



Return to War Human Rights under Siege

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Map of Sri Lanka



I. Summary

What I am saying is, if there is a terrorist group, why can't you do anything? It's not against a community... I'm talking about terrorists. Anything is fair.

—Defense Secretary Gothabaya Rajapaksa, June 12, 2007

My wife was bathing at the well near my hut. I heard one big boom and saw smoke.... Then I saw her lying near the well.... Blood was all around. I called her but she didn't speak.

—Father of two whose wife died in the army shelling of the displaced persons camp at Kathiravelli on November 8, 2006

We just want to know where he is. He can even be in prison but let us know where he is.

—Mother of “disappeared” son, Colombo, March 2007

Sri Lanka is in the midst of a human rights crisis. The ceasefire between the government and the armed secessionist Liberation Tigers of Tamil Eelam (LTTE) exists only in name. Since mid-2006, when major military operations resumed, civilians have paid a heavy price, both directly in the fighting and in the dramatic increase in abductions, killings, and “disappearances.” The return to war has brought serious violations of international human rights and humanitarian law.

The LTTE is much to blame. The group, fighting for an independent Tamil state, has directly targeted civilians with remote-controlled landmines and suicide bombers, murdered perceived political opponents, and forcibly recruited ethnic Tamils into its forces, many of them children.¹ In the areas of the country's north and east under its control, the LTTE harshly represses the rights to free expression, association, and movement.

¹ In this report, consistent with international law, the words “child” and “children” refer to anyone under the age of 18.



A mass grave for the victims of the LTTE's June 15, 2006 landmine attack on a civilian bus that killed 67 people.
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Human Rights Watch has long documented abuses by the LTTE, particularly the LTTE's systematic recruitment and use of children as soldiers, the targeted killings of political opponents, and its abusive fundraising tactics abroad.² We will continue to report on LTTE abuses and press the LTTE to change its practices.

This report, however, focuses primarily on abuses by the Sri Lankan government and allied armed groups, which have gotten decidedly worse over the past year. As the hostilities have increased, the government's respect for international law has sharply declined, with it often appearing indifferent to the impact on civilians in the north and east.

This report does not aim to be a comprehensive account. Rather, it highlights with examples the main areas of concern, from violations of the laws of war and

² See Human Rights Watch, *Funding the Final War: LTTE Intimidation and Extortion in the Tamil Diaspora*, vol. 18, no. 1(C), March 2006, <http://hrw.org/reports/2006/ltteo306/>; Human Rights Watch, *Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka*, vol. 16, no. 13(C), November 2004, <http://hrw.org/reports/2004/srilanka1104/>; "Sri Lanka: New Killings Threaten Ceasefire," Human Rights Watch news release, July 28, 2004, <http://hrw.org/english/docs/2004/07/27/slanka9153.htm>.

extrajudicial killings to unlawful restrictions on the media and nongovernmental organizations and the widespread impunity enjoyed by state security forces. It uses victim and eyewitness accounts to document indiscriminate attacks on civilians, the forced return of internally displaced persons, and the spate of arrests and “disappearances” by government forces and allied groups. Case studies reveal how the rights to freedom of expression and association are increasingly under threat from a government intolerant of criticism and dissent. Ethnic Tamils have suffered the brunt of abuses, but members of the Muslim and majority Sinhalese populations have also been victims of government rights violations.

Sri Lanka’s defense establishment is particularly responsible for abuses. The security forces have driven policy on the ethnic conflict since President Mahinda Rajapaksa was elected in November 2005, led by the president’s influential brother, Defense Secretary Gothabaya Rajapaksa. After an LTTE attempt on the defense secretary’s life, the government expanded draconian Emergency Regulations, in place from the previous government, that grant the security forces sweeping powers of detention and arrest. The government has used counterterrorism legislation against journalists who expose human rights abuses, official corruption, or otherwise question the government’s handling of the conflict with the LTTE.

Even top government officials have expressed concern. In a private letter to President Rajapaksa on December 13, 2006, then-Foreign Minister Mangala Samaraweera warned that the government must do more to address the deterioration of human rights. Leaked to the press after Samaraweera was sacked, the letter noted “persistent reports about alleged abductions and extra-judicial killings attributed to government forces as well as the [allied] Karuna faction and the LTTE” in areas controlled by both the government and the LTTE. “Whether or not these were committed by terrorist groups or government agencies,” Samaraweera wrote, “it is the responsibility of the government to investigate and prosecute the perpetrators in keeping with Sri Lanka’s treaty commitments.” He added, “Even when fighting a ruthless terrorist group like the LTTE, the Government must not be

seen as using the same tactics as a terror group. The rule of law must always be respected by all arms of the government.”³

Ironically, the serious deterioration in the government’s human rights record is taking place under a president who was once a human rights activist, known for getting dossiers of the “disappeared” out of the country to the United Nations (UN) Commission on Human Rights in 1990. President Rajapaksa’s official biography trumpets him as a “champion of human rights,”⁴ but he has failed to demonstrate those qualities during his presidential term.

Abuses during armed conflict

Some of the most serious international law violations have taken place during armed hostilities, when civilians have died in unlawful attacks and others were displaced. Both the government and the LTTE have shown a brazen disregard for the well-being of non-combatants.

In one of the most deadly incidents of recent years, government shelling in the eastern Vaharai area on November 8, 2006, hit school grounds that were housing thousands of displaced civilians, killing 62 and wounding 47. Government forces failed to distinguish between combatants and civilians and may have purposely targeted the school. Based on interviews with a dozen witnesses and other information, Human Rights Watch found no evidence to support government claims that the LTTE had fired that morning at government forces from the vicinity of the school or had used civilians as “human shields” to protect themselves from attack.

The treatment of internally displaced persons remains a paramount concern. Some 315,000 people have had to flee their homes due to fighting since August 2006; 100,000 fled in March 2007 alone. This comes atop the 200,000-250,000 people made homeless by the December 2004 tsunami—many from the same areas as the recent fighting—and the approximately 315,000 displaced by the conflict prior to

³ *The Sunday Times Online*, vol. 41-no. 39, February 25, 2007, <http://sundaytimes.lk/070225/News/102news.html> (accessed July 2, 2007).

⁴ Official website of the President of Sri Lanka, <http://www.presidentssl.org/data/about.htm> (accessed May 21, 2007).

2002. Since January 2006 more than 18,000 Sri Lankans have fled to India, often on rickety boats, as refugees.

Both the LTTE and the government have failed adequately to provide for the needs of the displaced. The LTTE has at times blocked civilians from leaving areas of conflict, while the government through its indiscriminate shelling and restrictions on humanitarian aid has compelled civilians to flee. The government has forcibly returned displaced persons after it deemed their home areas “cleared” of the LTTE, often without adequate security or humanitarian assistance in place.



Internally displaced Tamils collect their temporary identity cards from the Sri Lankan police at Aryampathy refugee camp in Batticaloa in May 2007.
© 2007 Reuters/Buddhika Weerasinghe

Humanitarian aid agencies and nongovernmental organizations, domestic and international, are finding it increasingly difficult to service populations in need, and have sometimes come under direct attack. According to the United Nations, 24 aid workers died in Sri Lanka in 2006, including 17 local staff of the Paris-based Action Contre Le Faim who were murdered in August. The Sri Lankan authorities have not arrested anyone for that crime.⁵

Abductions and “disappearances”

The number of abductions and enforced disappearances is spiraling. The national Human Rights Commission (HRC) said it recorded roughly 1,000 cases in 2006, plus nearly 100 more in the first two months of 2007.⁶ A government commission established in September 2006 to investigate “disappearances” said in June 2007 that 2,020 people were abducted or “disappeared” between September 14, 2006, and February 25, 2007. Approximately 1,134 of these people were found alive but the others remain missing.⁷

On the Jaffna peninsula alone, an area under strict military control, more than 800 persons were reported missing between December 2005 and April 2007. According to a credible non-governmental organization that tracks “disappearances,” 564 of these persons were still missing as of May 1.

While the LTTE has long been responsible for abductions, the majority of recent “disappearances” in Jaffna and the rest of the country implicate government forces or armed groups acting with governmental complicity.

While many of the “disappeared” likely have been killed, some may be in detention, held under the newly imposed Emergency Regulations (see below). If so, the government should announce the names of such persons, as well as any charges

⁵ Security Council Briefing by Under-Secretary-General for Humanitarian Affairs John Holmes, June 22, 2007, <http://www.reliefweb.int/rw/RWB.NSF/db900SID/SHES-74ESMZ?OpenDocument> (accessed June 25, 2007).

⁶ Simon Gardner, “Abductions, Disappearances Haunt Sri Lanka’s Civil War,” Reuters, March 5, 2007, and “Sri Lanka Police, Soldiers Arrested over Abductions,” Reuters, March 6, 2007.

⁷ “US Concerned about Disappeared,” *BBC Sinhala.com*, June 28, 2007, http://www.bbc.co.uk/sinhala/news/story/2007/06/070629_uscondemn.shtml (accessed July 2, 2007).

against them, and list the locations where they are being held. Those not charged should be released.

Human Rights Watch conducted interviews with the family members of 109 people who said their relative had been abducted or “disappeared” since 2006. These included cases from Jaffna, Colombo, Vavuniya, Mannar, Trincomalee, and Batticaloa. The cases can largely be grouped into two basic types: those by the state in the name of counterinsurgency, and those by allied armed groups or the LTTE to eliminate rivals, recruit fighters, or extort funds.

In the lawlessness that has grown in the past two years, criminal elements also appear to have committed some of the abductions. Over the course of late 2006 and 2007 scores of abductions were accompanied by huge ransom demands and the victims were mostly businessmen from the minority Tamil community. By May-June 2007, members of the Muslim community, particularly in the eastern district of Ampara, were targeted as well.

Under growing pressure from within Sri Lanka and abroad, the government has taken some steps to address abductions and enforced disappearances, including some arrests of alleged perpetrators, but none of these steps has significantly slowed the abuse. A one-man government commission on “disappearances” established in September 2006 has issued strong statements about the abuse and the government’s inability to halt it, but the government has not made public any of the commission’s interim reports, nor is it obliged to implement any of the recommendations.

Public statements by the government have rejected the overwhelming evidence of government involvement as “unfounded” and cast those who accuse government forces as sympathizers of the LTTE. President Rajapaksa, once an advocate for the “disappeared,” has dismissed many of the cases as fakes. “Many of those people who are said to have been abducted are in England, Germany, gone abroad,” he said

in May 2007. “They have made complaints that they were abducted, but when they return they don’t say.”⁸

Arbitrary arrests and detention

In August 2005, after the assassination of Foreign Minister Lakshman Kadirgamar, the government of then-President Chandrika Kumaratunga imposed Emergency Regulations drawn from the Emergency Regulations of 2000. Long a controversial measure in Sri Lanka, the regulations granted the security forces sweeping powers of arrest and detention, allowing the authorities to hold a person without charge based on vaguely defined accusations for up to 12 months.

Over the past 18 months, the Rajapaksa government has detained an undetermined number of people reaching into the hundreds under the regulations. The primary targets are young Tamil men suspected of being LTTE members or supporters, but the government has recently cast a wider net, arresting non-Tamils for allegedly supporting the LTTE.

The overbroad and vaguely worded regulations allow for the detention of any person “acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services.” The authorities may search, detain for the purpose of a search, and arrest without a warrant any person suspected of an offense under the regulations.

The regulations also provide for house arrest, restrictions on the internal movement of certain persons or groups, prohibitions on an individual from leaving the country, and limitations on an individual’s business or employment. They allow for the censorship of articles related broadly to “sensitive” issues, and the disruption and banning of public meetings.

The number of people arrested under the Emergency Regulations remains unclear. In March 2007 the government announced it was holding 452 persons under the

⁸ Teymoor Nabili, “Peace Through War in Sri Lanka,” *Al Jazeera*, May 31, 2007, <http://english.aljazeera.net/NR/exeres/654B1090-36E2-4374-AFC9-7EDCE9ACB4C7.htm> (accessed May 31, 2007).

Emergency Regulations (372 Tamils, 61 Sinhalese, and 19 Muslims), among them 15 soldiers, five policemen, one former policeman, and three military deserters.⁹ Human Rights Watch requested updated figures in June, as well as the status of cases and the locations of detention, but the government failed to provide the information requested.

In December 2006 the government introduced another Emergency Regulation called the Prevention and Prohibition of Terrorism and Specified Terrorist Activities. The broad, sweeping language allows for the criminalization of a range of peaceful activities that are protected under Sri Lankan and international law. Some of the regulations could be used to justify a crackdown on the media and civil society organizations, including those working on human rights, inter-ethnic relations, or peace-building. The authorities could also use the wide immunity clause to exempt from prosecution members of the security forces deemed to be acting in “good faith.”

Karuna group abuses

The Sri Lankan government has failed to take action against the abusive Karuna group, a Tamil armed group under the leadership of V. Muralitharan that split from the LTTE in 2004 and now cooperates with Sri Lankan security forces in their common fight against the LTTE. With the LTTE’s loss of territories in the east, the Karuna group has exerted de facto authority in the districts of Ampara, Trincomalee, and Batticaloa. The group also expanded its operations in the northern Vavuniya district, engaging in extortion and abductions.

Despite ongoing international scrutiny and criticism, including from the United Nations, the Karuna group has continued to abduct and forcibly recruit children and young men for use as soldiers, with state complicity. Between December 2006 and June 2007 UNICEF documented 145 cases of child recruitment or re-recruitment by the Karuna group. The actual number is likely to be higher because many parents

⁹ The figure is mentioned in a report by the International Crisis Group, “Sri Lanka’s Human Rights Crisis,” June 14, 2007, [http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/DBC51E0313E10AB5852572FA006892C6-Full_Report.pdf/\\$File/Full_Report.pdf](http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/DBC51E0313E10AB5852572FA006892C6-Full_Report.pdf/$File/Full_Report.pdf) (accessed July 18, 2007), which cites “Sri Lanka Human Rights Update,” INFORM and Law and Society Trust, March 15, 2007.

are afraid to report cases, and these numbers do not reflect the forced recruitment of young men over 18.

In February 2007 Human Rights Watch observed armed children guarding Karuna political offices in plain view of the Sri Lankan army and police. A top Karuna Eastern commander was seen riding atop an army personnel carrier. Armed Karuna cadre openly roamed the streets in Batticaloa district in sight of security forces, and in some cases they jointly patrolled with the police.

President Rajapaksa and other Sri Lankan officials have repeatedly promised that the government would investigate the allegations of state complicity in Karuna abductions and hold accountable any member of the security forces found to have violated the law. To date, however, the government has taken no effective steps. No member of the security forces is known to have been disciplined or prosecuted for committing these illegal acts. There is now a clear pattern of complicity by the security forces in abductions, extrajudicial executions, and extortion committed by this group.

Human Rights Watch asked the Sri Lankan government the status of the investigation announced by President Rajapaksa. Prior to any announced results, the government said that it “has no complicity with the Karuna group in any allegations of child recruitment or abduction.” This calls into question the sincerity of the government’s commitment to an investigation.



The mother of an abducted boy from Batticaloa district holds a photograph of her son.
© 2006 Fred Abrahams/Human Rights Watch

Crackdown on dissent

The government has increasingly sought to silence those who question or criticize its approach to the armed conflict or its human rights record. It has dismissed peaceful critics as “traitors,” “terrorist sympathizers,” and “supporters of the LTTE.” And it has used counterterrorism legislation to prosecute those whose views or versions of events do not coincide with those of the government.

Humanitarian and human rights organizations, both Sri Lankan and international, have come under sustained pressure. The government has dismissed their allegations of human rights violations as “baseless” and influenced by propaganda of the LTTE. “Any group or organization, falling prey to this malicious propaganda of the LTTE, without prior inquiry, investigation or reliable verification, could as well be accused of complicity in propagating and disseminating the message and motives of the LTTE,” the government’s peace secretariat said in March 2007.¹⁰

¹⁰ Secretariat for Coordinating the Peace Process (SCOPP), “Baseless Allegations of Abductions and Disappearances,” March 8, 2007.

Given Sri Lanka's Emergency Regulations, which criminalize "aiding and abetting the LTTE," this broad lumping of human rights groups with the LTTE seems aimed at silencing organizations working to report objectively on human rights, including groups also highly critical of the LTTE.

The climate of fear for human rights activists is intensified by death threats some individuals have received over the phone in the past year, in which unknown individuals warn activists that the government should not be condemned.

In December 2005, a parliamentary committee established to monitor the influx of aid organizations after the tsunami expanded its scope to organizations that work on human rights, democratization, and peace-building. The committee required NGOs to submit their internal records from the past 10 years, such as lists of publications and organized functions, including attendees.

Freedom of the press has taken a serious blow. Eleven Sri Lankan journalists and other media practitioners have been killed by various parties to the conflict since August 2005. To date, no one has been convicted for any of the killings.

Tamil journalists work under severe threat from both the LTTE and government forces. In LTTE-controlled areas media freedom is severely restricted. The LTTE has been implicated in abductions of media practitioners and the killings of journalists. It has routinely pressured Tamil journalists and attempted to force Tamil media practitioners to resign from state-owned media. The circulation of some Tamil newspapers was unofficially banned in parts of the north and east. In October 2006 and again in January 2007 the Karuna group blocked the delivery of the newspapers *Thinakural*, *Virakesari*, and *Sudar Oli* in Batticaloa and Ampara.

The Sinhala-language media is not exempt from government pressure. On November 22, 2006, agents of the police's Terrorist Investigation Division arrested Munusamy Parameswary, a reporter for the Sinhala newspaper *Mawbima*, accusing her of "helping the LTTE and a suspected suicide bomber." Parameswary was apparently targeted because of her writings on human rights violations, including enforced

disappearances. The police released her on March 22, 2007, when a court found insufficient evidence to continue her detention.

On February 27, 2007, the Terrorist Investigation Division arrested the spokesperson and financial director of Standard Newspapers Ltd., which publishes *Mawbima* and the English-language weekly *Sunday Standard*. Under the Emergency Regulations they detained him for over two months without charge. On March 13, 2007, the government froze the company's assets, forcing *Mawbima* and *Sunday Standard* to stop publication. On May 30, the police arrested the owner of the company under the Terrorist Financing Act on suspicion of providing material and financial assistance to the LTTE.

Over the past year President Rajapaksa has held regular breakfast meetings with media editors. According to participants, he has at times admonished editors for their "unpatriotic" writing. His brother the defence secretary has been more direct: in April 2007 he telephoned the editor of the *Daily Mirror*, an English-language daily, and told her that he would "exterminate" a journalist who had written on human rights issues in the country's east.

Impunity reigns

Impunity for human rights violations by government security forces, long a problem in Sri Lanka, remains a disturbing norm. As the conflict intensifies and government forces are implicated in a longer list of abuses, from arbitrary arrests and "disappearances" to war crimes, the government has displayed a clear unwillingness to hold accountable those responsible for serious violations of international human rights and humanitarian law. Government institutions have proved inadequate to deal with the scale and intensity of abuse.

One barrier to accountability lies in the failure to implement the 17th amendment to the constitution, which provides for the establishment of a Constitutional Council to nominate independent members to various government commissions, including the Human Rights Commission. Ignoring the amendment, the president has directly appointed commissioners to the bodies that deal with the police, public service, and human rights, thereby placing their independence in doubt. The 17th amendment has

been similarly bypassed in the unilateral appointment of the attorney general, which undermines the independence of that office.

In response to rising domestic and international concerns about human rights violations in Sri Lanka, and to preempt proposals for an international human rights monitoring mission, in November 2006 the government established a Presidential Commission of Inquiry (CoI) to investigate serious cases of human rights violations by all parties since August 1, 2005. Instead of an international commission, as many human rights groups had urged, and as President Rajapaksa had initially agreed, the commission is composed of Sri Lankan members, who are assisted by a group of international observers, called the International Independent Group of Eminent Persons (IIGEP).

The Commission of Inquiry has serious deficiencies, and it remains to be seen whether it can effectively promote accountability where state institutions have failed. First, the commission does not appear to have made much headway in the 16 serious cases it has the mandate to investigate, while additional atrocities by all sides continue to occur. Second, the commission can only recommend to the government the steps to take, so its findings will not necessarily result in prosecutions. Third, investigations are stymied by an inadequate witness protection program that would encourage rightly fearful victims and witnesses to testify about abuses by government security forces. Fourth, the attorney general's office has a direct role in commission investigations—a potential conflict of interest that may undermine the commission's independence. Finally, the head of the commission is limiting the work of the international experts to a narrow observer-only role, which would prohibit them from conducting investigations and speaking with witnesses.

In its first interim report to the president, the IIGEP warned that the success of the commission was at risk. It expressed concern that the government had not taken adequate measures to address crucial issues, such as “the independence of the commission, timeliness and witness protection.”¹¹ In its second report, the IIGEP questioned the role of the attorney general's department in assisting the

¹¹ “International Independent Group of Eminent Persons Public Statement,” June 11, 2007. For the full text of the statement see <http://www.medico-international.de/en/projects/srilanka/watch/20070611iigep.pdf> (accessed June 28, 2007).

commission, highlighting examples of lacking impartiality. The report said the commission's conduct was "inconsistent with international norms and standards" and that failure to take corrective action "will result in the commission not fulfilling its fact-finding mandate in conformity with those norms and standards."¹²

All of these problems suggest that the Commission of Inquiry is unlikely to make significant progress to change the climate of impunity in Sri Lanka today. The Rajapaksa government has not seriously addressed the escalating human rights crisis, and measures by the government and the Col to address issues such as the independence of the Commission and witness protection are falling short. The Commission of Inquiry seems more an effort to stave off domestic and international criticism than a sincere attempt to promote accountability and deter future abuse.

An international role

Foreign governments were especially supportive of the Commission of Inquiry, and its increasingly evident failings highlight the need for concerned governments to rethink their approach to human rights protection. In particular, international donor states should intensify their expressions of concern, urging the government to end abuse and punish those responsible. The Sri Lankan government time and again has pledged to its people and the international community that it will protect human rights and hold abusers accountable; it has routinely failed to fulfill that pledge.

The international co-chairs for the peace process (the United States, Japan, the European Union, and Norway), as well as other states, should use their leverage with both the government and the LTTE to encourage respect for international law, including the protection of civilians during hostilities. Financial aid is one lever that international governments have, and states such as the United Kingdom and Germany have recently elected to limit their assistance until government practices improve.

¹² "International Independent Group of Eminent Persons Public Statement," June 15, 2007. For the full text of the statement see <http://www.medico-international.de/en/projects/srilanka/watch/20070615iigep.pdf> (accessed July 2, 2007).

Concerned governments should also use the United Nations Human Rights Council to initiate and support strong resolutions to promote compliance with international law by the government and the LTTE. Most importantly, the international community should work at the Human Rights Council and with the government to establish a United Nations human rights monitoring mission in Sri Lanka to monitor, investigate, and report on human rights abuses and laws of war violations by all sides—the government, the LTTE, and Karuna forces.¹³

Key recommendations

Human Rights Watch urges the Sri Lankan government, the LTTE, the Karuna group, and key international actors to respond with urgency to the human rights crisis in Sri Lanka. Specifically, we call on all relevant actors to:

- Establish a human rights monitoring mission under United Nations auspices to investigate abuses by all parties, report publicly on abuses to enable prosecutions, and facilitate efforts to improve human rights at the local level.
- Improve humanitarian access to populations at risk, including by ending unnecessary restrictions on humanitarian agencies.
- Cease all deliberate and indiscriminate attacks on civilians, facilitate rather than prevent civilians leaving areas of active fighting and provide humanitarian agencies safe passage to populations at risk.
- End use of Emergency Regulations to clamp down on and threaten media, humanitarian and human rights groups, and other civil society organizations.
- Regularly publicize the names of all persons detained by the military and police under Emergency Regulations and other laws, and provide detainees due process rights, including access to their families and legal representation and to challenge the lawfulness of their detention.
- Cease the forced recruitment of all persons, end all recruitment of children, and permit those unlawfully recruited to return to their families.

Full recommendations can be found in Chapter XI.

¹³ A UN human rights monitoring mission would entail a field office of the Office of the High Commissioner for Human Rights with a mandate of protection, monitoring, capacity building, and public reporting.

Methodology

This report is based primarily on field research in Sri Lanka in February-March 2007. Human Rights Watch visited Colombo and its environs, and the districts of Batticaloa and Jaffna. The names of many interviewees are redacted or removed, usually at the interviewee's request, to protect that person from potential harm.

On June 18, Human Rights Watch wrote to President Mahinda Rajapaksa, requesting replies to 33 questions on a range of issues. The government replied on July 12. Relevant answers are included in the report. On some central issues the government did not provide the requested information, such as the number of people arrested under the Emergency Regulations, the number of people arrested on charges of kidnapping or abductions, and the status of the government's investigation into alleged state complicity in abductions by the Karuna group.

II. Background

2002 ceasefire agreement

Under the auspices of the Norwegian government, the LTTE and the Sri Lankan government signed a Cease-Fire Agreement (CFA) in February 2002. Under the CFA, both sides agreed not to engage in any offensive military operation on the ground, air, or sea. They also committed to respect international law and abstain from hostile acts against the civilian population, including torture, intimidation, abduction, extortion, and harassment. The Sri Lankan Monitoring Mission (SLMM), led by Norway and staffed by military and civilian personnel from Nordic countries, was established to monitor compliance with the CFA.¹⁴

The parties engaged in six rounds of talks over a six-month period from September 2002. On the agenda were issues relating to federalism and internal self-government for the north and east. These efforts were widely endorsed by concerned governments and were backed by a large, but conditional, aid commitment from other countries. The CFA brought a respite from hostilities, but not an end to serious abuses. From February 1, 2002, through December 31, 2006, the SLMM reported over 4,000 violations of the CFA, many of which involved targeted killings and other violence and intimidation against civilians, and the vast majority being committed by the LTTE.¹⁵ Members or suspected members of anti-LTTE Tamil political parties, which were required to give up their arms under the CFA, were particularly subject to attack.

Instability in Sri Lanka's mainstream politics was exacerbated by a revolt within the LTTE in early March 2004. Led by its chief military commander in the east, V. Muralitharan, known by his *nom de guerre* Colonel Karuna, the revolt led to a fierce confrontation between the breakaway group and the Vanni-based LTTE command. The reasons for the split are unclear, but Karuna accused the leadership of

¹⁴ The Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam, signed on February 21, 2002, had the stated objective to "find a negotiated solution to the ongoing ethnic conflict in Sri Lanka." The agreement set up modalities of the ceasefire, measures to restore normalcy, and the Sri Lanka Monitoring Mission. The agreement can be viewed at <http://www.slmm.lk/documents/cfa.htm> (accessed May 15, 2007).

¹⁵ According to SLMM, the LTTE committed 3,827 ruled violations; the GOSL committed 346 ruled violations.

discriminating against Tamils in the east—his traditional stronghold. The internal LTTE conflict resulted in a large death toll among both groups, the disruption of civilian life in the main venues of the rebellion in the eastern lowlands, and innumerable violations of the CFA, placing new pressures on the faltering ceasefire agreement. On April 12, 2004, an LTTE attack quickly routed Karuna’s forces. Karuna disbanded some of his forces, including most if not all of the many former LTTE child soldiers under his command. He went into hiding, but the split profoundly altered the political and military situation in the east. Since then, remaining elements of the Karuna group have frequently ambushed and attacked the LTTE and those affiliated with it, while the LTTE has sought to regain control of the east through a violent crackdown, not just on Karuna supporters, but on any dissent within the Tamil community.

