

## **Stop the War on Civilians in Sri Lanka: a briefing on the humanitarian crisis and lack of human rights protection**

A human rights crisis is unfolding in Sri Lanka where tens of thousands of people are trapped in the middle of heavy fighting between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lanka Armed Forces in the north eastern Wanni region.<sup>i</sup> The Tamil Tigers, swept by Sri Lankan forces from much of their *de facto* state in eastern and northern Sri Lanka, are now confined to a 35 square kilometer sliver of coastal land. With them—in many cases, involuntarily—are thousands of civilians, nearly all ethnic Tamils, caught between the sea and two fighting forces with records of serious human rights abuses. Most independent observers estimate there are between 150,000 to 200,000 civilians still confined in this area; the Sri Lankan government has claimed that there are “only” 50,000 to 60,000 civilians there.<sup>ii</sup> What is indisputable is that these people face grave risk of harm from military action, lack of food and health supplies, and the outbreak of disease. They must be immediately evacuated from the conflict zone and provided with shelter and support.

Most of the civilians now caught up in the conflict have already been forced to flee their homes in multiple waves of displacement during the 25-year-war in Sri Lanka, as well as after the Indian Ocean tsunami. They now face a potential humanitarian catastrophe as the Tamil Tigers and the Sri Lankan government continues to disregard their well-being. The Tamil Tigers have used these civilians as a buffer against government forces, as well as a steady source of income, forced recruitment (including of children), and involuntary labor. For its part, the Sri Lankan government, buoyed by its initial rapid military advances, has pursued a conclusive military end-game without fulfilling its obligations for the fate of the civilians trapped in the conflict zone. Even as the fighting rages on, the Sri Lankan government has sought significant international financial, material, and technical aid from various countries as well as international financial institutions such as the International Monetary Fund, without agreeing to international standards or international monitoring. In these circumstances, the United Nations and Sri Lanka’s international donors should do all they can to protect the tens of thousands of Sri Lankans facing disaster away from the eyes of the world.

**As a matter of utmost urgency:**

- the Tamil Tigers must immediately allow all civilians to leave the conflict area, and any parties in a position to exercise influence over the Tigers should urge them to do that;
- the Sri Lankan government must ensure that civilians trapped in the conflict area receive sufficient humanitarian assistance, while those civilians who seek to leave have safe passage out of the conflict zone;
- the Sri Lankan government must ensure that displaced people receive adequate shelter and assistance, and are allowed to resettle quickly and voluntarily, in conformity with international standards;
- the UN and Sri Lanka's international donors should ensure that their assistance is used in compliance with international human rights law and standards, and does not support abusive government policies.

### **Glimpses into the Wannu**

The exact situation in the Wannu is unknown due to the restrictions, imposed by the government of Sri Lanka, on access to the conflict zone for UN agencies, humanitarian, human rights and other non-governmental organizations, and national and international journalists. But the available information consistently and credibly suggests that both the Tamil Tigers and the Sri Lankan authorities regularly violate the laws of war, and in particular, the core principles of distinguishing between combatants and civilians and avoiding intentional harm to civilians and civilian objects.

The government of Sri Lanka has declared a so-called safe zone in the conflict area for civilians, but the LTTE has not agreed to the designation of these areas as safe. Meanwhile, reports from the few remaining UN staff, aid workers and civilians able to contact the outside world speak of regular, heavy bombardment of the safe zone, including hours-long artillery barrages. Both sides have been guilty of the indiscriminate use of violence.<sup>iii</sup> The International Committee of the Red Cross (ICRC), the only aid agency with a permanent albeit limited access to the warzone says that hundreds have been killed and injured in the past few weeks alone. A 13 March statement from the Office of the High Commissioner for Human Rights cited credible reports that more than 2,800 civilians had been killed and more than 7,000 injured since January 20<sup>th</sup>.<sup>iv</sup> Unicef reports that hundreds of children have now died in the conflict.<sup>v</sup> On 18 March, Care International reported that one of its humanitarian workers was killed inside the safe zone.<sup>vi</sup> The makeshift hospital inside the 'safe zone' at Puthumathalan is not functioning as there are no drugs or bandages in the hospital. Thousands of people in

the combat zone have no access to medical care. ICRC-chartered ferries have started evacuating the sick and wounded to Trincomalee by sea, including 1,400 who needed surgery, but the ICRC itself notes, “it is essential that evacuations take place regularly and without interference”.<sup>vii</sup> The ICRC has not received adequate security assurances from both sides to continue its work unimpeded.

The Sri Lankan government has vociferously rejected these claims as inaccurate or exaggerated, but it still refuses to allow any independent journalists or monitors to provide impartial and accurate assessments of the situation. This lack of access is compounded by a climate of fear in Sri Lanka where the rights to freedoms of expression and association have been violated over many years. Those who report on human rights abuses or express critical views of the government or the LTTE in Sri Lanka are at great risk of intimidation, threats, harassment and in some cases violence and unlawful killings.<sup>viii</sup> After the assassination of prominent journalist Lasantha Wickramatunge more than 10 journalists left the country in fear of their own safety.

