorts of illnesses.

"People have lost their family members, they are separated from their families and they are going through depression."

Accounts circulated of rapes and murders, of people disappearing. Some people committed suicide: a teacher was found hanging from a tree.

Military intelligence officers were roaming the camps, looking for former Tamil Tigers, she said. "It is an open prison, you are free to walk but you are inside a prison, you are not allowed to step out. You can't. There were guards everywhere and checkpoints."

### **Appeal from her parents**

A couple of days after she arrived, the British High Commission made contact through the UNHCR. An appeal from her parents in *The Guardian* brought fresh hope and a flurry of activity: she was moved from the overcrowded zone II to zone I, the part of the camp the authorities show to visitors.

"I was there when the UN Secretary Ban Ki-moon came in. He stayed there for about 10 minutes and just went. Why didn't he go into the camp and talk to the people and spend some time asking them what their problems were? I thought he has a responsibility and people were expecting something from him. They expected much from him and he just spent 10 minutes and that was it."

The officials told Gnanakumar she would be staying for a couple of days and would then be released. "And then the 48 hours turned into three days and then it turned into weeks and months and I thought OK, now I understand it is not going to happen." She was interrogated five times as to what was she doing there and why she had been in the hospitals.

The call to say she was going home came last week. She was taken to Colombo to meet the President's brother, Basil Rajapakse.

"He said OK, you went through so much in the country and now you are released you can go and join your family and be happy. He wasn't sorry about it." She was then handed over to British officials.

She speaks in a matter-of-fact way, rarely betraying emotion. Her hair has been tied back tightly. She had beautiful hair before she left, she says, but lost most of it in the camps. She is not sure what she will do now, maybe something in the field of medicine.

"I'm happy and proud of myself that I was able to help the people. I still think it is unreal that I am in the UK. I never thought I would be alive and be coming back, even in the camp.

"After looking at the people dying and dead bodies everywhere, it is like nothing would scare me any more — it is like I have had the hardest time in my life and I think I am prepared to take up whatever happens in life now.

"I'm not that old, the Vany that sits down and cries for little things. I'm stronger now after going through and seeing all those problems. My mind is clear now."

<http://www.guardian.co.uk/world/video/2009/sep/16/sri-lanka-tamil>

## **MORE THAN 100,000 CHILDREN TRAUMATISED: NORWEGIAN AID WORKER**

**5 March 2010** - Redd Barna (Save the Children) aid worker from Norway, Vidar Strøm, has said that there are over one hundred thousand children who have been traumatised, to a greater or lesser degree, after being exposed to the war and then for the internment camps in the North. Redd Barna has gained access to the camps only after December 01 and is working to create child-friendly environment within the camps. The goal is to make a very abnormal situation as normal as possible, Mr. Strøm told the official website of the organisation.

Save the Children is working intensively to put in place school, kindergarten or similar structures for children who are exposed to war, Mr. Strøm told the website. This is his fifth mission in Sri Lanka.

Children need support from adults who can understand and attend to their needs. Save the Children, among other things, has provided training to parents and teachers.

These children are entirely dependent on aid, and our job is to protect them best. I am glad that humanitarian organizations have been allowed entry into the camps, Mr. Strøm has told Reddbarna.no.

<http://news.pluggd.in/more-than-100000-children-traumatised-norwegian-aid-worker-221/>

## **DUBLIN TRIBUNAL FINDS AGAINST SRI LANKA ON CHARGES OF WAR CRIMES**

### **PRESS RELEASE 18TH JANUARY 2009**

**In Dublin today, 16th January**, at 2.00pm the Peoples' Tribunal Chairman Francois Houtart read the preliminary findings of the Peoples' Tribunal on the war in Sri Lanka and its aftermath. There were four findings:

- 1: That the Sri Lankan Government and its military are guilty of War Crimes;
- 2: That the Sri Lankan Government and its military are guilty of crimes against humanity;
- 3: That the charge of genocide requires further investigation;
- 4: That the international community, particularly the UK and USA, share responsibility for the breakdown of the peace process.

Harrowing evidence, including video footage, was submitted by eye-witnesses of the use of heavy artillery and phosphorous munitions, and of the continuous violation of human rights by military activity to a panel of ten international jurors over two days.

The Irish Forum for Peace in Sri Lanka welcomed the preliminary findings of the Tribunal. Responding to the findings, the Forum issued the following five demands:

- 1:** We call on the Sri Lankan government to allow the United Nations to conduct an inquiry into war crimes and crimes against humanity perpetrated during the final stages of the war between the Sri Lankan armed forces and the LTTE, and during the war's aftermath;
- 2:** We call on the Sri Lankan Government to release all those being detained in concentration camps and the estimated 11,000 people being held secretly at unknown locations;
- 3:** We call on the Sri Lankan government to end the use of extra-judicial killings, sexual violence, and the deprivation of food and water as weapons against the civilian population;
- 4:** We call on the Sri Lankan government to end the suppression of political dissent by violent or other means;
- 5:** We call on the Sri Lankan government to fully implement human rights for all citizens of Sri Lanka, and the political solution involving the full participation of the Tamil population, ending the systematic historical discriminatory measures of the Sri Lankan state against the Tamil people.

The Irish Forum for Peace in Sri Lanka asserts that long term peace and stability can only be established on the basis of full justice and rights for all the inhabitants of the island.

**Co-ordinators**  
**People's Tribunal on Sri Lanka (PTSL)**

[http://www.ifpsl.org/index.php?option=com\\_content&task=view&id=24&Itemid=1](http://www.ifpsl.org/index.php?option=com_content&task=view&id=24&Itemid=1)

## **1,830 DISAPPEARED, BETWEEN SEPTEMBER 2006 TO OCTOBER 2009**

A Sri Lankan Presidential Commission which investigated into disappearances of persons between 13-09-2006 to 01-10-2009 period confirmed that 1,830 are still missing. According to the Presidential Commission, 1,830 persons had not been found so far though inquiries were continuing. The missing comprises: Western Province (418), East (614), Vanni (323), Jaffna peninsula (148), NCP (73), Uva (56), Sabaragamuwa (26), Wayamba (31), CP (54) and Southern Province (87).

J. H. S. S. Jayasundera, Secretary to the Commission, said that of the investigated disappearances, 2,382 had been reported from the North, East and the Vanni. This comprises: 186 cases in the Jaffna peninsula, Vanni (453) and East (1,743). He said that of the 2,382 disappeared, 1,297 had been found. Of them 38 persons in the Jaffna peninsula, Vanni (130) and the East (1,129).

The Commission said that of the 1,855 persons abducted during this period, 1,290 had been found. Of the 565 persons who had not been found so far included 73 cases reported from the Western Province, 200 (East), 137 (Vanni), 100 (Jaffna peninsula), two (NCP), nine (Uva), three (Sabaragamuwa), 29 (Wayamba), 4 (CP) and eight (Southern Province).