The Karuna split offered the government a new opportunity to confront the LTTE. As military hostilities resumed in 2006, the Karuna group began cooperating with government forces in the east and helped with intelligence operations against the LTTE.

Under the CFA, the LTTE was allowed to open political offices in government-controlled areas and to travel freely. These offices gave the LTTE’s intelligence wing a free rein to increase its strength by targeting underage recruits, extorting money from business, and eliminating members of other Tamil groups.

Other killings since the CFA, such as the assassination of a pro-LTTE parliamentarian during a Christmas mass in 2005, have been attributed to the Karuna group, to Tamil political parties, or to Sri Lankan security forces. For a period in mid-2005, the rate of political killings reached nearly one a day.¹⁶

In November 2005 Mahinda Rajapaksa was elected the fifth president of Sri Lanka. Unlike his predecessor, he was more doubtful of the ceasefire’s benefits, as was the Sinhalese-nationalist constituency he catered to in the south.

¹⁶ “Sri Lanka: Political Killings Escalate,” Human Rights Watch news release, August 15, 2005, <http://hrw.org/english/docs/2005/08/15/slanka11630.htm>.

Return to hostilities

The resumption of major military operations in April 2006 started a new phase of the conflict. Government forces, which had shelled the Sampur area in the eastern district of Trincomalee after a suicide bomb assassination attempt on Army Commander General Sarath Fonseka in Colombo on April 25, bombed the area around Mavil Aru in the east on July 26, after the LTTE turned off water from a sluice gate. The LTTE responded with a counterattack on the government-controlled, mostly Muslim town of Muttur. On August 11, 2006, the LTTE launched an attack on the Jaffna peninsula leading to a closure of the A9 highway, the main north-south arterial road. LTTE artillery attacked Palaly airbase causing a suspension of flights to Jaffna. The closure of the A9 and air flights, combined with LTTE threats to attack shipping to Jaffna, led to a severe worsening of the humanitarian situation on the peninsula. Only the eventual resumption of food and essential supplies by ship spared the 600,000 Jaffna residents further hardship.

A government offensive to take over the Sampur area led to waves of displacement from April 2006. The number of displaced from Sampur increased as fighting intensified in August. Many sought shelter in the LTTE-controlled area of Vaharai, on the coastal road between Trincomalee and Batticaloa, but later fled that area when the government defeated LTTE forces there in January 2007. Government troops succeeded in cutting off the LTTE supply route to the strategic port of Trincomalee and thereby struck a major blow to the rebels' hold over the east, which was already considerably weakened following the Karuna split in 2004. The LTTE tried but failed to block the departure of civilians from LTTE areas.

During the fighting, LTTE forces fired heavy weapons from populated areas, including near displaced persons camps, placing civilians at unnecessary risk. The army often responded with or initiated indiscriminate shelling. On November 8, 2006, this dynamic resulted in the deaths of more than 40 displaced civilians and injuries to nearly 100 others who had sought refuge outside a school. Fearful of continued shelling, more than 20,000 people fled LTTE-territory by walking for days through jungle or risking their lives on overcrowded boats. Several drowned at sea. Many families continue to live in uncertain circumstances in areas under the influence of the Karuna group. In February 2007 the government began using threats and

intimidation to force civilians who fled fighting in the east to return home. Government and military officials threatened to cut aid and withdraw security for displaced persons who refused to return, causing the United Nations High Commissioner for Refugees (UNHCR) to seek assurances from the government (see Chapter III, “Internal Displacement”).

Since March 2007 a string of firefights and mortar duels accompanied by aerial bombing by the Sri Lankan military in the districts of Mannar and Vavuniya in the north has been inflicting heavy casualties on both sides. The onslaught on the north marks a decisive shift in the theater of fighting, which until then had largely been concentrated in the east.

Future fighting seems likely. In his November 2006 annual “Heroes Day” speech, LTTE leader Prabhakaran declared that the CFA was effectively “defunct.” Following a May 7, 2007 attack on the LTTE stronghold of Killinochchi, government defense spokesman Keheliya Rambukwella said the government would breach the terms of the 2002 CFA if necessary to safeguard national security.

In March 2007 the LTTE launched its first air strike, using a single-propeller plane to drop bombs on an air force base next to the international airport in Colombo, killing three soldiers. On April 29 the LTTE struck two oil facilities near Colombo, causing minor damage and tripping air defenses that plunged the city into darkness.

Officially the CFA remains in place, as neither side wants to be blamed for its demise. But the military realities on the ground reveal that it exists in name alone. Its formal existence allows for the continued presence of monitors of the SLMM, although the monitors have largely withdrawn to a base outside Colombo, from which they undertake short missions to the field.

III. Internal Displacement

The fighting since April 2006 has caused large-scale internal displacement in the country's north and east. In addition to the economic and psychosocial impact, displaced persons in some areas are vulnerable to intimidation, violence, and abductions by paramilitary groups. In some cases the government has forced internally displaced persons (IDPs) to return to their homes against their will and without adequate security or humanitarian assistance. While some displaced persons have moved in with relatives elsewhere in the country, many have gone to displaced persons camps or other places of refuge, where conditions are typically poor. Some of them have been displaced multiple times.

According to the United Nations, some 315,000 people have been displaced due to fighting since August 2006. In March 2007 alone 100,000 civilians fled their homes. This is in addition to the 200,000-250,000 people made homeless by the 2004 tsunami and the approximately 315,000 displaced by the conflict prior to 2002. More than 18,000 Sri Lankans are new refugees in India, most of whom entered the country by boat.¹⁷

The Sri Lankan government retains primary responsibility for ensuring the protection and security of displaced persons within the country. The LTTE is responsible for the protection of displaced persons in areas under its control (more than 45,000 displaced persons are in LTTE-controlled Killinochchi district alone¹⁸). In addressing the concerns of displaced persons, including those displaced by the 2004 tsunami, the government and the LTTE should act in accordance with the UN Guiding Principles on Internal Displacement.¹⁹

¹⁷ UN Inter-Agency Standing Committee briefing, April 12, 2007.

¹⁸ United Nations, "Joint UN North East Situation Monitoring Report—March 2007," March 2007.

¹⁹ UN Commission on Human Rights, Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998), noted in Resolution 1998/50, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/o/d2e008c61b70263ec125661e0036f36e?Opendocument> (accessed May 22, 2007). Detailed recommendations on confidence building and stabilization measures for displaced persons in Sri Lanka can be found in United Nations High Commissioner for Refugees (UNHCR), "Humanitarian Plan of Action: Guidelines on Confidence Building and Stabilization Measures for IDPs in the North and East," July 21, 2006.

International humanitarian law prohibits parties to a conflict from displacing civilians under their control unless the security of the civilians involved or imperative military reasons so demand. Imperative military reasons cannot be justified by political motives or used to persecute the civilians involved. Whenever displacement occurs, the responsible party must take all possible measures to ensure that the displaced population receives satisfactory conditions of shelter, hygiene, health, safety, and nutrition, and that family members are not separated. All parties must permit humanitarian assistance to reach the displaced population, as they must in respect of all civilians.²⁰

LTTE prevents civilian flight

As fighting raged between the government and LTTE in the districts of Trincomalee and Batticaloa in late 2006, the LTTE at times prevented civilians from fleeing the conflict zones, probably because the presence of civilians made it easier for the LTTE to conceal its members and hindered the government from an all-out attack. The civilian population also remains a source of ongoing LTTE recruits, both voluntary and forced.

In December the Sri Lanka Monitoring Mission accused the LTTE of preventing civilians from leaving the Vaharai area. “The LTTE has failed to protect civilians in Vakarai [Vaharai] by restricting their movements,” a statement from the SLMM said.²¹ Three displaced persons told Human Rights Watch how LTTE fighters had blocked their path as they tried to leave Vaharai for government-controlled territory in November.²² LTTE forces stopped civilians from crossing the Pannichchankeni bridge south of Vaharai, forcing hundreds to take arduous jungle routes. Groups including children and the elderly arrived in government-controlled territory with wounds on their legs and feet from the multi-day treks.²³

²⁰ See International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law* (Cambridge, UK: Cambridge University Press, 2005), rule 129, citing Protocol II, art. 17(1).

²¹ Sri Lanka Monitoring Mission, “Urgent Concerns over Alarming Situation in Vakarai Area,” December 12, 2006, http://www.slmm.lk/press_releases/SLMM%20STATEMENT%20VAHARAI%20121206.pdf (accessed May 14, 2007).

²² Human Rights Watch interview with displaced persons in camps around Batticaloa district, February 25, 2007.

²³ Human Rights Watch interviews with displaced persons in camps near Valaichchenai, February 26, 2007.

In mid-December at least six civilians drowned trying to make it by overcrowded boat to government-controlled territory.²⁴ Many of these displaced persons had fled previously from areas to the north and east, such as Mutur, Sampur, and Kantale in Trincomalee district.

Four displaced persons who fled Kathiravelli told Human Rights Watch how the LTTE tried to prevent them from leaving for government-controlled areas. One man explained how the LTTE blocked a large group of civilians, first firing into the air and then shooting one IDP in the leg:

Near Pannichchankeni at Murgan Temple they stopped us. We were about 560 families. They were about 150 armed LTTE. They said, ‘Don’t go, you must stop here and go back to your village.’ We said, ‘We’re suffering from the shelling and there’s no security here...’

We pushed ahead past the temple but the LTTE came from behind and assaulted some people. They shot one person in the leg and they hit people with palmyra [a kind of palm tree] strips and gun butts. I don’t know the guy who got shot. He was about 30 years old and he was trying to push an LTTE soldier.²⁵

The LTTE has restricted IDP movement at other times over the past year, most notably on August 4, 2006, when about 27,000 civilians—Muslims and Tamils—fled shelling in the Mutur area in Trincomalee district, and headed by foot towards Killevedi town. En route, LTTE forces stopped them, claiming the road ahead was mined, and directed them towards Kinanthmunai in LTTE-controlled territory. Along the way, LTTE cadres separated the men from the women and children and forced the men to walk past two masked informants, who were apparently looking for members of Muslim armed groups or the Karuna group, which had been active in Mutur. The LTTE removed from the line at least 32 mostly young men, nearly all of them Muslims, tied their hands behind their backs and pushed them to the ground. After an altercation

²⁴ “Six Civilians Drown Fleeing Sri Lanka Battle Zone,” Agence France-Presse, December 15, 2006.

²⁵ Human Rights Watch interview with displaced person, Valaichchenai, February 26, 2007.

in which an LTTE cadre shot and killed one of the civilians, the army was alerted to the LTTE presence and began to shell the area. The shelling reportedly killed several LTTE cadres (including the LTTE commander) and one of the masked informants. Everyone fled the scene. Families became separated, including parents from their children. Another civilian of this group died—a woman—but the circumstances are not known.²⁶ The surviving displaced persons all eventually reached camps in the vicinity of Kantale.

Violence and intimidation by the Karuna group

More than 150,000 Tamil displaced persons are currently staying in IDP camps and private houses along the coast in Batticaloa district.²⁷ The government has failed to provide them with the security and protection they need. The main threat for those in government-controlled areas comes from the Karuna group, which throughout late 2006 and early 2007 has intimidated, threatened, and at times abducted displaced persons.

The Karuna group's presence vastly expanded in early 2007 with the group's political party, Tamil Makkal Viduthalai Pulikal (TMVP), opening new offices around the district, some of them staffed with abducted children and young men. Armed members of the group are routinely visible along the main coastal road and in Batticaloa town. International humanitarian workers reported seeing checkpoints near TMVP offices in Batticaloa town run by men and boys in civilian clothes.

According to displaced persons and humanitarian aid workers who spoke with Human Rights Watch, armed members of the Karuna group have been seen in and around various Batticaloa area camps, threatening and sometimes using violence against displaced persons. An international humanitarian worker told Human Rights

²⁶ Human Rights Watch interview, Colombo, August 22, 2006. See also University Teachers for Human Rights (Jaffna), "Hubris and Humanitarian Catastrophe," August 23, 2006, <http://www.uthr.org/SpecialReports/spreport22.htm> (accessed May 23, 2007).

²⁷ Recent months saw two large IDP waves from the Vaharai area to government-controlled territory in Batticaloa district: December 12-18, 2006, and January 26-28, 2007.

Watch that on January 17 the Karuna group briefly detained four displaced persons from Sampur in the Savukady camp.²⁸



Tamil boy in a displaced persons camp outside Batticaloa town in February 2007.
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The Karuna group is known to have abducted at least four children from displaced persons camps in Batticaloa district in the first four months of 2007²⁹ (at the same time, the LTTE is known to have abducted at least three children from camps in areas under its control). In one reported incident, on March 9, armed men, allegedly belonging to the Karuna faction, tried to pull a 15-year-old boy into a white van at a temple near an IDP camp in Batticaloa district while Sri Lanka soldiers watched. The boy managed to get away.³⁰

The Sri Lankan police are reluctant to patrol the IDP camps—in large part due to fear of the LTTE—or to investigate alleged Karuna crimes. On January 7 police arrived at

²⁸ Human Rights Watch interview with humanitarian worker, May 22, 2007.

²⁹ Human Rights Watch interview with humanitarian worker, Batticaloa, February 26, 2007.

³⁰ “Sri Lanka: Armed Groups Infiltrating Refugee Camps,” Amnesty International press release, March 14, 2007, <http://news.amnesty.org/index/ENGASA370072007> (accessed May 12, 2007).

the Savukady camp in Batticaloa to investigate the presence of Karuna group members in the camp. The Karuna group members opened fire, wounding three policemen, an international humanitarian worker with knowledge of the incident said.³¹

(For discussion of cooperation and complicity between Sri Lankan security forces and the Karuna group, see Chapter IX.)

Forced returns

Continual fighting between government forces and the LTTE led to large-scale displacement of civilians from Trincomalee to Batticaloa district from the latter half of 2006 into 2007. In September 2006 the government sent between 15,000 and 25,000 displaced persons back to their homes in and around Mutur in Trincomalee district. A government spokesman said the initiative came from the displaced persons themselves. Representatives for the displaced reportedly said that all wanted to return, but many families said they wished to wait for guarantees that the area was safe and that fighting would not resume. International organizations monitoring the returns said the returns were problematic due to the threat of renewed hostilities, the likelihood that unexploded ordnance remained, the lack of habitable homes or temporary shelter, and the shortage of government and international emergency assistance.³²

The next wave of forced returns took place over roughly a one-week period in March 2007, when the government forcibly returned displaced persons from eastern Batticaloa district to areas around Trincomalee. Some returned to their original homes, if they were not destroyed, but hundreds of displaced persons from Sampur and East Mutur, forced to flee during fighting in August, were placed in a makeshift camp in Killevedi, a cramped series of sites about three hours drive from Trincomalee town and surrounded by Sinhalese communities. According to aid

³¹ Human Rights Watch interview with humanitarian worker, Batticaloa, February 28, 2007. Human Rights Watch also viewed camp records that showed that police and Special Task Force (STF) personnel had visited the camp on January 7.

³² Refugees International, "Sri Lanka: Forced Return Threatens Safety of Mutur Displaced," September 11, 2006, <http://www.refugeesinternational.org/content/article/detail/9408/> (accessed May 23, 2007).

workers who have visited the sites, food and security are major concerns. The events are described in more detail below.

The UN Guiding Principles on Internal Displacement provide that every internally displaced person has the right to liberty of movement, the right to seek safety in another part of the country, and the right to be protected against forcible return to any place where their safety would be at risk.

On June 18, Human Rights Watch asked the Sri Lankan government about its plans to resettle displaced persons from Sampur and East Mutur currently residing in the Killevedi site, and plans for compensating and otherwise assisting persons from areas where residents will not be allowed to return. The government replied that, due to the establishment of a High Security Zone in Mutur (see below) some civilians would be relocated elsewhere “in consultation with the wishes of the residents and the choice would also be given to even move to Batticaloa.”³³

March 2007 forced returns from Batticaloa

Beginning March 12, the government returned people from at least six divisions in Batticaloa district. More than 900 individuals were sent to Trincomalee district as part of a plan to return approximately 2,800 internally displaced persons.

The returns were accomplished with a range of abuses. The government notified some displaced persons slated for return one or two days in advance by placing lists of names at camp sites. The lists identified persons who had refused to sign letters consenting to return and those who said they were scared or unwilling to return.³⁴ To pressure individuals to return, government officials and military personnel threatened to withdraw humanitarian aid, food, and other essential supplies.³⁵ Some officials threatened families that they would revoke their family cards, which entitle them to food rations. In some cases, the security forces reportedly have said that

³³ Sri Lankan government response to Human Rights Watch, July 12, 2007.

³⁴ Human Rights Watch interview with humanitarian worker, May 23, 2007.

³⁵ The Sri Lankan government told Human Rights Watch that “all those who have chosen not to be settled are continuing to be provided with all required assistance from the Government of Sri Lanka.” Sri Lankan government response to Human Rights Watch, July 12, 2007.

they would no longer be responsible for the security of the displaced persons who stayed behind.

On March 12 government authorities organized more than 21 buses to transport displaced persons from Batticaloa camps, with a heavy presence and participation of the Sri Lankan army, police, and police Special Task Force (STF) at the IDP sites. At one location, Zahira College, an STF armored vehicle entered the site and led the convoy, one witness told Human Rights Watch.³⁶

Between March 15 and 17, armed members of the military, police, and STF increased pressure on displaced persons to return. At sites in Chenkalady, north of Batticaloa town, displaced persons told humanitarian workers that the army threatened to beat or kill them if they did not return. At two sites the military beat displaced persons with sticks to force them onto buses. At at least one site the military prevented displaced persons who said they did not wish to return from getting off a bus. Armed and unarmed Karuna cadres were present in several sites, and at least one these cadres threatened displaced persons with violence if they did not return.³⁷

The government gave many of these displaced persons no advance warning about their returns. Officials simply told them to pack their bags, sometimes while children were in school and other family members were at jobs outside the IDP camps.³⁸

In addition to returns to Trincomalee, beginning March 14 the government returned an additional 200 families to the Vaharai area. It remains unclear to what extent those returns were voluntary because of little international monitoring. However, in February Human Rights Watch interviewed more than a dozen displaced persons from Trincomalee and Vaharai, and they all said they feared going home. Most cited security concerns, particularly if fighting resumed between the government and the LTTE. Some said they were worried about reprisal killings by the military after an LTTE attack, as well as communal violence from neighboring Sinhalese communities. They mentioned abductions by the LTTE as another prominent concern.

³⁶ Human Rights Watch interview with humanitarian worker, May 23, 2007.

³⁷ Ibid.

³⁸ Ibid.

“We can’t go back to Mutur, our homes are all destroyed,” one IDP from Mutur said. “We want to go back but the problem is our security. Every day there are killings.”³⁹ Another IDP who had left his home in Kunjalkukulam near Vaharai on November 1, 2006, told us, “We want to go home but the problem is if the fighting begins again our security is not sure.” He continued, “Our home is near the jungle. If the government gives us full security [we would go home] but they’re not giving us this. The government is trying to get us to go home but it’s not safe.”⁴⁰

After an initial silence, the forced returns prompted an outcry from UNHCR, which along with dozens of nongovernmental organizations (NGOs) has been serving Sri Lanka’s displaced. On March 13, 2007, UNHCR said that “heavy pressure has been applied on internally displaced people,” and cited local authority statements that assistance would be stopped if they stayed in Batticaloa.⁴¹

On March 16 UNCHR said the government had provided renewed assurances that the agency would be involved in any IDP returns. In a statement, UNHCR urged that “all return movements are voluntary, without undue pressure or duress.”⁴²

Shortly thereafter, the UN distributed leaflets in Sinhala, Tamil, and English on the rights of the displaced. “If you want to go home, it is important that you know it is safe to do so and that you will be able to start your life at home again with dignity,” the pamphlet said.⁴³ This move sparked some criticism of the UN as ordinary people felt they had no one to complain to when their rights were violated and blamed the UN for printing leaflets and doing little else.

³⁹ Human Rights Watch interview with IDP from Muttur, Valaichchenai, February 26, 2007.

⁴⁰ Human Rights Watch interview with IDP from Kunjalkukulam, Almkulam IDP camp, Batticaloa district, February 25, 2007.

⁴¹ “More than 40,000 civilians flee latest fighting in eastern Sri Lanka,” UNHCR News Stories, March 13, 2007, <http://www.unhcr.org/news/NEWS/45f6bb704.html> (accessed July 2, 2007).

⁴² “Sri Lanka: Government Assures UNHCR Involvement in Future IDP Return,” UNHCR Briefing Note, March 16, 2007, <http://www.unhcr.org/news/NEWS/45fa70394.html> (accessed May 12, 2007).

⁴³ UN Inter-Agency Standing Committee Country Team, “Returning Home.” For the pamphlet in all three languages, see <http://ochaonline2.un.org/Default.aspx?alias=ochaonline2.un.org/srilanka> (accessed May 12, 2007).

In mid-May the government began a new round of returns from Batticaloa district to areas previously under the control of the LTTE.⁴⁴ According to media reports, officials were set to resettle 4,000 displaced persons back to their homes in Vellaveli. A group of international relief agencies coordinated by the UN complained that the resettlement was risky due to the tenuous security situation in Batticaloa. “Military and civilian authorities have been registering IDPs in the southern divisions of Batticaloa in view of planned resettlement towards the western part of Batticaloa,” the aid agencies said. “However, the resettlement plan has not been presented yet and the humanitarian community fears that the lack of proper planning might put returnees in a situation where safety and dignity are not ensured in the villages.”⁴⁵

On May 15, however, UNHCR announced that it had begun helping some 90,000 displaced persons return to western Batticaloa, and that the returns appeared to be voluntary. “Our staff monitoring the situation on the ground say the majority of people are eager to return home, the returns are voluntary and in line with international protection standards,” a UNHCR spokesperson said. She added that “UNHCR will continue to monitor the returns and report directly to the government on any problems regarding the voluntariness and any deviation from the civilian characteristics of the move.” She called on the government to improve access for international aid agencies to western Batticaloa, where displaced persons were returning, so they could provide necessary assistance.⁴⁶

Despite UNHCR’s public statements, other reports indicate different conditions. According to humanitarian workers present at the sites, between May 14 and 17 the police and STF maintained a heavy and coercive presence during the returns. According to one humanitarian agency on the ground, STF officers told some displaced persons that they would face “trouble” if they did not return and implied that refusing to return would mark them as connected with the LTTE. At one site the STF told displaced persons that if they refused to go home they would never be allowed to return. Also, extremely poor conditions in the Batticaloa IDP camps are

⁴⁴ Simon Gardner, “Sri Lanka Clashes Kill 15, War Refugees Resettled,” Reuters, May 14, 2007.

⁴⁵ “Sri Lanka Begins Resettlement of War-Victims,” Press Trust of India, May 13, 2007.

⁴⁶ “Sri Lanka: UN Refugee Agency Assists Return of Thousands Who Fled Conflict Zone,” UNHCR Briefing Notes, May 15, 2007, <http://www.unhcr.org/news/NEWS/464982332.html> (accessed May 15, 2007).

pushing some people to return despite a lack of information and their fears of unsafe conditions.



A displaced person in Alankalam camp, Batticaloa district in February 2007.
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On May 29, UNHCR commented on the government's resettlement program, which it said had been in operation for the previous two weeks, involving the return of some 30,000 displaced persons to their homes in Vellavelly DS division, with 90,000 more returns planned in the coming months. "Our staff have made several assessment missions and generally have seen that conditions are conducive for return," a spokesperson said. "Most of the returnees seem happy to be home but had received little prior information about the conditions in the areas of return."⁴⁷

Aid workers on the ground told Human Rights Watch that the return process, coordinated by the Ministry of Resettlement and the STF, was much improved from the forced returns in March, with no reported cases of physical abuse. However, many displaced persons were not properly informed of the return process and their rights, and some complained of intimidation from government security forces.

High Security Zones

The Sri Lankan military captured the Sampur area in Trincomalee district in September 2006. "Our armed forces have captured Sampur for the welfare and benefit of the people living there," President Rajapaksa declared on September 4.⁴⁸

Eight months later, on May 30, 2007, the president established a so-called High Security Zone in the areas of Sampur and East Mutur, encompassing approximately 90 square kilometers.⁴⁹ Government regulations forbid any person, including local residents, from entering or remaining in the newly designated area without written permission from the competent authority, currently Maj. Gen. Parakrama Pannipitiya.

In the past, the government has established High Security Zones to protect military camps and strategic installations from LTTE attack.

⁴⁷ UNHCR press briefing, May 29, 2007.

⁴⁸ Speech of President Mahinda Rajapaksa at the 55th Annual Convention of the Sri Lanka Freedom Party, September 4, 2006, <http://www.presidentsl.org/data/html/news/200609/20060904news-1.htm> (accessed July 16, 2007).

⁴⁹ The High Security Zone was established under Emergency Regulations (section 5 of the Public Security Ordinance) published in Gazette Extraordinary No.1499/25.

One month later, a Colombo-based NGO, the Centre for Policy Alternatives (CPA), challenged in court the establishment of the High Security Zone. On June 29 CPA filed a fundamental rights petition against Rajapaksa's decision, claiming that the establishment of the zone violated the constitutional rights to equality before the law and freedom of movement.⁵⁰ The government had demonstrated no military necessity to justify preventing or hampering nearly 15,000 residents from accessing to their land and property, CPA said.⁵¹

The creation of a High Security Zone has serious livelihood implications for the residents of these areas. In Mutur, for instance, the area declared a High Security Zone includes approximately 50 percent of the present Mutur Divisional Secretary's Division. This area covers 28 villages, which has 19 schools and 88 minor water tanks that irrigate farming lands of the predominantly agricultural community.⁵²

The CPA petition drew attention to the fact that lands covered in the High Security Zone also come under the Trincomalee Special Economic Zone.⁵³ The petitioners state that although commercial activity is allowed in the Special Economic Zone, thereby enabling commercial enterprises to enter and remain in the area, the High Security Zone prohibits ordinary residents from entering and residing on their lands.

On July 17, the Supreme Court rejected the CPA's petition, and accused the organization of trying to "create news for international consumption."⁵⁴ Chief Justice Sarath N. Silva called on the petitioners not to bring sensitive issues that affect national security before the judiciary.

In its communication to Human Rights Watch on July 12, the Sri Lankan government said that, due to the establishment of the High Security Zone, civilians from 12

⁵⁰ Article 12 of the constitution states that all citizens are equal before the law and no citizen shall be discriminated against on grounds specified in the constitution. Article 14 provides for the freedom of movement and the right to choose one's residence within Sri Lanka.

⁵¹ Centre for Policy Alternatives, "Background Note on High Security Zone Case," July 10, 2007.

⁵² Speech delivered by R. Sampanthan, MP, Trincomalee district, on the Adjournment Motion relating to the declaration of Mutur East-Sampur as a High Security Zone, June 20, 2007.