Not only are the displaced caught in the line of fire but when they cross to government held territory they face yet more violations of their rights and dignity. Sri Lankan authorities have now set up 13 sites in Vavuniya District—euphemistically called “welfare villages”—hosting over 40,000 displaced people. These camps in many instances operate as *de facto* detention centers without independent oversight. Sri Lankan authorities prevent the displaced from leaving the camps, to return home or resettle in another part of the country, in contravention of international standards. Despite assistance from INGOs and governments such as India, the camps lack sufficient supplies of healthcare, food and water.<sup>ix</sup> Civilians held at these camps suspected of Tamil Tiger sympathies are particularly vulnerable to enforced disappearances and extrajudicial executions, both tactics that the government and its allied militias have been known to employ in significant numbers over the past few years.

### **Possible violations of international humanitarian law by the LTTE and the Sri Lankan Armed Forces<sup>x</sup>**

Amnesty International has received credible and consistent reports that the LTTE has forcibly displaced civilians and pushed them into areas under their control in the Wanni where they are effectively kept as hostages and used as a buffer against the Sri Lankan armed forces<sup>xi</sup> in flagrant violation of international humanitarian law.<sup>xii</sup> The LTTE reportedly prevents civilians

from leaving their territory with a pass system that restricts freedom of movement. The LTTE is also reported to have deliberately attacked civilians, including by shooting at civilians that have tried to flee areas under their control.<sup>xiii</sup> Such attacks would constitute war crimes.<sup>xiv</sup>

The LTTE has carried out attacks from areas densely populated with displaced Tamil families under their control, exposing the trapped population to injury and death as a result of government ripostes.<sup>xv</sup> The LTTE appears to have made no effort to protect civilians from attacks in violation of customary international humanitarian law.<sup>xvi</sup> On the contrary, with their refusal to allow civilians to leave from the shrinking territory under their control, the LTTE have put civilians at risks from attacks. The LTTE has forcibly recruited civilians, including children, to build bunkers and serve as troops - acts which constitute war crimes.<sup>xvii</sup>

Reports from eyewitnesses, aid workers and civilians in the conflict zone strongly suggest that both the LTTE and the Sri Lankan Armed Forces have failed to take necessary precautions as required under international humanitarian law to protect civilians and civilian objects from attack. Furthermore, reports indicate that both sides may have deliberately attacked medical facilities and hospitals. International humanitarian law prohibits the deliberate targeting of civilians or civilian objects<sup>xviii</sup>, as well as indiscriminate attacks, i.e. attacks by whose nature strike military objectives and civilians or civilians objects without distinction.<sup>xix</sup> Hospitals, medical facilities and personnel enjoy special protection and cannot be attacked unless they are used to commit a hostile act and even then only after appropriate warnings have remained unheeded.<sup>xx</sup>

The main hospital in the town of Puthukkudiyiruppu in the Wannu was shelled on 4 February 2009. Hundreds of patients and medical staff were evacuated from the building. The hospital, which was subjected to several attacks in previous days, was bombarded by shelling for 16 hours. None of the warring parties took responsibility for the shelling.<sup>xxi</sup> This was the last hospital to remain open in Puthukkudiyiruppu.

The government of Sri Lanka has intensified the suffering of the people by cutting off international humanitarian assistance to those trapped in the Wannu, despite lacking the capacity to meet the needs itself. In September 2008, the government expelled international humanitarian agencies from the region citing security concerns. The government of Sri-Lanka has argued that it is not safe for aid workers to operate in the Wannu, an assessment not shared by the humanitarian agencies themselves. According to doctors inside the Wannu, the

Ministry of Health instructed all doctors and health workers to leave LTTE-controlled areas on 10 February 2009. In early February 2009 hundreds of injured civilians in the region were left with no proper medical facilities, doctors were performing operations without anaesthetics and patients had to wait up to a week for urgent treatment. A letter from the Office of the Regional Director of Health Services in Mullaitivu notes that since January 2009, more than 500 civilian deaths have been registered at hospitals. Dr. Varatharajah and Dr. Sathiyamoorthy note that access to basic medicines has been restricted by the government's lengthy security clearance procedures.<sup>xxii</sup>

The continued refusal by the government to allow international humanitarian operations into the Wanni, and the restrictions placed upon doctors and health workers have precipitated an acute humanitarian crisis. Government convoys and shipment by sea of food and medical supplies have alleviated some of the gaps but is inadequate for the needs. Tens of thousands of people are living without adequate food, shelter and medical care.<sup>xxiii</sup> The deliberate denial of basic services and assistance such as health care and food is prohibited by international humanitarian law.<sup>xxiv</sup>

Under international humanitarian law, the parties to the conflict must allow and facilitate rapid and unimpeded passage of impartial humanitarian relief. Temporary restrictions to the freedom of movement of relief personnel can only be allowed in case of imperative military necessity. Given that the government has thus far failed to provide for the basic humanitarian needs of the population in violation of international law, it must allow aid agencies that have experience of operating in conflict zones to make their own assessment as to whether it is too dangerous for them to operate in the Wanni.

Organisations such as *Médecins Sans Frontières* (MSF) reported that the critically injured were not getting the assistance they needed because ambulances did not receive adequate security assurances to move across frontlines to evacuate the wounded. MSF has offered to send medical staff and supplies to the Wanni, however, despite several requests from Ministry of Health staff still in Wanni, MSF has been denied access.<sup>xxv</sup>

Amnesty International recently called upon both parties to the conflict to immediately declare a temporary humanitarian truce and create humanitarian corridors in order to allow those people who are trapped to escape the conflict zone and let urgently needed humanitarian assistance reach those who cannot leave.<sup>xxvi</sup> However, these calls have been rejected by both

sides. The government must declare a temporary humanitarian truce and urge the LTTE to abide by this in order to allow civilians to evacuate. If the LTTE declines to observe such a humanitarian truce this would expose their willingness to continue to put civilians at grave risk.