The Commission further revealed that they had not been able to gather information relating to 746 killings nor identify 511 bodies.

According to information gathered from 408 police stations countrywide, there were altogether 3,652 cases of unresolved disappearances (1830), abductions (565), killings (746) and unidentified bodies (511).

Former High Court Judge and Commissioner of the Presidential Commission Mahanama Thilakarathne told a recent press conference at his office at the BMICH that the complaints had been received from individuals, some of them by way of letters and incidents revealed by the media. According to him, their task would have been much easier if those who had lodged complaints regarding disappearance and abductions informed the local police in case of the missing persons returning. Unfortunately this had not happened, he said.

He said that among the cases which were still being investigated included 100 killings reported between January 1, 2009 to October 1, 2009

## DETAINING IDPs VIOLATES TREATY - EU

**Daily Mirror, 08 October 2009** - A top European Union official has expressed concern over the failure by the government to permit freedom of movement to the more than 200,000 internally displaced persons (IDPs) housed at welfare camps in the North saying the failure to do so is not in line with a United Nations treaty.

Ms. Jean Lambert, President of the European Parliament (EP) delegation for relations with South Asia, in an e-mailed comment to Daily Mirror online, said that the protracted detention of IDPs is disproportionate and conflicts with key provisions of the ICCPR

The International Covenant on Civil and Political Rights (ICCPR) is a United Nations treaty based on the Universal Declaration of Human Rights, created on December 16, 1966 and entered into force on March 23, 1976.

The ICCPR is monitored by the Human Rights Committee (a separate body to the Human Rights Council which replaced the Commission on Human Rights under the UN Charter in 2006) with permanent standing, to consider periodic reports submitted by member States on their compliance with the treaty.

Ms Lambert told Daily Mirror online she fully shares the views expressed, in public, by the Commission at the Hearing on Sri Lanka which took place at the European Parliament Sub-Committee on Human Rights as recently as last Thursday that where it was said that "the protracted detention of IDPs is disproportionate and conflicts with key provisions of the ICCPR".

Ms Lambert further notes with alarm the Commission statement at this very meeting that "we have seen nothing to allay our concerns about the widespread climate of impunity which at present seems to prevail in Sri Lanka"

Commenting on deliberations by the EU on extending GSP plus status to Sri Lanka, Ms Jean Lambert in her capacity of Chair of the South Asia delegation said she would like to stress that the GSP+ issue is, at this stage, very much in the hands of the European Commission, which is to make its recommendation to the Council in mid-October and added that from this point of view, the formal role of the European Parliament is limited.

Giving her views on the case involving jailed journalist J.S.S Tissainayagam, Ms Lambert said she finds the conviction of Mr. Tissainayagam as "deeply shocking especially as to the message it conveys at this specific juncture".

Meanwhile, the United Nations has appealed to the government to relocate IDPs housed at the Menik Farm welfare camp before the monsoon season sets in as making physical arrangements at the existing sites by digging up bigger drains or ensuring better sanitation will not be enough.

John Holmes, UN Under Secretary General for Humanitarian Affairs, speaking to reporters in New York said that during relocation the Sri Lankan government must also ensure that those placed in transit camps are given freedom of movement and not placed in 'closed' camps like in most parts of Menik Farm.

<http://www.dailymirror.lk/DM BLOG/Sections/frmNewsDetailView.aspx?ARTID=64001>

## ICRC CONTINUES TO RESPOND TO HUMANITARIAN NEEDS

### ICRC REGISTERED CLOSE TO 10,000 "SURRENDEREES" BUT HAD NO ACCESS

**ICRC, 24 February 2010** - All over Sri Lanka, the ICRC continues to help those affected by the recent conflict, including detainees and their families, internally displaced persons (IDPs) and the war wounded. Meanwhile, the organization continues its discussions with the Sri Lankan government regarding the scope of future ICRC activities in the country. The following is a report on ICRC activities in Sri Lanka between 1 July and 31 December 2009.

The ICRC recently helped Sri Lankan authorities draft a "National Action Plan for the Demobilisation, Disarmament, Reintegration and Rehabilitation of Ex-combatants," working in coordination with the United Nations. In particular, the organization contributed to the development of safeguards and judicial guarantees aimed at protecting the rights and dignity of the population.

***The ICRC registered close to 10,000 "surrenderees" in northern Sri Lanka last June. Since July 2009, however, the organization has had no access to these "surrenderees" or to internally displaced persons currently living in camps in the Vavuniya district.***

The ICRC continues to visit people detained in relation to the recent conflict, with the agreement of the authorities. Visits started right back in 1989 and involve ICRC staff visiting places of detention around the country to monitor the treatment of detainees and their conditions of detention. Thousands of detainees have kept in touch with their families through the ICRC's Family Visits Assistance Programme.

The conflict has left thousands disabled, and these people need to regain their mobility and dignity. The ICRC is supporting the Jaffna Jaipur Centre for Disability Rehabilitation, which has been providing artificial limbs, orthotic devices and physiotherapy since 1994. The organization recently provided wheelchairs to patients in Mannar Hospital.

During 2009, the ICRC built semi-permanent shelters and latrines for displaced families living in the Jaffna peninsula. While it does not visit or work at the Manik Farm IDP site, the organization did help displaced persons there through the Sri Lanka Red Cross Society.

As part of its efforts to promote international humanitarian law, the ICRC arranged for 13 representatives from the armed forces, academia and government to attend training programmes for senior personnel during 2009. In addition, over 300 civilians and members of the Sri Lankan armed forces participated in workshops on international humanitarian law and the mandate of the ICRC.

The ICRC continues to support the Sri Lanka Red Cross Society, especially in its efforts to improve access to health care, water and sanitation in rural areas. In December 2009, the ICRC donated emergency stocks of household items, baby parcels, prefabricated latrines and hygiene parcels. These goods will allow the Society to respond to the needs of 10,000 people in case of an emergency.

<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/sri-lanka-update-180210?opendocument>

## **‘TOP TEN’ HUMANITARIAN CRISES: AID BLOCKED AND DISEASES NEGLECTED**

**MSF releases, NEW YORK, DECEMBER 21, 2009** - Civilians attacked, bombed, and cut off from aid in Pakistan, Somalia, Yemen, Sri Lanka, Afghanistan, and the Democratic Republic of Congo (DRC), along with stagnant funding for treating HIV/AIDS and ongoing neglect of other diseases, were among the worst emergencies in 2009, the international medical humanitarian organization Médecins Sans Frontières (MSF) reported today in its annual list of the "Top Ten" humanitarian crises.

Continuing crises in north and south Sudan, along with the failure of the international community to finally combat childhood malnutrition were also included on this year's list. The list is drawn from MSF's operational activities in close to 70 countries, where the organization's medical teams witnessed some of the worst humanitarian conditions.