⁵³ Under Section 22A of the BOI Act No. 4 of 1978, published on October 16, 2006, by the Gazette Extraordinary No. 1467/03.

⁵⁴ "Sampur FR Petition Dismissed," BBC Sinhala, July 17, 2007, http://www.bbc.co.uk/sinhala/news/story/2007/07/070717_sampur_hsz.shtml (accessed July 24, 2007).

Grama Niladari Divisions (the smallest administrative unit in Sri Lanka) would be relocated elsewhere over the coming weeks.⁵⁵

International law provides that persons internally displaced by armed conflict or other reasons have the right to voluntary return to their land in safety and dignity.⁵⁶ International humanitarian law prohibits the displacement of civilians except for their own security or in case of military necessity. Political motivations cannot be used to justify military necessity.⁵⁷ In this case, the government has not provided reasons to show military necessity or security concerns to justify preventing civilians' access to their land and property.

⁵⁵ Sri Lankan government response to Human Rights Watch, July 12, 2007.

⁵⁶ UN Commission on Human Rights, Guiding Principles on Internal Displacement.

⁵⁷ See ICRC, *Customary International Humanitarian Law*, rule 129, citing Protocol II, art. 17(1).

IV. Attack at the Kathiravelli School

Throughout October and early November 2006, the LTTE and Sri Lankan military exchanged artillery fire in and around the Vaharai area about 80 kilometers north of Batticaloa town. Vaharai remained under LTTE control until mid-January 2007. On November 8, 2006, the fighting turned deadly for Tamil civilians trapped in the conflict zone.

At around 7:15 a.m. the LTTE fired artillery from the Kathiravelli area at Sri Lankan military targets. According to the Sri Lankan government, LTTE artillery and mortar fire hit Mahindapura village and the army camp there.⁵⁸ One media report, citing defense ministry sources, said the LTTE fired 81mm mortars from the jungle at the army camps in Mahindapura, Serunuwara, and Kallar. The shelling lasted approximately 20 minutes, with sporadic shooting after. Two shells landed around 11:25 a.m.⁵⁹

Around 11:35 a.m. the military fired back with artillery and multi-barrel rocket launchers (MBRLs). According to the military, it used “mortar locating radar” to identify the LTTE gun positions two kilometers northwest of the Kathiravelli jungle area. “Two MBRL salvos and 130mm artillery guns of the security forces engaged the target,” the government said. “Security forces believe that the LTTE had relocated their gun positions closer to the civilian settlements which the security forces never expected.”⁶⁰

⁵⁸ “Civilians at the Mercy of the Tigers,” Government of Sri Lanka press release, November 9, 2006, <http://www.reliefweb.int/rw/RWB.NSF/db900SID/LSGZ-6VDHNJ?OpenDocument> (accessed May 7, 2007). Human Rights Watch asked the government at what time the LTTE attacked SLA positions on November 8; where; and the resultant casualties. The government declined to provide the requested information due to “security sensitive information.” Sri Lankan government response to Human Rights Watch, July 12, 2007.

⁵⁹ D.B.S. Jeyaraj, “Massacre of Innocent Civilians at Kathiravelli,” *Transcurrents*, November 11, 2006, <http://transcurrents.com/tamiliana/archives/217> (accessed May 6, 2007). According to this article, five soldiers and a civilian employee were wounded and one soldier died.

⁶⁰ “Civilians at the Mercy of the Tigers,” Government of Sri Lanka press release. Human Rights Watch asked the government what type of weapons the army fired into the Kathiravelli area; at what time; and by means of what targeting method. The government declined to provide the requested information due to “security sensitive information.” Sri Lankan government response to Human Rights Watch, July 12, 2007.

The salvos landed in and around the Vigneshwara Vidyalayam school in Kathiravelli. Since August the school compound—about five acres—had housed internally displaced persons from Trincomalee district, many of whom had fled the fighting further north in Mutur. At least 2,000 people were in the camp at the time of the attack, living in the six school buildings and in tin and palm-leaf huts on the premises.⁶¹

Human Rights Watch conducted interviews with 12 witnesses to the attack. All said that the shells landed without warning and that, while the LTTE was frequently milling about the area, no LTTE fighters were located in or adjacent to the IDP camp at the time of the attack or directly before. The LTTE had sentries in the area of the camp, ostensibly to monitor the movement of displaced persons, they said, but the nearest LTTE military base was the Sinnakangai camp on the coast about two kilometers away. None of the interviewees had seen or heard outgoing shelling earlier that day.

“Before the shelling I heard nothing. It was sudden, we didn’t expect it,” a woman who lives next to the Kathiravelli school told Human Rights Watch.⁶²

“We expected nothing,” another woman said. “Our children were playing and people were moving about.”⁶³

“There were no [LTTE] cadre or terrorists there,” said a man whose son and daughter were wounded in the shelling. “I don’t know why the army attacked.”⁶⁴

These and other witnesses explained what happened when the first shells hit. A woman whose house stands adjacent to the school told Human Rights Watch how her six-year-old son and three-and-a-half-year-old daughter were wounded when a shell landed inside their compound as they bathed in a well:

⁶¹ According to displaced persons present at the time of the attack, as well as a school employee, the compound had a rectangular shape. Inside stood a large assembly hall and five school buildings.

⁶² Human Rights Watch interview with Vaharai resident, Valaichchenai, February 26, 2007.

⁶³ Human Rights Watch interview with Mutur resident, Valaichchenai, February 26, 2007.

⁶⁴ Human Rights Watch interview with displaced person, Batticaloa, November 11, 2006.

I heard the shelling and I ran to the well. I saw my son running and then my daughter. Both were wounded. My son was hit in the leg. My daughter was wounded on the head and chest. They were bleeding. My husband was washing clothes near the well and he did not get hit.⁶⁵

The mother took her daughter to the nearby Vaharai hospital, where she died. The son went to the Batticaloa hospital, where doctors removed shrapnel from his leg.

Human Rights Watch spoke with the father of two girls, age one-and-a-half and six, who lost his wife in the attack. The family fled to the Vaharai area from Mutur, he said, and they had been staying in the Kathiravelli school for about six months:

My wife was bathing at the well near my hut. I heard one big boom and saw smoke. Smoke was everywhere and I ran out to look for my wife but I couldn't find her through the smoke. Then I saw her lying near the well. My younger daughter was also wounded there. Blood was all around. I called her [my wife] but she didn't speak.⁶⁶

A mother of four children explained how her husband died in the attack. The family had come to the Vaharai area from Mutur in July 2006, she said. They stayed in a house about 500 meters from the school. The mother was seven-and-a-half months pregnant when the attack took place.

I heard a blast, many blasts. My husband was in the camp to get food. I went there and I saw the dead bodies and the wounded. I waited one hour and then I went in. I heard 15 or 16 blasts in the camp. I saw my husband's dead body in the camp. There was a room where they gave out rations and he was behind that. I was screaming and crying. I

⁶⁵ Human Rights Watch interview with Vaharai resident, Valaichchenai, February 26, 2007.

⁶⁶ Human Rights Watch interview with Mutur resident, Valaichchenai, February 26, 2007.

didn't take him to the hospital because I saw he was already dead. His body was in pieces but I recognized part of his face.⁶⁷



A young girl wounded in the Kathiravelli school attack on November 8, 2006.
© 2007 Fred Abrahams/Human Rights Watch

⁶⁷ Human Rights Watch interview with Mutur resident, Valaichchenai, February 26, 2007.

Villagers and survivors of the attack took the wounded to the health clinic in Kathiravelli and then to the small hospital in Vaharai. Meanwhile, the military prevented the ICRC and SLMM from accessing the school site until about 4 p.m. Finally, an ICRC convoy of six ambulances, a bus, a truck, and three cars reached Vaharai hospital and transferred 69 serious cases to Valaichchenai hospital.⁶⁸

On November 10 and 11 Human Rights Watch visited the Batticaloa hospital, which received other wounded persons. Shrapnel wounds to the stomach, lower back, and arms and legs were predominant among the women. “Many people were cooking and were hit by shrapnel,” a wounded woman said.⁶⁹

In total, 62 people died. According to hospital records obtained by Human Rights Watch, 47 people, ranging in age from one to 74 years old, suffered injuries. Twenty-three of these victims were under 18. Twenty-one were women and 26 were men.



Three of these five children died in the Kathiravelli school attack: Gunanathan Suveeka, age 8 (first from left), Gunanathan Rajkumar, 6 (third from left) and Gunanathan Sarojinidari, 8 (fifth from left).
© 2006 private

⁶⁸ “Sri Lanka: ICRC Deplores Attacks on Civilians,” ICRC press release, November 9, 2006, <http://www.icrc.org/web/eng/siteengo.nsf/html/sri-lanka-news-091106> (accessed May 7, 2007).

⁶⁹ Human Rights Watch interview with displaced person, Batticaloa, November 11, 2006.

While describing the loss of civilian lives as “a tragedy,” the Sri Lankan government sought to justify its attack as lawful under the laws of armed conflict. In a statement on November 9, the Ministry of Defence said that army units had responded to two early morning artillery attacks from LTTE forces only after confirming the location of the LTTE weapons through the “mortar locating radar” and “observation points.”⁷⁰ Government defense spokesman Keheliya Rambukwella said the government regretted the incident but the “[a]ctions by the defense authorities were inevitable.”⁷¹

Rambukwella said the government would open an investigation. Human Rights Watch asked the government who is conducting the investigation and when will findings be announced, but the government said it could not answer these questions because the answers contained “security sensitive information.”⁷²

More pointedly, the government claimed that the LTTE had used camp residents as “human shields” to deter government forces from responding to LTTE attacks. “The Tigers had been planning this situation since the beginning of this month by detaining the innocent civilians in those areas by force to be used as a human shield when the time arises,” a Defence Ministry statement right after the incident said.⁷³ Human Rights Watch asked the Sri Lankan government how it had determined that the LTTE used human shields. The government replied,

Thousands of innocent civilians who came into government controlled areas complained that they were treated inhumanely by the LTTE and used as a human shield. Various international and local independent organizations too confirmed this fact. This information was supported by government sources.⁷⁴

⁷⁰ “Civilians at the Mercy of the Tigers,” Government of Sri Lanka press release.

⁷¹ “Sri Lankan Government ‘Regrets’ Civilian Massacre,” Agence France-Presse, November 9, 2006.

⁷² Sri Lankan government response to Human Rights Watch, July 12, 2007.

⁷³ “Refugee Camp Bombing Kills 65 in Sri Lanka,” Agence France-Presse, November 8, 2006.

⁷⁴ Sri Lankan government response to Human Rights Watch, July 12, 2007.

The 12 witnesses who spoke with Human Rights Watch provided no support for the government's claim. None of the people at or around the Kathiravelli camp that day reported any LTTE artillery fire that morning. The nearest LTTE military base was about two kilometers away, three people said. Six others explained how the LTTE had blocked them from leaving the Vaharai area along the roads, including one incident in which LTTE fighters shot and wounded a displaced person (see above). But none of them said the LTTE had used anyone as a "human shield," that is, purposefully using civilians to render an LTTE fighter immune from attack.⁷⁵

Similarly, Human Rights Watch spoke with three international organizations with direct knowledge of the Vaharai area and the Kathirivelli incident, and none of them had any direct knowledge, or had heard credible reports, of the LTTE using civilians as "human shields."

In addition, the location of the displaced persons camp was known to the government and should have been known to local army commanders. The camp had opened on August 8 and received regular supplies from the ICRC and the Italian Red Cross. Aerial observers would have spotted the numerous tin and palm-leaf huts on the school grounds.

As alleged evidence of LTTE military activity in the school, the government pointed to the many bunkers on the school grounds. Displaced persons who spent time in the camp readily admitted to Human Rights Watch that they had dug bunkers. The purpose was to protect their families from government shelling, they said—a common practice in Sri Lanka's militarily contested areas. "We built a bunker for ourselves in the camp for our protection," said the man who lost his wife.

"In the daytime, the LTTE didn't carry weapons, so I don't know who was LTTE," said a man who was in the school during the attack. "In the school after the bombing I

⁷⁵ The practice of human shielding is specifically outlawed by international humanitarian law. Article 28 of the Fourth Geneva Convention states, "The presence of a protected person may not be used to render certain points or areas immune from military operations."

saw no weapons, no bunkers or artillery.” He continued, “When the LTTE has heavy weapons they don’t show them because they’re afraid someone will inform.”⁷⁶

The woman who lost her husband said that about 15 LTTE fighters stayed in some huts about 600 meters from the school. “They had rifles but no heavy guns,” she said.⁷⁷ This matches other reports that the LTTE had sentries around the camp.

The Sri Lanka Monitoring Mission, which entered Vaharai on the afternoon of November 8, confirmed the witness accounts. “Our monitors saw there were no military installations in the camp area, so we would certainly like some answers from the military regarding the nature and reasons of this attack,” SLMM spokeswoman Helen Olafsdottir said.⁷⁸

Even if the LTTE had exercised control over the IDP camp, that would not have affected the camp’s fundamentally civilian nature that prohibited attacks against it. Having guards around the camp and even abducting children and young adults from the camp for use as LTTE fighters—as some displaced persons reported to Sri Lankan human rights activists—would not have transformed the Kathiravelli camp from a protected civilian object into a legitimate military target.

The laws of armed conflict, applicable in Sri Lanka’s civil war, require military forces to distinguish at all times between combatants and civilians. Civilians and civilian objects may never be targeted for attack. Attacking forces must take all feasible measures to ensure that a target is in fact a military objective.⁷⁹

⁷⁶ Human Rights Watch interview with displaced person, Valaichchenai, February 26, 2007.

⁷⁷ Human Rights Watch interview with Mutur resident, Valaichchenai, February 26, 2007.

⁷⁸ Anuruddha Lokuhapuarachchi, “Sri Lanka Says Sinks Rebel Boats as Thousands Flee,” Reuters, November 8, 2006, and “Anger of Lanka Civilian Deaths,” BBC, November 9, 2006, http://news.bbc.co.uk/1/hi/world/south_asia/6131566.stm (accessed May 3, 2007).

⁷⁹ The war in Sri Lanka is governed by international humanitarian treaty law and customary law applicable during non-international armed conflicts. Sri Lanka is a state party to the Geneva Conventions of 1949. While it is not party to the Protocol Additional of 1977 to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) or the Protocol Additional of 1977 to the Geneva Conventions of 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), most of their provisions are considered reflective of customary international law. An authoritative study of customary international humanitarian law is the ICRC’s two-volume *Customary International Humanitarian Law* (Cambridge, UK: Cambridge University Press, 2005).

In addition, the presence of LTTE forces in the vicinity of the Kathiravelli camp does not in itself make the shelling lawful. Military forces must use methods of attack and weapons that can discriminate between combatants and civilians. Anticipated civilian loss in an attack cannot be disproportionate to the expected military advantage. Thus, the military gain of attacking any LTTE forces near the Kathiravelli camp would have had to be measured against the anticipated civilian harm.

Given the mobility of most LTTE artillery and the permanent and long-term nature of the Kathiriveli IDP camp, whose location was known to the government, the Sri Lankan military failed to take adequate measures to distinguish between combatants and civilians, resulting in numerous civilian deaths and injuries.

Although there is no evidence of human shielding by the LTTE, the armed group did violate its obligations under international law by blocking the flight of many families trying to escape the area. (See Chapter III, “Internal Displacement”.)

V. Enforced Disappearances and Abductions

This chapter presents an overview of enforced disappearances and abductions and a selection of documented cases. In the coming months Human Rights Watch will publish a detailed report on “disappearances” with detailed analysis and case studies.

International law defines an enforced disappearance as

the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.⁸⁰

Such acts committed without the involvement of the state, such as by the LTTE or other armed groups acting alone, are considered abductions.

Sri Lanka has a long history of enforced disappearances. During the Janatha Vimukthi Peramuna (JVP) insurgencies of 1971 and 1988-1989, thousands of Sri Lankans, mainly Sinhalese youths, “disappeared” and were known to have been killed or were never heard from again. In 1996, after the security forces took over Jaffna from LTTE control, more than 500 Tamil youths “disappeared” and were believed killed.⁸¹

⁸⁰ International Convention for the Protection of All Persons from Enforced Disappearance, E/CN.4/2005/WG.22/WP.1/Rev.4 (2005), art. 2. Sri Lanka is not a signatory to the convention, which has yet to enter into force.

⁸¹ D.B.S. Jeyaraj, “An Overview of the ‘Enforced Disappearances’ Phenomenon,” *Transcurrents*, April 13, 2007, <http://transcurrents.com/tamiliana/archives/311> (accessed May 15, 2007).

Since its establishment in 1980, the United Nations Working Group on Enforced or Involuntary Disappearances has received over 13,000 cases from Sri Lanka.⁸² As of March 2007, the working group had 5,749 outstanding cases.⁸³

In the mid-1990s the government established four different commissions to investigate enforced disappearances. In total they recorded 27,000 complaints and issued findings on 18,000 “disappearance” cases. The government issued over 15,000 death certificates and provided more than 12,000 families with compensation, but commission findings led to very few prosecutions, and there were only a handful of convictions of low-ranking officers. The state accepted some of the commissions’ recommendations, including the establishment of a special unit for “disappearances” in the police and prosecutor’s office and a legal mechanism for issuing families of victims with death certificates and compensation.

At the same time, impunity for enforced disappearances did not stop, as security officials, including commanders, remained largely unaccountable for the massive crimes of the past.

Over the past two years, enforced disappearances and abductions have returned with disturbing regularity to Sri Lanka. The overwhelming majority of victims are Tamils, although some Sinhalese and Muslims have also been targeted. Since May-June 2007, abductions of businessmen from the Muslim community for ransom have been on the rise. Reporting of these abductions to the police or other agencies remains low, largely due to fear and because family members try to secure release by paying ransom.

The precise number of enforced disappearances and abductions since the resumption of major hostilities remains unknown, but available data suggests it is extremely high. The national Human Rights Commission recorded roughly 1,000 cases in 2006, plus nearly 100 abductions and “disappearances” in the first two

⁸² “ICJ Urges Sri Lanka to Ratify Convention against Enforced Disappearances,” International Commission of Jurists press release, January 24, 2007, http://www.icj.org/news.php3?id_article=4096&lang=en (accessed May 29, 2007).

⁸³ Interactive dialogue at the Human Rights Council with the Working Group on Enforced and Involuntary Disappearances, March 21, 2007.

months of 2007.⁸⁴ A government commission established in September 2006 to investigate “disappearances” said in June 2007 that 2,020 people were abducted or disappeared between September 14, 2006, and February 25, 2007 (see also below).⁸⁵

The Civil Monitoring Commission, founded in November 2006 by four opposition members of parliament, has recorded details of 130 cases, 47 of them in the capital, as of April 11, 2007.⁸⁶ The organization says this number reflects a small portion of the total.⁸⁷

During research in February and June 2007, Human Rights Watch documented the cases of 109 people who had been disappeared or were abducted in 2006 or 2007. These included cases from Colombo, Jaffna, Vavuniya, Mannar, Trincomalee, and Batticaloa.

The majority of “disappearances” appear to be perpetrated by the Sri Lanka security forces. In these cases the military, alone or in cooperation with paramilitary groups such as the Tamil political party Eelam People’s Democratic Party (EPDP) or the Karuna group, target young Tamils suspected of directly or indirectly supporting the LTTE. The clearest examples come from Jaffna, where abductions take place in areas of strict military control, sometimes at night, when a curfew is in effect (see below).

The fate of many individuals taken by the security forces and paramilitary groups remains unknown. Some of them are likely to be kept in unacknowledged detention under the Emergency Regulations reimposed in 2006, which allow the authorities to hold detainees for up to 12 months without charge (see Chapter VII, “Emergency Regulations”). Many of these individuals, however, are feared dead, especially in Jaffna, where the military has a powerful presence and LTTE activity is high. Local human rights groups believe that the security forces “disappear” and then

⁸⁴ Gardner, “Abductions, Disappearances Haunt Sri Lanka’s Civil War,” and “Sri Lanka Police, Soldiers Arrested over Abductions,” Reuters.

⁸⁵ “US Concerned about Disappeared,” *BBC Sinhala.com*.

⁸⁶ List of the Civil Monitoring Committee, April 11, 2007, on file with Human Rights Watch.

⁸⁷ Human Rights Watch interview with Mano Ganesan, member of the Civil Monitoring Commission, Colombo, March 6, 2007.

immediately summarily execute individuals for their suspected involvement in the LTTE, or sometimes detain and torture them first at illegal detention facilities, such as military and navy bases and camps.

The LTTE is also clearly responsible for a number of abductions. In most cases the Tigers openly execute their rivals or alleged government supporters and informers to ensure the deterrent effect on the population. But it is also possible that relatives are often too terrified to report abductions perpetrated by the LTTE, fearing further retaliation. At the same time, the LTTE is notorious for abducting children, young men and women for training and recruitment purposes.⁸⁸

Jaffna

According to a credible non-governmental organization that tracks disappearances, on the Jaffna peninsula alone, 805 persons were reported missing between December 2005 and April. As of May 1, 2007, 564 of these persons were still missing.⁸⁹

Human Rights Watch also inspected a report from the Government Agent (GA) of Jaffna, which had statistics from April to December 2006. During that time, the GA registered 354 missing persons.⁹⁰

Human Rights Watch visited Jaffna in February 2007 and interviewed the families of 37 persons who had been “disappeared” over the previous year. Of these, in 21 cases the evidence strongly suggested the involvement of government security forces. In two cases the families strongly believed that the perpetrators were members of the EPDP (based on their accents, appearance, and cars leaving in the direction of EPDP camps). In one case involving three people, the families believed the perpetrator was the LTTE.

⁸⁸ See Human Rights Watch, *Living in Fear*.

⁸⁹ For security reasons the NGO did not want to be identified. However, details of the 805 cases—names, ages, dates and locations of the incidents, and brief descriptions—are on file with Human Rights Watch.

⁹⁰ In the same period, according to the Government Agent’s report, 381 were killed and 204 were injured.

In one illustrative case documented by Human Rights Watch, the military “disappeared” two men, ages 25 and 23, in front of their wives on December 8, 2006. That morning the military conducted a large-scale cordon and search operation in several villages in Valvettiturai area, including Samarabaachu, Naachchimaar, Navindil, Ilainthaykadu, and Maavadi. According to witnesses, the group conducting the searches consisted of personnel from Point Pedro camp, Polikandy camp, VVT camp, Udupidy camp, and another camp locally known as “Camp David.”

The wife of the 25-year-old told Human Rights Watch that in the morning four military personnel searched their house and checked the ID cards of the family members. They returned her card, but took her husband’s with them and told him to come later that day to a playground in Navindil to collect it.

The man’s wife took their two children and accompanied her husband to Navindil. She said there were almost 2,000 people at the playground—men who came to collect their IDs, and their families. The military were calling people by name, asking some questions, and returning their ID cards. She said that they also called her husband, checked his documents again, and let him go. However, he never left the playground. The wife explained,

He got his card back, and was making his way through the crowd. There were two vehicles parked there, and as he was passing in between them, several military personnel jumped off the vehicle, picked him up, and pushed him aside. It all happened in front of my eyes—I stood with the kids some 10 meters away. I ran there, screaming, ‘Where are you taking him? Please, let him go!’

In response, one of the soldiers unfastened a strap from his gun, and lashed me, saying, ‘Go away, he is not here; if you lost your husband, go and ask the police.’ I kept crying, asking them to either release him or take me and the kids as well, because we wouldn’t survive without him anyway. One of the soldiers, moved by my tears, got inside the

vehicle and I heard him asking the others to take pity on me and the kids, but he [the soldier] never came back.⁹¹

The 23-year-old also had his ID card confiscated on the morning of December 8, in his home village of Naachchimaar. He also came to the Navindil playground to pick up his card. His wife told Human Rights Watch that she came there some time later and although she had to wait behind the fence, she saw her husband, who waved to her. She said that the military checked his ID again, and returned the card, allowing him to leave. However, as he was leaving the playground two soldiers picked him up and put him into one of their Powell vehicles. The man's wife said she then immediately ran to the vehicle, and, along with the wife of the 25-year-old, started begging the military to release the men. She said that the soldiers kept pushing the women away, saying they would hit them if they dared to come closer.

The women said that some 15 minutes after their husbands had been put into the Powell, the vehicles swiftly left the playground, and other personnel followed them. The two women told Human Rights Watch that they managed to write down the number plates of the two Powell vehicles, 40041-14 and 40032-14.

The wives of the two men immediately filed a complaint at the Point Pedro police station located inside the Point Pedro military camp. The wife of the 23-year-old said,

We gave them the vehicle numbers we wrote down, but they said, 'e have hundreds of vehicles with the same numbers, so it is childish of you to expect us to find them by these numbers.' Next day, when we came back, we saw both vehicles leaving the camp and coming back. We told the policeman, and also talked to a female military officer who wrote something down. Then a commander—he had stars on his epaulets and a red band on his arm—came. He talked to us and to the female officer, but never returned to us. They said they did not know anything and sent us to the Valvettiturai police station.⁹²

⁹¹ Human Rights Watch interview with wife of “disappeared” 25-year-old man, Jaffna, February 28, 2007.

⁹² Human Rights Watch interview with wife of “disappeared” 23-year-old man, Jaffna, February 28, 2007.

The Valvettiturai police registered the complaint, but advised the women to search for their men in the forest; they mentioned that previously a man taken away by the military had been dumped in the forest, blindfolded, yet alive. The families searched but failed to find their husbands there.

The two wives told Human Rights Watch that they kept visiting Point Pedro and Polikandy military camps, and that on December 25 the military from the Polikandy camp came to verify the places of residence of the two men with their village leaders. The military, however, kept denying having any knowledge of the men's whereabouts. The women also reported the "disappearances" to the International Committee of the Red Cross (ICRC), the HRC, and the SLMM. The ICRC inquired with the military, the women said, but received the same response.

At this writing, the fate and whereabouts of the two men remain unknown.

Perhaps the best known case from the Jaffna peninsula is that of Reverend Fr. Thiruchchelvan Nihal Jim Brown, a parish priest in the village of Allaipiddy on Kayts Island, who went missing with another man, Wenceslaus Vines Vimalathas, on August 20, 2006. The two men left Allaipiddy in the early afternoon for the nearby village of Mandaithivu, but the Sri Lankan military did not allow them to enter. On the way back to Allaipiddy they were stopped at a navy checkpoint, and they have not been seen again.

Inquiries into the fate and whereabouts of the two men proved futile. The navy denied having detained them, and the investigation into the "disappearance" has so far produced no results.

Father Jim Brown was known to have helped many civilians to move from Allaipiddy to the town of Kayts after fighting in the area between the Sri Lankan Navy and the LTTE. In fighting a week before his "disappearance," on August 13, 2006, at least 54 civilians were injured and 15 lost their lives.