Amnesty International repeats its call to:

- **both sides to immediately declare a temporary humanitarian truce and create humanitarian corridors in order to allow civilians to leave the conflict zone and let urgently needed humanitarian assistance to reach all those civilians in need;**
- **the LTTE and the Armed Forces of Sri Lanka to allow full and unimpeded access for international and national humanitarian agencies and to guarantee safe passage for humanitarian convoys;**
- **the LTTE and the Armed Forces of Sri Lanka to provide access to an independent multi-agency needs assessment team, including protection experts, to identify needs and gaps in assistance for the civilian population in the Wann;**
- **the LTTE and the Armed Forces of Sri Lanka to respect the prohibitions of hostage taking, targeting of civilians and launching indiscriminate or disproportionate attacks that are prohibited under international humanitarian law.**

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### **The need for security and protection of displaced people**

Civilians who try to flee the fighting run a gauntlet between the Sri Lankan armed forces and LTTE fighters. Many civilians risk their lives to reach government controlled areas. The Sri Lankan government has claimed that Tamil Tigers have fired upon civilians seeking to escape the conflict zone. Amnesty International has received several credible reports over the past few months that the Tamil Tigers have threatened violence against civilians who wish to leave, or their family members who may stay behind in Tiger-controlled areas. There are reports that the Tamil Tigers have interfered with evacuation attempts by the ICRC by applying a pass system even on the seriously wounded. The Tamil Tigers' efforts to prevent civilians from leaving the desperate conditions of the conflict zone could constitute a war crime.

Civilians who exit areas of fighting, often exhausted, traumatised and sometimes badly injured, face an ordeal once they enter government-controlled areas. The Sri Lankan government, which is ultimately responsible for the rights and welfare of the displaced

population, has shown itself incapable of addressing the logistical demands of the displacement crisis, a situation likely to get significantly worse with the expected exodus of tens of thousands of civilians out of LTTE-held areas. International humanitarian and human rights law guarantee the displaced fundamental rights and protections. Displaced individuals do not forfeit the rights of the rest of the population as a result of displacement.<sup>xxvii</sup> While the government has a primary obligation to provide security and assistance to the displaced, it should do so in ways that respect and protect their human rights. Sri Lanka is a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other human rights treaties, yet reports indicate that the government is failing to protect the rights of the displaced.<sup>xxviii</sup>

### ***De facto Detention camps or “welfare villages”***

Once the displaced pass through an initial check for weapons at Killinochchi they are taken to Killinochchi hospital and then transported to one of the heavily militarised temporary transit sites in Vavuniya or Jaffna. The Sri Lankan authorities have established a number of centres for the displaced in the past and have indicated that the long term plan will be to house the entire displaced population in these “welfare villages.”<sup>xxix</sup> Notwithstanding the use of the term “villages”, these facilities are in reality heavily militarised, suffer from inadequate facilities, and operate essentially as holding pens surrounded by barbed wire.

The majority of the recent influx of over 40,000 displaced people, are currently housed in one of the 13 transit sites set up by government of Sri-Lanka in Vavuniya District, most of which are converted educational facilities such as schools or colleges. These facilities are seriously overcrowded and there is an immediate need to address the conditions of these sites. One aid worker reports that in one camp, “there can be 600 people living in a large basketball court”. Approximately 8,000 IDPs have been taken to the semi-permanent camp in Menik Farm. In preparation for a further large influx, emergency shelters are also being constructed in another area of Menik Farm. Heavy rain has affected the area around Menik Farm this week and many of the temporary tents are flooding.

Previous research by Amnesty International demonstrates that the government has a poor track record on the protection of the rights of displaced people in government run centers and urgent action is needed to ensure security and protection of basic human rights.<sup>xxx</sup> Displaced people that have arrived in government territory since the escalation of the conflict in 2008

have been held in centers located at Kalimoddai and Sirukandal (Mannar district) and Menik Farm and Nellumkulam (Vavuniya district). In some camps in Vavuniya and Jaffna the displaced are held in de facto detention, not being allowed to leave the camps. The Sri Lankan Armed Forces have severely restricted the ability of the displaced held in these “welfare villages” and other camps to move freely. In some camps, such restrictions amount to deprivation of liberty and arbitrary detention.

In Mannar, the displaced who have been held in Kalimoddai and Sirukandal camps for almost a year have been allowed out of these camps for education, livelihood and health purposes, but have been required to leave a family member in the camp as a safeguard against them not returning<sup>xxxix</sup> Young single men with no family members to act as their guarantor have not been allowed to leave the camps.<sup>xxxix</sup>

In Vavuniya some of the displaced have been allowed to leave camps to live with host families, or allowed out of the camps for specific purposes. This has been largely limited to the very elderly, those requiring hospital treatment or particularly vulnerable people like mentally or physically disabled individuals. The reported government decision<sup>xxxix</sup> to allow all the displaced over the age of 60 to leave has not been comprehensively implemented. The probable extended nature of existing and planned “welfare villages” and the lengthy confinement of the displaced threaten to undermine the right to voluntary return or resettlement in safety as soon as the reasons for their displacement cease to exist.<sup>xxxix</sup>

The civilian character of these camps is also at risk and military personnel, soldiers or military police, are still a visible presence inside the sites, often reported to be questioning the displaced and, in some cases are still engaged in camp management activities, raising protection concerns arising from continued presence of military inside the sites. If security is needed for the camps it should be provided by the police and they should be located outside the camp perimeters with no role in managing the camp or distributing assistance.

