

# Sri Lanka

## Amnesty International Submission to the UN Universal Periodic Review

Second session of the UPR working group, 5-16 May 2008

**Key words:** rule of law, lack of redress, impunity, armed conflict

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review):

Under B, Amnesty International raises concern over the process of appointing members of public commissions, restrictions on the right to freedom of expression under Emergency Regulations, and the ruling by the Supreme Court to prevent the UN Human Rights Committee from considering individual cases.

In section C, we describe concerns related to enforced disappearances, unlawful killings, internally displaced persons, child soldiers, arbitrary arrest and detention, torture and other ill-treatment, freedom of expression, and impunity for human rights violations.

In section D, Amnesty International makes a number of recommendations in the areas of concerns listed.

### **B Normative and Institutional Framework**

#### **Undermining the rule of law**

1. The 17<sup>th</sup> Amendment to the Constitution, passed by Parliament in 2001, establishes an independent, ten-member Constitutional Council (CC) mandated to make appointments to key public commissions, in order to ensure their independence. In March 2005 the terms of six of the 10 council members ended. A subsequent disagreement by minority parties in Parliament over who could nominate the 10<sup>th</sup> member was used to justify the eventual failure to formally authorize the CC in 2006. Amnesty International is concerned by the paralysis of the CC, as this has had the effect of removing an essential check on executive authority. Effectively setting aside the 17<sup>th</sup> Amendment, the government assumed direct authority in making appointments to key commissions. In February 2006, following the resignation of two senior Supreme Court Judges from the three member Judicial Services Commission (JSC), new appointments to the JSC were made directly by the Chief Justice and the President Mahinda Rajapaksa rather than through the CC. This undermined the credibility and authority not only of the two judges but also of the JSC. In April 2006 the President appointed members to the National Police Commission and the Public Service Commission. In May 2006 the President unilaterally appointed new members of the Human Rights Commission after their predecessors' terms of office had expired. These appointments undermined public faith in the institutions as well as the individual Commissioners and impeded the ability of the Commissions to effectively deliver on their mandate. In a meeting with the President of Sri Lanka in Geneva in June 2007, Amnesty International expressed concern over recent appointments of Commissioners directly by the President rather than through an independent mechanism.

2. In December 2007, the National Human Rights Commission was downgraded to a B status by the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights, indicating that it is not fully in compliance with the Paris Principles.<sup>1</sup> The International Coordination Committee downgraded the accreditation of the National Human Rights Commission on two grounds: first, because of concerns in relation to the appointment of its commissioners and secondly, because it had publicly expressed its inability to investigate disappearances.

3. Provisions of the Emergency Regulations threaten to impose unjustified and disproportionate restrictions on the right to freedom of expression, in violation of international human rights law. Civil and political rights were further restricted following the reintroduction of the Emergency Regulations in August 2005. The new Regulations allow the government to deploy the military for cordon-and-search operations

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<sup>1</sup> Principles relating to the status and functioning of national institutions for protection and promotion of human rights, adopted by the General Assembly in resolution 48/134 on 20 December 1993.

and to detain without charge anyone suspected of terrorist activities. Regulation 6 criminalizes not only “terrorism” and “any specified terrorist activity,” but also “any other activity in furtherance of any act of terrorism or specified terrorist activity committed by any person, group or groups of persons.” Regulation 7 provides, among other things, that “no person shall... promote, encourage, support, advise, assist, act on behalf of; or organize or take part in any activity or event of, any person, group, groups of persons or an organization which acts in contravention of regulation 6 of these regulations”. Amnesty International is concerned that many such provisions of the Emergency Regulation are vaguely worded and therefore may be interpreted as criminalizing a wide range of activities, including media investigations and reporting. There have also been reports of discriminatory application of these regulations against Tamils.

#### **Lack of redress**

5. The judgment by the Supreme Court in the case of Nallaratnam Singarasa case<sup>2</sup> is of serious concern to Amnesty International. The Supreme Court ruled that accepting the process under the First Protocol to the ICCPR, whereby individuals may submit complaints for the UN Human Rights Committee amounts to granting it judicial power within Sri Lanka, in violation of Sri Lanka’s Constitution. The Court therefore ruled that the President acted *ultra vires* when ratifying this Protocol, as only Parliament is authorised to bestow judicial powers. Amnesty International is concerned that this ruling, which demonstrates profound misunderstanding of fundamental principles of international law, may have the effect of undermining the rights of individuals who have made or wish to make submissions to the Human Rights Committee, and thus removes an important means of redress.