Human Rights Watch asked the Sri Lankan government about the army's authority to arrest or detain civilians in Jaffna, as well as the number of persons the army is

detaining in its camps. The government replied that the army can arrest individuals under regulation 18 of the Emergency Regulations, and it is required to hand over to the police all arrested persons within 24 hours.⁹³

Colombo

Since August 2006 abductions and “disappearances” have also become a widespread phenomenon in the capital. Human Rights Watch interviewed 26 families of persons missing from Colombo. In seven of the cases, testimonies of the family implicate police and other security forces in the “disappearances.”

In one case, for example, the wife of a 21-year-old Tamil man said she saw the police take her husband on August 23, 2006. According to the woman, she and her husband had come to the capital from Trincomalee on June 26 so that he could obtain a visa to work abroad. They stayed at a lodge in the 14th district of Colombo while he was waiting for the visa to come through. In the early morning of August 23 the police knocked on their lodge door. She explained what happened next:

It was 12:30 a.m. We were all sleeping. The police came in uniform and we were all there. They asked for our ID cards. When they asked I saw there were two boys taken from the room next door. They threw my card away and grabbed my husband’s card, and they took him.⁹⁴

The wife went to the Armor Street police station on Kotehena Road the next morning but the police refused to take her complaint. She searched at other police stations in the city and returned to the Armor Street station that evening at 6 p.m., she said. This time, the police took her complaint and provided a receipt, which Human Rights Watch viewed.

According to the wife, two men in civilian clothes subsequently came to the lodge and told the wife that her husband would be released in one week, and that they

⁹³ Sri Lankan government response to Human Rights Watch, July 12, 2007.

⁹⁴ Human Rights Watch interview with wife of “disappeared” 21-year-old man, Colombo, March 4, 2007.

would send him by bus or train to Trincomalee. As of March 4, when we interviewed her, her husband had not returned.

Batticaloa, Trincomalee, and Ampara

In the eastern districts of Batticaloa, Trincomalee, and Ampara, the Karuna group has committed hundreds of abductions with the complicity of Sri Lankan security forces. The section below and Chapter IX, “Karuna Group and State Complicity,” document abductions by that group. Human Rights Watch received credible reports from Batticaloa residents and international aid groups who said the Karuna group was helping government security forces screen displaced persons fleeing into government-controlled territory, identifying those suspected of supporting the LTTE.

Responsibility in other cases is unclear. In one recent case documented by Sri Lankan organizations, unknown assailants abducted Alampalan Sivasubramaniam, the head of Lingapuram village in Trincomalee district. Sivasubramaniam had been a vocal advocate for the needs of the displaced. It is not known who abducted him.⁹⁵

One of the most prominent “disappearance” cases in the east is of Professor Sivasubramaniam Raveendranath, 56, vice chancellor at Eastern University in Batticaloa, who went missing from a High Security Zone in Colombo on December 15, 2006. The case began with the abduction in Batticaloa by an unknown armed group on September 20, 2006, of Dr. Bala Sugumar, dean of the arts faculty at Eastern University. The group said, for reasons that remain unclear, they would release Dr. Sugumar if Prof. Raveendranath resigned.

⁹⁵ Centre for Policy Alternatives and International Movement Against All Forms of Discrimination and Racism, “Trincomalee Fact-Finding Mission,” April 2007, http://www.imadr.org/en/news/TRINCOMALEE_APRIL_2007.pdf (accessed May 30, 2007).



Professor S. Raveendranath, 56, vice chancellor at Eastern University in Batticaloa, went missing from a High Security Zone in Colombo on December 15, 2006.
© 2006 courtesy of the Raveendranath family

According to Prof. Raveendranath’s family, the professor and his immediate relatives left Batticaloa for Colombo on the night of October 1. The next day, he submitted his resignation. Dr. Sugama was released 11 days later.

Prof. Raveendranath stayed in Colombo, where he worked for the university grants commission. He reported receiving death threats on his cell phone. “The people who threatened him said they would punish him and kill him if he didn’t stop working,” his son-in-law told Human Rights Watch.⁹⁶

On December 15, Prof. Raveendranath attended a science conference near the BMICH conference hall in Colombo, which is in a High Security Zone with a large presence of military and police. The family expected him back for lunch but he never arrived. His

⁹⁶ Human Rights Watch interview with M. Malaravan, Colombo, March 4, 2007.

wife tried his cell phone several times but it was turned off. The family filed a police report with the Dehiwala police that same day. They also submitted the case to the UN Working Group on Enforced or Involuntary Disappearances, which sent it under the urgent action procedure to the Sri Lankan government on January 9, 2007.⁹⁷ At this writing, Prof. Raveendranath was still missing.

Karuna group

Over the past two years the Karuna group has been implicated in numerous abductions resulting in summary killings. Most of the victims are alleged supporters of the LTTE. The group also has engaged in wide-scale abductions of young men and boys for use as soldiers (see Chapter IX, “Karuna Group and State Complicity”).

The Karuna group has also engaged in kidnappings for ransom of wealthy, predominantly Tamil, businessmen to raise money. Such kidnappings, which one journalist called an “industry,” have happened in Colombo and other towns, most recently Vavuniya.⁹⁸ A few businessmen have been killed, apparently because they or their families refused or were unable to pay, or perhaps as a message to others that they should comply. According to the Civil Monitoring Commission, out of 78 cases of reported abductions of Tamil businesses in Colombo in late 2006-early 2007, 12 abductees have been murdered, 15 released after the ransom had been paid, and 51 are still missing.⁹⁹ Media reports have suggested that security forces were implicated in these abductions, either directly facilitating them or providing a cover and not taking any action against them.¹⁰⁰

Human Rights Watch interviewed a Colombo Tamil businessman who had been abducted by Tamils he believed to be from the Karuna group but had been released

⁹⁷ Letter of receipt from the Working Group on Enforced or Involuntary Disappearances, reference number G/SO 217/1 Sri Lanka, March 26, 2007.

⁹⁸ Jeyaraj, “An Overview of the ‘Enforced Disappearances’ Phenomenon,” *Transcurrents*.

⁹⁹ Figures cited in “Abductions spread to Wellawaya,” *LeN*, April 10, 2007. Representatives of the Civil Monitoring Commission told Human Rights Watch that abduction for ransom is one of the most underreported categories of cases, as families who manage to secure the release of their relatives are very reluctant to report even to human rights groups, fearing further prosecution. Human Rights Watch interview with Mano Ganesan, Colombo, February 20, 2007.

¹⁰⁰ D.B.S. Jeyaraj, “Dear Ones of ‘Disappeared’ in depths of Despair,” *Transcurrents*, April 12, 2007, <http://transcurrents.com/tamiliana/archives/310> (accessed April 15, 2007).

after he paid a ransom. According to the man, a jeweler who wished to remain anonymous, he started getting threatening phone calls in April 2006, sometimes from people who said they were from the Karuna group. They demanded that he transfer one million rupees (\$US 8,946) into a bank account.¹⁰¹ About one month after the first call, he was walking from his shop in Colombo when a group of men forced him to get into a white van. He explained,

At 5:30 p.m. I went to my car. There's a bar between my car and my shop. There were two men, ages between 35 and 40. When they saw me they said, 'We're from CID [Criminal Investigation Division of the police]. Please show us your ID.' I gave it. They spoke Tamil but with a Batticaloa accent. They said, 'Our boss is there, so show him your ID.' I didn't ask for theirs. When I went there, immediately a white van came about 20 meters in front of my car. As soon as I got there, the sliding door of the van opened and some people inside pulled me in. I was shocked and I realized that I was trapped by some abductors. They said, 'Don't panic or we'll shoot you.' Immediately they put a white cloth over my eyes.... I don't know exactly but more than five people were in the van.

According to the man, the van drove for about four hours, stopping occasionally. The man thought they were stopping at checkpoints, because the person in the front said, "Hello, how are you?" in Sinhala. Eventually they put him in a room and, after 10 minutes, a man arrived. He said, "We had already instructed you to pay and you did not, so that is why we abducted you. If you don't pay we'll kill you and even your family won't be able to see the body because we'll dump it in the jungle."

The next day the man's captors made him call his brother. They told the brother that he had to pay money to save the man's life. The following day they put the man back into a vehicle and drove him for about three hours. They let him out at a bus stop and told him he could go home, but they warned him not to tell anyone. The man realized

¹⁰¹ Human Rights Watch interview with formerly abducted Tamil businessman, Colombo, October 2006.

then that his brother had paid, although he learned later that he had not paid the full one million rupees demanded.

“They said, ‘Do not convey this information to anyone: the media, the police or human rights groups,’” the man said. “We have connections at each organization, so we will not allow you to live.”

He believes the abductors were members of the Karuna group because they spoke Tamil with a Batticaloa accent (few police or military personnel speak Tamil without a Sinhala accent), and because they had no trouble going through what he believes were government checkpoints.

According to the man, who is active in Colombo’s Tamil business community, the Karuna group has extorted money from roughly 70 Tamil businessmen in Colombo, many of them with businesses on Sea Street. The Jewelers Business Association had met President Rajapaksa to complain, he said.

As in the case of the Colombo jeweler, abductions for ransom in Vavuniya are also part of a broader phenomenon of demanding money with menaces. Human Rights Watch interviewed one couple, both lawyers, from Vavuniya who fled the town after getting demands for money from individuals who identified themselves as from the Karuna group.¹⁰² One of the people who threatened the couple identified himself as Seelan, the couple said. According to the couple, who worked closely with the town’s business community, the Karuna group is believed to have abducted and killed three local businessmen who refused to pay. The first was a private teacher named Kamal Chandran, who ran a private tutoring company in town. Then N. Gunaratnam, who ran the Kapilan Transport bus company, with a route between Vavuniya and Colombo, was targeted. He apparently gave money but then informed the police. Last was S.K. Senthilnathan, who owned Elephant Soda Distribution Co. and City Agency in town.¹⁰³

¹⁰² Human Rights Watch interview with couple from Vavuniya, Colombo, March 4, 2007.

¹⁰³ According to Tamilnet, Senthilnathan was a senior member of the All Ceylon Tamil Congress. “Senthilnathan Shot and Killed in Vavuniya,” *Tamilnet*, April 26, 2007, <http://www.tamilnet.com/art.html?catid=13&artid=17922> (accessed June 28, 2007).

Most often the person demanding money on the phone used one of four names, the couple said: Robert, Seelan, Elial, or Benthana. The couple provided Human Rights Watch with the telephone numbers of the cell phones on which they received calls from these individuals.¹⁰⁴ Some of these numbers matched numbers given by two other Tamils from Vavuniya, who also said they had been contacted by men from the Karuna group who demanded money.

On February 28, 2007, the Vavuniya Bar Association decided to boycott court proceedings due to threats from the Karuna group. The association said that a person calling himself Seelan, who identified himself as from the Karuna group, had been threatening some members of the Bar, demanding large sums of money. “This Bar has not experienced any such demand by any militant group in the past. This demand has caused anxiety in the minds of the members of the Bar, affecting their professional performance. The Bar Association of Vavuniya has brought this matter to the notice of the High Court Judge and the District Judge, Vavuniya,” the Vavuniya Bar said.¹⁰⁵

Karuna group spokesman Azad Maulana said the group had a political officer named Seelan in the east, but he was not involved in any threats or intimidation. “Do you think someone will call and give his name while making threats,” Maulana said “Someone is obviously using Seelan’s name and making threats. We respect the legal profession.”¹⁰⁶

The government’s response

In late 2006 and early 2007 the Sri Lankan government began to react to the growing chorus of complaints about abductions and “disappearances” from within Sri Lanka and abroad. On the one hand, the government adamantly denied responsibility for the spree of “disappearances,” and dismissed human rights groups and journalists

¹⁰⁴ Human Rights Watch interview with couple from Vavuniya, Colombo, March 4, 2007.

¹⁰⁵ Easwaran Rutnam, “Vavuniya Bar Alleges Threat by Karuna Faction,” *Daily Mirror*, March 2, 2007, <http://www.dailymirror.lk/2007/03/02/news/06.asp> (accessed June 28, 2007).

¹⁰⁶ *Ibid.*

as the disseminators of “LTTE propaganda.”¹⁰⁷ On the other hand, the authorities made numerous pledges to investigate and stop the abuses. To date, however, the steps have failed to yield tangible results.

On September 15, 2006, the president’s office announced the creation of a special police unit to investigate abductions, “disappearances,” and ransom demands.¹⁰⁸ A few days later the president announced the creation of a one-man commission consisting of former judge Mahanama Tillekeratne to look at abductions and enforced disappearances across the country. Judge Tillekeratne submitted his interim reports to the president on December 12, 2006 and March 23, 2007. The government has not made either report public.

In a media briefing on June 28, 2007 Judge Tillekeratne said that 430 civilians had been killed between September 14, 2006, and February 25, 2007, almost all of them Tamil. Many of the victims were shot through the head with their hands tied behind their backs, he said.¹⁰⁹ In addition to the deaths, 2,020 people were abducted or “disappeared” during those five months, he said (1,713 “disappeared” and 307 abducted). An estimated 1,134 were later found alive (1,002 of the “disappeared” and 132 of the abducted) but the fate of the rest remains unknown.

Judge Tillekeratne said that he recommended the government take strong action against policemen who had failed to investigate complaints of abductions and “disappearances.” According to evidence before the commission, he said, the police had not recorded some complaints even after complainants had come to the police station multiple times.¹¹⁰

¹⁰⁷ For example, in a March 2007 press interview Human Rights and Disaster Management Minister Mahinda Samarasinghe responded to accusations of abductions by dismissing it as the LTTE’s “propaganda strategy” used to “paint a bleak picture internationally to bring pressure on the government so that our resolve will be weakened.” See “You cannot expect everything to be normal,” *The Nation* (Colombo), March 18, 2007.

¹⁰⁸ “Special Police Unit to Probe Incidents of Killing,” Office of the President media release, September 15, 2006, http://www.slembassyusa.org/archives/main_index_pages/2006/sl_govt_takes_18sep06/pr_presi_secre_15sep06.pdf (accessed May 15, 2007).

¹⁰⁹ “US Concerned about Disappeared,” *BBC Sinhala.com*, and Official website of the Government of Sri Lanka, “Majority of ‘Disappeared’ Had Returned—Commissioner,” June 29, 2007, http://www.priu.gov.lk/news_update/Current_Affairs/ca200706/20070629majority_of_disappeared_had_returned.htm (accessed July 27, 2007)

¹¹⁰ Susistha R. Fernando, “Majority of ‘Abductees’ Found to Have Returned,” *Daily Mirror* (Colombo), June 29, 2007.

The commission's media statements are quite strong but it remains unclear whether the government will make any details of its findings public, or act on its recommendations. Human Rights Watch asked the government whether it would make public any of the commission's reports, but the government did not reply to this question.

As public criticism of the rising abductions mounted, on March 6, 2007, Inspector General of Police (IGP) Victor Perera announced that the police had arrested a "large number" of police officers and soldiers, including deserters, among 433 people arrested on charges of abduction and extortion since September 2006. "There is a lot of attention by foreign organizations on the human rights situation here and these killings and abductions cause big problems for the government internationally," he said.¹¹¹

The government has yet to provide any details of those arrests, let alone whether those arrested face prosecution. On June 18 Human Rights Watch asked the government how many soldiers and police had been arrested, and on what charges. The government replied that "this information is being tabulated by the police, which maintains detailed records of persons arrested and places of detention."¹¹² Why the government could not provide any information on this issue remains unclear.

A government statement two days after IGP Perera's announcement took issue with security forces' involvement in the abductions, effectively raising questions about the authenticity of the 433 arrests. The government's peace secretariat rejected all allegations and accusations against the government for complicity in abductions and "disappearances" as "unfounded." It said that police investigations "substantiate the fact that neither the Security Forces, nor the Police, have been involved, directly or indirectly, in the alleged abductions and disappearances" and led "to the inescapable conclusion that much of the accusations were stage managed for mere propaganda purposes." The statement also dismissed allegations of "disappearances" as coming from people with ulterior motives:

¹¹¹ "Sri Lankan Police, Troops Involved in Abductions: Police Chief," Agence France-Presse, March 6, 2007. "Sri Lanka Police, Soldiers Arrested over Abductions," Reuters, March 6, 2007.

¹¹² Sri Lankan government response to Human Rights Watch, July 12, 2007.

It is evident that many of the [disappearance] cases reported below were clearly and intentionally manipulated, with the ulterior motive of gaining some personal advantage. This was in some instances to gain entry to a foreign land. In other instances, it was to avoid a Customs penalty or a consequence of not adhering to a Court order. Other cases reveal the negligence on the part of those who were allegedly abducted, of not informing their parents or guardians about their fate or whereabouts. Some others also show that underworld criminal gangs have been conveniently mistaken to be armed groups consisting of SL Army and Police personnel.¹¹³

Three days later, on March 11, the president's office shifted the blame for abductions and "disappearances" back on the police. "President Rajapaksa expected responsible intervention by the police to stem a wave of killings, abductions and extortion rackets, some of which have been linked to police and troops," the president's office said in a statement. "The President expects a more responsible intervention from the police to prevent the current wave of crime, the violence, extortion, human rights violations."¹¹⁴ (For the president's April 2007 recirculation of presidential directives on the arrest and detention of individuals, partly a response to "disappearances" as well as to spiraling detentions, see Chapter VII, "Emergency Regulations.")

On June 18 Human Rights Watch asked the government how many people the police had arrested over the previous year on charges of kidnapping or other involvement in abductions or enforced disappearances, and the current status of those cases. The government replied that this information was being tabulated by the police.¹¹⁵ Again, the government should be able to provide at least some information on this issue.

Local and international organizations have repeatedly criticized the ineffectiveness of Sri Lanka's existing national mechanisms and the government's failure to address

¹¹³ SCOPP, "Baseless Allegations of Abductions and Disappearances."

¹¹⁴ "Sri Lanka President blasts police dept for handling of abductions and killings," *ColomboPage*, March 11, 2007, http://www.colombopage.com/archive_07/March11175225JV.html (accessed May 15, 2007).

¹¹⁵ Sri Lankan government response to Human Rights Watch, July 12, 2007.

the problem of “disappearances.” The Asian Human Rights Commission, for example, noted in September 2006 that “within Sri Lanka at the moment there is no government authority with the capacity to efficiently investigate the disappearances,” and that “the assurance of some state authorities to the effect that if soldiers are found to be guilty of such acts they would be punished is a mere rhetorical gesture in the face of heavy criticism from local and international sources.”¹¹⁶

In April 2007 a group of relatives of the “disappeared” supported by the Civil Monitoring Commission petitioned the government, expressing their despair at the government’s unwillingness to investigate “disappearances.” The petition said,

We are saddened that the present government, headed by a President who had been at the forefront of the struggle against disappearances many years ago along with the family members of the disappeared, has chosen to dismiss the disappearance of our loved ones as something that is not worthy of local and international attention. We are particularly pained at the inability or unwillingness of the government to adequately investigate this situation and their rejection of our efforts and those of local and international groups trying to help us.

Although the government says it is taking steps to address this situation through the Tillekeratne Commission and the Commission of Inquiry (CoI) and the International Independent Group of Eminent Persons (IIGEP) etc., none of these mechanisms have helped to bring back our loved ones and to know the fates of them. Setting up of these two commissions and group did not prevent disappearances even after they have been set up.¹¹⁷

¹¹⁶ “Sri Lanka: White vans without number plates; the symbol of disappearances reappear,” statement by the Asian Human Rights Commission, AS-213-2006, September 13, 2006, <http://www.ahrchk.net/statements/mainfile.php/2006statements/729/> (accessed April 17, 2006).

¹¹⁷ Civil Monitoring Commission, “Petition to Help Find our Disappeared Family Members and Friends in Sri Lanka,” April 9, 2007.

The government's lack of commitment to address "disappearances" was also evident in its continued failure to cooperate with international mechanisms. For example, the UN Working Group on Enforced and Involuntary Disappearances sent a request in October 2006 to visit Sri Lanka in early 2007, but the government responded that it would not be possible for the visit to take place at that time.¹¹⁸

On June 27 the government took another step to address the growing concern about "disappearances," announcing the creation of a special center under the direction of President Rajapaksa for gathering information on abductions in and around Colombo.¹¹⁹ It remains unclear how this center will function, and whether it will help end the rash of abductions and "disappearances" that continue to occur.

In response to queries from Human Rights Watch, the government said on July 12 that the Disappearance Investigation Unit (DIU) of the Sri Lanka police is mandated to investigate cases of enforced disappearance. The unit is under the purview of the police deputy inspector general in charge of the Criminal Investigation Department (CID), currently D.W. Prathapasingha. The CID also conducts a few investigations into "disappearances," the government said.¹²⁰

¹¹⁸ Interactive dialogue at the Human Rights Council with the Working Group on Enforced and Involuntary Disappearances, March 21, 2007.

¹¹⁹ "Media is Commended for highlighting HR violations; government sets up a special center to avert abductions," Ministry of Defence news release, June 28, 2007, http://www.defence.lk/new.asp?fname=20070628_01 (accessed June 28, 2007).

¹²⁰ Sri Lankan government response to Human Rights Watch, July 12, 2007.

VI. Tamil Evictions from Colombo

Indications of possible Tamil evictions from Colombo became public on June 1, 2007, when Inspector General of Police Perera told reporters, “Those who are loitering in Colombo will be sent home. We will give them transport.” He continued, “We are doing this to protect the people and because of a threat to national security.”¹²¹

At about 4 a.m. on June 7, police and army forces conducted sweeps of lodges and boarding houses where Tamils from outside the capital frequently stay. In most cases, people were not allowed to use toilets and were given as little as 30 minutes to pack their bags. The authorities put 376 Tamils on board buses that drove to the predominantly Tamil town of Vavuniya, about 250 kilometers to the north, near the boundary with LTTE-controlled territory.

Human Rights Watch interviewed three people who were evicted from different Colombo lodges. According to one evicted man,

There were nearly 20 policemen and 15 army soldiers. They asked me what I was doing in Colombo. I told them I was working here as a driver for nearly four months. They checked my identity card and told me to pack my bags.¹²²

A Jaffna resident and his mother had been in Colombo lodges since December 29. He told us,

We are here to get our visas. In between my mother got very sick so we could not go back to Jaffna. They forced both of us on the buses. My mother was crying, she could not walk. In Jaffna, the situation is very bad. There is no security for us. We are scared to go back there.¹²³

¹²¹ Amal Jayasinghe, “Sri Lanka Government Seeks Peace Talks,” Agence France-Presse, June 1, 2007.

¹²² Human Rights Watch interview with person evicted from the lodges, Colombo, June 27, 2007.

¹²³ Human Rights Watch interview with mother and son evicted from the lodges, Colombo, June 27, 2007.

A lodge-owner who had 29 out of 36 lodgers evicted on the morning of June 7 told a similar story:

Three weeks before the incident, I got a verbal order from the Wellawatte [a section of Colombo] police station asking me to close the lodge because of security reasons. When we went to talk to the police, they told us to start packing off people who had been in Colombo for more than a month.

On June 7 morning, the police and army arrived in jeep-loads and said they want to do 'checking.' Within minutes they lined up everybody and asked them to pack their bags. There were old women with medical certificates and people with embassy appointments. They were all asked to get into buses which came in a few hours. Some people had return flight tickets to Jaffna; they were also sent on the buses to Vavuniya.



A Sri Lankan police officer in Colombo stands guard at a protest against the eviction of Tamils in the city on June 8, 2007. © 2007 AP/Eranga Jayawardena

According to the Ministry of Defence, the police told these 376 Tamils, including 85 women, to leave for their homes in Vavuniya, Batticaloa, Jaffna, and Trincomalee because they could not provide “valid reasons” for being in Colombo. The police sent these people in buses to their home towns in northeastern Sri Lanka after they “expressed consent to go home if free transportation was provided” a statement dated June 9 said. “The resulting action by the police is required considering security demands such as the recent Tamil Tiger bomb explosions resulting in several innocent lives lost, and severe damage to property,” the statement said. “Investigations have also confirmed that those responsible for these brutal killings have hatched their brutal plans and executed them from these lodgings.”

The forced evictions sparked a domestic and international outcry.¹²⁴ “While we are full cognizant of the current security situation and the need to maintain close surveillance of the city and its environs,” a group of eight Sri Lankan nongovernmental organizations said in an open letter to President Rajapaksa, “in terms of the human rights principles that guide us in our work as human rights defenders, we are convinced that the above process is NOT capable of guaranteeing security and rather creates further polarization between the different ethnic communities that share this island, and heightens the sense of marginalization and alienation of Tamil people of this country.” The organizations stressed the principle enshrined in Sri Lanka’s constitution that “guarantees all Sri Lankans the right to choose their own residence (temporary or permanent), and freedom of movement and maintain that what has taken place in Colombo today is a flagrant violation of this principle, and a disgrace to humanity.”¹²⁵

One of the signatories to the letter, the Centre for Policy Alternatives, filed a fundamental rights application with the Supreme Court to halt the expulsions,

¹²⁴ “Sri Lanka: End Expulsions of Tamils from Colombo,” Human Rights Watch news release, June 8, 2007, <http://hrw.org/english/docs/2007/06/08/slanka16106.htm>. The US government said, “Such measures violate the Sri Lankan Constitution’s guarantee that every citizen has the right to freedom of movement and choice of residence within Sri Lanka.” “The United States Condemns the Forced Removal of Tamils,” US Embassy in Sri Lanka press release, June 8, 2007, <http://colombo.usembassy.gov/pr-08june2007.html> (accessed June 25, 2007).

¹²⁵ “Open Letter to President Mahinda Rajapaksa to Stop the Expulsion of Tamils from Colombo,” signed by the Center for Human Rights and Development, Center for Policy Alternatives, Free Media Movement, INFORM Human Rights Documentation Center, Institute of Human Rights, International Movement against All forms of Racial Discrimination, Law & Society Trust, and Rights Now, June 7, 2007, http://www.cpalanka.org/Statements/Letter_to_Pres_on_expulsion_of_Tamils-Final.pdf (accessed June 25, 2007).

arguing that evicting Tamils from Colombo was “wrongful, unlawful and illegal and violates the fundamental rights of those persons who were so evicted.”¹²⁶ The Supreme Court issued an interim order on June 8, directing the Inspector General of the Police, Defence Secretary Gothabaya Rajapaksa, and eight other respondents to halt the expulsions. The interim order also stopped the government from preventing Tamil citizens from entering or staying in any part of Colombo.¹²⁷

That evening, President Rajapaksa ordered IGP Perera to open an immediate inquiry. “Allegations that officials exceeded their authority in implementing this initiative will be thoroughly investigated and appropriate remedial action taken, including disciplinary action against any wrong doing on the part of any government official,” a statement from the president’s office said.¹²⁸

Two days later, Prime Minister Ratnasiri Wickremanayake apologized for the evictions, saying “it was a big mistake.” He told reporters, “I express regret and apologize to the Tamil community on behalf of the government.”¹²⁹

That same day, the *Sunday Leader* published details of the government’s decision, including the directive to the police on the expulsion, entitled “Directives issued by State Defence Ministry Secretary following the discussion on 31.05.2007” and signed by Defence Secretary Gothabaya Rajapaksa. According to this, the decision had been made at a top-level meeting at the Defence Ministry presided by Gothabaya Rajapaksa on May 31, the paper said. Others present reportedly included IGP Victor Perera, Army Chief of Staff Lawrence Fernando, and Colombo Deputy Inspectors General Rohan Abeywardene and D.W. Prathapasingha.¹³⁰

¹²⁶ “The Centre for Policy Alternatives (CPA) Welcomes the Interim Order Issued by the Supreme Court of Sri Lanka,” Centre for Policy Alternatives press release, June 9, 2007, http://www.cpalanka.org/research_papers/Press_Release_on_the_interim_order.pdf (accessed June 25, 2007).