The UN Guiding Principles on Internal Displacement (the UN Guiding Principles) reinforce the rights to liberty and security of person and to freedom of movement which are set out in Articles 9 and 12 of the International Covenant on Civil and Political Rights respectively.<sup>xxxix</sup> The UN Guiding Principles provide that the displaced “shall not be interned in or confined to a camp.” While it is recognized that “exceptional circumstances” may permit the short term confinement of the displaced this must only be for as long as it is ‘absolutely necessary’- it is

questionable whether such exceptional circumstances exist in Sri Lanka to warrant the widespread detentions of Tamils displaced.<sup>xxxvi</sup> Furthermore the Sri Lankan government has made no progress in demonstrating or justifying that “exceptional circumstances” exist.

In order to clarify conditions an independent needs assessment mission must be allowed to visit all the camps. Human rights and international humanitarian law prohibits arbitrary detention. Detention must not be arbitrary, and must be based on grounds and procedures established by law (see article 9 paragraph 1 of ICCPR.) Persons must be informed of the reasons of their detention, and they must be allowed to challenge the legality of their detention before the courts. The UN Guiding Principles on internal displacement recognize the rights of liberty and freedom of movement guaranteed in the ICCPR, and consistently with the above standards, state that: “internally displaced persons have the right to move freely in and out of camps and other settlements” (see Principle 14, paragraph 2.).

In a 2008 report of his mission to Sri Lanka, the UN Special Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (SRSG) underlined the obligation not to subject the displaced to arbitrary periods of unsupervised and restricted confinement. The SRSG stated that; “while the need to address security may be a component of the plan [to receive IDPs], it should be humanitarian and civilian in nature. In particular, IDPs’ freedom of movement must be respected, and IDPs may not be confined to a camp”.<sup>xxxvii</sup>

The lack of consistent international supervision (and monitoring) of the transit sites and so-called “welfare villages” run by the government continue to put the displaced at risk of human rights violations by the security forces. There is no standard individual registration process for the displaced coming out of the Wannu.<sup>xxxviii</sup> Although UNHCR, the ICRC and some INGOs and NGOs have been granted limited access to these centers for distribution of assistance, there is still lack of adequate protection safeguards, and the displaced are vulnerable to further serious human rights violations such as extra judicial executions, torture, cruel and inhumane treatment (including sexual and gender based violence), and enforced disappearance.<sup>xxxix</sup> Furthermore, safeguards to ensure the right to a family life is preserved has not been implemented, the lack of systematic registration process in place means family members are being separated.<sup>xl</sup> Very little progress has been made on establishing procedures for tracing and reunification of separated families, including for unaccompanied and separated children. Lack of privacy for women in the centers is reported to be a problem – in

some centers men and women were compelled to sleep together and there is a lack of private bathing places for women.

**Amnesty International calls upon the Sri Lankan government to:**

- **respect and protect the human rights of displaced people, including the rights to freedom of movement, liberty and security of person, right to health, education and to adequate standards of living. All human rights must be guaranteed without discrimination;**
- **with assistance of the international community, immediately formulate plans and policies that aim to provide long term durable solutions for displaced people. Any decisions affecting displaced people must comply with international human rights standards, including the UN Guiding Principles on Displacement, including the right to return home or to resettle voluntarily in another part of the country. Displaced people must be given information on their rights and possible relocation options and they must be able to make informed choices about the future;**
- **ensure that “welfare villages” for displaced people are of a civilian character, and the camp administration must ensure that security and human rights are guaranteed and protected. All IDP settlements, of whatever kind, must be situated at a reasonable distance from areas of conflict, away from military targets and land mines or unexploded ordnance. Camps must be accessible to existing services and infrastructure, including education, medical and social welfare facilities;**
- **ensure that the right to education and to family reunification are protected for all children, including separated or unaccompanied children. The human rights of all children as recognized in the Convention of the Rights of the Child, to which Sri Lanka is a party, must be respected and protected and the best interest of the child must inform any decisions affecting children;**
- **Special protection must be provided in order to ensure that women are protected from gender based discrimination and sexual or other forms of violence and mistreatment both in government run IDP camps and during any future resettlement process.**

***Government screening of displaced people***

Amnesty International recognizes that the Sri Lankan government has legitimate security concerns that armed elements are mixed with displaced populations. In such situations, governments are responsible for ensuring that the displaced are housed in camps that are civilian in nature and that they are protected from armed elements. The Sri Lankan government has a duty to respect and protect the human rights of the displaced from both its own Sri Lankan Armed Forces and members of the LTTE. The government also has a responsibility to bring all persons suspected of crimes under international and national law to justice in trials that meet international standards of fairness.

The government of Sri Lanka must not use the need to screen for LTTE fighters as an excuse to discriminate against large groups of ethnic Tamils and to detain civilians, including entire families, the elderly and children, for indefinite periods of time or hold them in camps with very limited freedom of movement, and in conditions which violate their human rights.