Three distinct patterns dominated in 2009: governments **blocked** lifesaving assistance to trapped populations, including in Sri Lanka, Pakistan, and Sudan, where aid groups-including some MSF teams-were expelled from Darfur; respect for civilian safety and neutral humanitarian action further eroded, such as in Yemen, Afghanistan, Pakistan, DRC, and Somalia, where people-and in some cases aid workers-were either indiscriminately or directly **attacked**; people suffering from a host of largely ignored diseases were again **neglected** by the international community, and those living with HIV/AIDS saw their chances of receiving life extending therapy further diminished.

"There is no question that civilians are increasingly victimized in conflicts and further cut off from lifesaving assistance, often deliberately," said MSF International Council President Dr. Christophe Fournier. "*In places like Sri Lanka and Yemen, where armed conflicts raged in 2009, aid groups were either blocked from accessing those in need or forced out because they too came under fire. This unacceptable dynamic is becoming the norm. Our teams on the ground are witnessing the very tangible human consequences of these crises directly, either in war zones or in the AIDS and nutrition clinics in which they work,*" he said. We're therefore compelled and obligated to speak out."

***In Sri Lanka, tens of thousands of civilians were trapped with no aid and limited medical care as government forces battled Tamil Tiger rebels in the spring. Aid groups, including MSF, were banned from entering the conflict zone.***

On the medical front, years of success in increasing treatment for the numbers of people living with HIV/AIDS was threatened with punishment in 2009. The Global Fund to Fight AIDS, Tuberculosis and Malaria and the US President's Emergency Plan for AIDS Relief (PEPFAR) announced plans to reduce or limit funding.

"Just when more and more people were accessing crucial medicines and medical experts were acknowledging the need to put people on treatment sooner, patients will be turned away from clinics because the funding just won't be there," said Dr. Fournier. "The timing could not be worse."

The neglect also extends to childhood malnutrition, a treatable disease that is the underlying cause of up to half of the annual ten million preventable deaths of children under five each year. Global leaders gathered at the World Food Summit in Rome in 2009 failed to commit to combating the disease, which groups like MSF have shown can be prevented and treated by providing growing children with proper foods that meet their nutritional requirements.

Right now, international assistance to fight malnutrition amounts \$350 million dollars, while the World Bank estimates \$11.2 billion is required to adequately combat the disease in 36 high burden countries. Additionally, most food assistance is made up of costly and inefficient in-kind donations containing products of poor nutritional value that must be shipped overseas. Resources could be better spent on obtaining nutritionally appropriated foods closer to their source.

Other diseases, such as Chagas, kala azar, sleeping sickness, and Buruli ulcer continue to be neglected, with very few new commitments to expanding access to available treatment or carrying out research for much needed newer and more effective drugs.

"The tremendous resources devoted to the H1N1 pandemic in developed countries illustrates the response capacity for global health threats when the political will exists," said Dr. Fournier. "Regrettably, we fail to see the same commitments made to combat diseases claiming millions of more lives each year." (*Excerpt from the original report*)

[http://www.msf.org/msfinternational/invoke.cfm?objectid=B0A0D54F-15C5-F00A-25F13BE478E25FA9&component=toolkit.pressrelease&method=full\\_html](http://www.msf.org/msfinternational/invoke.cfm?objectid=B0A0D54F-15C5-F00A-25F13BE478E25FA9&component=toolkit.pressrelease&method=full_html)

## THOUSANDS INJURED DURING THE FINAL STAGE OF SRI LANKA'S DECADES-LONG WAR

**MSF, 11 December 2009** - As fighting raged earlier this year between the Sri Lankan military and the Liberation Tigers of Tamil Eelam in northeastern Sri Lanka, tens of thousands of civilians were **trapped for months in a war zone** reduced to a narrow strip of jungle and beach, with **no aid and limited medical care**. A few months before the final phase of the country's decades-long civil war, humanitarian aid agencies, including MSF, had to **leave the areas most affected by the fighting**, at the request of the government. Only the International Committee of Red Cross (ICRC) could continue some crucial medical assistance, evacuating some of the wounded to Ministry of Health hospitals. An MSF surgical team worked since February 2009 in one of these hospitals, in nearby Vavuniya.

In April, thousands of people managed to escape the war zone, many needing health care because of severe shrapnel, gunshot, or landmine injuries. On the 21st April, in just one 36-hour period, more than 400 patients were treated for life-threatening conditions in Vavuniya hospital. In total, from February to the end of June, **almost 4,000 war wounded** had major surgical interventions in this hospital. The other referral hospitals in the region had also to cope with at least double, or triple, the number of patients they had the capacity for.

In May, just after the end of the government's final assault, MSF opened a new emergency multi-functional Referral Hospital with surgical facilities in front of the camps in Menick Farm and reinforced the Ministry of Health Surgical and Post Operative care facilities in Vavuniya General Hospital and Pampaimadhu. The medical team also cared for over 60 spinal cord patients in need of rehabilitation.

Government-run camps held up to **280,000 displaced people**, the biggest camp being Menick Farm. Inside the camps, access to health care progressively improved, ensured by Ministry of Health. Patients needing hospitalisation were referred to hospitals outside the camp, including the MSF structure. The main cause of hospitalisation among the 3,000 patients admitted to the MSF Menick Farm hospital from June to November was trauma and wounds. In this hospital, MSF treated over 500 trauma cases related to the conflict; over 200 of them needed surgery.

The release of people held in the camps has slowly started since August and families have been gradually leaving the camps in Vavuniya district for their home areas, hoping to rebuild their lives in the aftermath of war. Still many displaced are living with host families in Vavuniya and tens of thousands **remain in camps** opened since December 2008. MSF works with the Ministry of Health to support the population by providing physical rehabilitation, including reconstructive surgery, and psychological care, in Vavuniya or areas of resettlement.

With its previous experience working in Mannar, Mullaitivu and Killinochchi districts, MSF is ready to support the health system during the period of rehabilitation in the Vanni, where families have started to return.

<http://www.doctorswithoutborders.org/publications/topten/2009/story.cfm?id=4101&cat=top-ten-humanitarian-crises>

## **STILL OVER 400,000 IDPs IN SRI LANKA (JANUARY 2010)**

**The Internal Displacement Monitoring Centre (IDMC) - 22 January 2010**

- As of 31 December 2009, about 108,000 IDPs from the Vanni remained in previously closed camps, with limited freedom of movement (pass system) since 1 December
  - About 156,000 IDPs had returned to their districts (not necessarily places) of origin in the north and east by 31 December 2009. Out of these, a large part remain in displacement there, according to reports
  - In the east there remained 6,000 persons in displacement due to the Trincomalee High Security Zone
  - By mid-2009, in addition to the 285,000 IDPs from the Vanni at that time, there was a caseload of 197,925 IDPs from the period before 2006, including over 60,000 Muslim IDPs now living in Puttalam who were expelled from the North by the LTTE in 1990
- [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/7E8CFF727BBFB54DC12576B3002DEBD9?OpenDocument#44.2.1](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/7E8CFF727BBFB54DC12576B3002DEBD9?OpenDocument#44.2.1)

## **THOUSANDS OF IDPs MISS RESETTLEMENT DEADLINE**

**COLOMBO, 15 February 2010 (IRIN)** - Sri Lankan government officials aim to resettle more than 100,000 internally displaced people (IDPs) by April after missing a self-imposed deadline to move everyone out of camps in the country's north by end-January.