¹²⁷ Ibid.

¹²⁸ “Lodge Residents – President Asks IGP for Immediate Report,” Media Centre for National Security news release, June 9, 2007, <http://www.nationalsecurity.lk/fullnews.php?id=6169> (accessed June 25, 2007).

¹²⁹ Amal Jayasinghe, “Sri Lanka Says Sorry for Evicting Tamils,” Agence France-Presse, June 10, 2007.

¹³⁰ Lasantha Wickrematunge, “The Sunday Leader Blows the Lid on Eviction Drama Following the President’s Call for Probe,” *Sunday Leader* (Colombo), June 10, 2007.

Defence Secretary Rajapaksa, meanwhile, defended his decision, saying the police had taken action against only a small proportion of the 17,000 ethnic Tamils he said were living in Colombo. He explained the decision to reporters on June 12: “So you tell them, ‘You don’t have any legal business in Colombo, there is a security problem in Colombo, you are the people who are suspected of... we don’t want to detain you, go back to your homes.’”¹³¹

The Sri Lankan constitution states that all persons are equal before the law, and no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds (article 12). The constitution also grants “the freedom of movement and of choosing his residence within Sri Lanka” (article 14).

Sri Lanka is a party to the International Covenant on Civil and Political Rights, which guarantees freedom of movement and choice of residence to all lawfully within a country.¹³² While this right may be restricted to protect national security, restrictions must be lawful and consistent with the other protected rights. Policies that are arbitrary and discriminatory are not permitted or considered legitimate restrictions under international law.

¹³¹ Roland Buerk, “Sri Lanka Accuses ‘Bullying’ West,” BBC, June 12, 2007, http://news.bbc.co.uk/2/hi/south_asia/6745553.stm (accessed June 24, 2007).

¹³² International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, article 12.

VII. Emergency Regulations

In August 2005, after the assassination of Foreign Minister Lakshman Kadirgamar, the government of then-President Chandrika Kumaratunga imposed Emergency Regulations drawn from the Emergency Regulations of 2000.¹³³ Long a controversial measure in Sri Lanka, the regulations granted the security forces sweeping powers of arrest and detention, allowing the authorities to hold a person without charge based on vaguely defined accusations for up to 12 months.

Since then, subsequent Sri Lankan governments have detained an undetermined number of people reaching into the hundreds under the regulations, mostly young Tamil men suspected of being LTTE members or supporters. The vast majority have been arrested over the past 18 months. On June 18 Human Rights Watch asked the government how many people it had arrested under the Emergency Regulations, the charges against them, and the locations of their detention. The government did not provide the requested information, saying the figures were being tabulated by the police. As in other cases noted above, it should have been possible for the government to provide at least some information.

History of abuse

Sri Lanka has a longstanding experience with emergency rule: some form of emergency regulations has been in place almost continuously since 1971.

Under Sri Lanka's Public Security Ordinance (PSO) of 1947,¹³⁴ the president can declare a state of emergency. The law offers no possibility to challenge the existence

¹³³ Article 155 of the Sri Lankan constitution, on public security, empowers the president to declare a state of emergency. The parliament has 14 days to approve the measure and then must renew the state of emergency every 30 days thereafter.

¹³⁴ Public Security Ordinance (PSO): an ordinance to provide for the enactment of emergency regulations or the adoption of other measures in the interests of the public security and the preservation of public order and for the maintenance of supplies essential to the life of the community, 16 June 1947.

or the grounds for such a declaration. A 1987 constitutional amendment grants legal immunity to the president for declaring a state of emergency in good faith.¹³⁵

Numerous governmental and nongovernmental organizations have criticized abuses related to Emergency Regulations. In 2001, a report by human rights lawyer N. Kandasamy indicated that some 18,000 people may have been arrested under Emergency Regulations and the Prevention of Terrorism Act¹³⁶ from January to November 2000. The vast majority of those arrested were Tamil, some of whom were ordered detained without trial for more than two years. Often the only evidence against them was a confession extracted under torture.¹³⁷

In its most recent review of Sri Lanka on December 15, 2005, the UN Committee Against Torture expressed concern about “allegations that fundamental legal safeguards for persons detained by the police, including habeas corpus rights, are not being observed.” The committee said that “the lack of an effective systematic review of all places of detention, including regular and unannounced visits to such places (art. 11), by the Human Rights Commission of Sri Lanka and other monitoring mechanisms,” was a serious concern.¹³⁸

More recently, in December 2006, the Colombo-based Centre for Policy Alternatives commented on the recent reimposition of the full Emergency Regulations:

¹³⁵ See

<http://www.law.qub.ac.uk/schools/SchoolofLaw/Research/HumanRightsCentre/Resources/StatesofEmergencyDatabase/SriLanka/> (accessed July 25, 2007).

¹³⁶ The government of President J.R. Jayewardene first introduced the Prevention of Terrorism Act (PTA) in 1979 amid widespread criticism from opposition parties and human rights groups. The PTA allows arrests without warrant and permits detention without the person being produced before a court, initially for 72 hours, and thereafter on an administrative order issued by the defense minister up to 18 months, which could be followed by detention until the conclusion of trial. The law allows for release during trial with the consent of the attorney general, but it does not provide any mechanism to secure such consent. The government may hold a person under the PTA on suspicion and need not charge the person with an offense. Currently the PTA is suspended. The 2002 Ceasefire Agreement (CFA), article 2.12, provided that the government would not conduct arrests or search operations under the PTA, but rather “in accordance with the criminal procedure code.” The act was never formally repealed but, according to the government, since the CFA “no person has been arrested under the relevant provisions of the PTA.” Sri Lankan government response to Human Rights Watch, July 12, 2007.

¹³⁷ Human Rights Watch, World Report 2002, Sri Lanka chapter, <http://www.hrw.org/wr2k2/asia10.html>.

¹³⁸ Committee Against Torture, “Issues Concluding Observations on Reports of Bosnia and Herzegovina, Nepal, Sri Lanka, Ecuador, Austria, France, and the Democratic Republic of Congo,” November 25, 2005, <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/A8C1CC94A9128EAF12570C400502F1D?opendocument> (accessed July 24, 2007).

Given the wide ranging powers provided to the State and its officers under these regulations, the absence of independent review, the history of abuse of similar draconian legislation, including the Prevention of Terrorism Act, to stifle legitimate democratic activity and political dissent, and the culture of impunity that has developed in Sri Lanka in recent months in particular, such a clause could easily become one that promotes impunity rather than providing for immunity for bona fide actions.¹³⁹

With respect to the treatment of detainees, the Emergency Regulations enacted by the Sri Lankan government are contrary to international human rights standards on their face and in practice. The International Covenant on Civil and Political Rights, to which Sri Lanka is a state party, permits limitations on some rights during periods of national emergency. However, such measures are limited to the extent strictly required by the exigencies of the situation. States must provide careful justification for any specific measures based on a proclamation of a national emergency. Certain basic rights, such as the right to life and to be free from torture and other cruel, inhuman or degrading treatment, may never be restricted. The principles of legality and the rule of law require that the fundamental requirements of a fair trial be respected even under Emergency Regulations.¹⁴⁰

The Emergency (Miscellaneous Provisions and Powers) Regulations (EMPPR), August 2005

The government enacted the Emergency Regulations on August 14, 2005. The new measures were justified by referring to the “terrorist challenge which claimed the life of Minister Kadirgamar and which requires adequate security measures to ensure that terror cannot act with impunity.”¹⁴¹

¹³⁹ Centre of Policy Alternatives, “Statement on the Introduction of the Emergency (Prevention and Prohibition of Terrorism) Regulations 2006,” December 2006.

¹⁴⁰ See UN Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 186 (2003). Sri Lanka ratified the International Covenant on Civil and Political Rights in 1980.

¹⁴¹ President Chandrika Kumaratunga’s Address to the Nation, August 14, 2005, *South Asia Terrorism Portal*, http://www.satp.org/satporgtp/countries/shrilanka/document/papers/Kumaratunga_Address_to_the_Nation.htm (accessed July 2, 2007).

Under these regulations, the authorities may search, detain for the purpose of a search, and arrest without a warrant any person suspected of an offense under the regulations.

A fundamental problem is the vague definition of an offense, which opens the door for arbitrary arrests. The regulations, for example, allow for the detention of any person “acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services.” The term “prejudicial to the national security” is not further defined and could be interpreted to include peaceful or nonviolent acts protected under the rights to free expression or association.

The regulations also provide for house arrest, prohibitions on an individual from leaving the country, restrictions on the movement of certain persons or groups, and limitations on an individual’s business or employment. They empower the police to require people to register at the local police station where they live. They allow for the censorship of articles related broadly to “sensitive” issues, and the disruption and banning of public meetings.

Arbitrary arrests and detention

Under the Emergency Regulations currently in place, persons arrested must be turned over to the police within 24 hours and their family provided with an “arrest receipt” acknowledging custody. In practice, according to Sri Lankan lawyers, the authorities have frequently failed to respect these requirements.

According to Sri Lankan lawyers and human rights activists, the typical profile of a detainee under the Emergency Regulations is an ethnic Tamil man between the ages of 18 and 40. But since late 2005, arrests under the regulations have expanded beyond the Tamil community. By February 2007, at least 11 Sinhalese civilians had been arrested and detained under the Emergency Regulations charged with being LTTE supporters from areas such as Matale, Ratnapura, and Galle.¹⁴²

¹⁴² Human Rights Watch interview with Sri Lankan lawyer, Colombo, February 2007.

Large-scale arrests of Tamil youth under the Emergency Regulations are particularly common after attacks attributed to the LTTE. After the suicide bomb attack against Army Commander Lt. Gen. Sarath Fonseka in April 2006, for example, the authorities arrested 97 Tamils in Colombo.¹⁴³ The status of their cases remains unclear. Similarly, security forces arrested a large number of Tamils in connection with the August 2005 Kadirgamar assassination. Between midnight of December 30 and noon on December 31, 2005, the Sri Lankan army and police arrested 920 people, mostly Tamils, in a joint cordon and search operation named “Strangers Night III.” The pro-LTTE website Tamilnet said the police arrested only Tamils, including 105 women,¹⁴⁴ but the police said the 920 suspects comprised 118 Sinhalese, 96 Muslims, and 706 Tamils.¹⁴⁵ It remains unclear how many of these people remain in detention at this writing. Human Rights Watch asked the Sri Lankan government how many of those arrested in “Strangers Night III” are still under detention, how many have been charged, and how many have been brought to trial, but the government did not reply.

Sri Lankan lawyers dealing with arrests under the Emergency Regulations told Human Rights Watch that the security forces frequently detain individuals on spurious charges, such as if found speaking softly on a mobile phone in Tamil in a public place. The police take advantage of the powers granted them under the regulations to arrest all those suspected in any way of supporting the LTTE. In some cases, deliberate misrepresentation of a suspect’s identity has led to innocents being detained. On October 2, 2006, for example, the police arrested Rasurajah, a 32-year-old Tamil from Talgampola in Galle district. According to the Asian Human Rights Commission, Rasurajah remained in custody for three days because the police misrepresented his identity in court as “M. Selliah,” an individual wanted by the police for investigation. A second magistrate, informed of the facts of the case, did not release Rasurajah but kept him on remand until the next hearing on October 6, after which he was released.¹⁴⁶

¹⁴³ Centre for Policy Alternatives, “War, Peace and Governance in Sri Lanka,” December 2006.

¹⁴⁴ “920 Tamils arrested in major cordon, search operation in Colombo,” *TamilNet*, December 31, 2005, <http://www.tamilnet.com/art.html?catid=13&artid=16702> (accessed July 16, 2007).

¹⁴⁵ Nirmala Kannangara, “DIG says Tamils not targeted through search operations,” *Morning Leader* (Colombo), January 11, 2006, <http://www.themorningleader.lk/20060111/News.html> (accessed July 16, 2007).

¹⁴⁶ “Sri Lanka: Innocent man victimised by illegal arrest and detention due to unlawful police malpractice of misrepresenting suspect’s identity in court,” Urgent Appeal, Asian Human Rights Commission, November 9, 2006.

In February 2007 Human Rights Watch interviewed the family members of 17 people whom the families believe were detained by the police, although they did not know whether they were specifically arrested under the Emergency Regulations. All said they had been unable to obtain any information about the location of their relative or the charges against them.

Also problematic is that the 2005 Emergency Regulations allow joint operations between the army and the police, with no clarity on responsibility. Lawyers working on cases of arrests under the regulations say that the police often round up alleged suspects in cordon and search operations in conjunction with the military and then tell lawyers and family members that they must speak to the military because the police have no information about the arrest.¹⁴⁷

According to Sri Lankan lawyers and human rights activists, detainees under the Emergency Regulations are kept in regular prisons as well as police stations and other detention facilities, including those run by the Terrorism Investigation Division. The total number of people detained under Emergency Regulations since 2005 is unknown. The government has failed to provide complete lists of those detained, the charges they face, and the locations where they are being held.

On March 8, 2006, government defense spokesman Keheliya Rambukwella said that 452 persons were in detention under the Emergency Regulations, among them 15 soldiers, five policemen, one former policeman, and three military deserters. The ethnic breakdown of the detainees, he said, was 372 Tamils, 61 Sinhalese, and 19 Muslims.¹⁴⁸ The number of detainees is certainly significantly higher now, as these figures predate the resumption of major hostilities.

On June 18, 2007, Human Rights Watch asked the government how many people it had arrested under the Emergency (Miscellaneous Provisions and Powers) Regulations (EMPPR) since its enactment in August 2005, where they were being

¹⁴⁷ Human Rights Watch interviews with lawyers, Colombo, February 2007.

¹⁴⁸ The figure is mentioned in a report by the International Crisis Group, "Sri Lanka's Human Rights Crisis," June 14, 2007, [http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/DBC51E0313E10AB5852572FA006892C6-Full_Report.pdf/\\$File/Full_Report.pdf](http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/DBC51E0313E10AB5852572FA006892C6-Full_Report.pdf/$File/Full_Report.pdf) (accessed July 18, 2007), which cites "Sri Lanka Human Rights Update," INFORM and Law and Society Trust, March 15, 2007.

held, how many had been charged with offenses, how many had been brought to trial, and how many of these people had been released. The government replied that these figures were being tabulated by the police.¹⁴⁹ Again, it should have been possible for the government to provide at least some information.

On April 12, 2007, in response to public concerns and international pressure about spiraling arrests and “disappearances,” the government recirculated presidential directives on how security forces should protect human rights during arrests and detentions.¹⁵⁰ The Presidential Directives on Protecting Fundamental Rights of Persons Arrested and/or Detained, distributed to the commanders of the army, navy, air force and police, instruct the security forces to respect basic human rights, as well as to cooperate with the Sri Lankan Human Rights Commission. The main points include:

- Security forces should not arrest or detain any person under any Emergency Regulation or the Prevention of Terrorism Act No. 48 of 1979 except in accordance with the law.
- The arresting officer should identify himself by name and rank, inform the person to be arrested of the reason for the arrest, and document all details of the arrest. The arrested person should be allowed to make contact with family or friends to inform them of his or her whereabouts.
- Arrested children and women can be accompanied by a person of their choice.
- An arrested person should be allowed to make a statement in the language of his or her choice.
- The Sri Lankan Human Rights Commission must be granted unfettered access to all arrested or detained persons. The HRC must be informed within 48 hours of any arrest or detention and the place the person is being detained.

¹⁴⁹ Sri Lankan government response to Human Rights Watch, July 12, 2007.

¹⁵⁰ “Secretary Defense [sic] Re-circulates Presidential Directives on Protecting Fundamental Rights of Persons Arrested and/or Detained,” Ministry of Defence, Public Security, Law and Order, April 25, 2007, http://www.defence.lk/new.asp?fname=20070425_02 (accessed May 16, 2007).

These are important principles and the government presented the reissued directives as a sign of its commitment to human rights.¹⁵¹ But the directives, originally issued on July 7, 2006, merely instruct the security forces to respect fundamental due process rights already enshrined in Sri Lankan and international law. The fact the president had to issue them twice suggests that members of the military and police were frequently violating the law and that the government lacked the will to hold those responsible for abuses accountable. Without concrete action, including prosecutions of those arbitrarily arrested by the security forces, the directives appear aimed more at assuaging international opinion than holding accountable police and soldiers who commit crimes.

Unauthorized places of detention

The use of unauthorized places of detention has become a source of enormous anxiety for the families of detainees. Often families don't know where a relative is being held and the authorities are reluctant to give information. Under the Emergency Regulations, there is no requirement to publish the places where people are held.

In 2007, around 100 people were reported held in detention at the Boosa detention centre in Galle on Sri Lanka's southern tip.¹⁵² Lawyers and human rights activists told Human Rights Watch that they believed the government was also holding individuals under the Emergency Regulations in other places, including in Kandy and the Pollunaruwa district, but Human Rights Watch did not confirm these claims.¹⁵³

Human Rights Watch asked the Sri Lankan government where it was holding those arrested under the Emergency Regulations. The government did not provide this requested information, saying it was being tabulated by the police.¹⁵⁴

¹⁵¹ In a March 2007 statement about abductions and "disappearances," for example, the government highlighted the Presidential Directives as evidence of its efforts to promote and uphold the rule of law. See SCOPP, "Baseless Allegations of Abductions and Disappearances." In July 2006 a ministerial body had issued a statement calling for the implementation of the presidential directives. Government of Sri Lanka, Inter-Ministerial Committee on Human Rights, "Implementation of Presidential Directives on the Arrest or Detention of Persons," July 19, 2006.

¹⁵² "Fury at Detentions Under Sri Lanka Anti-terror Rules," Reuters, February 21, 2007.

¹⁵³ Human Rights Watch interviews with human rights activists, Colombo, February 2007.

¹⁵⁴ Sri Lankan government response to Human Rights Watch, July 12, 2007.

Various United Nations principles including the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (principle 12) and the UN Standard Minimum Rules for the Treatment of Prisoners (rule 55), lay down that “[A]ll detainees should only be kept in recognized places of detention.” Such places of detention should be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention.

Disposal of bodies without public notification

Under the current Emergency Regulations, the authorities may dispose of bodies without public notification.¹⁵⁵ The deputy inspector general of the police has the authority to cremate bodies and thereby destroy potential evidence prior to inquest proceedings. This is particularly problematic in cases of alleged torture of a detainee who then dies while in custody. It is not known in how many cases the authorities have disposed of a body.

Emergency Regulation (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) No. 7 of 2006

On December 6, 2006, President Rajapaksa promulgated an additional set of emergency regulations called the Prevention and Prohibition of Terrorism and Specified Terrorist Activities, No. 7 of 2006. The broad, sweeping language of several of these provisions has also given rise to serious concerns.

¹⁵⁵ Regulation 56 of the Emergency (Miscellaneous Provisions and Powers) Regulations No.1 of 2005 published in Gazette Extraordinary 1405/14 of August 13, 2005, states, “(1) The Magistrate shall, upon receipt of the report of the facts by the Inspector-General of Police, or the Deputy Inspector-General of Police as the case may be under regulation 55: (a) direct the Government Medical Officer to forthwith hold a post-mortem examination of such body and may direct that the dead body if it has already been buried, be disinterred; and (b) make an order that at the conclusion of the post-mortem examination that the dead body be handed over to the Deputy Inspector-General of Police for disposal. (2) The Deputy Inspector-General of Police to whom the body is handed over the dead body [sic] to any relations who may claim the dead body, subject to such conditions or restrictions as he may deem necessary in the interest of national security of [sic] for the maintenance or preservation of public order; Provided, however, that the Deputy Inspector-General of Police may in the interest of national security or for the maintenance or preservation of public order, authorize the taking possession of and effecting the burial or cremation of the dead body in accordance with such steps as he may deem necessary in the circumstances.” These provisions had been removed from the previous set of regulations on May 3, 2000.

The range of activities prohibited by Regulations 6, 7 and 8,¹⁵⁶ and the definition of terrorism in Regulation 20,¹⁵⁷ allow for the criminalization of a range of peaceful activities that are protected under Sri Lankan and international law.

Some of the regulations could be used to justify a crackdown on the media and civil society organizations, including those working on human rights, inter-ethnic relations, or peace-building. The vague terminology in regulations 7 and 8, for example, opens the door for a range of peaceful activities to be brought under the ambit of terrorism. A peace-building organization, for instance, in contact with the LTTE or corresponding with the LTTE could be accused of collaboration with a terrorist group. Humanitarian relief offered to persons known to be LTTE supporters could be similarly construed. Journalists meeting with the LTTE or organizing a function with LTTE attendees could be similarly accused.

¹⁵⁶ According to Regulation 6, no person or groups of persons either incorporated or unincorporated including an organization, shall either individually or as a group or groups or through other persons engage in :

- (a) terrorism, or
- (b) any specified terrorist activity, or
- (c) any other activity in furtherance of any act of terrorism or specified terrorist activity committed by any person, group or groups of persons.

According to Regulation 7, no person shall :

- (a) wear, display, hoist or possess the uniform, dress, symbol, emblem, or flag of ;
- (b) summon, convene, conduct or take part in a meeting of ;
- (c) obtain membership or join ;
- (d) harbour, conceal, assist a member, cadre or any other associate of ;
- (e) promote, encourage, support, advise, assist, act on behalf of ; or
- (f) 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.

According to Regulation 8, no person shall engage in any transaction in any manner whatsoever, including contributing, providing, donating, selling, buying, hiring, leasing, receiving, making available, funding, distributing or lending materially or otherwise, to any person, group or groups of persons either incorporated or unincorporated, or with a member, cadre or associate of such a person, group or groups of persons, which acts in contravention of regulations 6 and 7 of these regulations.

¹⁵⁷ According to regulation 20, “terrorism” means any unlawful conduct which:

- (a) involves the use of violence, force, coercion, intimidation, threats, duress, or
- (b) threatens or endangers national security, or
- (c) intimidates a civilian population or a group thereof, or
- (d) disrupts or threatens public order, the maintenance of supplies and services essential to the life of the community, or
- (e) causing destruction or damage to property, or
- (f) endangering a person’s life, other than that of the person committing the act, or
- (g) creating a serious risk to the health or safety of the public or a section of the public, or
- (h) is designed to interfere with or disrupt an electronic system

In addition, the regulations established an Appeals Tribunal to hear appeals but its composition did not guarantee that the body would review cases in an impartial or transparent way. The tribunal is composed of the secretaries to the ministries of defense, finance, nation building and justice.

Lastly, the regulations contain in Regulation 19 an immunity clause for any government officials who may commit wrongful acts when they implement the regulations. Legal proceedings are prohibited if an official acted "in good faith and in the discharge of his official duties." Such immunity can further protect from prosecution government officials who violate the law: Sri Lankan human rights organizations have complained that the authorities could use the wide immunity clause in Regulation 19¹⁵⁸ to exempt members of the police, armed forces and other persons deemed to be acting in "good faith." The regulations also provide for exemptions to engage in approved transactions in certain circumstances such as "the furtherance of peace and the termination of terrorism" with the written permission of a competent authority appointed by the president.¹⁵⁹

On June 18, 2007, Human Rights Watch asked the government how many people the security forces had arrested under the Emergency Regulation (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) No. 7 since its enactment in December 2006, where they were being held, how many had been charged with offenses, how many had been brought to trial, and how many of these people had been released. The government replied that these figures were being tabulated by the police.¹⁶⁰

¹⁵⁸ According to Regulation 19, no action or suit shall lie against any Public Servant or any other person specifically authorized by the Government of Sri Lanka to take action in terms of these Regulations, provided that such person has acted in good faith and in the discharge of his official duties.

¹⁵⁹ Statement on the introduction of the Emergency (Prevention and Prohibition of Terrorism) Regulations 2006, Centre for Policy Alternatives, December 2006, http://www.cpalanka.org/psg/STATEMENT_on_Emergency_Regulations2006.pdf (accessed July 24, 2007).

¹⁶⁰ Sri Lankan government response to Human Rights Watch, July 12, 2007.

VIII. Freedom of Expression and Association

Article 14 of the Sri Lankan constitution enshrines the rights to freedom of speech, assembly, association, and movement. However, since 2006 the government has increasingly intimidated and tried to silence the media, NGOs, and others with independent or dissenting views of government military and human rights policies. It has dismissed critics of the government's military strategy as allies of the LTTE and traitors of the state. Shortly after the government enacted the Emergency Regulations of 2006, President Rajapaksa gave a speech in which he equated opposition to the government's war efforts as support for the LTTE and terrorism:

I ask this of all political parties, all media, and all people's organizations. You decide whether you should be with a handful of terrorists or with the common man who is in the majority. You must clearly choose between these two sides.¹⁶¹

Journalists and NGO activists in particular found these words chilling given the new Emergency Regulations, which broadly criminalize "aiding and abetting the LTTE." Two weeks later, on December 20, 2006, two senior journalists from *The Sunday Observer*, Ranga Jayasurya and Lionel Yodasinghe, were summoned to the headquarters of the Criminal Investigation Division of the police and questioned under the newly enacted counterterrorism regulations.¹⁶²

The government has created an environment in which criticism of government policies has left the media and activist groups vulnerable to arrest and attack. In such an environment, suggestions that the media and human rights groups can be lumped together with the LTTE can be very dangerous. This has already silenced

¹⁶¹ Address to the Nation by President Mahinda Rajapaksa, December 6, 2006, http://www.priu.gov.lk/news_update/Current_Affairs/ca200612/20061207address_to_the_nation.htm (accessed May 30, 2007).

¹⁶² "Senior Journalists Questioned by Police under New Anti-Terrorism Regulations," Free Media Movement press release, December 21, 2006, http://freemediasrilanka.org/index.php?action=con_news_full&id=401§ion=news (accessed May 25, 2007).

individuals and groups working to report objectively on human rights and politics in Sri Lanka and created a climate of fear for many government critics.

Attacks on media

Since the resumption of major military operations in 2006, the government has intensified political pressure on the independent media, including by conducting politically motivated arrests. In the areas it controls, the LTTE strictly controls the media, and it has a powerful influence through fear and intimidation over Tamil outlets in other parts of the country. Countrywide, attacks on journalists have reached a level unknown in recent years.

Tamil journalists, especially in the north and east, have been frequently subject to intimidation and harassment by the security forces and armed groups. Since the beginning of 2006 over two dozen Tamil media workers have been abducted, threatened, assaulted or killed.