At checkpoints and in transitional and “welfare villages” the government is reported to be screening the civilian population in order to identify suspected LTTE fighters. There is currently no standard registration process for the displaced coming out of the Wannu. Although the government has previously recognized the urgent need to establish a process for displaced people documentation, the current government screening procedures do not conform to international human rights standards.<sup>xli</sup>

The SRSR on Internal Displacement, reporting back to the UN Human Rights Council on his mission to Sri Lanka from 14 to 21 December 2007, observed some of the human rights concerns that relate to government screening of the displaced, and used the process in the East of the country as an example:

“often screening was conducted by military in the presence of masked men... confidence in the security forces is undermined by routine disregard of procedures for arrest and detention, including notification of family members of the reasons for and location of the individual’s detention. The fact that women simply do not know where their son or husband is, who he is with, or why he was taken, turns their fear into terror”.<sup>xlii</sup>

Forced family separations have been reported as part of the screening process. Women who may go through screening procedures are at greater risk of gender based discrimination including verbal harassment, sexual violence including rape and other forms of exploitation and mistreatment.<sup>xliii</sup>

Previous research by Amnesty International indicates furthermore that those persons who are suspected by the government of being members or supporters of LTTE are at grave risk of extrajudicial executions, enforced disappearance, torture, cruel, inhumane and degrading treatment. Previous research indicates that human rights violations are perpetrated by the government to punish former LTTE fighters.<sup>xliv</sup>

**The government with the assistance of the international community must:**

- **Ensure that the screening process is carried out in ways that guarantees the human rights and dignity of all those involved, and allow independent monitoring of the screening process; special attention should be paid to ensuring that women, children, the sick and the elderly are protected during the screening process and guaranteed humane treatment.**
- **Anyone who is detained on suspicion of involvement with the LTTE must be promptly charged with a recognizable criminal offence and be brought to justice in proceedings that meet international standards for fairness, without recourse of death penalty, or released. While in detention, individuals must not be held incommunicado or in secret or unofficial places of detention where they are vulnerable to extrajudicial executions, torture and enforced disappearance. Detainees must be allowed access to lawyers, families and doctors, and have the right to challenge the lawfulness of their detention.**

**A climate of Fear**

Both the government and the LTTE have routinely used harassment, threats, enforced disappearances, violence and killings to silence critical voices and hamper the work of journalists, and domestic and international NGOs over the course of the 25 year conflict in violation of international human rights and humanitarian law. The LTTE never brooked dissent and systematically assaulted free expression in the areas under its control, frequently through threatening, and carrying out, violence against critics—in particular, voices within the Tamil community that disagreed with the Tamil Tigers' often abusive behavior.

Disappointingly, Sri Lanka's once vibrant civil society, and in particular its media, has faced severe threats to freedom of expression over the past few years in Sri Lanka. There have been increasing instances of physical attacks on the media and other critics, including the recent assassination of the editor of the *Sunday Leader*, Lasantha Wickramatunge. Human rights

defenders and journalists across the island report increased attacks including death threats. 14 journalists have been killed since 2006 and over 10 journalists have fled the country this year alone for safety. The perpetrators of such human rights violations have never been brought to justice.

These attacks take place against a backdrop of official government statements against critical voices, accusing dissenting journalists or human rights activists of treason or supporting the Tamil Tigers.<sup>xlv</sup> The government's frequent vitriolic responses to any criticism only serve to erode its legitimacy on the international arena, but within Sri Lanka, such rhetoric serves to implicitly support, if not actually encourage, physical attacks on government critics.

- **The government and the LTTE must publicly condemn all unlawful killings, torture, threats, violence, arbitrary detention, and enforced disappearance. Journalists, human rights defenders and NGOs must not be subject to harassment, smear campaigns or intimidation. The government must respect and protect the right to freedom of expression, assembly and association;**
  
- **The government must ensure prompt, effective, independent and impartial investigations by competent authority into reports of unlawful killings, arbitrary detentions, torture and other ill-treatment, or of harassment and that the perpetrators are brought to justice without recourse to the death penalty.**

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### **Duties of the international donor community**

The humanitarian and human rights crisis in Sri Lanka must no longer be allowed to play out beyond scrutiny. The urgent protection needs of the population can only be met if there is immediate independent supervision and technical assistance in northern Sri Lanka. There is an immediate urgent need to provide independent verification of the human rights and humanitarian situation in the Wanni and in government run "welfare villages." The Sri Lankan government has recently approached individual donors as well as international financial institutions for financial, material, and technical assistance. Most significantly, the Sri Lankan government has approached the International Monetary Fund for a US\$1.9 billion short-term loan to offset the government's heavy expenditures on its war effort and the country's general economic problems. The attempt to secure an IMF loan highlights the

government's precarious economic situation, as a number of donor states have cut or reduced assistance to Sri Lanka as a result of the country's poor human rights record.

A number of donor states have already expressed their concern at the situation in Sri Lanka. For example, the EU Commissioner for Development and Humanitarian Aid has condemned the escalating humanitarian catastrophe in Sri Lanka.<sup>xlvi</sup> The United States' Millennium Challenge Corporation, a government funding agency, cut nearly \$600 million in funding in 2007 as a result of the serious deterioration in the country's security and human rights situation, while in the same year the US Senate imposed a ban on military assistance to Sri Lanka.<sup>xlvii</sup> Sri Lanka's dire human rights record has also prompted the European Commission to question whether it should extend preferences for Sri Lankan exporters under its Generalized System of Preferences for developing countries (GSP+).<sup>xlviii</sup>

A number of countries raised issues of civilian protection in Sri Lanka during the Human Rights Council session in March 2009 including Japan, a significant donor to Sri Lanka who noted "the serious damages and casualties surrounding internally displaced persons and other civilians in the north of the country".<sup>xlix</sup> On a visit to Washington in March 2009, Indian Foreign Secretary Shiv Shankar Menon highlighted India's concern with civilian protection in Sri Lanka.