Rishad Bathiudeen, Minister of Resettlement and Disaster Relief Services, said the delay was due in part to incomplete demining activities in northern areas. "It has impeded the resettlement process. The area needs to be completely safe for the people to resettle," Bathiudeen told IRIN.

"Administrative structures [in the areas] are now completely restored. They are also functional. Most schools, co-operatives and hospitals are now functioning," he added.

A fortnight after re-electing incumbent President Mahinda Rajapaksa for another six years, Sri Lanka's political focus is now on electing a new parliament, with the poll set for 8 April.

The secretary of the Ministry of Resettlement and Disaster Relief Services, ULM Halaldeen, admitted there had been a delay in the resettlement process in the run-up to the presidential election on 26 January.

However, he said all the IDPs should be resettled by the time the parliamentary election is held, and insisted they would be able to vote.

"Come April, they all will be resettled in their own homes and leading more normal lives," Halaldeen told IRIN. "This is a process and we are continuing to resettle people at our earliest," he said.

As of 5 February, there were more than 106,000 IDPs remaining in camps in the districts of Vavuniya, Mannar and Jaffna, according to the UN, citing government agents. About 160,000 IDPs have been returned to their districts of origin, while 29,060 people have been released from temporary camps into host families and elders' homes.

More than 280,000 were displaced in the fighting and living in government camps soon after the war ended in May 2009. *(Excerpt from the original report)* <http://www.irinnews.org/Report.aspx?ReportId=88107>



## SRI LANKA - BISHOP GETS GLIMPSE OF TAMILS' FINAL BATTLEFIELD

**JAFFNA, Sri Lanka 5 February 2010 (UCAN)** – Tamil Bishop Thomas Savundaranayagam has visited the civil war's final battlefield for the first time since the fighting ended, and said rebuilding lives and churches in the area was an "unbearable burden" on the people there.

The bishop is the first to be allowed to visit the war zone after fighting ended last May. The government still prohibits civilians, UN agencies, NGOs and the media from visiting the area.

At this week's feast of the Presentation of Our Lord in Jaffna, he appealed to Tamils not to spend lavishly during church festivals but help displaced people instead.

Bishop Savundaranayagam, visibly shaken by his unpublicized visit to the war zone on Jan. 29, described the chaos he found there, particularly in the Catholic fishing village of Mathalan on the east coast.

"Devastation is everywhere" and threatens our people's future, he said.

Thousands of people were killed, injured or disabled in the final battle near Mathalan and some 300,000 were forced to flee the area.

In Jaffna diocese alone, 110 churches belonging to 17 parishes and 15 Religious houses have been abandoned. The bishop said many had already been reclaimed by the jungle.

"Villages and rice fields are covered with jungle and undergrowth," the bishop said. "People have lost their life savings. It is going to be an unbearable burden to our people to rebuild," the bishop told UCA News.

He said he saw the final battlefield where Tamil Tiger rebels had been cornered by government forces and also visited devastated villages nearby.

He described a barren landscape:

- Church buildings are demolished.
- Religious statues are all damaged.
- Rice fields are overgrown with shrubs.
- Herds of cattle and goats have disappeared.
- Homes have been reduced to rubble.
- Heaps of burned vans, buses, cars and motor cycles clog the roads

An emotional Bishop Savundaranayagam wondered whether civil life could be restored. The Tamil prelate also traveled with the army to the farming villages of Mankulam, Oddusuddan and Puthukudiyiruppu.

The government announced recently that people would be resettled and places of worship reconstructed, work which had already begun, according to Pandu Bandaranayaka, the Deputy Minister of Religious Affairs and Moral Upliftment. But the scale of the task is enormous.

Jaffna diocese and the nearby Mannar diocese have 148 abandoned churches. Apart from those hit by the fighting, some churches inundated by the 2004 tsunami have not yet been renovated.\*

<http://www.ucanews.com/2010/02/05/bishop-gets-first-glimpse-of-final-battlefield>

## EU TO CUT SRI LANKA TRADE BENEFITS OVER RIGHTS

**Brussels, 15 February 2010** - European Union nations decided Monday to withdraw preferential trade benefits from Sri Lanka due to "significant shortcomings" on human rights issues, the EU Commission announced.

The decision came after an "exhaustive investigation... identified significant shortcomings in respect of Sri Lanka's implementation of three UN human rights conventions," the commission said in a statement.

The suspension of the **GSP+ (Generalised System of Preferences plus)** benefits will not take effect for six months "giving Sri Lanka extra time to address the problems identified," the EU executive added.

"I would like to emphasise that I hope Sri Lanka will sit with us over the next six months in order to agree upon a set of measures that will result in rapid, demonstrable and sustainable progress in relation to the human rights shortcomings we have identified," said new EU Trade Commissioner Karel De Gucht.

The European Union's GSP+ scheme gives 16 poor nations preferential access to the trading bloc in return for following strict commitments on a wide variety of social and rights issues.

Sri Lanka's hawkish government has faced almost constant criticism over the past several years because of the way it has conducted a war against Tamil Tiger rebels.

Government forces have been accused of a host of rights violations including the indiscriminate killing of thousands of Tamil civilians, the murder of aid workers and the execution of surrendering rebels.

Sri Lanka gains about 150 million dollars annually due to preferential tariffs, according to trade estimates.

The island's clothing industry is the main beneficiary, using the tax breaks to sell to high street retailers in Europe. <http://www.eubusiness.com/news-eu/srilanka-trade.2ph>

## **WAR CRIMES PROBE CALL REITERATED**

**BBC Sinhala News, 12 February 2010** - The United Nations have once again called for an independent international investigation over alleged war crimes in Sri Lanka.

Navi Pillai, UN High Commissioner for Human Rights has told a gathering in Dublin, Ireland that her office is in a clear understanding that national investigations "have not worked so far".

Speaking in Dublin, Ireland, she added that UN Secretary General Ban ki-Moon is "seriously committed to getting President Rajapaksa to comply with the undertaking he gave to the Secretary General."

The High Commissioner confirmed that she recently met Human Rights Minister Mahinda Samarasinghe in Geneva.

### **HR minister**

"It seems that everybody was waiting for the election to be over, and so that is what I reminded him," she said.

"The position that Sri Lanka has the unique office of a ministry for HR I thought places a particular responsibility on the minister of HR should talk to his own government not only on post conflict rights violations but post election rights violations."