The LTTE has long been implicated in abductions and killings of media practitioners—journalists, editors and newspaper office workers—including the August 2005 murder of Sri Lanka Broadcasting Corporation journalist Relangi Selvarajah and her husband Sinnadurai Selvarajah in Colombo. Tamil journalists like Selvarajah have suffered the brunt of the attacks:¹⁶³ from January 2001 to July 2006, apart from a single Sinhalese journalist, every media person murdered in Sri Lanka was Tamil.¹⁶⁴ The LTTE has also routinely pressured Tamil journalists and attempted to force Tamil media practitioners to resign from state-owned media.¹⁶⁵

Eleven media practitioners have been killed in Sri Lanka since August 2005, placing it second after Iraq in the list of media worker deaths. None of the investigations into the murders have led to prosecutions. In its Worldwide Press Freedom index,

¹⁶³ Reporters Without Borders, “Mission Statement of International Fact-Finding and Advocacy Mission to Sri Lanka,” October 11, 2006,

http://www.rsf.org/article.php3?id_article=19142 (accessed July 16, 2007).

¹⁶⁴ Free Media Movement’s submission to the United Nations Human Rights Council, March 2007.

¹⁶⁵ Freedom House, “Freedom in Sri Lanka-2006, Overview,”

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?country=7062&pf (accessed July 3, 2007).

Reporters Without Borders said that media freedom in Sri Lanka dropped dramatically from rank number 51 in 2005 to 141 in 2006.¹⁶⁶

Over the past year, President Rajapaksa has held regular breakfast meetings with editors. According to participants, on occasion he has admonished them for their “unpatriotic” writing.¹⁶⁷ The president has made similar statements in public. In a briefing to the media on March 29, 2007, he asked “all media institutions not to criticize our security forces, underestimating their morale. Media should not highlight the lapses of our security forces which may be advantageous to the enemy.”¹⁶⁸

The president’s brother, Defense Secretary Gothabaya Rajapaksa, has been more direct.¹⁶⁹ On April 17, 2007, he reportedly called the editor of the *Daily Mirror*, Champika Liyanaarachchi, on her cell phone. According to Liyanaarachchi, he complained about the paper’s editorial stance on the war. In particular he cited an article the paper carried on April 16, about illegal activities by the Karuna group in the east, which he considered hostile to the government. He told her that the Karuna group could take revenge on her, and that the government would not be able to provide protection. According to Liyanaarachchi, Rajapaksa asked her to resign so as to avoid facing reprisals. He also allegedly said that he would “exterminate” journalist Uditha Jayasinghe, a reporter with the paper, who has written extensively on human rights issues in the country’s east.¹⁷⁰

Members of the Sri Lankan Army from the 512 Brigade based in Jaffna summoned the editors of three Jaffna dailies on November 6, 2006, and warned them against publishing any news critical of the military.¹⁷¹

¹⁶⁶ Reporters Without Borders, “Press Freedom Index 2006,” http://www.rsf.org/rubrique.php3?id_rubrique=639 (accessed May 14, 2007).

¹⁶⁷ Human Rights Watch interview with journalists, Colombo, March 2, 2007.

¹⁶⁸ Free Media Movement, “President requests media not to criticise our Security Forces,” March 29, 2007, http://www.freemediasrilanka.org/index.php?action=con_news_full&id=510§ion=news (accessed July 16, 2007).

¹⁶⁹ Human Rights Watch interview with journalists, Colombo, March, 2007.

¹⁷⁰ Reporters Without Borders, “Defence secretary threatens editor and journalist on Daily Mirror,” April 19, 2007, http://www.rsf.org/print.php3?id_article=21819 (accessed July 16, 2007).

¹⁷¹ Centre for Policy Alternatives, “War, Peace and Governance.”

At a public meeting on April 6, 2007, the minister for health, Nimal Sripala de Silva, described journalists as “mad dogs” and recommended that they be given an anti-rabies injection. The minister’s angry outburst was a reaction to a series of exposes on corruption in the health sector.¹⁷²

In June 2006 the government reactivated the Press Council, a media regulatory body, which it had scrapped in favor of a Press Complaints Commission (PCC) in 2003. The change sparked protests from media advocacy groups in Sri Lanka because the Press Council Act, on which the Press Council is based, prohibits the publishing of certain cabinet decisions, cabinet documents, and defense, fiscal and security matters (section 16).¹⁷³ Section 16(3) prohibits the publication of an official secret as vaguely defined in the Official Secrets Act of 1955.

On September 20, 2006, the Ministry of Defense sent a letter to media institutions, requesting that “news gathered should be subjected to clarification and confirmation.”¹⁷⁴ Journalists and editors viewed the letter as an attempt to impose censorship.

Journalists and human rights activists explained to Human Rights Watch that they now engage in self-censorship to avoid running afoul of the authorities. As one senior journalist told Human Rights Watch, “The government wants to look at everything we write, wants to vet articles and condemn those which are not favorable. If this is not censorship, what is?”¹⁷⁵

Attacks on *Uthayan* and *Sudar Oli*

The staffs of the popular Tamil dailies *Uthayan* and *Sudar Oli* have been repeatedly targeted because of the papers’ alleged pro-LTTE stance.

¹⁷² PK Balachandran, “Lankan minister calls scribes ‘mad dogs’,” *Hindustan Times*, April 12, 2007, <http://www.hindustantimes.com/StoryPage/StoryPage.aspx?id=5afe13bb-7aaf-404a-8552-98326d71fb95> (accessed July 16, 2007).

¹⁷³ Kelum Bandara and Kasun Yapa Karunaratne, “Media associations concerned about PC,” *Daily Mirror*, June 26, 2006, <http://www.dailymirror.lk/2006/06/24/front/04.asp> (accessed July 16, 2007).

¹⁷⁴ International Federation of Journalists, “International Fact-Finding and Advocacy Mission to Sri Lanka,” October 11, 2006, <http://www.ifj-asia.org/page/srilankamission061011.html> (accessed July 16, 2007).

¹⁷⁵ Human Rights Watch interview with journalist, Colombo, March 4, 2007.

The most prominent incident was the January 2006 killing of *Sudar Oli* journalist Subramaniam Sugirdharajan, apparently because he had reported on serious crimes by the Sri Lankan army. On the morning of January 24, unidentified gunmen in Trincomalee shot and killed Sugirdharajan as he waited for a bus to go to work. Sugirdharajan was known for having published photographs and news reports critical of the army and paramilitary groups active in the town. Most notably, *Sudar Oli* had published his photographs of five students allegedly executed by security forces in Trincomalee on January 2, 2006. The photographs directly contested claims by the Sri Lankan army that the young men were killed by grenades (the case is discussed further in Chapter X).¹⁷⁶

On May 2, 2006, five masked gunmen killed two *Uthayan* employees—Suresh Kumar, the marketing manager, and Ranjith Kumar, working in the circulation department—when they sprayed the paper’s Jaffna office with automatic weapon fire. The attack wounded five others and damaged the office.¹⁷⁷

On August 16, unknown attackers shot and killed an *Uthayan* driver named Sathasivam Baskaran, 44, while he was delivering the newspaper during a temporary lifting of the curfew in Jaffna. He was shot while driving his clearly marked vehicle in an area controlled by the Sri Lankan armed forces.¹⁷⁸ Three days later, unknown assailants burned down the Jaffna warehouse containing *Uthayan*’s printing equipment.¹⁷⁹ On September 7, six armed men entered the Jaffna offices of *Uthayan* and threatened editors with “severe reprisals” if they did not publish a statement urging employees of Jaffna University to call off a strike they had started over a salary dispute.¹⁸⁰

¹⁷⁶ Ibid.

¹⁷⁷ Committee to Protect Journalists, “In Sri Lanka, Two Killed in Attack on Tamil Newspaper,” May 2, 2006, <http://www.cpj.org/news/2006/asia/srio2mayo6na.html> (accessed July 16, 2007), and Reporters Without Borders, “Tamil press group driver killed, newspaper offices raided,” August 16, 2006, http://www.rsf.org/article.php3?id_article=18578 (accessed July 16, 2007).

¹⁷⁸ Free Media Movement, “Press Freedom and Freedom of Expression in Sri Lanka: The Struggle for Survival,” January 2007, http://www.freemediasrilanka.org/index.php?action=con_all_full&id=30§ion=news_reports (accessed July 16, 2007).

¹⁷⁹ “Sri Lanka: Tamil Journalists Under Threat—Overview,” *South Asia Media Monitor*, 2006, http://www.minvanradio.com/reports/SAMM_2006/Annual_Media_Report2006.pdf (accessed July 17, 2007).

¹⁸⁰ Human Rights Watch interview with *Uthayan* journalists, Colombo, March 2007.

On April 30, 2007, unidentified gunmen on a motorcycle shot and killed Selvarajah Rajewarnam, a young reporter for *Uthayan*, less than 200 meters from a military checkpoint in Jaffna. Rajewarnam, a Tamil, had worked for another Tamil-language paper, *Namadu Eelanadu*, which had closed soon after its managing editor, Sinnathamby Sivamaharajah, was killed outside his Jaffna home in August 2006.¹⁸¹ Some reports blamed Rajewarnam's killing on the Eelam People's Democratic Party (EPDP).¹⁸²



N. Vithiyatharan, editor of the newspapers *Sudar Oli* and *Uthayan*.
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¹⁸¹ Committee to Protect Journalists, "Amid Civil Strife, Another Tamil Journalist Killed in Sri Lanka," April 30, 2007, <http://www.cpj.org/news/2007/asia/sri30apro7na.html> (accessed July 3, 2007).

¹⁸² Reporters Without Borders, "Young Reporter with Tamil Newspaper Murdered in Jaffna," May 1, 2007, http://www.rsf.org/article.php3?id_article=21932 (accessed July 16, 2007).

Soon after the August 2006 attacks on *Uthayan*, the government provided the paper's editor Vithyatharan with two police guards at his Colombo home. On August 13 the security was unexpectedly withdrawn, Vithyatharan told Human Rights Watch. He raised the unexpected withdrawal with President Rajapaksa at a breakfast meeting of 25 editors on August 16. According to Vithyatharan, the president immediately lost his temper and started to shout. Vithyatharan told Human Rights Watch,

President Rajapaksa suddenly started shouting at me in front of everybody. He said, 'I have asked to withdraw your security! No one will come to your place to give you security! You go and ask [LTTE leader] Prabhakaran! You people are praising the law of the jungle! Policemen and security are scared to come to your place since you are LTTE!'

I told him that I am working under your umbrella—it is your duty to give me protection. He started shouting at me again. He said, 'I am not like Chandrika [former President Chandrika Kumaratunga]! I am a different person! I will hammer you people and teach a lesson to your people in Jaffna!'¹⁸³

Blocking of Tamilnet website

On June 15, 2007 internet service providers in Sri Lanka blocked access to the Tamilnet website, apparently on government orders. Based in London, Tamilnet (www.tamilnet.com) is a widely read, English and German language website that publishes pro-LTTE news and opinion. It is popular among Tamils who live outside Sri Lanka, as well as journalists, diplomats, and others who follow Sri Lankan news. At this writing it remained blocked inside Sri Lanka but was available outside the country.

¹⁸³ Human Rights Watch interview with N. Vithyatharan, Colombo, March 3, 2007.

“We have blocked it as per a government directive,” said an unnamed spokesman for Dialog, a telecommunications company.¹⁸⁴ An official at the state carrier Sri Lanka Telecom confirmed the company was blocking the site,¹⁸⁵ but company Chief Corporate Officer P.N.E. Abeysekara said the company had not blocked Tamilnet, and was investigating.¹⁸⁶ (The government owns slightly under 50 percent of Sri Lanka Telecom, which is run by the Japanese company Nippon Telegraph and Telephone (NTT).¹⁸⁷)

Sri Lanka's government and military denied they had ordered internet service providers to block the site.¹⁸⁸ “The government has nothing to do with this,” Media Minister Anura Priyadarshana Yapa said.¹⁸⁹ At the same time, government defense spokesman Keheliya Rambukwella joked that he would like to close the site. “I do not know, but I would love to hire some hackers,” he said, adding that he had no access to people who could do the job.¹⁹⁰

Attacks on Sinhala media

The Sinhala-language press has also come under governmental pressure. On November 22, 2006, agents of the Terrorist Investigation Division arrested Munusamy Parameswary, a reporter for the weekly newspaper *Mawbima*, under the Emergency Regulations, accusing her of “helping the LTTE and a suspected suicide bomber.” On March 22, 2007, the Supreme Court found no reasonable grounds for her detention and ordered her release.

Before Parameswary’s release, on February 27, the Terrorist Investigation Division arrested Dushantha Basnayake, the spokesman and financial director of Standard Newspapers Ltd., the company that publishes *Mawbima* and the English-language

¹⁸⁴ Simon Gardner, “Sri Lanka Urged to Stop Censoring Pro-Tiger Website,” Reuters, June 22, 2007.

¹⁸⁵ “Sri Lanka Seeks Hackers to Down Pro-Tiger Website,” Agence France-Presse, June 20, 2007.

¹⁸⁶ Gardner, “Sri Lanka Urged to Stop Censoring Pro-Tiger Website,” Reuters.

¹⁸⁷ “Sri Lanka Seeks Hackers to Down Pro-Tiger Website,” Agence France-Presse.

¹⁸⁸ “Popular Tamil Website ‘Blocked,’” BBC, June 20, 2007, http://news.bbc.co.uk/2/hi/south_asia/6221844.stm (accessed June 27, 2007).

¹⁸⁹ Gardner, “Sri Lanka Urged to Stop Censoring Pro-Tiger Website,” Reuters.

¹⁹⁰ “Sri Lanka Seeks Hackers to Down Pro-Tiger Website,” Agence France-Presse.

weekly *Sunday Standard*. They detained Basnayake for over two months also under the Emergency Regulations, eventually releasing him on bail; Basanayake is required to appear before court every month. On March 13 the government froze the assets of Standard Newspapers Ltd., citing suspected links to the LTTE. The company's assets remain frozen and neither *Mawbima* nor the *Sunday Standard* have published since March 29.

Over the past year, *Mawbima* has reported on government corruption and human rights violations. The newspaper's journalists have questioned the government's role in the spiraling number of abductions and enforced disappearances as fighting between the government and LTTE escalated.

The owner of Standard Newspapers, Tiran Alles, is also a close associate of two former ministers, Foreign Minister Mangala Samaraweera and Ports Development Minister Sripathi Sooriyaarachchi. Both ministers lost their jobs in February 2006 after falling out with the president. According to press reports, during an executive committee meeting of the ruling Sri Lanka Freedom Party on February 11, President Rajapaksa accused the two sacked ministers of using *Mawbima* to plot against him. One month later, the government froze Standard Newspapers' assets.

In a letter released to the Free Media Movement in March 2007, *Mawbima's* owners alleged that the government first made subtle overtures to Alles to change the editorial policy of its newspapers. When this failed, the paper was shut down.¹⁹¹

In another case against the Sinhala media, on January 5, 2007, government security forces in Colombo arrested three activists of the Sri Lanka Railway trade union and its publication *Akuna*, M.A. Sisira Priyankara, M.L. Senaviratna, and Nihal Serasinghe. The government did not announce the arrests at first, but one day later army spokesperson Prasad Samarasinghe produced evidence at a press conference that he claimed implicated the three trade union activists in planning terrorist acts. He accused the three men of collusion with the LTTE, and another officer at the press

¹⁹¹ Open letter to the diplomatic community in Sri Lanka from Thilakarathne Kuruwita Bandara, chief editor of *Mawbima*, and Hana Ibrahim, chief editor of the *Sunday Standard*, May 14, 2007, http://www.freemediasrilanka.org/index.php?action=con_news_full&id=491§ion=news (accessed July 16, 2007).

conference said they had already carried out attacks that had not resulted in casualties. The military showed journalists video recordings of the three activists confessing that they were planning to commit terrorist acts. All three, who reportedly appeared to be under pressure, also explained their military training with the LTTE. The army spokesperson told the press that the CID was holding the “traitors” in the interests of the investigation.¹⁹² The three men are still detained.

In response to a Human Rights Watch query, the Sri Lankan government said M.A. Priyankara was charged with undergoing weapons training at an LTTE camp, detonating bombs, the destruction of a Mobitel Tower at Radawana, and the possession of firearms and explosives. The government did not provide any information to support these claims.¹⁹³

Harassment by the Karuna group

The Karuna group has impeded and at times blocked the circulation of some Tamil-language newspapers in the north and east. In October 2006 and again in January 2007 the Karuna group prohibited the circulation of *Thinakural*, *Virakesari*, and *Sudar Oli* in Batticaloa and Ampara districts. The government took no apparent steps against the Karuna group for this. Also in October 2006 the Karuna group burned 10,000 copies of the Tamil-language daily *Virakesari*.¹⁹⁴ In government-controlled areas of Batticaloa district the Karuna group banned the sale of Tamil papers except the EPDP-owned *Thinamurasu* and the government-owned *Thinakaran*. The group has also issued death threats to newspaper distributors in Trincomalee in an attempt to block the distribution of independent Tamil papers. Again there was no apparent effort by the government to block these actions or arrest those responsible.

While the Karuna group has been blocking Tamil media, the EPDP has reportedly used force to sell its newspapers. Batticaloa residents told Human Rights Watch that EPDP members sometimes force local residents to buy the EPDP newspaper

¹⁹² Reporters Without Borders, “Army Accuses Three Journalists of Terrorism,” February 7, 2007, http://www.rsf.org/article.php3?id_article=20939, accessed May 19, 2007 (accessed July 16, 2007).

¹⁹³ Sri Lankan government response to Human Rights Watch, July 12, 2007.

¹⁹⁴ International Press Institute, “World Press Freedom Review-Sri Lanka, 2006,” http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0005/KW0132/ (accessed July 3, 2007).

Thinamurasu. They have seen EPDP cadres demanding that people on the streets and in buses purchase the paper.¹⁹⁵

Pressure on NGOs

Relations between local and international NGOs and the Sri Lankan government began to deteriorate after the 2004 tsunami, when dozens of new NGOs entered the country. Many made valuable contributions to reconstruction and rehabilitation, but in the unregulated wave of new organizations, some were ineffectual or engaged in corruption or religious proselytizing.

The Sinhalese nationalist JVP political party and its allies in particular grew critical of the presence of a large number of international NGOs. Because Tamils and Muslims were among the hardest groups hit by the tsunami, and thus got much (but by no means all) of the foreign assistance, the JVP and its allies viewed these NGOs with suspicion. Those groups that provided services in LTTE-controlled areas were subjected to greater criticism, and were often accused of supporting the LTTE.

As major hostilities between the government and the LTTE resumed in 2006, the government significantly stepped up its verbal attacks on NGOs, increasingly accusing them of undermining the government's war efforts, if not outright supporting the LTTE. The government has purposely fostered an atmosphere of distrust and dislike that, according to some humanitarian groups, has placed their staff members at risk.

Some members of the government have issued direct threats against civil society groups. In February 2007, for example, Minister for Environment and Natural Resources Champika Ranawaka of the Jathika Hela Urumaya (JHU, the Buddhist monk party in the government coalition), advocated extrajudicial methods to deal with human rights groups, journalists, and others who criticize the state's military strategy. "Those bastards are traitors. We can't do anything because of wild donkey freedom in this country," he told the *Ravaya* newspaper on February 18. "If those can't be handled with existing laws we know how to do it. If we can't suppress those

¹⁹⁵ Human Rights Watch interviews, Batticaloa, March 2007.

bastards with the law we need to use any other ways and means, yes.” To Human Rights Watch’s knowledge, no one in the government has condemned Ranawaka’s words.

On March 8, 2007, the government’s peace secretariat vehemently dismissed the growing allegations of government human rights violations as propaganda of the LTTE, suggesting that those who reported such violations were assisting the insurgent group:

Any group or organization, falling prey to this malicious propaganda of the LTTE, without prior inquiry, investigation or reliable verification, could as well be accused of complicity in propagating and disseminating the message and motives of the LTTE.¹⁹⁶

When Amnesty International launched a campaign during the 2007 Cricket World Cup to raise awareness about human rights violations in Sri Lanka, the Sri Lankan government suggested that the international human rights organization was linked to the LTTE. A report by Sri Lanka’s peace secretariat condemning the campaign was titled “Amnesty International’s Campaign and LTTE’s Expectations Fail.”¹⁹⁷

At times the government has purposefully spread the message that international humanitarian organizations are assisting the LTTE. Following military operations in Vaharai in January 2007, for example, the military found shelter material from UNHCR left behind by displaced persons, as well as empty food bags from the World Food Programme (WFP). The defense ministry broadcast images of these WFP bags filled with sand in LTTE bunkers on the state-run Rupavahini television channel, insinuating that the relief organization was helping the LTTE. Shortly thereafter, a mob attacked a government warehouse in Trincomalee stocked with WFP supplies.¹⁹⁸

¹⁹⁶ SCOPP, “Baseless Allegations of Abductions and Disappearances.”

¹⁹⁷ “Amnesty International’s Campaign and LTTE’s Expectations Fail,” SCOPP statement, April 26, 2007, http://www.peaceinsrilanka.org/peace2005/Insidepage/SCOPPDaily_Report/SCOPP_report_WC.asp (accessed July 3, 2007).

¹⁹⁸ Human Rights Watch interview with international aid worker, Colombo, February 21, 2007.

In January 2007 the military claimed to have found equipment donated by the international humanitarian organization ZOA Refugee Care at an LTTE-run hospital it had overrun in Ampara district. The government quickly accused ZOA, a Dutch NGO that has operated in Ampara since 1997, of supporting the LTTE. “Certain NGOs are acting against the normal law of the land and have got involved with subversives,” government defense spokesman Keheliya Rambukwella said. “Some have stooped down to assisting the terrorists.”¹⁹⁹ ZOA adamantly denied the charges, stating that it had supported the community by providing, among other aid, reconstruction material, development loans, and psychosocial support. “Though we received some requests to support the hospital we declined as the same was run directly by LTTE and had an LTTE doctor,” ZOA said in a statement. “To the best of our knowledge we have not provided support of any kind to LTTE in any form. All our assistance was provided directly to beneficiaries. No assistance was provided to [the LTTE-linked] TRO [Tamil Rehabilitation Organization] or any other local agency in the area.”

According to ZOA, the organization had stopped all activities as of August 4, 2006, when the Special Task Force said Ministry of Defence permission was required to access the LTTE-controlled area. “After this we entered the area on one occasion with STF permission to remove essential office items and documents,” ZOA said. “However we were unable to enter the area again to remove other items due to prevailing situation in the area.”²⁰⁰

Government security forces have been implicated in violence against NGO workers. According to the United Nations, 24 aid workers died in Sri Lanka in 2006.²⁰¹ The most serious incident was the execution-style killing of 17 local staff of the Paris-based NGO Action Contre la Faim in August 2006. The case is currently under investigation by the Attorney General and the Commission of Inquiry (see Chapter X, “Impunity for Rights Violations”).

On May 15, 2006, soldiers in Vavuniya shot dead an employee of the Norwegian Refugee Council, Jeyaruban Gnanapragasam. According to an international

¹⁹⁹ Simon Gardner, “Sri Lanka Probes Aid Groups for Suspected Rebel Links,” Reuters, January 11, 2007.

²⁰⁰ ZOA statement, January 10, 2007.

²⁰¹ Security Council Briefing by Under-Secretary-General for Humanitarian Affairs John Holmes, June 22, 2007.

humanitarian worker with direct knowledge of the incident, a soldier shot and killed Gnanapragasam after an argument over the military's use of his tractor.²⁰² On May 21, 2006, in Mutur, unknown assailants threw grenades at the offices of three international NGOs, ZOA Refugee Care, INTERSOS, and Non-Violent Peace Force (NVPF). The latter attack injured one international staff member and two passers-by, and damaged the NVPF offices. The government condemned the attack²⁰³ and ordered an investigation, but at this writing the police have not reported any arrests.

On April 4, 2007, Sri Lankan security forces said they had arrested two NVPF local staff members in Trincomalee after discovering a grenade in their car. NVPF said it had “no reason to suspect its staff of deliberately carrying the hand grenade” and that the organization “can only assume that the said grenade was placed in the vehicle without the knowledge of our staff.” NVPF alerted other nongovernmental organizations and UN agencies “to be vigilant to the possibility of further occurrences of this nature.”²⁰⁴ Police released the men on April 16, but they are scheduled to appear in court in July, apparently on charges of possessing illegal weapons.²⁰⁵ The police seem to have conducted a professional investigation, but the Ministry of Defence issued a statement on its website on the day of the arrests, entitled “Non Violent Peace Force Caught with Its Pants Down—Trincomalee,”²⁰⁶ that further stirred anti-NGO sentiment by suggesting the NVPF members were guilty before trial. The Sri Lankan army website also posted photographs of the arrested NVPF staff but shortly thereafter took them down.

The Ministry of Defence issued a second statement on April 6 that alleged one of the two suspects had ties to the LTTE. The statement elaborated on the alleged link between nongovernmental organizations and the armed group:

²⁰² Human Rights Watch interview, Batticaloa, February 27, 2007.

²⁰³ “Attack on International NGOs an Act of Terror,” Sri Lankan government statement, May 22, 2006, http://www.news.lk/index.php?option=com_content&task=view&id=140&Itemid=51 (accessed July 3, 2007).

²⁰⁴ Nonviolent Peaceforce, “Statement of NPSL on the Trinco Incident,” April 4, 2007.

²⁰⁵ “Hand grenade discovery - NPSL is concerned and perplexed,” Ministry of Defence news release, April 6, 2007, http://www.defence.lk/new.asp?fname=20070406_07 (accessed July 3, 2007).

²⁰⁶ “Non Violent Peace Force Caught with Its Pants Down—Trincomalee,” Ministry of Defence news release, April 4, 2007, http://www.defence.lk/new.asp?fname=20070404_04 (accessed April 5, 2007).

Despite the INGOs unwavering confidence over its employees, one of the suspects is alleged to have close connection with an LTTE terrorist named ‘Ice Manju’, a Sinhalese LTTE assassin based in Trincomalee area, our sources said. In 2005, a body of an employee of another INGO was found with full military gear among the slain LTTE cadres who had attacked the security forces personnel. There are many other speculations on INGOs helping the LTTE to expand its bloodshed in the country. The SL government has several times requested the INGOs operating with in the country to review their recruitment mechanism since such organizations might be easily targeted by the terror moles seeking immunity over security measures.²⁰⁷

On June 2, 2007, the bodies of two employees of the Sri Lankan Red Cross were found with gunshot wounds in Ratnapura district, southeast of Colombo. The dead were Karthakesu Chandramohan, age 26, and Sinnarasa Shanmugalingam, 32.

The two men, both Tamils, had traveled with four Red Cross colleagues from their hometown of Batticaloa to Colombo on May 30 for a workshop on tsunami relief. The group was waiting in Colombo’s Fort railway station on June 1 for the train home when, around 6:30 p.m., a group of men in civilian clothes who identified themselves as police asked them for their identity papers.²⁰⁸ According to the Red Cross, the men took Chandramohan and Shanmugalingam away in a white van for “alleged questioning.” The other four Red Cross workers lodged an entry at the nearby Fort police station. The president of the Red Cross informed the inspector general of police and the secretary to the Ministry of Defence.²⁰⁹

The bodies appeared the following day in Dumbara Estate in Kiriella, Ratnapura district.

²⁰⁷ “Hand grenade discovery - NPSL is concerned and perplexed,” Ministry of Defence news release.