Although the primary obligation to respect, protect and fulfill human rights of people in Sri Lanka lies with the country's government, Amnesty International believes that those governments that provide international assistance should ensure that the assistance is used in a manner consistent with human rights. This includes the obligation under international human rights law for donor states acting abroad to contribute to, or support, and not to undermine, the development of an environment that ensures the protection of human rights. States should assess the likely human rights impact of their international assistance and to monitor the actual impact.

The Sri Lankan government has turned to the international community to provide the financial and technical assistance necessary to provide short term responses to the displacement crisis in the Wanni, and will surely require greater international assistance to address the massive problems of the areas recently taken over from the Tamil Tigers. The Sri Lankan government's attitude so far has been to seek international assistance while rejecting international standards or scrutiny. In September 2006 the Co-Chairs of the Tokyo Donor

Conference (Norway, the European Union, the USA and Japan) urged “guarantees for the safety of NGO workers and for ensuring access for NGOs and international organizations to help citizens and communities in need of essential humanitarian assistance and valuable reconstruction and development work”.<sup>i</sup> There has been little progress in these areas and the donor community should act immediately to avert further humanitarian and human rights crisis in the Wanni.

The Sri Lankan government has also tried to avoid any scrutiny by the United Nations, even as the cost of the campaign in terms of damage to civilians rises daily. The government of Sri Lanka has correctly pointed out that the LTTE have a long record of gross human rights abuses, and have tried to use the LTTE's poor record to avoid opprobrium. Amnesty International welcomes the strong public statements from various United Nations organs, including the Secretary General<sup>ii</sup> and the 13 March statement by the High Commissioner for Human Rights<sup>iii</sup> regarding the grave human rights situation in Sri Lanka. It is now time for the United Nations to act more vigorously to resolve the humanitarian catastrophe in the Wanni and to prevent the creation of a long-term crisis of displacement for those who have survived the fighting in eastern and northern Sri Lanka.

- **Donor governments should offer technical assistance to Sri Lanka to assist in the protection of displaced populations. They should ensure that the assistance they provide is used in a manner consistent with human rights and they should set clear benchmarks to monitor the impact of their assistance on displaced people;**
  - **The Human Rights Council should act on the human rights situation in Sri Lanka without delay. It should also urge the government of Sri Lanka to authorize the establishment of an international human rights monitoring presence without further delay to monitor and publicly report on the human rights situation of displaced people;**
  - **The Security Council must request regular briefings on the humanitarian and human rights situation in Sri Lanka. The Council must call for an immediate humanitarian truce, emphasize the need for all parties to fully observe their obligations under international humanitarian, human rights and refugee law, stress the need to bring to justice those responsible for violations thereof and must keep the situation in Sri Lanka under constant review;**
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- **All international and national humanitarian and human rights workers must be protected from attack and harassment and have full access to all IDP camps and government screening procedures. These workers must be guaranteed full freedom of**

**movement and the power to seek and receive information from any source and to report its findings to the government and the UN.**

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**Endnotes**

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<sup>i</sup> The Vanni is an area encompassing the two districts of Kilinochchi and Mullaittivu and parts of Jaffna, Mannar and Vavuniya districts in the north. It is difficult to gain accurate statistical information as much of the population is constantly on the move and due to the lack of independently verified information. Civilians have been trapped since the intensification of hostilities from July 2008 as the offensive pushed people eastwards as they fled aerial bombardment.

<sup>ii</sup> 'SRI LANKA: Clinton raises security fears for IDPs in north', IRIN news, 26 March 2009, <http://www.irinnews.org/Report.aspx?ReportId=83490>.

<sup>iii</sup> [http://www.humanitarianinfo.org/srilanka\\_hpsl/Files/Media%20Centre/Press%20Releases%20And%20Statements/LKP0111\\_UN%20Sri%20Lanka%20Statement\\_2009FEB16.pdf](http://www.humanitarianinfo.org/srilanka_hpsl/Files/Media%20Centre/Press%20Releases%20And%20Statements/LKP0111_UN%20Sri%20Lanka%20Statement_2009FEB16.pdf).

<sup>iv</sup> 'Serious violations of international law committed in Sri Lanka conflict: UN human rights chief', Statement by United Nations High Commissioner for Human Rights, 13 March 2009, Geneva.

<sup>v</sup> 'Statement by UNICEF Executive Director Ann M. Veneman on the situation in Sri Lanka', Unicef Press Release 17 March 2009, [http://www.unicef.org/infobycountry/media\\_48749.html](http://www.unicef.org/infobycountry/media_48749.html).

<sup>vi</sup> 'CARE aid worker killed in conflict', Care International, 18 March 2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SODA-7Q9L2A?OpenDocument&rc=3&cc=lka>.

<sup>vii</sup> Sri Lanka – ICRC Bulletin No: 02/2009, 17 March 2009.

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

<sup>ix</sup> On 11 March 2009 the Indian government sent a 52 member team to help with medical aid and the treatment of the displaced coming from the war zones in Wannai, 24 March, <http://timesofindia.indiatimes.com/World/India-may-expand-hospital-facility-in-Lanka-war-zone/articleshow/4309797.cms>.

