

Amnesty International Public statement submitted to Human Rights Council Session 14 (Ref:SL A/HRC/14/NGO/53).

Human Rights Council must call for an independent international investigation into allegations of war crimes in Sri Lanka

Amnesty International urges the Human Rights Council to call for an independent international investigation into allegations of war crimes and human right violations committed in the final stages of the armed conflict between the Sri Lankan armed forces and the Liberation Tigers of Tamil Eelam (LTTE). This is an essential step to ensuring accountability in Sri Lanka and justice for victims and their families. This appeal coincides with a global action by the organisation to focus worldwide attention on the continuing impunity in Sri Lanka.

In May 2009, compelling evidence that war crimes were committed by both sides in the final phase of Sri Lanka's armed conflict led Amnesty International to call for an independent investigation. We asked members of this Council to raise human rights concerns in the context of a Special Session of Sri Lanka, and to support calls for an international inquiry. The Human Rights Council rightly condemned LTTE attacks on the civilian population and its practice of using civilians as human shields. However, the Council failed to acknowledge and act on credible reports that Sri Lankan forces killed thousands of civilians when they fired artillery into areas they knew were densely populated with displaced civilians, that Sri Lankan artillery hit hospitals and killed patients and medical workers, and that more than a quarter of a million displaced persons were detained by the Sri Lankan army to military-run camps, violating their rights to liberty and freedom of movement.

The Council failed to call for an investigation into allegations of abuse of international human rights and humanitarian law. It did however endorse a joint communiqué of 23 May issued at the conclusion of the visit to Sri Lanka of Secretary-General Ban Ki-Moon in which the Secretary-General "underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law," and President Rajapaksa promised that the Sri Lankan Government would "take measures to address those grievances." President Rajapaksa reiterated Sri Lanka's "strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations."

One year has passed and little has been done to give effect to those commitments. Having endorsed the joint communiqué, it is high time that the Human Rights Council remedied the failure of President Rajapaksa to address accountability for violations or demonstrate a commitment to the promotion and protection of human rights. Amnesty International recalls that last March in the Human Rights Council, the High Commissioner for Human Rights called again for "a full reckoning of the grave violations committed by all sides during the war."¹ The Council should support the High Commissioner's calls for an independent international inquiry and encourage the UN Secretary-General to use his inherent authority to establish such an international investigation into the numerous credible allegations of war crimes and human right violations committed in the final stages of the armed conflict.

A national inquiry is not satisfactory

Sri Lanka has a very poor record where combating impunity is concerned. It has not delivered on commitments it made during Sri Lanka's Universal Periodic Review in June 2008, including its promises to take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law.

¹ Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in a report released in January has also called for an independent international inquiry after expert analysis of a video purported to show extrajudicial executions was deemed authentic. Alston concluded that previous investigations carried out by the Sri Lankan authorities on the video had not been impartial.

It is clear that Sri Lanka's token efforts to address allegations of abuse are aimed at diverting international scrutiny rather than securing truth and justice or guaranteeing reparations for survivors. Sri Lanka's strategically timed announcements of new *ad hoc* mechanisms should be viewed with scepticism, given its flawed justice system, long history of impunity and many ineffectual investigations (documented at length in our 2009 report, *Twenty Years of Make Believe: Sri Lanka's Commissions of Inquiry*)²

National commissions of inquiry have simply not worked as mechanisms of justice in Sri Lanka

Official actions send a very different message about the Sri Lankan government's willingness to respect and protect rights, tolerate criticism, and pursue justice for wrongdoing by its forces. Sri Lanka has jailed local critics, and lashed out at or ejected international journalists, diplomats and aid workers who questioned its military's treatment of civilians. The antipathy expressed by Sri Lankan officials for human rights concerns of the international community and the country's domestic critics supports our conviction that President Rajapaksa is not serious when he promises to meet international obligations. We believe that the prospects for real national progress on accountability for past abuse domestically are very slim indeed. Action must therefore take place internationally.