#### **C. Protection and promotion of human rights in Sri Lanka**

6. The armed conflict in Sri Lanka between government forces, the Liberation Tigers of Tamil Eelam (LTTE) and other armed groups, which has escalated since April 2006, continues to be characterised by widespread human rights abuses.<sup>3</sup> Grave violations of human rights and breaches of international humanitarian law by all parties are continuing in a climate of impunity.

#### **Systemic abuses of international human rights and humanitarian law, including in the context of the armed conflict**

7. A pattern of enforced disappearances is evident in Sri Lanka, not just in the north and east but also in the capital, Colombo. Several hundred cases of enforced disappearances were reported in the first six months of 2007; in the north and east such violations appear to be part of the government’s counter-insurgency strategy. Many of these disappearances take place inside high security zones and during curfew hours. This suggests that at least some may have been committed by people working directly with or with the consent of the security forces, in particular the Sri Lanka Army, which has primary operational responsibility for security in such areas.

8. The Human Rights Council’s Working Group on enforced or involuntary disappearances has expressed concern about the high number of recent cases reported from Sri Lanka.<sup>4</sup> In 2003, the Human Rights Committee urged the Sri Lankan state to implement fully the right to life and physical integrity of all persons (Articles 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights, in particular) and to give effect to the relevant recommendations by the Working Group on enforced or involuntary disappearances and by the Presidential Commission for Investigation into Enforced or Involuntary Disappearances.<sup>5</sup>

9. Heavy fighting has resumed since April 2006 between government forces and the LTTE, causing concerns as to the protection of civilians. More than 5,000 people, including at least 35 humanitarian workers, have been killed as a result of the conflict since 2005. The increase in hostilities has led to a

<sup>2</sup> *Nallaratnam Singarasa vs The Hon. Attorney General*, (S.C Spl (LA) No. 182/99), ruling of 15 September 2006

<sup>3</sup> See *Amnesty International: Sri Lanka: urgent need for effective protection of civilians as conflict intensifies*, AI Index: ASA 37/009/2007, 5 April 2007.

<sup>4</sup> UN Working Group on Enforced or Involuntary Disappearances Concludes its 83rd Session, Revises Methods of Work and Adopts Annual Report, Press Release, 30 November 2007.

<sup>5</sup> Concluding observations of the Human Rights Committee, UN Doc. CCPR/CO/79/LKA, 1 December 2003, para 10.

number of unlawful killings.<sup>6</sup> There has been little progress on investigations into the unlawful killing of fifteen Action Against Hunger workers in August 2006 and that of two volunteers from the Sri Lanka Red Cross in June 2007. While the government has publicly condemned acts of violence against humanitarian staff, there has been little action taken to ensure impartial and effective investigations which would lead to the prosecution of those responsible.

10. The number of people displaced as a result of the armed conflict since April 2006 currently totals more than 300,000. In addition, many more people remain displaced on a long-term basis. In the north-west town of Puttalam, for example, Muslim families from the north have spent over 17 years displaced from their homes. The physical security of internally displaced persons (IDPs) is also frequently compromised. On several occasions in the last two years, the government has forced IDPs to return to their homes against their wishes and in conditions of insecurity, in contravention of international standards.

11. The recruitment of child soldiers continues in the north and east by the LTTE and the Tamil armed group known as the Karuna Group<sup>7</sup>, despite the government's policy of "zero tolerance" on child combatants. According to UNICEF, since 2002 the LTTE alone has recruited over 5,700 children. In May 2007, the Security Council Working Group on Children and Armed Conflict proposed measures to be taken against the LTTE if it continued to recruit children, such as travel bans and freezing of assets. The UN Special Representative of the Secretary-General for Children in Armed Conflict identified the LTTE as "a repeat offender who has been on the Secretary-General's list of violators for four years".<sup>8</sup>

12. In January 2008 Amnesty International received reports that families in Batticaloa District in eastern Sri Lanka were fearful of child recruitment by armed cadres of the Karuna Group who remain active in the east.