<sup>x</sup> Both parties to the conflict are bound by Common Article 3 to the Geneva Conventions and applicable principles of customary international humanitarian law applicable to non-international armed conflicts. International humanitarian law includes rules protecting civilians and other non combatants, as well as rules regulating the means and methods of warfare.

<sup>xi</sup> See 'Civilians Trapped by Armed Conflict', Amnesty International Web Feature, <http://www.amnesty.org/en/news-and-updates/news/civilians-trapped-sri-lanka-conflict-20090128>.

<sup>xii</sup> The forcible displacement of civilians is prohibited under customary international law. See, Rule 129 (b), ICRC Rules. It is also a war crime under Article 8(2)(e)(viii), ICC Statute. See: also Principles 6(1) and 6(2)(b) of the UN Guiding Principle on Internal Displacement (hereafter UN Guiding Principles). The prohibition of hostage taking is set out in Common Article 3 (1)(b) to the Geneva Conventions and Rule 96, ICRC Rules. On human shields see Rule 97, ICRC Rules.

<sup>xiii</sup> The United Nations Country Team in Sri Lanka statement on 16 February 2009 reports that a growing number of people trying to leave the Wannai, have been shot at, and sometimes killed by the LTTE, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/JBRN-7PBHEJ>.

<sup>xiv</sup> Article 8(2)(e)(i) ICC Statute and Rule 1, ICRC Rules.

<sup>xv</sup> Under customary international law parties to a conflict must avoid, to the extent feasible, locating military objectives within or near densely populated areas. See: Rule 23, ICRC Rules.

<sup>xvi</sup> Under customary international law parties to a conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives. See: Rule 24, ICRC Rules.

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<sup>xvii</sup> Rule 95, ICRC Rules prohibits uncompensated or forced labour. See also: Article 8(2)(e)(vii) ICC Statute, Rule 137, ICRC Rules, Principle 13(1) UN Guiding Principles.

<sup>xviii</sup> See ICRC, Customary International Humanitarian Law, Volume I: Rules; Rules 1 and 7 (hereinafter “ICRC Rules”) and Articles 8(2)(e)(i) of the Rome Statute.

<sup>xix</sup> See ICRC Customary International Humanitarian Law, Volume 1: Rules (hereafter ICRC Rules), Rules 11, 12 and 13.

<sup>xx</sup> Article 8(2)(e)(iv) of the Rome Statute of the International Criminal Court, Rules 7 and 25 of ICRC Rules.

<sup>xxi</sup> An International Committee of the Red Cross (ICRC) representative said of the attack: “At least nine people were killed and at least 20 others injured as a result of the first three shellings. The hospital sustained direct hits three times in less than eight hours: twice between 3 and 4 p.m. local time, then again at 10.20 p.m. local time. On Monday evening at 6.40 p.m., the hospital was hit a fourth time. On Sunday the hospital's kitchen was hit first, then its church and later a ward with women and children. On Monday it was another ward. It is likely that there were casualties outside the hospital, too, but we do not have the exact figures yet. Despite the shelling, people injured in the ongoing fighting continue to arrive at the hospital. When it was hit the third time, more than 800 people, including 500 in-patients, were sheltering in the hospital. See, Sri Lanka: Vanni hospital shelled”, <http://www.icrc.org/web/eng/siteeng0.nsf/html/sri-lanka-news-0102.k>.

<sup>xxii</sup> Letter from the RDHS Mullaitivu & RDHS Kilinochchi, Dr. Varatharajah and Dr. Sathiyamoorthy, 16 March 2009.

<sup>xxiii</sup> Amnesty International, ‘*Civilians trapped by Sri Lanka conflict*’, 28 January 2009, <http://www.amnesty.org/en/news-and-updates/news/civilians-trapped-sri-lanka-conflict-20090128>.

<sup>xxiv</sup> Rule 55, ICRC Rules. Article 7 (2)(b) of the ICC statute sets out that for the purpose of demonstrating crimes against humanity (which are widespread and systematic in nature), “extermination” includes the intentional infliction of conditions of life, *inter alia*, the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population”.

<sup>xxv</sup> *Sri Lanka: 250,000 Civilians Trapped in Intense Fighting MSF Denied Access to Assist Victims in War Zone*, 28 January 2008, <http://www.doctorswithoutborders.org/news/article.cfm?id=3372&cat=field-news>.

<sup>xxvi</sup> Amnesty International, Call for a Truce in Sri Lanka as the Humanitarian Situation Deteriorates, 6 February 2008, <http://www.amnesty.org/en/news-and-updates/news/call-for-truce-sri-lanka-humanitarian-situation-deteriorates-20090206>

<sup>xxvii</sup> Principle 1, UN Guiding Principles. International human rights law continues to apply in Sri Lanka alongside international humanitarian law.

<sup>xxviii</sup> Sri Lanka is also a party to Convention on the Rights of the Child (CRC) and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, CERD, CAT, CMW and CEDAW. The government has a legal obligation to ensure that all people in its territory or under its jurisdiction, including the displaced, benefit from the protection of these treaties.

<sup>xxix</sup> As of 16 February 2009, official figures indicate 37,420 people have crossed from LTTE held territory into government-controlled areas in 2009, with nearly 35,000 people crossing over in the first 16 days of February 2009.