Expressing "disappointment" that the issue of alleged war crimes in Sri Lanka was not properly addressed at the UN HRC, she said it is an important vehicle on which states can take measures on rights violations of another country.

Denying war crimes allegations, the Sri Lanka government says it will not allow any international investigations.

In an interview with the BBC, Defence Secretary Gotabhaya Rajapaksa said he would not allow any such investigation as "there is no reason."

But the former military chief Gen Sarath Fonseka has said he will testify at an international hearing. [http://www.bbc.co.uk/sinhala/news/story/2010/02/100212\\_war\\_crimes.shtml](http://www.bbc.co.uk/sinhala/news/story/2010/02/100212_war_crimes.shtml)

# PRESS FREEDOM

## POLITICAL REPORTER AND CARTOONIST MISSING IN COLOMBO ON EVE OF ELECTION

**25 January 2010** - Reporters Without Borders urges the security forces to assign more personnel to the search for journalist Prageeth Eknaligoda, who went missing last night in Colombo. A senior police official told the press freedom organisation he was too busy with tomorrow's presidential election to make the case a priority.

Eknaligoda, who writes political analyses for the Lankaenews website, left work at about 9 p.m. but did not arrive home and has not contacted any family members or friends. He had told a close friend he thought he had been followed for the past few days.

"Given the current political tension, it is extremely worrying that a journalist known for criticising the government should disappear in the capital," Reporters Without Borders said. "With rumours of premeditated violence against journalists circulating, we expect a rapid response from the authorities designed to find Eknaligoda safe and sound."

Eknaligoda's wife told Reporters Without Borders she reported his disappearance to police stations in the Homagama and Rajagiriya-Welikada districts of the capital, and police officers took her statement.

A fellow journalist told Reporters Without Borders that Eknaligoda had been threatened because of his political analyses: "Last week he wrote a long comparative analysis of the two main candidates for the presidential election that was published in Sinhalese on the Lankaenews site. He sided with the opposition. We fear that his disappearance is linked to that article."

Eknaligoda, who works for the newspaper Sirata as well as Lankaenews and is also well-known as a cartoonist, was previously kidnapped for a few hours on 3 August.

Yesterday's disappearance comes one day after the leading opposition candidate, General Sarath Fonseka, accused the government of planning violence in order to scare voters.

Other journalists have been kidnapped in recent years. Poddala Jayantha, the secretary-general of the Sri Lanka Working Journalists Association, was kidnapped on a Colombo street in June of last year, tortured and then dumped on the side of a road. Radio Sooriyan news editor Nadarajah Kuruparan was kidnapped for 20 hours in Colombo in August 2006. Dharmaratnam "Taraki" Sivaram, editor of the Tamilnet news website and columnist for the Colombo-based Daily Mirror, was kidnapped and then murdered in April 2005.

<http://www.rsf.org/Political-reporter-and-cartoonist.html>

## CRACKDOWN ON MEDIA CONTINUES IN SRI LANKA

**RSF, 31 January 2010** - The Colombo headquarters of *Lanka*, a Sinhalese-language weekly that supports the JVP opposition party, were closed by the authorities yesterday, 24 hours after its editor, **Chandana Sirimalwatte**, was taken into custody by the Criminal Investigation Department. The offices of the *Lanka-e-News* website were also surrounded by the police.

The authorities today rescinded Swiss journalist **Karin Wenger**'s deportation order. Wenger, who covered the presidential election for Swiss public radio station *DRS*, had received a letter from the immigration department ordering her to leave the country by tomorrow. *AFP* quoted a government spokesman as saying the order was issued on the basis of "false information."

### **29 January 2010 - President Rajapaksa urged to halt post-election crackdown on media**

Two days after he was declared the winner of this week's election, Reporters Without Borders appealed today to President Mahinda Rajapaksa to put a stop to arrests and intimidation of journalists working for privately-owned and foreign media.

"This wave of post-election violence could cast a lasting stain on the start of President Rajapaksa's second term and bodes ill for the political climate during the coming years," said Reporters Without Borders, which highlighted an increase in election violence and censorship in countries such as Iran and Tunisia in its latest press freedom roundup.

Reporters Without Borders also reminds the president of the statements in support of press freedom that he has made on many occasions, including a meeting with a Reporters Without Borders representative in October 2008.

“It is quite normal for journalists and privately-owned media to side with a candidate before and during a democratic election but it is unacceptable for them to the victims of reprisals once the elections are over,” the press freedom organisation added.

Police and unidentified groups have been targeting the media, especially media that supported the leading opposition candidate, Gen. Sarath Fonseka, every since the announcement of the result, which some opposition sectors including Fonseka are disputing. Sri Lanka’s five main journalists’ organisations have issued a joint statement condemning the “post-election media suppression.”

The following serious press freedom violations have been reported:

1. Police today arrested Chandana Sirimalwatta, the editor of Lanka, a newspaper that supports the JVP opposition party, after he responded to a summons for questioning about an article published on 26 January. The president’s brother, defence minister Gotabhaya Rajapaksa, threatened to burn the newspaper down a few days ago.
2. Plain-clothes men using a car with the license plate 32/ 84 32 placed seals yesterday evening over the entrance to the office of the Lankaenews website. Men searched the office earlier in the day. The website itself has been rendered inaccessible for the past few days by the state telecommunications company Sri Lanka Telecom.
3. In an interview for the Colombo-based Daily Mirror newspaper yesterday, Tamil government minister Douglas Devananda threatened the Jaffna-based newspaper Uthayan with unspecified reprisals.
4. Reporter Karin Wenger of the Swiss public radio station DRS is facing possible deportation on 1 February following the withdrawal of her press accreditation. “I had a visa and accreditation that were valid for the election,” she told Reporters Without Borders. “I think this decision is linked to the questions I asked an official during a news conference after the results were announced.” A presidential adviser referred to her insultingly as a “white skin.”
5. Ravi Abewikrama, a reporter with state radio broadcaster SLBC was attacked yesterday by one of the station’s officials for criticising the biased election coverage imposed by the head of the station.
6. Soldiers took up position on 26 January around and inside the buildings that house two privately-owned TV stations, Sirasa and Swarnavahini, in Colombo.
7. Soldiers roughed up photographers working for foreign news agencies when they tried to attend a news conference given by Gen. Fonseka yesterday. One was forced to delete the photos on his camera’s memory card. Soldiers also prevented journalists from working freely near a hotel being used by Fonseka the previous day.

Reporters Without Borders finally also urges President Rajapaksa to assign more police officers to the search for political reporter and cartoonist Prageeth Eknaligoda, who has been missing since 24 January. His family has had no news of him since that date.

<http://www.rsf.org/President-Rajapaksa-urged-to-halt.html>

## **SHOCK AND ANGER CONTINUE ONE YEAR AFTER LASANTHA WICKREMATUNGE’S UNPUNISHED MURDER**

**RSF, 7 January 2010** - “A year has gone by without any progress in the investigation into his murder,” Lal Wickrematunge said today to Reporters Without Borders, on the eve of the first anniversary of the fatal shooting of his brother, **Lasantha Wickrematunge**, the Colombo-based *Sunday Leader’s* well-known managing editor. It is Lal who has replaced him at the helm of investigative weekly, some of whose journalists were recently threatened.