²⁰⁸ “Sri Lanka Red Cross Staff Killed,” BBC, June 3, 2007, http://news.bbc.co.uk/2/hi/south_asia/6716557.stmm (accessed June 28, 2007).

²⁰⁹ “Brutal Murder of Two Red Cross Volunteers,” Red Cross Society of Sri Lanka news release, June 4, 2007, http://www.redcross.lk/eh_news51.html (accessed July 16, 2007).

The government dismissed the allegation that it was behind the abductions and murders as “part of the general propaganda and disinformation build-up against the president and the government.”²¹⁰

At the same time, the president ordered the police to conduct a full inquiry into the killings. According to a presidential statement, he told the Sri Lankan Red Cross and the ICRC that the government “would do everything possible to bring the perpetrators of this crime to book.”²¹¹ He repeated the promise to top officials from the International Federation of Red Cross and Red Crescent Societies in Geneva that he was committed to a full investigation that would hold the perpetrators to account.²¹²

In a statement, the Sri Lankan Red Cross explained how the murders will impact its work: “This act will have major impact on the volunteers of the Sri Lanka Red Cross Society as well as to the Red Cross Red Crescent movement which is the largest humanitarian organization in the world, whose mission is to alleviate human suffering. We believe that this act will jeopardize the commitment of our volunteers and have a major impact in our accessibility in delivering humanitarian assistance to the vulnerable.”

Direct evidence of Karuna group threats emerged in Batticaloa district. According to humanitarian agencies working there district, the Karuna group has threatened local and international NGOs providing aid to displaced persons, trying to control the delivery of humanitarian aid and also attempting to extort from NGOs—including large international organizations that are providing services to the displaced—to buy goods from Karuna-endorsed suppliers. In one case known to Human Rights Watch, the group demanded that an international humanitarian organization purchase supplies from a distributor aligned with the group. In another case, the Karuna group

²¹⁰ Presidential Secretariat, “Red Cross Workers’ Abduction and Killing – Concerted Efforts to Discredit President and Government, and Tarnish Sri Lanka,” June 4, 2007.

²¹¹ Official website of the President of Sri Lanka, “President Talking to Red Cross Representatives at the Presidential Secretariat,” June 6, 2007, <http://www.presidentssl.org/data/html/news/200706/20070606news.htm> (accessed June 28, 2007).

²¹² “Red Cross/Red Crescent Meet with Sri Lankan President in Geneva,” ICRC press release, June 14, 2007, <http://www.icrc.org/web/eng/siteengon.nsf/html/sril-lanka-news-140607!OpenDocument> (accessed June 28, 2007).

abducted a Sri Lankan worker at an IDP camp, apparently because the person was Muslim. He was subsequently released.²¹³

In December 2006 the Karuna group started a drive against the “No Weapons” stickers used by most NGOs outside their offices and on vehicles. Two international aid groups told Human Rights Watch that the Karuna group had complained to them about the “pacifist” stickers, which they considered an “insult to their movement.”²¹⁴

In Colombo, Sri Lankan human rights activists have also been receiving death threats on the telephone from unknown callers. Three activists told Human Rights Watch that they had received such calls over the past year, and they knew of others who had received them too, but none of them reported the call to the police or wished their names to be published in this report due to security concerns. One activist who received a death threat told Human Rights Watch,

There is no point in trying to get these death threats investigated. We know whoever is making these calls enjoys a degree of protection from law-enforcing authorities in the country.²¹⁵

Parliamentary Committee on NGOs

In March 2005 parliament established a Select Committee of Parliament for the Investigation of the Operations of Non-governmental Organizations and their Impact. The committee was initially created to investigate tsunami funding and the role of foreign NGOs. The justification for the committee, as set out in the terms of reference, was the allegation that some NGOs were engaged in activities that are “inimical to the sovereignty and integrity of Sri Lanka” and “detrimental to the national and social well being of the country,” as well as adversely affecting “national security.”²¹⁶

²¹³ Human Rights Watch interview with international aid worker, Batticaloa, February 28, 2007.

²¹⁴ Human Rights Watch interviews with international aid worker, Batticaloa, February, 2007.

²¹⁵ Human Rights Watch interview with human rights activist, Colombo, March 2007.

²¹⁶ International Commission of Jurists, “Sri Lanka - Open letter on the Select Committee of Parliament for the Investigation of the Operations of Non-governmental Organizations and their Impact,” September 5, 2006.

With the change of administration in November 2005, however, the committee altered tack and began to examine a range of NGOs not directly involved in tsunami-related relief. Over the past 12 months, the committee has asked NGOs to submit internal records from the past 10 years, such as lists of publications and organized functions, including attendees.²¹⁷ NGO activists believe the government has encouraged an expansion of the committee's purview as a means to pressure independent and critically-minded groups.

The committee has asked at least eight international organizations to submit records for investigation. These include Caritas, Consortium for Humanitarian Agencies (CHA), Bergof Foundation, Centre for Policy Alternatives, National Peace Council, and ZOA. Some of the organizations have balked at the demand. The Berghof Foundation, for example, at first refused to appear before the committee, although it later agreed. The director for Sri Lanka, Dr. Norbert Ropers, told the committee that the foundation had an arrangement directly with the government so there was no need to appear. "We work here under a MoU [Memorandum of Understanding] signed between the Foundation and the Ministry of Constitutional Affairs and Industrial Development in July 2001 and is also registered under the Companies Act," he said.²¹⁸

On January 27, 2007, the committee summoned the Dutch NGO ZOA to discuss allegations by the military that it had provided equipment to the LTTE (see above). According to ZOA, the committee members made the following allegations:

1. ZOA is a Christian organization only helping Tamil Christians;
2. ZOA built and supported a hospital for the LTTE in Kanchi Kudi Aru;
and
3. ZOA built 500 houses for the families of fallen LTTE fighters in Kanchi Kudi Aru.

²¹⁷ "Hunting NGOs or Restoring and Rewarding Non-profit Work, *Daily Mirror*, February 22, 2007.

²¹⁸ "Berghof Questioned over Ducking Select Committee Summons," *Sunday Times* (Colombo), May 13, 2007.

ZOA denied all the allegations, and said it also helped non-Tamil communities, including Muslims resettling in Musali in Mannar, Sinhalese families in Serunuwara, and Sinhalese and Muslim families in Polonnaruwa.²¹⁹

The Select Committee is chaired by a JVP parliamentarian, Wijitha Herath, and consists of the chair plus members from the JVP and the Buddhist monk party, JHU. Both parties represent a strong Sinhalese nationalist perspective. Hardline segments of Sinhalese polity are vehemently opposed to a negotiated, federal solution to the conflict, and have openly supported an intensified military strategy.

NGOs register under the Voluntary Social Services Organization Act or the Companies Act and are subject to the financial oversight of these acts. Any allegations of fraud or misappropriation of funds by NGOs registered under the Voluntary Social Services Organization Act are brought to the notice of the government by the registrar, which may refer the matter to a Board of Inquiry. Those NGOs registered as non-profit organizations under the Companies Act must provide an annual report and statement of accounts to the Registrar of Companies. As existing checks and balances are already in place, the need for additional financial reviews seems unnecessary and raises questions about the parliament's motives in monitoring NGO work.

²¹⁹ Email correspondence between ZOA staff member and Human Rights Watch, January 27, 2007.

IX. Karuna Group and State Complicity

With the government's acquiescence if not open backing, the Sri Lankan security forces continue their support for the abusive Karuna group, the Tamil armed group that split from the LTTE in 2004. The LTTE's loss of key territories in the east has permitted the Karuna group to extend its influence over the districts of Ampara, Trincomalee, and Batticaloa. In 2007 the group was expanding its operations in the Vavuniya district in the north, working in tandem with government forces, and continuing to engage in extortion and abductions.

In late 2006 and early 2007 the Karuna group, with the complicity of the security forces, continued to forcibly recruit children for use as soldiers, as well as commit abductions and murders of suspected LTTE members and supporters, and kidnappings for ransom of wealthy Tamil businessmen.

International criticism of the Karuna group has grown. On April 27, 2007, UNICEF publicly criticized the Karuna group for stalling on its promises to end child recruitment.²²⁰ On May 10, US Assistant Secretary of State Richard Boucher called on the government to rein in paramilitary groups, a clear reference to the Karuna group. At a press conference after a three-day trip to Sri Lanka, he said,

[I]t is also important that the government ensures security for everybody. And in the current circumstance that means stopping and controlling the paramilitary groups that have operated in various parts of the island and who are suspected, believed, known to be involved in many of the abductions and killings that have occurred in recent months.²²¹

On May 11 the chairman of the UN Security Council Working Group on Children and Armed Conflict released two statements condemning the recruitment and use of

²²⁰ "UNICEF Says Karuna Faction 'Not Serious' About Child Releases," UNICEF news note, April 27, 2007, http://www.unicef.org/media/media_39477.html (accessed May 13, 2007).

²²¹ Remarks by US Assistant Secretary of State Richard A. Boucher, Colombo, May 10, 2007.

child soldiers by the LTTE and Karuna group. The statement on the Karuna group said the working group “[s]trongly condemns the recent recruitment and use of child soldiers and all other violations and abuses committed against children by the Karuna faction.”²²² The statement called on the group to end the abduction, use, and recruitment of children and to engage with UNICEF to release all children among their ranks.

Human Rights Watch and others, notably UNICEF and Allan Rock, a United Nations advisor on children and armed conflict, have frequently condemned the Karuna group’s use of child soldiers, and the Sri Lankan government for tolerating such abuse.²²³ They have all called on the government to take action.

President Rajapaksa and other Sri Lankan officials have repeatedly said the government would investigate the allegations of state complicity in Karuna abductions and hold accountable any member of the security forces found to have violated the law. In a letter to Human Rights Watch sent on May 8, 2007, Sri Lankan ambassador to the United States Bernard Goonetilleke reiterated the point. He said the government “unreservedly condemns such abductions, recruitment and use of children by the Karuna Group and will investigate the allegations made against individual members of the armed forces and take appropriate action following investigation.”²²⁴

On June 18, 2007, Human Rights Watch asked the Sri Lankan government to explain the status of the government’s investigation into state complicity in abductions by the Karuna group. The government provided no information on the investigation,

²²² Statement by the Chairman of the Security Council Working Group on Children and Armed Conflict, April 11, 2007, http://www.franceonu.org/article.php3?id_article=1460 (accessed May 12, 2007).

²²³ See Human Rights Watch, *Sri Lanka – Complicit in Crime: State Collusion in Abductions and Forced Recruitment by the Karuna Group*, vol. 19, no. 1(c), January 2007, <http://hrw.org/reports/2007/srilanka0107/>; “UNICEF Condemns Abduction and Recruitment of Sri Lankan Children by the Karuna Group,” UNICEF news note, June 22, 2006, http://www.unicef.org/infobycountry/media_34677.html (accessed May 13, 2007); and Statement from the Special Advisor on Children and Armed Conflict, <http://www.un.org/children/conflict/pr/2006-11-13statementfromthe127.html> (accessed May 13, 2007).

²²⁴ Letter from Sri Lankan Ambassador to the United States Bernard Goonetilleke to Human Rights Watch, May 8, 2007.

stating that it “has no complicity with the Karuna group in any allegations of child recruitment or abduction.”²²⁵

On the contrary, a clear pattern of the government turning a blind eye to abductions, extrajudicial executions, and extortion committed by the Karuna group, and of open cooperation between Sri Lankan security forces and the Karuna group, has emerged. Armed Karuna members regularly walk or ride throughout Batticaloa district in plain view of government forces. On February 26 Human Rights Watch saw a Karuna commander named Jeyam riding atop a Sri Lankan armored personnel vehicle outside Valaichchenai. In Batticaloa town residents have seen Karuna cadre patrolling jointly with the police. Local residents in Batticaloa district said that Karuna members sometimes manned checkpoints together with government security forces, helping them identify suspected members or supporters of the LTTE.

In Batticaloa district the Karuna group now abducts and uses child soldiers with blatant complicity of the Sri Lankan military and police. In February Human Rights Watch observed armed children guarding Karuna political offices in plain view of the Sri Lankan army and police.

Parents of abducted children told Human Rights Watch that members of the Karuna group had taken their children in early 2007. Parents of one abducted child and two abducted young men told Human Rights Watch how Karuna cadres had abducted their sons in recent weeks. In the first case, Karuna group members first abducted the child in July 2006, allowed him home for a family visit, and about one week later came and took him back. In the second, Karuna cadre abducted two young men on the A11 road between Welikanda and Valaichchenai in February 2007. When relatives of the two complained at the nearby Karuna camp in Karapola, Karuna cadres told them not to report the case—or else to say the LTTE took their sons.

The mother of one of the young men explained how Karuna members took her son away:

²²⁵ Sri Lankan government response to Human Rights Watch, July 12, 2007.

The bus stopped. A white van came and three men with pistols came inside. One guy took my son and pulled him out. I was crying and they pushed me and I fell.²²⁶

As of July 1, 2007, UNICEF had documented 145 cases of recruitment or re-recruitment of children by the Karuna group since December 2006. Figures for the individual months are as follows: December—16, January—37, February—19, March—15, April—19, May—19, and June—20.²²⁷

The actual number is likely to be higher because many parents are afraid to report cases, and these numbers do not reflect the forced recruitment by the Karuna group of young men over 18.

According to Sri Lankan human rights groups and some kidnap victims, the Karuna group is also implicated in the kidnappings for ransom of dozens of Tamil businesspeople and, increasingly, Tamil professionals (see Chapter VI, “Abductions and Enforced Disappearances”). Such kidnappings have taken place in Batticaloa, Trincomalee, Vavuniya, and Colombo. At first the victims were wealthy businessmen, but over time the Karuna group targeted smaller businessmen and then professionals, such as bankers and lawyers.

Human Rights Watch asked the Sri Lankan government what steps it has taken to end kidnappings for extortion by the Karuna group. The government replied generally that it “takes action on any allegations of abductions, disappearances and killings who so ever may be the perpetrator, on the basis of a complaint filed.”²²⁸

In late 2006 and early 2007, Human Rights Watch interviewed the family members of more than one dozen abducted boys and men in the east, however, who said the police had failed to accept their complaints.²²⁹ According to Judge Tillekeratne, head

²²⁶ Human Rights Watch interview with mother of abducted young man, Batticaloa, February 27, 2007.

²²⁷ Information provided to Human Rights Watch by UNICEF, email communication, July 9, 2007.

²²⁸ Sri Lankan government response to Human Rights Watch, July 12, 2007.

²²⁹ See Human Rights Watch, *Sri Lanka – Complicit in Crime: State Collusion in Abductions and Forced Recruitment by the Karuna Group*.

of the government commission looking into “disappearances,” the police did not always record complaints.²³⁰

The accounts of a Colombo businessman abducted in Colombo—he believes by members of the Karuna group—and of a Vavuniya couple who fled the town after getting demands for money from individuals who identified themselves as from the Karuna group are included in Chapter VI. The couple told us, “We are afraid to go to the police. The police are attached to this. If we file a case in court the Karuna group will throw a grenade at my house,” one of them told us.²³¹ Vavuniya businesspeople who were threatened into giving money frequently did so to a person near the Joseph Camp, the Sri Lankan army’s largest camp in the area, the couple said.



Sea Street in Colombo is the location of many Tamil-owned businesses and shops. Since mid-2006, the Karuna group has been implicated in the abductions of Tamil businessmen and holding them for ransom.
© 2007 Fred Abrahams/Human Rights Watch

²³⁰ Susistha R. Fernando, “Majority of ‘Abductees’ Found to Have Returned,” *Daily Mirror*, June 29, 2007.

²³¹ Human Rights Watch interview with couple from Vavuniya, Colombo, March 4, 2007.

X. Impunity for Rights Violations

Since the beginning of Sri Lanka's civil war more than two decades ago, successive governments have consistently failed to adequately investigate or prosecute those in the security forces responsible for serious violations of human rights and international humanitarian law. In cases of enforced disappearances, torture, indiscriminate attacks, and targeted killings, successive Sri Lankan governments have consistently failed to hold accountable members of the police or military who commit serious crimes.²³²

Some observers seeking to explain this culture of impunity point to weaknesses in the criminal justice system, which has proved unable to deliver justice for victims of common crimes, let alone victims of serious crimes involving the military or police. Sri Lankan lawyers report long delays in hearings, threats to witnesses and family members, and government officials working on behalf of the accused.

These structural obstacles seriously hinder the judicial process. But they are not as significant as the government's lack of political will to prosecute soldiers, police, and other government officials and agents implicated in wrongdoing. Even when there is overwhelming evidence of government forces responsibility for abuse, successive governments have rarely conducted an investigation resulting in a successful prosecution.

Then Foreign Minister Mangala Samaraweera highlighted the problem of impunity in the December 2006 letter he sent to President Rajapaksa: "Even when investigations are being carried out, the process of perpetrators being brought to justice is extremely slow," he wrote. "As a result, there is a perception that authorities are turning a blind eye to these matters. As such, the impression of a culture of impunity gains further credence."²³³

²³² See Law & Society Trust, Sri Lanka, "State of Human Rights 1999."

²³³ *The Sunday Times Online*, vol. 41-no. 39, February 25, 2007, <http://sundaytimes.lk/070225/News/102news.html> (accessed July 2, 2007).

Over the past 18 months, the government has failed to adequately investigate dozens of prominent crimes in which the involvement of the security forces is alleged. The most publicized case is the execution-style murder of the 17 aid workers from the Paris-based NGO Action Contre la Faim in Muttur in August 2006 (see Chapter VIII). Available evidence indicates that the killings could have been committed by government security forces.²³⁴

The attorney general has been conducting an investigation but, according to international monitors, the process is fraught with difficulties that place the government's sincerity in doubt. In March 2007, based on observations of the legal proceedings, the International Commission of Jurists (ICJ) found "significant flaws" in the investigation by the local police and criminal investigation department. ICJ recommended "the establishment of a team independent of the police and security forces to investigate this crime, to identify the perpetrators and to report to the Attorney-General, who should then ensure that those responsible are prosecuted."²³⁵

Action Contra La Faim also went public with its concerns, saying in June 2007 that it questioned "whether the investigation will lead to an indictment against those responsible."²³⁶

In his report to the Human Rights Council on September 19, 2006, the United Nations special rapporteur on extrajudicial, summary or arbitrary executions summed up the inability of state institutions to address serious crimes:

National accountability mechanisms are important but insufficient for achieving the necessary accountability. The criminal justice system police investigations, prosecutions, and trials have utterly failed to provide accountability. Indeed, it is an enduring scandal that

²³⁴ Human Rights Watch interview with official from the Attorney General's department, Colombo, June 25, 2007.

²³⁵ "Sri Lanka: ICJ Inquest Observer Finds Flaws in Investigation into Killing of ACF Aid Workers," International Commission of Jurists press release, April 23, 2007, http://www.icj.org/news.php3?id_article=4151&lang=en (accessed May 14, 2007).

²³⁶ "The Muthur Massacre: ACF Questions the Facts," Action Contra La Faim press release, June 22, 2007.

convictions of government officials for killing Tamils are virtually non-existent.²³⁷

The Sri Lankan government claims that it prosecutes abusive members of the security forces to the fullest extent of the law. It said that in 2006 the attorney general issued 10 indictments against security force personnel, followed by seven indictments in 2007. In addition, the government said that the military took disciplinary action against six members of the military in 2006, and the police did the same against 26 members of that force.²³⁸ The government has not provided details on any of these cases.

The one specific case the government has publicized is the November 2006 arrests of a police officer and army soldier in relation to the killing of five students from the Thandikulam Agricultural College near Vavuniya earlier that month.²³⁹ On November 18, an explosive device near the college ostensibly placed by the LTTE killed five government soldiers as they drove the A9 highway towards the Kokilai army camp. According to media reports, security forces arrived in the area after the explosion, assaulted college students, and shot at some, killing five. A spokeswoman for the SLMM said the soldiers “fired indiscriminately at a group of students who had thrown themselves on the ground seeking safety after an LTTE claymore mine blast nearby.”²⁴⁰ The government denounced the SLMM for its “biased statement” and, citing military sources, said the students were caught in crossfire when the LTTE opened fire from behind the college.²⁴¹ In July, however, the government said the attorney general would forward an indictment in the case.²⁴²

²³⁷ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Sri Lanka, 28 November – 6 December 2005 (E/CN.4/2006/53/Add.5).

²³⁸ Letter from Sri Lankan Ambassador to the United States Bernard Goonetilleke to US Congressman Rush Holt, July 9, 2007, available at <http://www.lankaweb.com/news/itemso7/usletter.pdf> (accessed July 18, 2007).

²³⁹ “Soldier, PC Arrested in Thandikulam Killing,” *Daily News* (Colombo), November 27, 2006, <http://www.dailynews.lk/2001/pix/PrintPage.asp?REF=/2006/11/27/seco6.asp> (accessed July 18, 2007).

²⁴⁰ “S. Lankan Troops Opened Fire on Students – Monitors,” Reuters, November 19, 2006.

²⁴¹ “SLMM is Biased and Unreasonable – Minister Rumbukwella,” News Portal of the Government of Sri Lanka, November 22, 2006, http://www.news.lk/index.php?option=com_content&task=view&id=1190&Itemid=44 (accessed July 18, 2007).

²⁴² Ministry of Disaster Management and Human Rights, “Government to Prosecute Army and Police Personnel Indictment to Be Served on Thandikulam Killings,” July 5, 2007, http://www.slembassyusa.org/backup/PR_July_6_2007.dwt (accessed July 18, 2007).

Lack of witness protection

A key problem in prosecuting cases is the lack of a witness protection law or program, which discourages cooperative individuals from giving evidence against members of the security forces.²⁴³ Without adequate protection, the risk of retaliation for some remains too high. According to Sri Lankan lawyers and human rights activists, witnesses in criminal cases who implicate members of the security forces have been targeted in the past with threats, harassment, and violence.

Witness protection is a serious concern in the murder case of five Tamil young men in Trincomalee on January 2, 2006. According to University Teachers for Human Rights (Jaffna), members of the security forces beat and then executed the young men.²⁴⁴ Initially the security forces reported that five LTTE cadres preparing an attack had been killed by their own grenade, which had accidentally exploded, but the authorities soon abandoned that claim.²⁴⁵

In January 2006 President Rajapaksa promised donor co-chairs that abuse of power by security forces would not be tolerated under any circumstances and that perpetrators of the Trincomalee killings would face justice, irrespective of rank.²⁴⁶ However, at this writing the investigation has not progressed. A dozen STF members were effectively discharged in April,²⁴⁷ but to date several of the security personnel implicated in the murders remain in Trincomalee. A senior police officer cited in a special investigator's report as allegedly being "behind the shooting incident" received a promotion and remained in Trincomalee until July 31, 2006, seven months

²⁴³ The attorney general has drafted a new bill, currently before the law commission, entitled "Assistance and Protection to Victims of Crime and Witnesses." According to the Sri Lankan government, it is "keen on having the bill formally approved by the law commission, so that it could be present to parliament soon." Sri Lankan government response to Human Rights Watch, July 12, 2007.

²⁴⁴ University Teachers for Human Rights (Jaffna), "The Five Students Case in Trincomalee," April 19, 2007, <http://uthr.org/SpecialReports/spreport24.htm> (accessed May 30, 2007).

²⁴⁵ D.B.S. Jeyaraj, "Terrible truth of the Trincomalee tragedy," *TamilWeek*, January 15, 2006, http://www.tamilweek.com/Trincomalee_tragedy_0115.html (accessed July 16, 2007).

²⁴⁶ President Mahinda Rajapaksa meets donor co-chairs, Embassy of Sri Lanka, Washington D.C., January 9, 2006, http://www.slembassyusa.org/archives/main_index_pages/2006/pr_presi_secre_09jano6.html (accessed July 24, 2007).

²⁴⁷ Human Rights Watch interview with official at Presidential Secretariat, June 27, 2006.

after the crime.²⁴⁸ Because of fear of reprisals, only one witness—Dr. K. Manoharan, the father of one of the victims—has offered to testify as a prosecution witness. No one else among the many persons in the vicinity of the killings has agreed.

After testifying at a magistrate’s inquest in January, Dr. Manoharan and his family were subjected to repeated threats, forcing them eventually to leave Trincomalee. On the evening of the inquest, unidentified men banged on Dr. Manoharan’s door and threw stones at his house. Dr. Manoharan subsequently received anonymous phone calls threatening to kill him and his family. In June the police threatened one of Dr. Manoharan’s sons as he went to school, and at a checkpoint a policeman delayed Dr. Manoharan, saying, “You are supporting the LTTE and our high officers are supporting you, so how can we do our duty?” Naval officers and police also came to Dr. Manoharan’s home in the evening offering “protection” in a manner suggesting not a genuine offer of assistance, but a thinly veiled threat.²⁴⁹

Potential witnesses were also scared by the January 24, 2006 killing of the journalist Subramaniam Sugirdharajan, apparently because he had taken photographs of the five murdered youth, which contested claims that the men were killed by a grenade. (See Chapter VIII, “Freedom of Expression and Association.”)

Non-implementation of the 17th Amendment

In October 2001 the Sri Lankan parliament unanimously voted in favor of the 17th amendment to the Sri Lankan constitution, which created a Constitutional Council.²⁵⁰ The council’s task is to nominate members of the Human Rights Commission, the Election Commission, Public Service Commission, the Permanent Commission to Investigate Allegations of Bribery or Corruption, the Finance Commission, the Delimitation Commission, and the newly formed National Police Commission.²⁵¹ The

²⁴⁸ “Flight, Displacement and the Two-fold Reign of Terror,” University Teachers for Human Rights (Jaffna), Information Bulletin No. 40, June 15, 2006, <http://www.uthr.org/bulletins/bul40.htm> (accessed July 25, 2007).

²⁴⁹ “Sri Lanka: Protect Witnesses in Trincomalee Killings,” Human Rights Watch news release, June 28, 2006, <http://hrw.org/english/docs/2006/06/27/slanka13628.htm>.

²⁵⁰ See the full text of the 17th amendment at <http://www.priu.gov.lk/Cons/1978Constitution/SeventeenthAmendment.html> (accessed May 30, 2007).

²⁵¹ Under the amendment, the membership of the Judicial Services Commission is composed of the chief justice and two sitting judges recommended by the president and approved by the Constitutional Council.

president cannot appoint any commission members without the recommendation of the council.

The logic behind the amendment was to create a neutral and independent body to make appointments to the various commissions. Previously, the president had directly appointed the members of the Human Rights Commission, the Public Service Commission, and the Bribery Commission.

According to the amendment, the 10-person Constitutional Council is comprised of the prime minister, the leader of the opposition in parliament, and the speaker of parliament, who acts as chairperson. Of the seven other members, one is chosen by the president, five are appointed by the president after nomination by the prime minister and leader of opposition,²⁵² and one is appointed by the president after majority vote of the deputies from the smaller parties in parliament. The nominated members are people of “eminence and integrity who have distinguished themselves in public life and who are not members of any political party.”