13. The resumption of hostilities in April 2006 has led to an increase in cordon and search operations by the security forces and the police which are often targeted at young Tamil men. Allegedly in response to suicide bombings in Colombo on 28 November 2007, the Sri Lankan police arrested over 1,000 Tamils. Amnesty International is concerned that the arrests were made on arbitrary and discriminatory grounds using sweeping powers under Emergency Regulations. The Sri Lankan media reported that the authorities bundled Tamils onto buses and took them to places of detention where they were subject to interrogation. The organisation is concerned about the reported lack of procedural safeguards in relation to the arrests and detention.

14. Amnesty International is concerned at the lack of clarity over procedures to be followed following arrests. There is currently no centralised register of detainees<sup>9</sup> and no guaranteed procedure for informing families and the National Human Rights Commission of the place of arrest and charge within 48 hours of the arrest.

15. The UN Special Rapporteur on Torture noted that torture is widespread and "prone to become routine in the context of counter-terrorism operations" in Sri Lanka.<sup>10</sup> The adoption of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994<sup>11</sup> was an effort to criminalize torture and bring perpetrators to justice. A significant number of indictments

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<sup>6</sup> All parties to the conflict, including the Government, the LTTE and the Karuna Group, are legally bound by common article 3 of the Geneva Conventions of 12 August 1949 and customary international humanitarian law. In particular, humanitarian law provides that those not taking an active part in the hostilities must in all circumstances be treated humanely and never be targeted for attacks.

<sup>7</sup> In 2004, former Tamil Tiger commander Colonel Karuna broke away from the Liberation Tigers of Tamil Eelam (LTTE) to form his own splinter group, Tamil Makkal Viduthalai Pulikal, or People's Liberation Tigers of Tamil Eelam (TMVP).

<sup>8</sup> Statement Ms. Radhika Coomaraswamy, UN Special Representative for Children in Armed Conflict, Press Release, 11 May 2007, and *Sri Lanka: Amnesty International urges LTTE to live up to its pledge to end child recruitment*, AI Index: ASA 37/017/2007, 10 July 2007.

<sup>9</sup> A central register of detainees is provided for in article 10(3) of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance.

<sup>10</sup> See UN Press Release, 'UN human rights expert reports allegations of torture in Sri Lanka', 29 October 2007.

were filed under the Act. Nonetheless, the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction, unlawful confinement, or torture have been inconclusive due to a lack of sufficient evidence and the unavailability of witnesses.

16. Human rights defenders have been increasingly attacked or threatened, often with death. Journalists have faced shootings and other physical assaults, abductions, intimidation and harassment, reportedly carried out by both government personnel and members of armed groups, including the LTTE and the Karuna Group. In 2007, the number of attacks on journalists, particularly those considered part of the Tamil media, escalated and journalists from all communities have been arrested in connection with articles critical of the government.<sup>12</sup> In the Jaffna peninsula alone, six media workers have been killed since May 2006, four of whom worked for the Jaffna based daily *Uthayan*.

#### **Impunity for human rights violations**

17. Amnesty International is gravely concerned about the persistent climate of impunity for human rights abuses in the context of the conflict, reported by human rights activists and other civil society actors in Sri Lanka. The organization considers that there is an urgent need for systematic monitoring and prompt, impartial and effective investigations.

18. In September 2006, in response to international concern over the human rights crisis in Sri Lanka, the government established a Commission of Inquiry (Col) and an International Independent Group of Eminent Persons (IIGEP). While Amnesty International welcomes all steps towards addressing impunity, the organization is concerned that the mandate of the Col and IIGEP is limited to only 16 cases (albeit with the possibility of new cases being considered) and cannot address the broader range of human rights violations. It is also a matter of concern that the Col is merely to be advised by the IIGEP, that it will report only to the Sri Lankan President, and that it is not formally part of the country's justice system.<sup>13</sup> The continuing absence of an effective witness protection programme poses a serious obstacle to the work of the Col and other investigative bodies. The Col has failed to gain the confidence of the public and has also failed to act as a deterrent for human rights violations.

19. The official end to the ceasefire agreement on 16 January 2008 and the subsequent withdrawal of the Sri Lankan Monitoring Mission leaves a vacuum in terms of independent reporting of human rights violations which compounds feelings of insecurity, particularly in the north and east of the country.