“When finally I am killed, it will be the government that kills me,” Lasantha Wickrematunge wrote in an editorial that was published after his death. Known for his revelations and criticism of the government, he was called a “terrorist journalist” by President Mahinda Rajapaksa, while the president’s brother, defence minister Gotabhaya Rajapaksa, used the courts in a bid to silence him and tried to smear his reputation in foreign press interviews after his death.

"The emotion and anger have not gone away in the year since this famous Sri Lankan journalist's death," Reporters Without Borders said. "The anger is being sustained by the government's flagrant obstruction of the investigation. Lasantha Wickrematunge's name and memory will not disappear and, in that sense, those who were behind his murder made a mistake.

"Even if these criminals continue to feel sufficiently protected that they can threaten the *Sunday Leader's* new editor in messages written in the same red ink, we are confident that one day they will be punished."

The press freedom organisation added: "We urge the various candidates for the 26 January presidential election to pledge to shed light on this murder and on the other serious press freedom violations that have taken place in recent years and to punish the perpetrators and instigators severely. Some candidates are promising the truth. We hope this is not just words."

Lal Wickrematunge told Reporters Without Borders: "After a 10-month investigation, the case was transferred to the criminal investigation department but since then they have not taken any serious statements. They called me once, but not again. The examination of the case before the courts has been postponed 24 times. Each time, the police say they don't have enough evidence. And the only eye witness has been missing for months."

Lasantha's widow, Sonali Samarasinghe Wickrematunge, herself a journalist and lawyer who has sought refuge abroad, said in an email to Reporters Without Borders: "One year later, no progress has been made (...) Accusations are being hurled in a desperate attempt to exploit the issue for political gain."

The murdered journalist's relatives and friends will meet at his grave in Colombo tomorrow and then participate in series of activities in his memory. Lasantha was attacked by four gunmen on motorcycles as he was driving to work on 8 January 2009. He was taken unconscious to a hospital where he died from his head injuries.

Read the release: <http://www.rsf.org/Disgraceful-fail...>

New threats against Sunday Leader's editor: <http://www.rsf.org/New-threats-to-p...>

Exclusive interview with Frederica Jansz: <http://www.youtube.com/watch?v=8yvw...>

***SRI LANKA WAS RANKED 162ND OUT OF 175 COUNTRIES IN THE 2009 REPORTERS WITHOUT BORDERS PRESS FREEDOM INDEX. THIS WAS THE WORST RANKING OF ANY DEMOCRATIC COUNTRY.***

<http://www.rsf.org/Shock-and-anger-continue-one-year.html>

## **THREATENING LETTER TO SUNDAY LEADER EDITOR FREDERICA JANSZ**

**RSF, 26 October 2010** - Reporters Without Borders urges the Sri Lankan authorities to take all necessary measures to investigate threatening letters received six days ago by Frederica Jansz and Munza Mushtaq, two journalists who work for the Leader Publications media group. "We will slice you up if you do not stop your writing," the letters said.

At the same time, senior newspaper employees have been questioned by the police about their sources in a new attack on editorial independence.

"The police must treat these death threats written in red ink with the utmost seriousness, especially as they were sent to two journalists whose press group has repeatedly been the target of physical violence," Reporters Without Borders said. "We urge the police to track down and arrest those who wrote these letters."

The press freedom organisation added: "It is also vital that the authorities order the security forces to put a stop to their unwarranted summonses and arrests of journalists, and to register the complaints submitted by journalists when they are physically attacked." threatening letters that she and Mushtaq received on 22 October. The threats may have been prompted by the newspaper's coverage of a video showing Sri Lankan soldiers executing unarmed men.

Jansz told Reporters Without Borders the letters were similar to those received by Sunday Leader managing editor Lasantha Wickrematunge three weeks before he was murdered in January 2009. "We wrote to the police station describing the threats but the police have not even contacted me (...) The Sunday Leader's publisher mentioned these persistent threats at a meeting with the president a few months ago. The president told one of his aides to follow up the matter, but since then there has been nothing.

<http://www.rsf.org/New-threats-to-privately-owned.html>

## GLOBAL MEDIA RIGHTS GROUPS CONDEMN " CULTURE OF IMPUNITY AND INDIFFERENCE" IN SRI LANKA

**21 January 2009** - The International Press Freedom Mission today condemned a "culture of impunity and indifference" over killings and attacks on journalists in Sri Lanka. Since the beginning of the New Year, both the killing of a senior editor and the attack on the facilities of a popular independent TV channel have led to a total paralysis of the media community.

Launching a new report, "Media under Fire: Press Freedom Lockdown in Sri Lanka", the International Mission criticised the Government over its inaction and failure to take the attacks, murder and assassination of reporters seriously. This has in turn led to an almost total blackout of independent and objective reporting from the North and East of Sri Lanka, which have seen the worst of the country's long-running civil war.

"In all the cases of attacks against media and assassinations of reporters there are few serious investigations by the authorities and none of the killers are ever brought to trial," said the International Mission. "A hostile environment of intolerance propelled forward by the top political leadership has created a culture of impunity and indifference making every day hunting season for attacks on media staff."

Based on its visit to Sri Lanka in October 2008, the International Mission noted three trends relating to the coverage of the conflict: lack of press access and independent information flow in the conflict zones; a wave of assaults and intimidation of journalists covering the conflict; and self-censorship by the media on the realities of the war.

Since the International Mission took place, the situation for media has continued to deteriorate in Sri Lanka. On 6 January this year the studio of the Maharaja Television/Broadcasting Network (MTV/MBC) was attacked by armed gunmen. **On 8 January, Lasantha Wickrematunga, editor of the Sunday Leader, was shot dead by two men on a motorcycle as he drove to work in Colombo.** On 15 January, police began a widespread search for MTV Channel 1 Chief Chevaan Daniel after accusations of him being behind the attack on his station.

According to the findings of the International Mission, reporters and editors conveying messages that are critical of the government's war against the LTTE are labeled as "traitors" and "terrorists" where they work in an increasingly hostile environment of censorship and fear.

The International Mission is shocked at the repeated instances of elected representatives and Government Ministers using violent and inflammatory language against media workers and institutions. Not surprisingly this has led to widespread self-censorship among journalists in order to protect their lives.

"The killing of Lasantha and the deaths of at least 8 other journalists along with 2 disappeared since 2007 illustrates in painful detail just how journalists and media staff continue to suffer for their profession," said the International Mission. "Without a proper investigation into Lasantha's assassination and the attack on MTV, there will be no chance at all for the government to claim that it assumes responsibility to guarantee the basic safety and independence of media," said the International Mission.