In March 2005 the terms of six of the 10 council members expired, and the Constitutional Council lost its necessary quorum, thereby rendering it inoperative.²⁵³ President Rajapaksa was elected in November 2005. After months of haggling, the prime minister and leader of the main opposition party finally decided on the individuals they would recommend to the president for appointment to the council. Rather than immediately appoint those five members to the council, however, which would have given the council nine members, the president argued that the council could not function without the tenth member, who had to be nominated by a majority vote of the smaller parties in parliament. To date, the smaller parties have been unable to decide on the name of their recommended appointee, ostensibly due to disagreement over the proper process of selection. Lawyers and human rights activists in Sri Lanka view the president’s decision as a way to keep the council from operating.

²⁵² Three of the five persons nominated jointly by the prime minister and opposition leader should “represent minority interests.”

²⁵³ According to Article 41E(3), the commission’s quorum is six.

The decision had a direct impact in April 2006, when the mandates of the Human Rights Commission members expired. Arguing that the Constitutional Council could not appoint the new members because it was inoperative, the president appointed the members himself. The president also directly appointed new members to the National Police Commission.²⁵⁴

The president's appointments to the police and human rights commissions contravened the letter and spirit of the 17th amendment. Sri Lankan human rights groups protested that "[t]he failure of the government to implement the 17th amendment to the Constitution and to establish a Constitutional Council has rendered independent bodies such as the Human Rights Commission invalid and impotent."²⁵⁵

The president's unwillingness to constitute the council has undermined the independence of the Human Rights Commission and the National Police Commission. Both of these institutions are intended to provide some oversight of the behavior of the government, and in particular the security forces. Both, if functioning properly, could help to promote accountability for violations of human rights.

Throughout 2006 Sri Lankan organizations have filed petitions in courts to challenge President Rajapaksa's circumvention of the 17th amendment and his unilateral appointment of individuals to serve on the commissions. Thus far they have all failed.²⁵⁶

The president has directly appointed more than one dozen commissioners to the various commissions, including to the Human Rights Commission. Human Rights

²⁵⁴ While some constitutional experts believe the Constitutional Council must await the naming of its tenth member before it can resume functioning, others believe the council can function with just nine members. With political will to ensure effective implementation of the 17th Amendment, the President could refer the matter to the Supreme Court for a determination. Furthermore, the speaker of parliament (ex officio chair of the Constitutional Council) could rule which parties are entitled to be part of the electoral college to elect the tenth member.

²⁵⁵ Joint statement of the Centre for Policy Alternatives, Civil Monitoring Commission, Free Media Movement, INFORM, International Movement Against All Forms of Racial Discrimination, Law & Society Trust, and Rights Now, "Time for the UN Human Rights Council to Turn Its Concerns on Sri Lanka into Action," April 10, 2007, http://www.lawandsocietytrust.org/PDF/Human%20Rights%20Council_Press%20Release.pdf (accessed May 30, 2007).

²⁵⁶ Teles Anandappa, "Court Rejects Petition, Calls for Action against Petitioners," *Sunday Times*, July 2, 2006.

Watch asked the Sri Lankan government why the president has not appointed the necessary members to the Constitutional Council. “Because the minority party nominee has not been proposed, there is a current impasse in this process,” the government replied. “However, the matter is now before a committee in parliament.”²⁵⁷

Inefficacy of the Human Rights Commission

Sri Lanka’s Human Rights Commission (HRC) was created as “an independent body to monitor the state agencies in their performance of human rights, to investigate violations of rights by using its own mechanisms, to recommend corrective action for individual rights violations, and to make recommendations for the improvement of human rights within the country.”²⁵⁸ Particularly in recent years, the lack of resources and insufficient support from other arms of government and security forces have hampered its effectiveness as an independent monitor.

With respect to specific cases, the HRC has the authority to conduct public inquiries where the evidence suggests there has been a gross violation of human rights; inquire and resolve complaints brought by the public concerning alleged human rights violations; and inquire into such matters on its own initiative and litigate on behalf of victims when necessary.²⁵⁹ In addition, the HRC has the very specific task of monitoring the welfare of detainees and making recommendations to improve conditions of detention.²⁶⁰

Under its mandate, the HRC can initiate litigation directly or bring a case before a court on its own initiative when investigations disclose an infringement of fundamental rights. The HRC can refer a matter to any court with jurisdiction, and initiate litigation where prior proceedings have been flawed. It also has the power to

²⁵⁷ Sri Lankan government response to Human Rights Watch, July 12, 2007.

²⁵⁸ Radhika Coomaraswamy, “Human Rights Commission will cease to function from April,” Asian Human Rights Commission, March 30, 2006.

²⁵⁹ Human Rights Commission Act, No. 21, § 14 (1996). See also Mario Gomez, “Sri Lanka’s New Human Rights Commission,” 20 Human Rights Quarterly 281, 284-5 (1998).

²⁶⁰ Human Rights Commission Act, §11(d).

intervene in litigation before any court dealing with the infringement of a fundamental right.

In practice, the HRC's ability to jump-start prosecutions has been limited. It must first try to settle a complaint through mediation. If this fails, it can recommend to the appropriate authorities that the persons responsible for a violation be prosecuted. Security personnel frequently fail to cooperate with the HRC and have often denied commission staff access to detention facilities. "We have the power to take up [laws of war] cases but during the war the military always tells us that they can't guarantee our safety," one Human Rights Commission officer told Human Rights Watch. "So in effect we can't investigate."²⁶¹

In addition, many Sri Lankans face great difficulties in accessing the HRC, particularly in the rural areas where serious abuses take place. While the HRC has 11 regional offices around the country, many lack adequate resources and are understaffed. Furthermore, field officers do not have proper protection when their inquiries place them in danger.

With the onset of the peace talks after the 2002 ceasefire, the Norwegian government, which mediated the negotiations, called on the HRC to assume a larger role in the peace process because both the government and the LTTE rejected proposals for international human rights monitoring. On March 21, 2003, during the sixth round of peace talks in Japan (the last round before the LTTE pulled out), the parties resolved to strengthen the Human Rights Commission by helping

[to] enable it to develop the capacity for increasingly effective monitoring throughout the country. These proposals would involve international advice and assistance to the HRC from the Office of the UN High Commissioner for Human Rights and other sources, and close coordination with the roles of UNICEF in relation to child protection, UNHCR in relation to the protection of returning internally displaced

²⁶¹ Human Rights Watch interview with Human Rights Commission officer, date and place withheld.

persons and refugees, and SLMM in relation to acts against the civilian population.²⁶²

The HRC balked at what it considered an unmanageable task. After a mission to the east in December 2003, it declared,

It is the Commission's belief that no national or regional human rights entity will be able to effectively monitor and implement human rights standards in the north and the east. No organization or individual enjoys that kind of universal authority and legitimacy. If a national organization is entrusted with this task it must be with substantial international aid and assistance. The Commission believes that the following course of action should be agreed to by the parties to the peace process.... A monitoring mechanism must be set up which involves substantial international assistance. The monitoring mechanism must have a strong and independent investigating wing which is fully trained and competent. Witness protection schemes and victim protection schemes should also be in operation.²⁶³

The HRC reiterated this position after its mission to the east in April 2005.²⁶⁴ Thus, while a strengthened and better funded commission with genuine independence can play an important role in monitoring human rights abuses in Sri Lanka, it could not substitute for an international monitoring mission under UN auspices.

Inadequacy of the Presidential Commission of Inquiry

Under pressure from foreign governments and domestic and international human rights groups to address the growing culture of impunity, the Sri Lankan government

²⁶² "New Progress in Sri Lanka Peace Talks," *News of Norway*, March 21, 2003, <http://www.norway.org/News/archive/2003/200301srilanka.htm> (accessed July 3, 2007).

²⁶³ Human Rights Commission of Sri Lanka, "The Human Rights Situation in the Eastern Province," December 2003, p. 33.

²⁶⁴ Human Rights Commission, "The Human Rights Situation in the Eastern Province (April 2005)," April 12, 2005, http://www.lines-magazine.org/articles/HRC_April2005_SriLanka.htm (accessed May 16, 2007).

agreed on November 3, 2006, to establish a Presidential Commission of Inquiry (Col) to investigate serious cases of human rights violations since August 1, 2005.²⁶⁵

Instead of an international commission, as many human rights groups urged, the Col is composed of Sri Lankan members, with an international group of observers, called the International Independent Group of Eminent Persons (IIGEP).²⁶⁶

According to the chairman of the commission, Justice Nissanka Udalgama, the purpose of the Col is “to collect sufficient evidence to launch prosecutions against person who are responsible for having perpetrated such violations.”²⁶⁷

The Col mandate lists 15 serious cases of alleged human rights violations since August 1, 2005, and the commission is allowed to expand that list:

1. Assassination of Sri Lankan Foreign Minister Lakshman Kadirgamar on August 12, 2005.
2. Killing of 17 aid workers from Action Contre La Faim in August 2006.
3. Killing of Muslim villagers in Mutur in early August 2006 and the execution at Welikanda of 14 persons from Mutur who were being transported in ambulances.
4. Assassination of Mr. Joseph Pararajasingham, member of parliament, on December 25, 2005.
5. Killing of five young men in Trincomalee on January 2, 2006.
6. Assassination of Deputy Director General of the Sri Lanka Peace Secretariat Mr. Ketheesh Loganathan on August 12, 2006.

²⁶⁵ Hon. Nissanka Kumara Udalgama is chair of the Col. The original members were: Upawansa Yapa, Dr. Devanesan Nesiya, Kanapathipillai Cathiravelpillai Logeswaran, Manouri Kokila Muttetuwegama, Jezima Ismail, Somapala Samarasinghe Srimega Wijeratne, and Ahamed Javid Yusuf. Upawansa Yapa has since died and Kanapathipillai Logeswaran resigned.

²⁶⁶ The original IIGEP members were: Justice P.N. Bhagwati (chair), Bernard Kouchner, Gene Dewy, Sir Nigel Rodley, Yozo Yokota, Marzuki Darusman, Kamal Hossain, Andres Mauromatis, Prof. Dr. Cornelis Fasseur, Prof. Bruce Matthews, and Prof. Ivan Shearer. Bernard Kouchner resigned in May after his appointment as foreign minister of France.

²⁶⁷ “Address of Hon. Justice Nissanka Udalgama, Chairman, Presidential Commission of Inquiry to Investigate and Inquire into Serious Violations of Human Rights,” Inauguration of Sessions of the Presidential Commission of Inquiry, May 14, 2007, http://www.peaceinsrilanka.org/peace2005/Insidepage/SCOPPDaily_Report/SCOPP_report140507_1.asp (accessed May 30, 2007).

7. Death of 51 persons in Naddalamottankulam (Senchola) in August 2006.
8. Disappearance of Rev. Nihal Jim Brown of Philip Neri's Church at Allaipiddy on August 28, 2006.
9. Killing of five fishermen and another person at Pesalai beach and at the Pesalai Church on June 17, 2006.
10. Killing of 13 persons in the Kayts police area on May 13, 2006.
11. Killing of 10 Muslim villagers at Radella in Pottuvil police area on September 17, 2006.
12. Killing of 68 persons at Kebithigollewa on June 15, 2006.
13. Incident relating to the finding of five headless bodies in Awissawella on April 29, 2006.
14. Killing of 13 persons at Welikanda on May 29, 2005.
15. Killing of 98 security forces personnel in Digampathana, Sigiriya, on October 16, 2006.

The Col subsequently decided to add another case:

16. Assassination of Nadarajah Raviraj, member of parliament for Jaffna district on November 10, 2006.

The decision to create the Col in itself suggests an admission on the government's part that domestic institutions have been incapable of investigating and prosecuting these serious crimes. If the police, attorney general's office, and courts were functioning properly, then a special commission would not be required.

The government presented the commission as a good faith effort to investigate serious human rights violations. But the commission's ability to promote accountability remains very much in doubt, and it is clearly not a substitute for international human rights monitors who can follow ongoing abuses as they take place.

First, there is little evidence to suggest that the commission is making significant headway on the 16 cases on its list. Considerable energy and resources have been

devoted to the commission, yet the only impact thus far is to take pressure off the criminal investigation arm of the government and the attorney general's office to bring prosecutions. In the meantime, abuses continue to take place.

Second, the commission is only advisory. It can only recommend to the government the steps to take, including by the attorney general. Within two months of receiving the report, the president must pass the recommendations onto the relevant state authority, but there is no legal obligation for that authority to act.

Third, neither the Commission on Inquiry Act of 1948²⁶⁸ nor the commission's mandate specifies that the government must make the Col reports public. Though Col hearings can be public, the reports themselves may never reach the public domain.²⁶⁹ In the past, the government has failed to release the reports of some independent commissions looking into human rights abuses.²⁷⁰

Fourth, the commission is saddled with the same concerns about witness protection as the courts (see above). In recognition of the problem, chairman of the commission Justice Nissanka Udalgama said that witnesses were often fearful to come forward. "We are trying to establish a victim and witness protection unit to encourage them to give evidence before the commission," he said.²⁷¹ Until then, it remains to be seen how many individuals are willing to take such a serious risk, especially when their evidence may never result in prosecution.

²⁶⁸ The Commissions of Inquiry Act No. 17 of 1948 grants the president the power to set the terms of reference of a Col and appoint all its members (sec.2); add new members at his/her discretion (sec. 3); revoke the warrant establishing the Col at any time (sec. 4); and appoint the commission's secretary (sec. 19) without needing to consult the commission or its chairperson.

²⁶⁹ The Sri Lankan government told Human Rights Watch that the president will make the Col report public "in accordance with the provisions of the presidential warrant establishing the commission." Sri Lankan government response to Human Rights Watch, July 12, 2007.

²⁷⁰ The report of the Presidential Commission of Inquiry into the Bindunuwewa Massacre of October 25, 2000, for example, has never been released. The report examines the attack by a mob of Sinhalese civilians and police on Tamil youth that killed 28 and wounded 14. The commission headed by Justice PHK Kulatilaka was set up on March 8, 2001, and its report was submitted in early 2002. For detailed information on the incident and the commission, see Alan Keenan, "Bindunuwewa: Justice Undone?" at http://www.brynmawr.edu/peacestudies/faculty/Keenan/bindunuwewa_justice_undone.html (accessed May 30, 2007).

²⁷¹ "Commission Urges Witness Protection," BBC, May 14, 2007, http://www.bbc.co.uk/sinhala/news/story/2007/05/070514_presidential_commission.shtml (accessed May 30, 2007).

Members of the IIGEP have also expressed concerns. “We need to set up the network of protection before [asking] the people to talk, otherwise we will face assassinations,” said Bernard Kouchner, a member of the IIGEP until May, when he became foreign minister of France. He added, “Without that, this is impossible. The number of people who have been assassinated is too high.”²⁷²

Fifth, the mandate of the commission allows a high level of participation by the attorney general’s office and the police. The former assists with investigations and inquiries and the latter works with the commission’s investigating unit. The involvement of government agencies in an ostensibly independent commission’s work raises serious concerns about conflict of interest. The issue of the independence of the attorney general’s office is particularly relevant given that the attorney general is unilaterally appointed by the executive, bypassing the 17th amendment (see above). As the Centre for Policy Alternatives wrote in one of its briefing papers on the Col,

With the increasing involvement of the [attorney general’s] department, many will question whether the Col and IIGEP are in reality independent of the State or whether they are indeed functioning with and/or on the advice of the Government and Government actors.²⁷³

The first months of the Col’s work have heightened these concerns. Although the Commissions of Inquiry Act and the Col mandate empower the Col to obtain information for its investigations, the government is reported to have withheld some of the requested material. According to a press account, the Colombo magistrate refused to provide the Col with records it wanted on the assassination of Foreign Minister Kadigamar because releasing the documents would interfere with an ongoing investigation.²⁷⁴

²⁷² Simon Gardner, “INTERVIEW-Witness Protection Vital to Sri Lanka Abuses Probe,” Reuters, March 10, 2007.

²⁷³ Centre for Policy Alternatives, “Commission of Inquiry and the International Independent Group of Eminent Persons: Commentary on Developments,” January-April 2007, CPA Policy Brief no. 2, 2007 http://www.cpalanka.org/research_papers/Policy_Brief_2_2007.pdf (accessed May 30, 2007).

²⁷⁴ Susitha R. Fernando, “Release of Kardigamar documents to Presidential Commission refused,” *Daily Mirror*, March 30, 2007, <http://www.dailymirror.lk/2007/03/30/news/03.asp> (accessed July 16, 2007).

The decision to withhold information does not bode well for the other 15 cases under investigation. And in the Kadirgamar case the victim was a government official, apparently killed by the LTTE. It seems even less likely that the authorities will provide information on cases in which the alleged perpetrator is the military or police.

Finally, the commission's first months suggest that it is relegating the group of eminent observers to a marginal role. Indeed, commission chairman Justice Udalgama made that clear during his inaugural address. "The IIGEP has not been appointed to conduct any substantive or alternate investigations or inquiries into any incident amounting to serious violations of human rights," he said, adding that "their role is to observe the functions of the commission."²⁷⁵

Sri Lankan organizations have urged that the government remove all restrictions on the IIGEP, and allow it to collect information and interview witnesses, in addition to monitoring the work of the Col.²⁷⁶

The IIGEP submitted its first interim report to the president on June 11, 2007. According to an IIGEP statement, the report informed the president that the Col has "so far made hardly any noticeable progress in investigations and inquiries since its inception in November 2006."²⁷⁷ In addition, the IIGEP expressed concern that the government had not taken adequate measures to address issues such as "the independence of the Commission, timeliness and witness protection."

In particular, the IIGEP expressed concern about the role of the attorney general's office in the investigations, citing a potential conflict of interest because investigators "may find that they are investigating themselves." It also disapproved of the Presidential Secretariat controlling the commission's finances.

The IIGEP also made clear that the Col's existence did not obviate the need for wider human rights monitoring:

²⁷⁵ "Address of Hon. Justice Nissanka Udalgama, Chairman, Presidential Commission of Inquiry to Investigate and Inquire into Serious Violations of Human Rights," Inauguration of Sessions of the Presidential Commission of Inquiry, May 14, 2007.

²⁷⁶ CPA Policy Brief no. 2, 2007.

²⁷⁷ "International Independent Group of Eminent Persons Public Statement," June 11, 2007.

In the current context, in particular, the apparent renewed systematic practice of enforced disappearance and the killings of Red Cross workers, it is critical that the Commission and IIGEP not be portrayed as a substitute for robust, effective measures including national and international human rights monitoring.

Commission chair Udalagama defended the Col's work. "Members of the commission are confident that the Col could continue to discharge its functions independently and that the mandate of the commission can be implemented in the best interests of justice," he said.²⁷⁸

Regarding the involvement of the attorney general's office, he said the commission was "satisfied regarding the professional integrity and the professional services being rendered." On funding, he said the government "has assured the Col that it will make available all required resources for the commission."

The IIGEP issued a second report four days later, which said the commission's conduct was "inconsistent with international norms and standards" and that failure to take corrective action "will result in the commission not fulfilling its fact-finding mandate in conformity with those norms and standards."

In particular, the IIGEP again questioned the role of the attorney general's department in assisting the Col, highlighting the conflict of interest that "compromises national and international principles of independence and impartiality."²⁷⁹

The report cited specific examples of the lack of impartiality by the attorney general's office, such as the improper leading of witnesses. The report concluded that "the commission does not seem to have taken sufficient corrective measures to ensure that its proceedings are transparent and conform with international norms and standards of independence, impartiality and competence."

²⁷⁸ "Response from the Chairman of the Commission of Inquiry to the IIGEP's Public Statement," June 11, 2007. For the full text of the response, see <http://www.dailymirror.lk/2007/06/12/feat/01.asp> (accessed June 28, 2007).

²⁷⁹ "International Independent Group of Eminent Persons Public Statement," June 15, 2007.

In his reply, commission chairman Udalgama expressed satisfaction with the services provided the Col by members of the attorney general's office:

We are confident that, in accordance with the rules of procedure of the Commission and the practices of the Commission applied so far, the Commission would be able to identify those responsible for having committed Human Rights violations pertaining to incidents being investigated and inquired into by the COI.²⁸⁰

The attorney general took great exception to the IIGEP's criticism of its role. In a sharply worded response, the attorney general reminded the IIGEP of its mandate "to observe the functions of the Col and comment on compliance with international norms and standards, and to also propose correctional action to be taken by the Col."²⁸¹ The attorney general told the IIGEP that, in view of its terms of reference, it is "inappropriate for the IIGEP to propose the setting up of an "international monitoring mechanism to address ongoing alleged Human Rights violations." The attorney general also reiterated that at least one of the 11 IIGEP members should be present in Sri Lanka to observe the functioning of the Col.

The last point resonated with Sri Lankan lawyers and activists. Two lawyers told Human Rights Watch that many IIGEP members have not stayed in Sri Lanka for a substantial time, and consequently they have not been very involved in the proceedings.²⁸²

Chairman Udalgama's assurances aside, the problems raised by the IIGEP suggest the Commission of Inquiry is unlikely to obtain prosecutions in the cases it is investigating, let alone bring an end to Sri Lanka's climate of impunity. The government of Mahinda Rajapaksa has shown no willingness to seriously address the deepening human rights crisis, and the commission seems an effort to stave off

²⁸⁰ "Response from the Chairman of the Commission of Inquiry to the Statement," June 15, 2007. For the full text of the statement see <http://www.medico-international.de/en/projects/srilanka/watch/20070615iigep.pdf> (accessed July 3, 2007).

²⁸¹ "Response from the Attorney General to the Statement," June 15, 2007. For the full text of the statement see <http://www.medico-international.de/en/projects/srilanka/watch/20070615iigep.pdf> (accessed July 17, 2007).

²⁸² Human Rights Watch interview with two Sri Lankan lawyers, Colombo, June 26, 2007.

domestic and international criticism, rather than a sincere attempt to promote accountability and the rule of law.

The need for international leverage

Foreign governments and international organizations should not view the Col as an effective means to address persistent human rights violations. They can and should devise creative methods to promote human rights and the rule of law in Sri Lanka.

In particular, international donors should encourage and press the Sri Lankan government to take the necessary steps to end abuse. The government has time and again pledged to the international community and to the Sri Lankan people that it will protect the human rights of all Sri Lankans. Now donor governments should hold them to respect that claim.

The co-chairs for the peace process (United States, the European Union, Japan, and Norway), as well as other governments, should use their leverage with both the Sri Lankan government and the LTTE to encourage respect for international law, including the obligation to minimize harm to civilians during hostilities. Financial aid is one lever that international governments have, and some states have recently elected to go that route.

Concretely, the international community should work with the government and the LTTE to establish a United Nations human rights monitoring mission to monitor violations of human rights and international humanitarian law by all parties, report its findings publicly, and act to promote respect for basic rights at the local level.

XI. Recommendations

To the Government of Sri Lanka

- End the practice of enforced disappearances by the security forces and pro-government armed groups, including the Karuna group, and EPDP, and prosecute those responsible.
- Make public the names of all persons detained by the military and police under Emergency Regulations and other laws, and provide those detained prompt access to their families and legal counsel.
- Make public the reports of the Presidential Commission on Abductions, Disappearances and Killings (Tillakaratne Commission).
- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
- Bring an end to torture, arbitrary arrest and detention, and extrajudicial executions by state security forces and pro-government armed groups.
- Institute disciplinary proceedings or prosecute as appropriate members of the security forces implicated in human rights abuses, including individuals criminally responsible as a matter of command responsibility when superiors knew or should have known of ongoing crimes but failed to take action.
- Bring an end to child abductions by the Karuna group, and ensure that abducted children and young men are released and returned to their families.
- Cease using the Emergency Regulations for arbitrary arrests, including interference with media, humanitarian NGOs, and other civil society organizations.
- Cease the forcible return of internally displaced persons and instead work with displaced communities to provide for genuinely voluntary and safe returns.
- Cooperate with humanitarian agencies to ensure that they are able to obtain access to populations at risk, including those in areas of LTTE control;
- Work with donor governments to establish an international human rights monitoring mission under United Nations auspices to monitor violations of human rights and international humanitarian law by all parties to the conflict;
- Ratify the Rome Statute of the International Criminal Court.

To the Liberation Tigers of Tamil Eelam (LTTE)

- Cease extrajudicial executions of civilians, including members of Tamil groups and political parties. Discipline as appropriate any member who commits human rights abuses.
- Cease all indiscriminate attacks on civilians, stop preventing civilians from leaving areas of active fighting, and provide humanitarian agencies safe passage in areas under their control.
- Stop extortion, intimidation, and mistreatment of persons who are perceived to be against the LTTE.
- Stop all recruitment of children, including voluntary enlistment as well as recruitment effected by abduction or other force or coercion, and cease the use of children in military operations. Cease the forced recruitment of all adults.
- Release all children from LTTE forces and give those recruited before age 18 the option to leave.
- Cooperate with UNICEF in ensuring the safe return of all child soldiers to their families.
- Take all appropriate steps to ensure LTTE commanders and other cadres do not recruit children under the age of 18 into LTTE forces and provide the international community (through UNICEF or the OHCHR) with documentation of disciplinary actions taken against LTTE cadres responsible for such recruitment.
- Allow UNICEF, the SLMM, and domestic and international humanitarian and human rights agencies access to all LTTE camps—military and otherwise—to assess the age of recruits, and identify children for demobilization.

To the Karuna Group (TMVP and its military wing)

- Cease the forced recruitment of all persons.
- Stop all recruitment of children, including voluntary enlistment as well as recruitment by abduction or other force or coercion.
- Cease the use of children in military operations.
- Release children and all others forcibly recruited for Karuna forces and cooperate with UNICEF in ensuring the safe return of minors to their families.

- Take all appropriate steps to ensure Karuna group commanders and other members do not engage in abductions, and release all those previously abducted immediately.
- Stop extortion, intimidation, and mistreatment of persons who are perceived to be against the Karuna group.
- Take appropriate steps to ensure Karuna group commanders and other members do not harass and intimidate displaced persons living in camps.
- Allow UNICEF, SLMM, and other domestic and international protection agencies access to all Karuna group camps—military and otherwise—to assess the age of recruits, and to identify children for demobilization.

To donor governments

- Work with the Sri Lankan government to establish an international human rights monitoring mission under United Nations auspices to monitor violations of human rights and international humanitarian law by all parties to the conflict.
- Urge the government of Sri Lanka and the LTTE to agree to designate demilitarized zones as sanctuaries in conflict areas and pre-position humanitarian relief in known places of refuge.
- Urge the government of Sri Lanka to ensure the protection of displaced persons, regardless of ethnicity, and end forced returns.
- Urge the Sri Lankan government to take proactive steps to end the practice of enforced disappearances, seriously investigate cases of complicity of state forces, and prosecute those responsible.
- Urge the government to discipline or prosecute as appropriate members of the security forces, including commanders, responsible for serious human rights abuses.
- Urge all parties to improve humanitarian access to populations at risk, including by ending unnecessary governmental restrictions on humanitarian workers.
- Urge the government to bring an end to torture, arbitrary arrest and detention, and extrajudicial executions by state security forces and other pro-government groups, including the Karuna group and EPDP.

- Urge the Sri Lankan government to stop using Emergency Regulations to clamp down on critical media, nongovernmental organizations, and civil society.
- Push for a strong resolution on Sri Lanka at the Human Rights Council that supports the establishment of a UN human rights monitoring mission.

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