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## **SRI LANKA: Contribution from the World Organisation Against Torture (OMCT) to the Universal Periodic Review (UPR) Process**

The World Organisation Against Torture (OMCT) wishes to draw attention to the serious situation as regards torture and other cruel, inhuman or degrading treatment or punishment in **Sri Lanka** and, in particular, to emphasise the following:

### **1/ The end of the ceasefire agreement in a context of increasing abuses: a looming future for human rights in the country<sup>1</sup>**

- On 2<sup>nd</sup> January 2008, the Sri Lankan Government led by Mahinda Rajapakse decided to call off the 2002 ceasefire agreement with the Liberation Tigers of Tamil Eelam (LTTE). In a conflict that has already seen a large number of human rights violations and high levels of impunity, the abrogation of the agreement is likely to result in an escalation of violence. Indeed, there have been increasing reports of enforced disappearances and unlawful killings since the resumption of hostilities in 2006, including over 1,000 reported extrajudicial executions and unlawful killings in 2006 and hundreds of disappearances across the country.
- In addition, while the Sri Lanka Monitoring Mission (SLMM), mandated by the ceasefire agreement to report on violations of the agreement by both parties to the conflict, will now come to an end, the International Independent Group of Eminent Persons (IIGEP), set up to observe investigations and inquiries carried out by the Presidential Commission of Inquiry on human rights violations (COI), recently complained that its observations were being persistently disregarded by the Sri Lankan government.
- As the end of the ceasefire makes an independent monitoring mechanism (such as the establishment of an Office of the UN Commissioner for Human Rights) indispensable, the Sri Lankan government has been increasingly hostile to calls for international observers, claiming its domestic mechanisms to be more than adequate.
- However, *impunity* for perpetrators of violations of international human rights and humanitarian law remains the rule in Sri Lanka, demonstrating the failure of authorities to investigate and prosecute such perpetrators.

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<sup>1</sup> See Human Rights Features HRF/180/08, a joint initiative of the South Asia Human Rights Documentation Centre (SAHRDC), a member of OMCT SOS-Torture network, and the Asia-Pacific Human Rights Network (APHRN), 11<sup>th</sup> January 2008.

- In particular, it is worth pointing out that the *Human Rights Commission of Sri Lanka* is now a shadow of its former self. Indeed, in May 2006, President Mahinda Rajapakse decided to appoint the members of the Human Rights Commission himself, despite the fact that the 17<sup>th</sup> amendment to the Constitution of Sri Lanka stipulates that the Constitutional Council alone can appoint the Commission members. However, the Council was dissolved in October 2005 following conflicts between political parties, and the President thus preferred to overrule the safeguards of the 17<sup>th</sup> amendment, without waiting for the reconstitution of the Council. One immediate impact of the change in the composition of the Commission was the decision to put an end to the evaluation of complaints filed in connection with the disappearance of over 2,000 people, “unless the government decides otherwise”. Besides, the International Coordinating Committee of National Institutions recently downgraded its status from full member to observer after concluding that the appointment of its commissioners had been irregular and that the commission’s functioning had not been balanced and objective<sup>2</sup>.
- It is therefore all the more worrying that in a 2006 ruling, the Supreme Court of Sri Lanka held that Sri Lanka’s accession to the *Optional Protocol to the International Convention on Civil and Political Rights*, which allows individuals to send complaints to the United Nations Human Rights Committee after having exhausted domestic legal remedies, was *unconstitutional*<sup>3</sup>.

## **2/ The situation of human rights defenders, including humanitarian workers**

In such a context of blatant human rights violations, human rights defenders in Sri Lanka are facing increasing persecution and threats to their lives. Indeed, in recent years, the number of reported attacks from both parties on human rights defenders has increased dramatically in the country. As a consequence, many had to leave their homes and localities and many others have fled the country. Besides, in Jaffna, the freedom of movement of human rights defenders is extremely restricted.