We urge the Government to accept the creation of an international and independent commission to investigate the two recent attacks in line with requests by Sri Lankan journalists and media institutions. As a group, the International Mission will offer its assistance to form this commission and to participate in the investigation.

Notes to the editor:

Since 2006, the International Press Freedom Mission to Sri Lanka has conducted three missions to Sri Lanka. The most recent mission in October 2008 had representatives from the following international media organisations:

International Federation of Journalists (IFJ) · International Media Support (IMS) · International Press Institute (IPI) · International News Safety Institute (INSI) · Reporters Without Borders (RSF)

[HTTP://WWW.RSF.ORG/SPIP.PHP?PAGE=ARTICLE&ID\\_ARTICLE=30048](http://www.rsfb.org/spip.php?page=article&id_article=30048)

## **SRI LANKA'S JOURNALISTS MAY COME FROM DIFFERENT ETHNIC GROUPS, BUT WE STAND UNITED**

**By Pearl Thevanayagam**

**CPJ, 12 January 2010** - There is something unique among Sri Lanka's journalists. We may come from different ethnic groups but when it comes to freedom of expression we stand united.

Tissainayagam may have had his faults in that he chose to support an NGO championing Tamil rights. The government's ire and excuse for jailing him was he procured funds from the LTTE to do so.

I too was branded an LTTE sympathiser simply because I defied govt. censorship in visiting LTTE areas to interview LTTE leaders as to how they could air their grievances without resorting to violence.

I paid the price of being arrested in July 1995.

But it was my Sinhalese colleagues who protested to the then defence minister and I was released without charges. The Tamil journalists were too scared to support me understandably since they would also be branded as traitors.

If Tissa had indeed procured funds from the LTTE for his own personal benefit then there is the regular judicial procedure.

But the irony is there are no evidence to accuse him of mis-appropriation. Only hearsay evidence and conjectures.

Tissa has obviously been granted bail to show the world before elections that this govt. is democratic and it could exonerate itself from the war crimes and other HR violations the EU, US and UK are insistent on investigating.

The election gimmickry in allowing Tamils in detention camps to be freed, pardoning suspected LTTErs are show-piece gestures of the govt to win Tamil votes. The Tamils are forced at gunpoint by Tamil para military groups opposed to the LTTE and who have chosen to support the ruling govt. to vote for the current President or else.

Whether it is the current president or his former army chief who is contesting him media freedom cannot be achieved until the international community places some kind of economic embargo and instigate thorough investigation into the atrocities committed against Tamils in the last few months of the onslaught.

Lasantha, Sivaram alias Taraki in 2005, and the very first journalist Richard De Soysa who was murdered by armed gunmen in 1990 for sending videotapes to a foreign news agency of the massacre of 70,000 Sinhala youth believed to support Marxist rebels in 89/90 were too outspoken that they were considered dangerous to the ruling parties' autocratic governance.

Should the international community is hoodwinked by the government's conducted tours to chosen rehabilitation camps and pacified by dis-information counsellors the powers that would take the presidency will continue to enjoy privileges which would be denied to the minorities.

[HTTP://CPJ.ORG/BLOG/2010/01/ONE-FREED-BUT-WHAT-ABOUT-THE-OTHERS-SILENCED-IN-SR.PHP](http://CPJ.ORG/BLOG/2010/01/ONE-FREED-BUT-WHAT-ABOUT-THE-OTHERS-SILENCED-IN-SR.PHP)

## **SRI LANKA'S HUMAN-RIGHTS AND FREE-SPEECH PROBLEMS NEED INTERNATIONAL ATTENTION**

**By Peter Mountford - Special to The Times**

**The Seattle Times, 26 February 2010** - In post-civil war Sri Lanka, where democratic institutions are more imperiled than ever, the international press has a vital role to play — even more important than the diplomatic efforts of our governments — in forcing greater transparency and accountability.

I just spent two weeks in Sri Lanka and whenever I sat down with someone in Colombo to ask their opinion of the country's political situation, they'd scan the room, lean in close, and ask if we could talk off the record. When I called opposition journalists they demurred, and suggested that we meet in person. They wouldn't say it out loud, but my driver did: "The phones are all tapped," he explained with refreshing bluntness.

I asked if he thought my phone at the Hilton might be bugged. He bobbed his head vaguely, hesitating, and said, "Well ... "

This was an example of what Kesara Abeywardena, a journalist from The Daily Mirror — the closest thing there is to an independent newspaper on the island — referred to as Sri Lanka's "culture of self-censorship." Abeywardena used to write a political column, but decided it would be better to broaden his focus.

"For your safety?" I asked.

"Well ... " he replied, smiling slightly.

Over the last year, numerous journalists have, in the grim local parlance, been "white vanned." The latest, Prageeth Eknaligoda, a vocal critic of the government, has been missing since Jan. 24. Chandana Sirimalwatte, the editor of an opposition paper, Lanka, was recently detained by the police and his newspaper was ordered to stop printing.

Since President Mahinda Rajapaksa came to power, arrest warrants increasingly have been used to muzzle opponents. Earlier this month, to the shock of the West, police picked up the main opposition candidate, Sarath Fonseka (literally, apparently, as he was unwilling to get out of his chair). Last week they arrested Fonseka's son-in-law's mother. At the end of January a dozen or so ranking members of the military — all allies of Fonseka — were fired or arrested.

The charges, in all of these cases, are trumped up. The point is the message, and the message is, "We will get you. If you're not around, we'll get your next of kin."

Malinda Seneviratne, a sharp but unabashedly pro-government journalist, is the only person I spoke to who was happy to go on the record about anything. He said that these things have been going on for years, but no one complained because the country was mired in civil war.

"The problem," he said, "is that we continue to live under 'emergency rule,' even though the war is over. These kinds of policies made a kind of sense when we were dealing with all the terrorism, and the war. But the war's over. It's not necessary anymore."

Over the past 30 years, Sri Lanka has undergone extraordinary changes in order to cope with the day-to-day reality of the war. The changes are systemic and will be almost impossible to undo. Now that the war has ended, people in the West have begun to take notice. Major news outlets have been decrying the failure of Sri Lankan democracy, as if it's something new. It's not. A few wartime presidents were somewhat friendlier, but the underlying political structure was the same.

At the core of Sri Lanka's problem is a rotten constitution, which gives the president near dictatorial power. Opposition members in parliament are easily bought through cushy ministerial appointments, and the chief justice of the Supreme Court is appointed by the president.

A populist and a nationalist in the mold of Hugo Chávez, President Rajapaksa is able to win political points by defying diplomatic pressure from the West, a fact that often makes the application of that pressure self-defeating. On Feb. 16, the European Union dropped Sri Lanka's preferential trade status because of human-rights violations, but the lead article on the issue in Sri Lanka's state-run newspaper began with a prideful quote from Rajapaksa's central bank governor, "Sri Lanka is not prepared to barter its sovereignty for the sake of regaining the tariff concession and will continue with its stated policy instead of giving in to any unfair demands."