Violations of human rights and international humanitarian law

Sri Lankan government forces and their armed political affiliates have violated human rights with impunity for decades, engaging in extrajudicial killings, enforced disappearances and torturing people suspected of links to the LTTE. The LTTE also abused civilians, launching suicide attacks directed at civilian objects like buses and railway stations, assassinating politicians and critics, and forcibly recruiting children as fighters. Violations peaked in the final months of war, when displaced civilians were trapped between the warring parties. The LTTE used civilians as human shields against the approaching army, and shot civilians who tried to escape; as its forces were depleted, the LTTE intensified conscription of child soldiers. The Sri Lankan government declared a "No Fire Zone," and directed civilians to relocate. But army artillery hit these areas, which the Sri Lankan army and political leadership knew were densely populated by civilians. Hospitals were shelled, killing and injuring patients and staff. Many thousands of civilians were killed.

Eyewitness accounts of the last months of war paint a grim picture of deprivation of food, water and medical care; fear, injury and loss of life experienced by civilians trapped in the fighting.

Nearly 300,000 survivors were detained for months in military-run displacement camps. Sri Lankan authorities obstructed international humanitarian and human rights protection work in an effort to contain a perceived security threat from LTTE members suspected of operating within the displaced population. Restrictions on displaced people's liberty and freedom of movement and humanitarian access were eventually loosened, but some 80,000 people remain in the camps, dependent on humanitarian assistance. More than 10,000 suspected LTTE members are still arbitrarily detained in what the state refers to as "rehabilitation camps." They have not been charged with offences or produced in court, and the ICRC has not had access to them since July 2009.

Consequences of inaction by the international community

The international community's failure to take timely action in 2009 endangered hundreds of thousands of civilian lives in Sri Lanka. Continued inaction threatens future generations and institutions that are critical to protection of rights in Sri Lanka and internationally. Sri Lanka's failure to ratify the Rome Statute of the International Criminal Court means the Court cannot act without a referral from the UN Security Council. And far from referring the situation to the Court, the UN has not even established an effective system to document the extent of

² Amnesty International, *Twenty Years of Make Believe; Sri Lanka's Commissions of Inquiry*, ASA 37/005/2009. June 2009

violations. It has never revealed what it knew about the final days of conflict or acknowledged the scale of the abuse that took place.

Impunity in Sri Lanka, where violations were on a massive scale and yet the UN failed to act, sets dangerous precedents. It sends a message to Sri Lankans that the UN was irrelevant and could re-enforce trends of impunity globally. Failure to address impunity in Sri Lanka could cement a situation where states that have not ratified the Rome Statute would feel that they are beyond the reach of international justice and that crimes committed in the name of “combating terrorism” can simply be ignored.

The end of the armed conflict in Sri Lanka should have been an opportunity for Sri Lanka turn a page on impunity. It is crucial that the Human Rights Council and concerned governments support genuine international efforts to encourage the Sri Lankan government to better protect the rights of all Sri Lankans and ensure that violations that became so commonplace in the past are not repeated.

Recommendations

Amnesty International urges the Human Rights Council to call on the UN Secretary-General to establish an independent international investigation leading to recommendations for accountability of all sides for violations of international human rights and humanitarian law that occurred during the final stages of the armed conflict.

The Council should also call on Sri Lanka to take the following measures to protect human rights:

- Stop harassment, intimidation and attacks against human rights defenders, journalists and other peaceful critics exposing past or present abuses
- Fully implement recommendations made in successive reports by Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, aimed at ending human rights violations and bringing perpetrators to justice, including by investigation of evidence of possible war crimes.
- Ensure the independence of key justice institutions in Sri Lanka necessary to protect human rights and combat impunity; initiate reforms to bring domestic institutions into line with international standards, including by establishing an effective witness protection scheme.
- Fully protect and respect the rights of internally displaced persons, in accordance with the UN Guiding Principles on Internal Displacement; and
- Release all persons held in “rehabilitation camps” unless they are charged with internationally recognizable crimes and brought before an independent court.