To that extent, OMCT wishes to recall that on August 7, 2007, while Mr. John Holmes, the United Nations Under Secretary General on Humanitarian Affairs and Emergency Relief Co-ordination, was carrying out a visit to Sri Lanka from August 6 to 9, 2007, his attempt to meet with civil society representatives during his visit to Jaffna was marred by the heavy presence of the military, thus preventing humanitarian and human rights NGOs from freely sharing their views, perspectives and experiences with Mr. Holmes, without fear of any kind of reprisals<sup>4</sup>.

### *The Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations 2006*<sup>5</sup>

On December 6, 2006, President Mahinda Rajapaksa promulgated the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations 2006. More specifically, they introduce broad-based and vaguely defined terrorist offences that will likely criminalise human rights activities, in particular the defence of the freedoms of expression, association and assembly. It is feared that those who seek a peaceful solution to the conflict, humanitarian workers, human rights defenders, demonstrators or even journalists could be prosecuted on the basis of these provisions. Indeed, they criminalise actions in breach of law and order if their purpose is to bring about “political or governmental changes” or to force the government to “take or refrain from taking a certain action”. Such vague wording could include activities such participating in or organising peaceful demonstrations or strikes.

Under these regulations, national and international organisations must obtain prior authorisation from a “competent authority” in order to engage in any action with a person or a group suspected of being involved in “terrorist activities” (Articles 11 and 12), which can easily apply to organisations providing aid and assistance in the northern and eastern regions of the country. The regulations also institute a “Court of Appeal”, before which the decisions of the “competent authority” can be challenged. However, the “Court of Appeal” is solely composed of representatives of government Ministries (Article 14).

<sup>2</sup> *Ibid.*

<sup>3</sup> See Home for Human Rights, a member of OMCT SOS-Torture network, Beyond the Wall, “Sri Lanka Civil Society Calls for International Monitoring Body on Human Rights”, July-Dec 2006.

<sup>4</sup> See Press Release of the Observatory for the Protection of Human Rights Defenders, 10<sup>th</sup> August 2007.

<sup>5</sup> See Annual Report 2006 of the Observatory for the Protection of Human Rights Defenders.

For its part, Regulation n°3 prohibits the “promotion” or “support” of persons involved in terrorist activities. Regulation n°15 also introduces an impunity clause that could be used to protect members of the police and the armed forces. Indeed, all legal proceedings shall be suspended if the official acted in “good faith and in the performance of his duty”. Such a provision can only reinforce the existing climate of impunity in Sri Lanka.

### *Humanitarian workers under attack*<sup>6</sup>

Since the intensification of the conflict between the government and the LTTE in July 2006, the government has imposed an unofficial embargo on humanitarian aid in the zones controlled by the LTTE, who have been fighting the army for over thirty years in order to obtain the creation of a State for the Tamil minority in the north and the north-east of the country. Not only is it now more difficult for humanitarian agencies to assist civil populations because of the ongoing conflict, but the attacks, threats and restrictions against humanitarian workers, defenders working for peace and journalists have also increased, in particular in the northern and eastern provinces. Travel restrictions in the conflict zone were imposed on NGOs, as well as on the Office of the High Commissioner for Refugees and the SLMM. These restrictions and the attacks on humanitarian workers have led several organisations to suspend their humanitarian activities.

### **3/ Recommendations**

In view of these elements, OMCT recommends that the Government of Sri Lanka:

- Guarantee in all circumstances the physical and psychological integrity of all Sri Lankan citizens, including human rights defenders;
- Ensure that legal safeguards guaranteed under national law are consistently applied and coherently enforced in accordance with international human rights standards;
- Order thorough and impartial investigations into human rights violations in order to identify all those responsible, bring them to trial and apply the penal and/or administrative sanctions as provided by law;
- Put an end to all acts of harassment against all human rights defenders in Sri Lanka, in accordance with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially its Article 12(2), which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;
- Authorise the establishment of an independent monitoring mechanism in the country;
- Ensure respect for human rights and fundamental freedoms throughout the country in accordance with national laws and international human rights standard.

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<sup>6</sup> *Ibid.*