As long as the government can control the conversation like that — deftly transforming international concern about human rights into the politically attractive issue of sovereignty — there will be little impetus for reform. Accountability and openness go hand in hand. So the first step forward falls to the press. Since the Sri Lankan press can't speak up for itself, it's the duty of the international press to speak on its behalf.

So the best thing we can do right now is continue flooding the newswires with stories about the disastrous state of Sri Lankan democracy. Kesara Abeywardena may have to choose his words carefully, lest he get white vanned, but I just flew home to Seattle, so I'll go ahead and call it like I see it.

***Peter Mountford is in his second year as a writer in residence at Seattle Arts & Lectures. His first novel will be published in 2011 by Houghton Mifflin Harcourt.***

**[http://seattletimes.nwsourc.com/html/opinion/2011202630\\_guest28mountford.html](http://seattletimes.nwsourc.com/html/opinion/2011202630_guest28mountford.html)**



## **SRI LANKA LAWYERS CRITICISE GOVERNMENT OVER CRACKDOWN**

**Colombo, 15 February 2010 (AFP)** – Lawyers in Sri Lanka accused the government Monday of illegally suppressing protests at the arrest of former army chief Sarath Fonseka.

Thousands of people taking part in peaceful protests have been attacked by pro-government supporters despite the presence of armed police, the independent Lawyers for Democracy said in a statement.

"We were shocked to witness that protesters were first attacked by hooligans and thugs who were provided protection by the police. Subsequently the same peaceful protesters were beaten by the police," the lawyers said.

Thousands took to the streets to protest against the arrest of Fonseka, who lost a January 26 presidential election to the incumbent Mahinda Rajapakse. Smaller protests were continuing on Monday. Two weeks after the election, Fonseka was arrested for plotting a coup when he was army chief. The lawyers said peoples' right to protest and expression guaranteed by the constitution were "severely undermined by the law enforcement authorities and supporters of the government".

On Sunday, the heads of Sri Lanka's influential Buddhist clergy backed opposition demands for the immediate release of Fonseka, a decorated war hero who helped crush Tamil Tiger rebels and their 37-year separatist campaign in May.

[http://news.yahoo.com/s/afp/20100215/wl\\_sthasia\\_afp/srilankaprotestsecurityngo\\_20100215103928](http://news.yahoo.com/s/afp/20100215/wl_sthasia_afp/srilankaprotestsecurityngo_20100215103928)

## **SRI LANKA ELECTION LOSER GENERAL SARATH FONSEKA ARRESTED**

**BBC World News, 8 February 2010** - The defeated candidate in Sri Lanka's presidential election, General Sarath Fonseka, has been arrested at his office in Colombo. Gen Fonseka was defeated by incumbent Mahinda Rajapaksa last month by six million votes to four million.

Gen Fonseka rejected the results and vowed to challenge them in court. The initial allegations brought by the government against Gen Fonseka, 59, were put simply as "committing military offences".

The government had earlier been seeking legal advice on bringing a court martial on charges of plotting to overthrow the administration. The BBC's Charles Haviland in Colombo says he later learned from National Security Director-General Laxman Hulgalle that the charges against the general relate to the alleged violation of rules preventing the discussion of political matters while being a member of the military.

Mr Hulgalle said the general would be questioned and put on trial in a military court. Military law still covered Gen Fonseka despite his retirement, he said. Gen Fonseka was in charge of Sri Lanka's army when it defeated the Tamil Tiger rebels last year after a destructive civil war lasting more than a quarter of a century. However, he fell out with President Rajapaksa soon after and the pair fought a bitter election campaign.

### **WAR CRIMES**

Gen Fonseka's wife confirmed to the BBC that her husband had been detained after the security presence around his office in Colombo had been stepped up during the day. Gen Fonseka's secretary, Senaka de Silva, was also said to have been arrested.

Gen Fonseka was meeting a number of politicians who had supported his candidacy. The Muslim Congress leader Rauff Hakeem told Reuters news agency: "He was dragged away in a very disgraceful manner in front of our own eyes."

Mr Hakeem said the action was "authoritarian and vindictive". A spokesman for the People's Liberation Front told Agence France-Presse: "The general refused to be taken away. They grabbed him and virtually carried him away after threatening the others. There must have been over 100 soldiers." The politicians at the meeting said the military police had given no reasons as they made the arrest.

Mr Hakeem said Gen Fonseka had complained that because he was no longer in the military he should not have been arrested by military police.

Earlier in the day, Gen Fonseka had said he was prepared to give evidence in international courts on any war crimes charges brought in relation to the civil war.

"I am definitely going to reveal what I know, what I was told and what I heard. Anyone who has committed war crimes should definitely be brought into the courts," Gen Fonseka said.

Our correspondent, Charles Haviland, says the arrest was dramatic but not unexpected and there must now be questions about whether this is the start of a bigger clampdown on the opposition.

After the election, the government had accused Gen Fonseka of divulging sensitive information to the public, and of plotting both a coup and to assassinate the president and his family.

Gen Fonseka has vehemently denied the charges.

He said he feared an assassination attempt against him and had been told that airports would not allow him to leave the country.

Analysts had predicted a closely fought election contest between the two architects of the government's victory over the Tamil Tigers.

But in the end President Rajapaksa won the vote comfortably - capturing 57% of the vote, while Sarath Fonseka won 40%. [http://news.bbc.co.uk/2/hi/south\\_asia/8504882.stm](http://news.bbc.co.uk/2/hi/south_asia/8504882.stm)

## **TWO CANADIAN MPs CLAIM THEY WERE DENIED LANKAN VISAS**

**Daily Mirror, 16 October 2009** - Two Canadian Conservative Members of Parliament Partick Brown (Barrie) and Paul Calandra (Oakridges Markham) claim they have been denied visas to Sri Lanka to visit the Internally Displaced Persons camps. The MPs told Canadian media he will take up the issue with the Canadian government.

Meanwhile a statement issued by the two MPs said: Members of Parliament, Paul Calandra (Oak Ridges-Markham) and Patrick Brown (Barrie) were recently denied visitors visas by the Sri Lankan High Commission.

The two MP's had planned on travelling to Sri Lanka to visit the displaced Tamil citizens living in the Refugee Camps. Unfortunately, at this time they will not be able to do so.

The Government of Canada has acknowledged that the events which have unfolded this past year in Sri Lanka have been tragic, and Canada has committed over \$22 million in aid to Sri Lanka through respected international organizations such as the Red Cross.

"I am disappointed that I will not be able to visit the IDP camps in Sri Lanka at this time," said Brown. "Although we are disappointed, we will continue to work with local community representatives to address the concerns raised with respect to the situation in Sri Lanka," said Calandra.

<http://www.dailymirror.lk/DM BLOG/Sections/frmNewsDetailView.aspx?ARTID=64907>