#### **D Amnesty International recommendations**

Amnesty International considers that there are a number of key challenges that the government of Sri Lanka must address to uphold its commitment to human rights protection, including as a member of the Human Rights Council:

##### **Strengthening the rule of law**

To ensure that members of public commissions are selected through an independent process;

To abolish all emergency legislation currently in force or bring it into line with international human rights law and standards, including ensuring the protection of the right to life, freedom of expression, freedom from arbitrary detention, discrimination, enforced disappearances, torture and other cruel, inhuman or degrading treatment or punishment;

To ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention for the Protection of All Persons from Enforced Disappearances; and the Rome Statute of the International Criminal Court;

<sup>11</sup> The restrictive definition of torture in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 continues to raise problems in the light of article 7 of the International Covenant on Civil and Political Rights.

<sup>12</sup> *Amnesty International, Sri Lanka: Silencing Dissent* (AI Index ASA 37/001/2008), 7 February 2008.

<sup>13</sup> See *Establishing a Commission of Inquiry into serious violations of human rights law and international humanitarian law in Sri Lanka: Amnesty International's recommendations* (ASA 37/031/2006), 12 September 2006.

**Addressing abuses of international human rights and humanitarian law, including in the context of the armed conflict**

To put an immediate end to all unlawful killings, irrespective of the identity of perpetrators or victims, and all acts of enforced disappearance, to immediately release all persons held in secret incommunicado detention unless they are transferred to official places of detention where they have immediate access to lawyers and courts, are charged with a criminally recognizable offence and remanded by an independent court.

To ensure prompt and impartial investigations into all reported killings, enforced disappearance, torture and other ill-treatment, and other serious human rights violations; to ensure that the perpetrators are brought to justice in proceedings that meet international standards of fairness and ensure reparation for victims and survivors;

To implement fully the recommendations by the UN Working Group on enforced or involuntary disappearances and by the Presidential Commissions for Investigation into Enforced or Involuntary Disappearances;

To invite the UN Working Group on enforced or involuntary disappearances to visit Sri Lanka, and to implement its previous recommendations fully and without delay;

To ensure that security is provided in camps, settlements and other locations where internally displaced persons have sought safety, and ensure that their human rights are protected at all times

To ensure that any return of internally displaced persons to their homes or places of habitual residence takes place voluntarily, in conditions of safety and dignity, and that no one is forced to return to a situation of insecurity

To prevent the recruitment of child soldiers, including through the adoption and adherence to national and international legal standards, including the Optional Protocol to the Convention on the Rights of the Child, which prohibit the military recruitment and deployment in hostilities of any person younger than 18 years of age

To ensure that all legislation or practices allowing for or facilitating arbitrary arrest and detention are abolished

To take immediate steps to prevent all cases of harassment against media personnel and journalists, and ensure that such cases are investigated promptly, thoroughly and impartially, and that those found responsible are brought to justice in accordance with international standards for fair trial.

To urgently enact and implement legislation to protect victims and witnesses to crimes, which would include violations of international human rights and humanitarian law, in accordance with international standards.

To allow independent human rights monitors, including the National Human Rights Commission, full access to all places of detention, including police barracks, without prior notice.

To establish an independent, international human rights monitoring presence on the ground without delay.

**Appendix: Amnesty International documents for further reference**

Sri Lanka: urgent need for effective protection of civilians as conflict intensifies, Media Briefing, (ASA 37/009/2007)

Sri Lanka: Amnesty International calls on the United Nations Human Rights Council to address violations (ASA 37/019/2007)

Sri Lanka: A climate of fear in the East (ASA 37/001/2006)

Sri Lanka: Waiting to go home - the plight of the internally displaced (ASA 37/004/2006)

Sri Lanka: Observations on a proposed commission of inquiry and international independent group of eminent persons (ASA 37/030/2006)

Sri Lanka: Establishing a commission of inquiry into serious violations of human rights law and international humanitarian law in Sri Lanka - Amnesty International's recommendations (ASA 37/031/2006)

UN Human Rights Council, Third regular session: Compilation of statements by Amnesty International (including joint statements) (IOR 41/034/2006)

Sri Lanka: Silencing Dissent, (AI Index ASA 37/001/2008), 7 February 2008.