<sup>xxx</sup> Amnesty International Report, ‘*Sri Lanka: Waiting to go home - the plight of the internally displaced*’, (Index: ASA 37/004/2006), 28 June 2006.

<sup>xxxi</sup> Common Article 3(1)(b).

<sup>xxxii</sup> ‘Barbed wire villages raise fears of refugee concentration camps’, Jeremy Page interviewing Rajiva Wijesinha, Secretary to the Ministry of Human Rights, *The Times*, 13 February 2009, <http://www.nowpublic.com/world/sri-lankas-refugee-concentration-camps>.

<sup>xxxiii</sup> See John Holmes statement to the UNSC.

<sup>xxxiv</sup> Rule 132, ICRC Rules; Displacement should last no longer that required by the circumstances, Principle 6(3), UN Guiding Principles.

<sup>xxxv</sup> The UN Guiding Principles provide an internationally recognised framework for the protection of IDPs and they provide guidance for states as to how they can ensure the protection of binding international human rights and humanitarian law within the context of internal displacement.

<sup>xxxvi</sup> Principle 12(2), UN Guiding Principles. See, also Annotations to the Guiding Principles, (2008), pp. 58-61.

<sup>xxxvii</sup> See: Report of the secretary-general on human rights on the human rights of internally displaced persons, Mission to Sri Lanka, UN Doc. A/HRC/8/6/Add.4, 21 May 2008.

<sup>xxxviii</sup> Centre for Policy Alternatives, 'Report of the situation of IDPs leaving the Vanni', forthcoming, February 2009.

<sup>xxxix</sup> 2006-2008 have been characterized by impunity for violations of international human rights and humanitarian law. Soaring human rights abuses included hundreds of enforced disappearances, unlawful killings of humanitarian workers, arbitrary arrests and torture. See Amnesty International Annual Report on Sri Lanka 2007, <http://thereport.amnesty.org/eng/Regions/Asia-Pacific/Sri-Lanka>.

<sup>xl</sup> Rule 131, ICRC Rules. Principle 18(2), UN Guiding Principles. The UN ICESCR to which Sri Lanka is a party also protects human rights such as the right to food, to health, and to an adequate standard of life.

<sup>xli</sup> Perera, R, Dr & Fernando M. 2009, *Draft report of the first phase of consultations in the development of a national action plan of action for the promotion and protection of human rights*, Ministry of Disaster Management and Human Rights, Sri Lanka.

<sup>xlii</sup> A/HRC/8/6/Add.4, 21 May 2008, Point 41.

<sup>xliii</sup> Urgent Action for Krishanthy Kumarasamy (f), aged 18, student, "Disappearances", 20 September 1996, UA 222/96.

<sup>xliv</sup> There are reports that some of the displaced, particularly young men, are screened on more than one occasion often at different locations.

<sup>xlv</sup> 'Army Commander calls journalists traitors',

<http://freemediasrilanka.wordpress.com/2008/01/04/army-commander-calls-journalists-traitors/>.

<sup>xlvi</sup> Brussels, 29 January 2009, Press statement, Louis Michel condemns the escalating humanitarian catastrophe in Sri Lanka and calls for life to be respected, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/189&format=HTML&aged=0&language=en&guiLanguage=en>.

<sup>xlvii</sup> Congressional notification of the suspension of MCC funds to Sri Lanka. <http://www.mcc.gov/documents/cn-121307-eligiblecountries.pdf>

<sup>xlviii</sup> The EU provides Sri Lanka with a range of support. On trade, Sri Lanka benefits from GSP+, giving the country duty free access to the EU which is the world's largest single market. The GSP+ (General System of Preferences for LDCs, is a special incentive arrangement for sustainable development and good governance and covers 14 countries and has been in place in Sri Lanka since 2005. The EU-Commission (COM) initiated an investigation with respect to the effective implementation of certain human rights conventions in Sri Lanka to decide whether to temporarily withdraw the preferential arrangement. The Government of Sri Lanka applied to join the new scheme in October 2008. COM is now investigating Sri Lanka's adherence to key treaties (Convention Against Torture (CAT), ICPPR).

<sup>xlix</sup> Oral Presentation during Article 4 at the Human Rights Council, Geneva, 16 March 2009, Shinichi Kitajima (Japan).

<sup>l</sup> Statement by the Co-Chairs of the Tokyo Donor Conference on Reconstruction & Development of Sri Lanka, 12 September 2006,

[http://www.humanitarianinfo.org/srilanka/catalogue/Files/Media%20Centre/Press%20Centre/PR75\\_Co-Chairs%20of%20the%20Tokyo%20Donor%20Conference.pdf](http://www.humanitarianinfo.org/srilanka/catalogue/Files/Media%20Centre/Press%20Centre/PR75_Co-Chairs%20of%20the%20Tokyo%20Donor%20Conference.pdf)

<sup>ii</sup> United Nations Statement Attributable to the Spokesperson for the Secretary-General on Sri Lanka  
[http://www.humanitarianinfo.org/srilanka\\_hpsl/Files/Media%20Centre/Press%20Releases%20And%20Statements/LKP0122\\_Pressrelease06032009.pdf](http://www.humanitarianinfo.org/srilanka_hpsl/Files/Media%20Centre/Press%20Releases%20And%20Statements/LKP0122_Pressrelease06032009.pdf)

<sup>iii</sup> Serious violations of international law committed in Sri Lanka conflict: UN human rights chief', Statement by United Nations High Commissioner for Human Rights, 13 March 2009.